IN THE MATTER OF THE
REVOCATION OF LICENSING
AUTHORITY OF:

STANLEY A. SMAGALA
5031 WEST 85TH
BURBANK, ILLINOIS 60459

CHRISTINE L. SMAGALA
12750 CARRIAGE LANE
CRESTWOOD, ILLINOIS 60445

and

SMAGALA INSURANCE, INC.
9702 SOUTHWEST HIGHWAY
OAK LAWN, ILLINOIS 60453

ORDER OF REVOCATION

I, Arnold Dutcher, Acting Director of Insurance of the State of Illinois, hereby revoke the license of Stanley A. Smagala and Christine L. Smagala (Licensees) and the license of Smagala Insurance, Inc. (Business Entity) to take effect 30 days from the date of mailing of this Order pursuant to Section 500-70 of the Illinois Insurance Code (215 ILCS 5/500-70).

Based upon an investigation and review of the Licensees and the Business Entity by the Producer Section of the Illinois Department of Insurance, the Department alleges that:

A. The examination revealed that on (106) days out of (531), the Licensees and Business Entity allowed the Premium Fund Trust Account (PFTA) to fall below the minimum required to be held in a fiduciary capacity. By the above action, the Licensees and Business Entity misappropriated premiums which were to be held in a fiduciary capacity in violation of 50 Ill. Adm. Code 3113.40(j) and,

therefore, have violated a rule of the Director which is a ground for revocation pursuant to Section 500-70(a)(2) of the Illinois Insurance Code [215 ILCS 5/500-70(a)(2)] and also have misappropriated premiums required to be held in a fiduciary capacity in violation of Section 500-115 of the Illinois Insurance Code [215 ILCS 5/500-115], which is a ground for revocation pursuant to Section 500-70(a)(4) of the Illinois Insurance Code [215 ILCS 5/500-70(a)(4)].

B. During the period of February 7, 2001 through March 9, 2001, the Licensees and Business Entity collected $1,108.00 from three (3) consumers. The premium payments were deposited into the Entity's PFTA. The net premiums were to be remitted to Buschbach Agency by March 15, 2001. The Licensees and Business Entity remitted the full payment to Buschbach Insurance Agency for policies #CP1000118, #CPS0341698 and #12AU000027174 on June 7, 2001.

Additionally, the examination revealed that the Licensees and Business Entity failed to remit premiums received in July 2001 and August 2001 from consumers to Constitutional Casualty Company by the due date.

By the above information, the Licensees and Business Entity improperly withheld premiums required to be maintained in a fiduciary capacity in violation of Section 500-115 of the Illinois Insurance Code which is a ground for revocation pursuant to Section 500-70(a)(4) of the Illinois Insurance Code. Additionally, the Licensees and Business Entity have demonstrated untrustworthiness, incompetence and financial irresponsibility in the conduct of business which are grounds for revocation pursuant to Section 500-70(a)(8) of the Illinois Insurance Code [215 ILCS 5/500-70(a)(8)].

C. The examination revealed that the Licensees and Business Entity arranged for the insured to borrow cash value on an existing life insurance policy from Jackson National Life Insurance Company in the amount of $1,906.83 to take out a new policy. The check was deposited into the Entity's PFTA on November 2, 2000. Premium payments were deducted from the Licensees and Business Entity's PFTA in 14 withdrawal payments totaling $1,610.00 and forwarded to the insurance company. The entity failed to remit the entire premium to the insurance company, leaving an unpaid balance of $296.83, therefore, breaching their insurance producer's Agreement Contract with Jackson National Life Insurance Company. The Licensees and Business Entity failed to remit the full premium payment from a loan proceed collected on behalf of the insured and have demonstrated untrustworthiness, incompetence and financial irresponsibility in the conduct of business which are grounds for revocation pursuant to Section 500-70(a)(8) of the Illinois Insurance Code.

D. It was determined that the Entity issued three (3) separate checks to Constitutional Casualty Company in the amount of $537.00, $787.00 and $140.75 on

behalf of two consumers which were returned by the bank non-sufficient funds (NSF).

By issuing NSF checks in payment of premiums collected, the Licensees and Business Entity have demonstrated untrustworthiness and financial irresponsibility which are grounds for revocation pursuant to Section 500-70(a)(8) of the Illinois Insurance Code.

E. A review of the two (2) consumer files revealed that the Licensees and Business Entity assessed a service fee of $20.00 and $70.00. The files did not contain a signed separate memorandum by the insured. It was determined that the Licensees and Business Entity did not obtain prior written authorization from the insured in order to assess the service fee in violation of Section 500-80(e) of the Illinois Insurance Code [215 ILCS 5/500-80(e)].

By the above action, the Licenses and Business Entity have demonstrated untrustworthiness, incompetence and financial irresponsibility in the conduct of business which are grounds for revocation pursuant to Section 500-70(a)(8) of the Illinois Insurance Code.

F. The examination revealed that the Licensees and Business Entity used the PFTA as a general operating account. The Department determined that 89 improper disbursements totaling $10,803.90 were issued from the PFTA during the period of June 1, 2001 through December 15, 2001.

By using the Premium Fund Trust Account as a General Operating Account, the Licensees and Business Entity have violated 50 Ill. Adm. Code 3113.40(i). Therefore, the Licensees and Business Entity have violated a rule of the Director which is a ground for revocation pursuant to Section 500-70(a)(2) of the Illinois Insurance Code and have demonstrated incompetence in the conduct of business which is a ground for revocation pursuant to Section 500-70(a)(8) of the Illinois Insurance Code.

G. The examination revealed that the cash disbursement register or check stubs did not include a positive running balance after each entry. By not maintaining a positive running balance in the check stubs or disbursement register, the Licensees and Business Entity have violated 50 Ill. Adm. Code 3113.50(h). Therefore, the Licensees and Business Entity have violated a rule of the Director which is a ground for revocation pursuant to Section 500-70(a)(2) of the Illinois Insurance Code and have demonstrated incompetence in the conduct of business which is a ground for revocation pursuant to Section 500-70(a)(8) of the Illinois Insurance Code.

Furthermore, by having negative balances in the PFTA, the Licensees and Business Entity have demonstrated incompetence and financial irresponsibility,

which are grounds for revocation pursuant to Section 500-70(a)(8) of the Illinois Insurance Code.

H. The examination revealed that the Licensees and Business Entity did not maintain a cash receipts register. However, the Licensees did maintain a cash receipts book. The cash receipt book in general provided the name of the insured, date, amount, type of policy and balance owed to the carrier. It is noted that the cash receipts book did not contain the policy number or date of deposit. The Department was unable to consistently determine the date of the deposit.

The Entity did not maintain deposit slips, but retained the actual bank receipt after each deposit. The bank receipt reflected lump sums of premium payments. Some premium payments indicated the name of the insured. However, the bulk of the bank receipts could not be matched against the insured's name or policy number.

The Licensees and Business Entity failed to consistently provide the policy number, date of deposit and insured's name, and other descriptions pertaining to the cash receipts in violation of 50 Ill. Adm. Code 3113.50(d). Therefore, the Licensees and Business Entity have violated a rule of the Director which is a ground for revocation pursuant to Section 500-70(a)(2) of the Illinois Insurance Code and have demonstrated incompetence in the conduct of business which is a ground for revocation pursuant to Section 500-70(a)(8) of the Illinois Insurance Code.

I. On February 21, 2001, the Licensees and Business Entity collected and deposited a partial payment of $380.00 into the Premium Fund Trust Account for an insured. The Entity was required to collect $558.00 ($2,232.00 policy x 25% = $558.00 minus $380.00 = $178 00). On June 7, 2001, the Entity paid the entire premium payment which he did not fully collect.

By the Licensees and Business Entity's own admission, they paid part of the premium on the policy for the insured in violation of Section 151 of the Illinois Insurance Code [215 ILCS 5/151]. Therefore, the Licensees and Business Entity have demonstrated incompetence and financial irresponsibility in the conduct of business which are grounds for revocation pursuant to Section 500-70(a)(8) of the Illinois Insurance Code.

J. Documentation obtained during the examination revealed that the Licensees and Business Entity failed to properly reveal that replacement was involved in a life insurance application. On November 3, 2000, the Licensee deposited a Jackson National Life Insurance loan proceed check in the amount of $1,906.83 into their Premium Fund Trust Account #2002335 with the intent to pay a life insurance premium for an insured. Records reflect that the insured asked the carrier, Jackson National Life Insurance Company for the maximum cash value loan amount on an existing life insurance policy #0020697790 ($10,000.00). The

Licensee used this loan check to take out a $25,000.00 new life insurance policy #0070351740 on the insured.

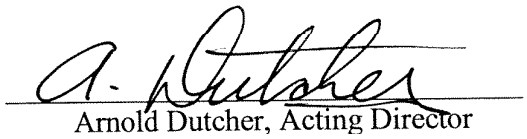
By the above stated actions, the Licensee has violated the replacement regulation 50 Ill. Adm. Code 917.60(a)(2). Therefore, the Licensee has violated a rule of the Director which is a ground for revocation pursuant to Section 500-70(a)(2) of the Illinois Insurance Code. Additionally, the Licensee has demonstrated untrustworthiness, incompetence and financial irresponsibility in the conduct of business which are grounds for revocation pursuant to Section 500-70(a)(8) of the Illinois Insurance Code.

K. The Licensees and Business Entity's records revealed that the Premium Fund Account was not properly labeled in violation of 50 Ill. Adm. Code 3113.40(b). Therefore, the Licensees and Business Entity have violated a rule of the Director which is a ground for revocation pursuant to Section 500-70(a)(2) of the Illinois Insurance Code and have demonstrated incompetence in the conduct of business which is a ground for revocation pursuant to Section 500-70(a)(8) of the Illinois Insurance Code.

This Order of Revocation shall take effect 30 days from the date of mailing but shall be stayed if within the 30-day period a written request for hearing is filed with the Director. Any correspondence concerning this Order of Revocation shall be addressed to the Department of Insurance, Producer Section, 320 West Washington Street, Springfield, Illinois 62767-0001.

50 Ill. Adm. Code 2402 governs hearings before the Department of Insurance. Section 408(5)(a) of the Illinois Insurance Code (215 ILCS 5/408) and 50 Ill. Adm. Code 2402.270(d) provide that the costs of a hearing may be assessed against the parties.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Official Seal of the Department of Insurance in the City of Springfield, State of Illinois, this 25th day of March, A.D., 2003.



Arnold Dutcher, Acting Director

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