

STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE

In the Matter of:)
)
 Paul A. Wagstaff,)
 Respondent)
_____)

Case No. D94-22

Findings of Fact, Conclusions of Law and Proposed Decision

Introduction

This Proposed Decision is submitted to the Director of the Division of Insurance, (hereinafter "Director") pursuant to AS 44.62.500 of the Administrative Procedures Act. In considering this Proposed Decision the Director is acting in an adjudicative (quasi-judicial) capacity and is restricted in deliberations to the testimony, evidence and arguments presented at the hearing. The Director should not receive any information of any kind other than that found in the hearing record.

Pursuant to AS 44.62.630 the Director should also refrain from discussing this case with anyone other than the Hearing Officer during the formal consideration of this Proposed Decision.

Background

On August 29, 1994, the Division of Insurance issued a Statement of Accusation ("accusation") seeking to revoke the individual insurance producer license of Paul A. Wagstaff under AS 21.27.410 for alleged untrustworthy conduct and alleged violations of AS 21.09.010, AS 21.27.010.

An administrative hearing was held on January 24 and 25, 1995. The State of Alaska appeared through Assistant Attorney General, Signe Andersen. Respondent Wagstaff appeared representing himself.

Based on the testimony and evidence presented by the parties, the Administrative Hearing Officer makes the following Findings of Fact, Conclusions of Law and Proposed Decision.

Findings of Fact

1. Wagstaff was licensed by the Division as a resident individual insurance producer for life and disability insurance under license no. 1326 until he voluntarily surrendered the license at the administrative hearing on January 25, 1995. License no. 1326 is a conversion of license no. 8305 which was originally issued to Wagstaff on or about October 15, 1984 as a nonresident insurance agent license for life and disability and later converted to a resident insurance license. License no. 1326 is also a conversion of license no. 14327 that was issued to Wagstaff on or about February 27, 1986, as "principal in a firm" for his firm, Northwest Planning Associates, Inc. (aka Northwest Financial).

2. On or about February 27, 1986, the Division had also issued firm license no. 9226 to Wagstaff in the name of Northwest Financial which was subsequently reissued in the name of Northwest Planning Associates, Inc. (new license no. 8602) which expired on February 27, 1994.

Count I

3. Prior to licensure in Alaska, Wagstaff lived in Salt Lake City, Utah and was licensed as an insurance agent for life and disability. He also held real estate and securities licenses. Wagstaff acted as a life insurance agent for Blanche Smith whom he had met through her daughter, Darlene Smith in 1982. At the time, Blanche Smith was elderly and retired.

4. In 1984, Blanche Smith, acting on Wagstaff's advice, gave him \$60,000 from the sale of her home to purchase annuity contracts with Sun Life Insurance Company of America ("Sun Life"). As listed below, these proceeds were used to purchase six annuities with Blanche Smith as owner and her children, daughter-in-law, and step-children as annuitants:

<u>Contract #</u>	<u>Annuitant</u>
84000657 A	Carol Evans (step-daughter)
84000658 A	Beverly Hodgkinson (step-daughter)
84000653 A	Keith Powers (son)
84000654 A	Darlene Smith (daughter)
84000655 A	Robert Malin (son)
84000656 A	Ilean Malin (daughter-in-law)

5. In November 1984, Wagstaff moved to Anchorage, Alaska. He continued to act as Blanche Smith's life insurance agent and advise her regarding insurance needs. By letter dated November 19, 1984, Wagstaff informed Blanche Smith of his relocation to Anchorage, Alaska and the opening of his own life insurance agency, Northwest Financial. He assured her that the move would not affect her policies or the servicing of her life insurance program. He emphasized that it is important "to have a good and dependable agent to service that program; [h]e must keep you updated and informed about your life insurance policy(s)" and that he could still provide that service to her satisfaction even with his move to Anchorage. Ex. 1, pg. 1.

6. In early 1985, Blanche Smith, acting on Wagstaff's advice, agreed to rollover two other annuity contracts she owned in the name of her sons into Sun Life annuities to obtain more favorable interest rates. As Wagstaff explained in a letter dated February 12, 1985:

The current interest rate that they are paying is 8.5%. The reason for this is that each program of annuities has an investment portfolio behind it, this is what determines the interest rate that they can pay. Interest rates have dropped substantially during the last 4 years, so it is for that reason we should move the monies to the new annuity program. Their portfolio is based on the new market of investments. We can lock up 11.25% interest for one year or we can lock up 11.00% for three years..... The Company is the same and the annuity is basically the same, just a new product with a new set of interest rates. It's equally as safe for your money. Good planning takes moving your monies sometimes so that you can maximize your profits. Ex. 1, pg. 2 and 3.

These new Sun Life annuities had a value of approximately \$70,000 and listed her sons as the annuitants as identified below:

<u>Contract #</u>	<u>Annuitant</u>
85000786 S	Keith Powers
85000787 S	Robert Malin

7. In January 1986, Blanche Smith also surrendered the six Sun Life annuities totaling approximately \$60,000, and gave the funds to Wagstaff to manage based on Wagstaff's assurances that he could maximize the return on her monies without putting them at risk. Wagstaff knew that Blanche Smith's primary concern was to ensure that these monies were safe and not at risk. These monies were received by Wagstaff on or about January 27, 1986 and purportedly placed "in his management fund" as described in a written agreement dated March 1, 1986 signed by Blanche Smith and Wagstaff. Ex. 1, pg. 7 and 8. Under this agreement, Wagstaff guaranteed 14% interest per annum on the funds for as long as these funds were under his management. Wagstaff also agreed that he would try to obtain an annuity that would provide Blanche Smith with a competitive interest rate. Wagstaff designated the funds received under this agreement as the "Blanche Smith Living Trust Investment Funds."

8. After receipt of the \$60,000, Wagstaff did not maintain these funds in a "management account" or in an account designated the "Blanche Smith Living Trust

Investment Funds." Nor did Wagstaff ever use these funds to obtain an annuity that would provide Blanche Smith with a competitive interest rate. To date, the disposition of these funds has not been accounted for other than Wagstaff's claim that he invested the funds in the stock market and lost them in the stock market crash of 1987. There is no evidence that these funds were ever invested in the stock market.

9. From April 1986 to July 28, 1988, Wagstaff sent Blanche Smith false and misleading quarterly reports that purportedly reflected earnings on her funds in the "Blanche Smith Living Trust Investment Funds" account at interest rates ranging from 10% to 14%, even though such an account did not exist and at least by 1987 the funds did not exist. Ex. 1, pg. 9-13, 22-24, 27, 30, 32. During this time, Wagstaff repeatedly gave Blanche Smith false assurances that her funds were accumulating income at a very good rate of interest. As of July 28, 1988, the "current value" of this account (after apparent withdrawals of \$12,000 paid to Blanche Smith) was purported to be \$67,082.40. Ex. 1, pg. 32.

10. Ignorant of the management of the \$60,000, Blanche Smith agreed in February 1987 to surrender the two Sun Life annuities in the name of her sons and give the proceeds to Wagstaff for him to invest, again relying on his advice and promises that he could maximize the return on these funds without putting them at risk. The surrender value of these annuities was \$35,038.44 for Keith's annuity #85000786 and \$35,038.42 for Robert's annuity #85000787. Wagstaff was to manage these funds pursuant to two separate agreements prepared by Wagstaff under which he promised to manage these funds on Blanche's behalf and guaranteed 12% interest on the funds for 24 months without putting the funds at any risk. Ex. 1, pg. 14-15, 20-21.

11. On or about February 23, 1987, Wagstaff received the funds from the surrender of the Powers and Malin annuities totaling \$70,076.86 and deposited them into his bank account for Northwest Financial Associates at Alaska Mutual Bank, account number 707000261. As of May 31, 1987, the balance on the account was

\$187.88. Ex. 4. Other than payment of business and personal expenses, Wagstaff cannot account for any of the disbursements from that account including one large cash withdrawal of \$25,000 on April 1, 1987.

12. From September 1987 to June 1992, Wagstaff prepared and sent reports to Blanche Smith and her heirs falsely representing that he had established tax deferred accounts in the names of Robert Malin and Keith Powers with funds received from surrender of the Powers and Malin annuities. These reports also falsely represented that the funds were earning interest at rates of 9% to 12%. Ex. 1, pg. 25, 26, 28, 29, 31, 36, 39-42. As of June 15, 1992, Wagstaff reported that the Robert Malin's and Keith Powers' accounts each had balances of \$50,356.14, when, in fact, there were no such accounts and no such funds. Ex. 1, pg. 82.

13. On or about September 28, 1988, Darlene Smith wire-transferred \$26,107.06 to Wagstaff to manage for her sole benefit. Like the earlier agreements, Wagstaff guaranteed Darlene a return of 12% per annum for 24 months. They agreed that any or all monies in the account plus accrued interest would be returned to Darlene upon 90 days notice. Ex. 1, pg. 34. On or about October 26, 1988, Darlene Smith forwarded by cashier's check an additional \$12,018.94 to Wagstaff for investment under the same terms of the earlier agreements. Ex. 1, pg. 34.

14. Wagstaff deposited the funds received from Darlene Smith into his bank account for Northwest Financial Associates that was now with Alliance Bank (formerly Alaska Mutual Bank), account number 0707-000261. After receipt of these funds, Wagstaff paid personal and business expenses from this account. As of November 30, 1988, the balance on this account was \$65.08. There is no evidence that these funds were used for anything other than personal or business expenses except one check for \$10,500 payable to Power Securities, a now defunct securities broker-dealer out of Utah. Ex. 3.

15. From October 1988 to June 1992, Wagstaff sent quarterly and annual reports to Darlene Smith falsely representing that he had set up a tax deferred account in her name with the funds he received and falsely representing that the funds were earning interest at rates of 8.5% and 9%. As of June 15, 1992, Wagstaff reported that Darlene Smith's tax deferred account had a balance of \$42, 258.07, when, in fact, there was no such account and no such funds. Ex. 1, pg. 84.

16. On or about September 2, 1988, Wagstaff and Blanche Smith entered into an "Annuity Installment Contract" under which Wagstaff agreed to pay Blanche \$1500 a month for 5 years certain. The contract also provided death benefits to Blanche's heirs for up to ten years from the date of the agreement. Ex. 12. The monies from the "Blanche Smith Living Trust Investment Funds" were to fund this contract and to become designated as the "KRD Funds Annuity Account." Wagstaff, however, never set up an account designated as the "KRD Funds Annuity Account" and never made any deposits to this account.

17. From September 1989 to June 1992, Wagstaff sent Blanche Smith and her heirs false and misleading annual statements for the K.R.D. Funds Annuity Account that purportedly reflected deposits of \$1500 into this account each month with monthly accrual of interest at a rate ranging from 8.5% to 9%. The balance on this account as of June 15, 1992 was represented as \$73,681.42. Ex. 1, pg. 85. Wagstaff never made any such deposits nor were the funds earning any interest as reflected in the reports. At the time of these reports, the monies that were to fund this account had been lost or used for Wagstaff's personal or business expenses.

18. Blanche Smith died on November 7, 1991. Following her death, her heirs, Darlene Smith, Robert Malin, and Keith Powers, became dissatisfied with and concerned over Wagstaff's handling of their mother's funds because he had issued a check to the heirs in December 1991 that was returned for nonsufficient funds,

because he was late with his reports, and because the reports reflected interest rates lower than he guaranteed in his agreements.

19. When first confronted with the heirs' concern, he responded by letter dated January 12, 1992 in which he continued to provide false assurances that everything was in order with their mother's funds, although he knew at the time that the funds had already been lost or spent. He continued to mislead the heirs into believing that the funds had been invested in products that were earning interest, claiming that the funds had another 3 1/2 years to maturity and that he had "tied up" an interest rate of 8.5%. He told them that they could withdraw the accrued interest if requested in writing. Ex. 1, pg. 73-74.

20. On or about March 4, 1992, the heirs wrote to Wagstaff and requested the liquidation of the "annuity account for K.R.D. Funds" and the remittance to them of the accrued interest on the individual accounts. Wagstaff did not respond to this letter. By letter dated April 21, 1992, the heirs informed Wagstaff that they wanted to liquidate all the assets under his management. Ex. 1, pg. 76-77.

21. Finally in January, 1993, Wagstaff revealed to Darlene Smith that he had lost their monies in 1987 due to the stock market crash. He admitted that he had been providing reports reflecting substantial sums of money because he did not want to tell Blanche Smith that he had lost the monies.

22. At the time of the transactions with Wagstaff, Blanche Smith and her heirs were elderly and unsophisticated about insurance and financial planning matters. Each trusted and relied on Wagstaff's advice based on his stature and apparent expertise as a licensed insurance producer and financial advisor. Wagstaff violated that trust by disregarding the stated desires of Blanche Smith and her heirs that the monies not be put at risk and by using the monies for his own undisclosed purposes. Blanche Smith and her heirs believed that Wagstaff had placed the funds in annuity type products and never authorized him to invest the funds in the stock market or to

use them for his own business purposes. He also accepted additional funds from Smith and her heirs after he allegedly lost the funds in the stock market.

23. Wagstaff's explanation that he was only obligated to provide them with the contractually agreed interest and was free to invest the money however he wished violated his statutory duty as a fiduciary, as well as created a scheme to defraud them of additional monies. His explanation that this was a 'private annuity' constitutes willful fraud since there is no recognized instrument in the State of Alaska. Wagstaff's use of his status as an insurance licensee and representations as to financial planning were intended to infer that he was investing their money in secure and controlled accounts, when in fact the agreements amounted to no more than unsecured promissory notes.

24. On or about July 14, 1993, Wagstaff entered into a Property Settlement and Child Custody and Support Agreement with his former wife Leslie Wagstaff. In this agreement, Wagstaff acknowledged the debt to Blanche Smith and her heirs as well as gambling debts to the Riviera and Dunes Casinos in Las Vegas, Nevada. Wagstaff testified that he made frequent trips to Las Vegas to gamble during the time he was purportedly managing the funds on behalf of Blanche Smith and her heirs.

25. On or about May 6, 1994, Darlene Smith, Robert Malin, and Keith Powers obtained a default judgment in fraud against Wagstaff in Utah. The total amount of judgment is \$948,586.43 which includes principal, interest, attorneys fees, and costs. This judgment was filed in Alaska on or about August 2, 1994.

Count II

26. Wagstaff did not hold a certificate of authority as an insurer when he entered into the Annuity Installment Contract with Blanche Smith.

27. In his transactions with Smith and her heirs, Wagstaff used letterhead that referred to his business as a "life insurance brokerage" and entered into management agreements under which Blanche Smith and her heirs believed he would procure annuity type insurance products for their use and benefit. Wagstaff and his firm were never licensed as brokers in the State of Alaska.

Count III

28. In 1987, Wagstaff employed Brenda White as an agent in his firm, Northwest Planning Associates. White was not added to Wagstaff's firm license until September 11, 1989 and was terminated on October 10, 1990.

29. While in Wagstaff's employ, White solicited and persuaded Betty Jane Steilen to purchase a health insurance policy with Golden Rule Insurance Company. White was not an appointed agent for Golden Rule. In March 1988, White went to Steilen's home to complete a medical insurance application for the Golden Rule policy. White assisted Steilen in completing that application.

30. The Golden Rule application form required that the agent or broker review the completed application before signing and represent that "Each question on this application was completed by the applicant" and that "I have personally witnessed the reading, completion, and signing of this application." Wagstaff signed Steilen's application knowing that White had actually completed the application and that he had not personally witnessed the completion.

Conclusions of Law

Based on the foregoing Findings of Fact, the Administrative Hearing Officer makes the following Conclusions of Law.

1. The testimony and evidence presented regarding the purchase of Sun Life annuities, Wagstaff's inducement of Blanche Smith to cash in the annuities and give him the proceeds to "manage" with promises of guaranteed return and no risk investment, and Wagstaff's conversion of these proceeds for his personal and business use constitute violation of AS 21.27.360, AS 21.36.050 and AS 21.36.360(b)(5) and provide a basis for revoking his license under AS 21.27.410(a)(1), (2), (4), and (6).

2. Wagstaff's management of the funds in a manner contrary to the expressed desires of Blanche Smith and her heirs, his use of the funds for personal and business use, and his deliberate efforts to conceal disposition of the funds through false and misleading business reports at a minimum establish untrustworthy and incompetent conduct and at a maximum establish fraud and provide a basis for revoking Wagstaff's license pursuant to AS 21.27.410(a)(1), (8), and (13).

3. The testimony and evidence presented establish that the "Annuity Installment Contract" is an annuity insurance product as it is defined under AS 21.12.055 and is subject to regulation under Title 21. As the transferee of that product, Wagstaff was acting as an insurer as defined in AS 21.90.900(24) in violation of AS 21.09.010(a). This violation provides a basis to revoke Wagstaff's license under AS 21.27.410(a)(2) and (9).

4. The testimony and evidence presented regarding the firm letterhead and the management agreements establish that Wagstaff represented himself to be and acted as an insurance broker without an appropriate license and bond in violation of

AS 21.27.010 and former AS 21.27.190. Failure to obtain a broker's license and bond is grounds for revocation under AS 21.27.410(a)(2) and (9).

5. The testimony and evidence presented also establish that Wagstaff was acting as a securities broker-dealer without appropriate licensing from the Division of Banking and Securities when he made purported investments in the stock market on Blanche Smith's behalf. Wagstaff's attempts to act as a broker-dealer without appropriate licensing reflect untrustworthiness and incompetence and provide a basis to revoke his license pursuant to AS 21.27.410(a)(1), (8), and (9).

6. The testimony and evidence presented regarding the Steilen health insurance application, the false representations Wagstaff made on the application, and the failure to name Brenda White on Wagstaff's firm license prior to the Steilen transaction in violation of AS 21.27.140 reflect untrustworthiness and incompetence. This conduct provides a basis to revoke Wagstaff's license pursuant to AS 21.27.410(a)(1) and (8).

Proposed Decision

Based on the foregoing Findings of Facts and Conclusions of Law the Administrative Hearing Officer makes the following recommendations:

1. Wagstaff's license no. 1326 is deemed revoked, notwithstanding voluntary surrender of the license at the administrative hearing.

2. Wagstaff is precluded from seeking licensure in the State of Alaska for three years from the date of this decision.

3. Wagstaff is ordered to make restitution to Blanche Smith's heirs or their estates in the total amount of \$216, 651.77. If this debt is specifically discharged by a court under Wagstaff's pending bankruptcy, the Division of Insurance is precluded from using nonpayment as a bar to relicensing, assuming Wagstaff has satisfactorily met all other conditions for relicensure.

4. Pursuant to AS 21.27.360(c), AS 21.27.440, and AS 21.36.320, Wagstaff shall pay a civil penalty of \$50,000 for the violations set forth above within two years from the effective date of the Director's order.

5. Wagstaff shall not be licensed by the Division of Insurance for the State of Alaska until all above restitution and penalties have been paid.

6. Wagstaff shall not be licensed by the Division of Insurance for the State of Alaska except under the following conditions:

a) that he retests and submits passing test results on the producer licensing exam before he is relicensed;

b) that he has no direct or indirect control over premium trust accounts for five years from the date of relicensing and that any firm for which he is working during that time agree to unannounced audits of all accounts maintained by Wagstaff as the Division may require;

c) that he holds no designation as principal, manager, or compliance officer of a firm for five years from the date of relicensing;

d) that he make semi-annual reports to the Division of Insurance for two years from the date of relicensing and annual reports for three additional years that identify the type of insurance sold, the name of insureds, the premium amount, and the companies involved;

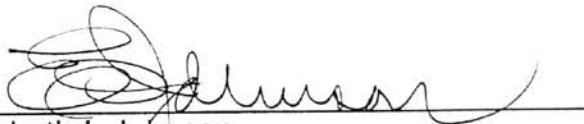
e) that he maintain individual errors' and omissions' insurance in the amount of \$500,000 and provide the Division of Insurance with evidence of such insurance prior to relicensure and for each year for five years from the date of relicensing;

f) that he provides any employer that he works for as a licensed producer with a copy of this Decision and Order;

g) that he submits to a psychological or psychiatric examination with a licensed professional approved by the Division of Insurance to evaluate problems, if

any, with gambling, that he submits to the Division of Insurance a written report prepared and certified by the psychologist or psychiatrist, and that he seek treatment and submit evidence to the Division that he has successfully completed treatment if that is recommended by the psychologist or psychiatrist.

Dated at Anchorage, Alaska, this 30 day of March 1995.



Elizabeth I. Johnson
Administrative Hearing Officer

DIRECTOR'S ACTION ON PROPOSED DECISION

The Director of the Division of Insurance for the Department of Commerce and Economic Development, having reviewed the Findings of Fact, Conclusions of Law and the Proposed Decision of the Hearing Officer in Case No. D94-22 in regard to Paul A. Wagstaff, hereby

Option 1: adopts the Findings of Fact, Conclusions of Law, and Proposed Decision as the Final Decision and Order in this matter.

Dated: _____

By: _____
Marianne K. Burke,
Director, Division of Insurance

Option 2: modifies the Findings of Fact, Conclusions of Law, and Proposed Decision as follows:

Recommendation 4 of Proposed Decision is modified to read _____
"...within one year from the effective date..." pursuant _____
to AS 21.27.440(b) _____

and adopts the balance of the Findings of Fact, Conclusions of Law, and Proposed Decision as the Final Decision and Order in this matter.

Dated: April 6, 1995

By: Marianne K. Burke
Marianne K. Burke
Director, Division of Insurance

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE

In the Matter of:)
)
PAUL A. WAGSTAFF,)
)
Respondent.)
_____)

Case No. D94-22

STATEMENT OF ACCUSATION

David J. Walsh, Director, Division of Insurance (the division), Department of Commerce and Economic Development, State of Alaska, states and alleges as follows:

1. This is a proceeding to revoke the individual insurance producer license no. 1326 of Paul A. Wagstaff (Wagstaff).
2. Wagstaff was first licensed in this state with life and disability, nonresident insurance agent license no. 8305 on or about October 15, 1984. Prior to that time, he held an insurance license in the State of Utah. When he became eligible for resident licensure, license no. 8305 was converted to a resident insurance license. On or about February 27, 1986, the division issued Wagstaff "principal in a firm" license no. 14327 for the firm, Northwest Planning Associates, Inc. (NPA). These licenses subsequently became license no. 1326 when the division converted to a new licensing system in 1992. The current license no. 1326 expires on April 5, 1995.
3. A firm license was originally issued on or about February 27, 1986 under license no. 9226 under the name of Northwest Financial, Inc. Shortly thereafter, Wagstaff requested that the license be reissued in the name of Northwest Planning Associates (NPA).

1 NPA's license became license no. 8602 in 1992 under the new licensing system. At all times,
2 Wagstaff has been the principal/manager for this firm. License no. 8602 expired on February
3 27, 1994 and, to date, no attempt has been made to renew this license.

4 **COUNT I**

5 4. The Director realleges paragraphs 1 through 3.

6 5. While Wagstaff was in Utah, he was a life insurance agent for Blanche
7 Smith (Mrs. Smith). In 1984, Mrs. Smith, on Wagstaff's advice, gave him \$60,000 from the sale
8 of her home to purchase annuity contracts with Sun Life Insurance Company of America (Sun
9 Life).
10

11 6. In November 1984, Wagstaff relocated to Alaska. He wrote to Mrs. Smith
12 to advise her that he had opened his own life insurance agency in Anchorage and to assure her
13 that his move would in no way affect her "life insurance program" -- the annuity contracts with
14 Sun Life. He stated that he could service her program in Alaska through the mail and by
15 telephone. This letter was written on "Northwest Financial" letterhead that represented it to be
16 a "Life Insurance Brokerage". Over the subsequent months, Wagstaff serviced Mrs. Smith's "life
17 insurance program" from Alaska.

18 7. By letter dated February 12, 1985, Wagstaff advised Mrs. Smith to change
19 to a new annuity program with the same insurance company to take advantage of higher interest
20 rates. Also in 1985, Mrs. Smith gave Wagstaff approximately \$70,000 to invest in two additional
21 annuity contracts with Sun Life. Mrs. Smith was the owner of both annuities; her son Keith
22 Powers was the beneficiary on one annuity and her son Robert Malin was the beneficiary on
23 the other annuity.

24 8. On or about January 27, 1986, Mrs. Smith surrendered her 1984 annuity
25 contracts with Sun Life totaling \$60,000, acting upon Wagstaff's advice. These monies were
26

1 received and held by Wagstaff for Mrs. Smith's benefit pursuant to a March 1, 1986 agreement.
2 Under this agreement, Wagstaff guaranteed 14 percent per annum on the surrendered funds
3 for as long as the funds were under his management. Wagstaff also agreed to "try to obtain
4 an Annuity that would provide (Mrs. Smith) with a competitive interest rate." The agreement
5 further stated that Mrs. Smith would take yearly withdrawals of interest (and if necessary,
6 principal) to live on. The agreement was drafted on "Northwest Financial" letterhead that
7 represented it to be a "Life Insurance Brokerage".
8

9 9. Wagstaff designated the \$60,000 funds received from Mrs. Smith as the
10 "Blanche G. Smith Living Trust Investment Funds." He sent her quarterly statements reflecting
11 the alleged earnings on these funds.

12 10. In February 1987, on Wagstaff's advice, Mrs. Smith surrendered her two
13 remaining annuities with Sun Life in her sons' names, totaling \$70,076.86. These funds were
14 received and held by Wagstaff pursuant to two written agreements dated January 21, 1987.
15 The funds from each annuity were managed by Wagstaff in separate accounts, one in Keith
16 Powers' name, the other in Robert Malin's name. Under the agreements, the parties understood
17 that the monies were not to be put at any risk and Wagstaff guaranteed a return of 12 percent
18 interest per annum for 24 months. The agreements also provided that either party could cancel
19 the agreement upon 90-day notice.
20

21 11. On or about July 28, 1988, the total current value of the Blanche G. Smith
22 Living Trust Investment Funds was \$67,082.40, according to statements sent by Wagstaff.
23 These monies were subsequently used to create a new fund named "K.R.D. Funds Annuity
24 Account" to be managed by Wagstaff. K.R.D. stood for her children Keith Powers, Robert Malin,
25 and Darlene Smith. Under an "Annuity Installment Agreement" dated September 2, 1988, the
26 Blanche G. Smith Living Trust was to be liquidated over a period of 5 years with \$1,500 a month

1 going to the KRD Annuity Fund. All parties understood that the account was owned by Mrs.
2 Smith for her use and benefit until her death at which time the fund would be equally owned by
3 her children.

4
5 12. On or about September 28, 1988, Darlene Smith wire-transferred
6 \$26,107.06 to Wagstaff to manage for her sole benefit. Wagstaff guaranteed a return of 12
7 percent per annum for 24 months like the agreements for Keith and Robert. They agreed that
8 any or all monies in the account plus accrued interest would be returned to Darlene Smith upon
9 90 days notice. On or about October 28, 1988, Darlene Smith forwarded an additional
10 \$12,018.84 to Wagstaff for investment into her account under the same terms.

11 13. Wagstaff sent periodic reports purporting to show values of each of the
12 above-referenced accounts. Occasionally, Mrs. Smith withdrew monies from the funds, but all
13 statements reflected positive balances and that a profit was being made on the investment.
14 During the time Wagstaff managed the accounts, Wagstaff wrote checks to Darlene Smith,
15 Robert Malin, and Keith Powers from their respective accounts that did not clear because of
16 non-sufficient funds.

17
18 14. Mrs. Smith died on November 7, 1991. Her heirs (Malin, Powers, and
19 Smith) were dissatisfied with Wagstaff's reports and non-sufficient funds checks he issued to
20 them. On or about March 4, 1992, the heirs wrote to Wagstaff and requested the liquidation of
21 the "annuity account for K.R.D. Funds" and the remittance to them of the accrued interest on
22 the individual accounts. Wagstaff did not respond to this letter. By letter dated April 21, 1992,
23 the heirs informed Wagstaff that they wished to liquidate all of their assets under his
24 management.

25 15. On or about July 10, 1992, Wagstaff entered into agreements with the
26 heirs whereby he would distribute all of the assets he held to each of the heirs on a monthly

1 basis over a period not to exceed five years. In July and in August, Wagstaff sent them each
2 checks for \$500. These disbursement checks to the heirs did not clear the banks due to "non-
3 sufficient funds." To date, no other payments have been received by the heirs.

4
5 16. In an interview with division personnel on December 8, 1992, Wagstaff
6 admitted that he had lost all of Mrs. Smith's money in 1987 in stock market investments. When
7 asked by the division's investigator, Sam LaChapelle, whether any of the Smith funds were "ever
8 plowed into" his own business, Wagstaff said that they were.

9 17. Darlene Smith telephoned Wagstaff on January 3, 1993. During that
10 phone conversation, Wagstaff told her that he had lost all of Mrs. Smith's and the heirs' money
11 in 1987 due to a downturn in the stock market. He also admitted that he had been providing
12 statements since that time reflecting substantial sums of money because he did not want to tell
13 Mrs. Smith of the loss of all of her money. He believed the shock of such information would
14 have "killed her."

15 18. By letter dated February 11, 1993, the heirs requested for their tax records
16 a detailed accounting of and historical information regarding all funds Wagstaff held for them.
17 To date, no such information has been provided by Wagstaff.

18 19. On or about May 6, 1994, Darlene Smith, Keith Powers and Robert Malin
19 obtained a Default Judgment for Fraud against Wagstaff in the State of Utah in the total amount
20 of \$948,586.43.

21 20. The actions of Wagstaff described in paragraphs 5 through 19 above
22 demonstrate untrustworthy behavior and are grounds for revocation of a license under
23 AS 21.27.410(a)(1), (4), and (8). Wagstaff's actions also establish violations of AS 21.27.360(e),
24 AS 21.36.050, and AS 27.36.145, which are also bases for revocation under AS 21.27.410(a)(2),
25 (4), and (6).
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

COUNT II

21. The Director realleges paragraphs 1 through 20.

22. The Annuity Installment Agreement described in paragraph 11 above that Wagstaff and Mrs. Smith entered into on September 2, 1988 is an insurance product. As the transferee of that insurance product, Wagstaff was acting as an insurer as defined in AS 21.90.900(24). Under AS 21.09.010(a), a person may not transact insurance in Alaska without a certificate of authority that has been issued by the Director. Violation of AS 21.09.010(a) is grounds for suspension or revocation of a license under AS 21.27.410(a)(2) and (9).

23. In the above transaction and others with Mrs. Smith, Wagstaff represented himself to be and acted as an insurance broker. During all relevant times, however, neither Wagstaff nor NPA were ever licensed as brokers in violation of AS 21.27.010. Wagstaff also did not have a broker's bond as required under former AS 21.27.190 which was in effect at the time of the above transactions. Failure to obtain a broker's license and bond is grounds for revocation under AS 21.27.410(a)(2) and (9).

COUNT III

24. The Director realleges paragraphs 1 through 23.

25. In late 1987, Wagstaff employed Brenda White (White) as an agent in his firm at NPA. While in Wagstaff's employ, White solicited and persuaded Betty Jane Steilen (Steilen) to purchase a new health insurance policy with Golden Rule Insurance Company (Golden Rule). At the time, Steilen had a valid uncontestable insurance policy. White represented that the new policy would be better than her existing coverage. Steilen was not told that the new policy would be contestable and had pre-existing condition waivers that could affect coverage.

1 26. In March 1988, White came to Steilen's home with a medical insurance
2 application for Golden Rule. The application was partially completed in the handwriting of White.
3 To complete the remainder of the application, White paraphrased the questions on the
4 application and convinced Steilen that her answers were proper and factually correct. Based
5 on White's advice and direction, Steilen signed the application. White left without leaving a copy
6 of the application with Steilen.
7

8 27. The Golden Rule application form required that the agent or broker review
9 the completed application before signing and represent that "Each question on this application
10 was completed by the applicant" and that "I have personally witnessed the reading, completion,
11 and signing of this application." Wagstaff signed Steilen's application, falsely representing that
12 the application was completed by Steilen and that he personally witnessed its completion.
13 Wagstaff also added information to the application that was not obtained from Steilen.
14

15 28. Relying on representations by Wagstaff and White that the Golden Rule
16 policy would provide her with valid replacement coverage, Steilen allowed her existing medical
17 insurance with Blue Cross to lapse. In August of 1988, Steilen was diagnosed with cancer and,
18 shortly thereafter, she made a claim for benefits under her Golden Rule policy. The insurance
19 company contested coverage and refused to pay her ensuing medical expenses because of
20 preexisting condition provisions and because of misstatements in the insurance application
21 attributable to Wagstaff and White. As a result, Steilen was unable to pay her medical bills and
22 was forced to litigate her claim for benefits under Golden Rule's policy. Steilen died before
23 conclusion of that litigation.
24

25 29. The actions described above demonstrate participation in a fraudulent
26 transaction under AS 21.36.360(b)(2) and (3), twisting in violation of AS 21.36.050, and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

untrustworthy behavior, all of which are grounds to revoke a license under AS 21.27.410(a)(1), (2), (5), (8), and (13).


WHEREFORE, the Division prays for the following relief:

1. For an order revoking license no. 1326.
2. For an order requiring full restitution to victims of Wagstaff; and conditioning any future application to license on full restitution.
3. For a specific finding that Wagstaff violated provisions of the insurance code under AS 21.27, et seq. warranting a civil fine of at least \$50,000 or an amount as deemed appropriate.

DATED this 29th day of August, 1994, at Anchorage, Alaska.

DAVID J. WALSH, DIRECTOR
DIVISION OF INSURANCE

By:


Thelma Snow Walker
Deputy Director