

JUN 26 2002

DEPT. OF INSURANCE
BY Kali

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:)
)
 JAMES E. FITZGERALD,)
 d.b.a. FITZGERALD BAIL BOND,)
)
 Respondent.)
)
 _____)

No. 02A-016-INS

CONSENT ORDER

A Notice of Hearing was issued by the Director of the Arizona Department of Insurance (the "Department") on January 31, 2002. Respondent James E. Fitzgerald has been advised of his right to a hearing in this matter, which he waives. Respondent James E. Fitzgerald admits the following Findings of Fact are true, and consents to entry of the following Conclusions of Law and Order.

FINDINGS OF FACT

1. James E. Fitzgerald, dba Fitzgerald Bail Bond ("Respondent"), is currently, and was at all material times licensed as a bail bond agent, Arizona license number 203050, which license expires January 31, 2002.

2. Respondent is not and was not at any material time licensed as a premium finance company.

COUNT I

3. Bankers Insurance Company ("Bankers") is currently, and was at all material times, authorized to operate as a property and casualty insurer in the State of Arizona pursuant to a Certificate of Authority issued by the Director.

4. In or around May 1991, Bankers filed bail bond rates with the Department that listed rates of \$50.00 on bond amounts up to \$500 and rates of ten percent (10%) of the bond amount on all bonds over \$500. The rates were effective May 1, 1991.

5. In or around September 1993, Kenneth Sutton contacted Respondent to arrange for a bond in the amount of \$13,700 to be posted with the Yavapai County Court for Keith Sutton.

1 6. On September 26, 1993, Kenneth Sutton signed a promissory note in the amount of
2 \$1,450 at eighteen percent (18%) interest and completed a deed of trust on his home to secure the
3 performance of his agreement on the bond. Respondent was named as the beneficiary of the trust.
4 Although the note stated that the bond premium and related expenses totaled \$1,450 there is no
5 indication of what items were included in the expenses.

6 7. On or about September 26, 1993, Respondent posted bond number 91-23848 for Keith
7 Sutton. The bond was underwritten by Bankers.

8 8. In accordance with the filed rates a bond amount of \$13,700 would result in a bond
9 premium of \$1,370.

10 9. The Sutton bond was exonerated on or about December 1, 1998. Fitzgerald has been
11 unable to produce a copy of the bond exoneration.

12 10. On or about February 11, 1999, the Department investigator obtained a complete copy
13 of Fitzgerald's records related to the bond posted for Keith Sutton. These records included: a) five
14 receipts on National American Insurance Company paper for cash payments on the bail bond
15 underwritten by Bankers totaling \$390 from October, 1993 through June, 1994; b) handwritten notes
16 setting forth the monthly beginning balance, monthly interest charges and payments from in and
17 around October 1993 through in and around February 1999; c) a letter dated December 1, 1993 from
18 Fitzgerald to Keith Sutton stating that "when the account owed us is paid in full, including the title and
19 recording fee's (\$1,450 less 3 payments totaling \$190) we will release the property"; d) a letter dated
20 September 9, 1994 from Fitzgerald to Keith Sutton stating that the last payment he had received was
21 three months ago; e) a copy of the bond; f) the promissory note; and g) a deed of trust on Kenneth
22 Sutton's home.

23 11. Fitzgerald did not provide Kenneth Sutton with a final billing of the balance due after
24 the bond was exonerated.

25 12. The Sutton's paid Fitzgerald a total of \$2,985.45 against a filed bond premium of
26 \$1,370.

COUNT II

13. National American Insurance Company ("National American") is currently, and was at all times material, authorized to operate as a property and casualty insurer in the State of Arizona pursuant to a Certificate of Authority issued by the Director.

14. On or about January 3, 1990, National American filed bail bond rates with the Department that listed rates of ten percent (10%) of the bond amount plus \$10.00 on bond amounts up to \$400 and rates of ten percent (10%) of the bond amount on all bonds over \$400. The rates were effective January 1, 1990.

15. On April 16, 1999, the Department issued a subpoena to Respondent for records related to all bonds financed by Respondent from 1998 through the first quarter of 1999. From January 9, 1998 through February 10, 1999, Fitzgerald posted eleven bonds, underwritten by National American, for nine different individuals. The premium charged for ten of the bonds exceeded ten percent (10%) of the bond amount. The bond premium was financed by Fitzgerald at eighteen percent (18%) interest on all eleven bonds. The bond files provided to the Department by Respondent failed to contain documentation supporting amounts charged by the Respondent to the arrestee and/or indemnitor(s) in excess of the bond premiums filed by the insurer. These bonds include:

- a. Bond number NA15 161283 underwritten by National American in the amount of \$6,850 on or about January 9, 1998 on behalf of Dewayne Edward Griest for a bond premium and related charges of \$685 and financed by Respondent at 18% interest. Although the bond was exonerated on or about December 15, 1998, Respondent did not provide a final accounting to the indemnitors. Although Fitzgerald failed to provide the required final accounting, Fitzgerald's available records do not indicate Griest was overcharged.
- b. Bond number NA15 162576 underwritten by National American in the amount of \$15,000 on or about April 22, 1998 on behalf of Kim Belliveau for a bond premium and related charges of \$1,550 financed by Respondent at 18% interest. Although the

1 bond was exonerated on or about July 20, 1998, Respondent did not provide a final
2 accounting to the indemnitor. Although Fitzgerald failed to provide the required final
3 accounting, Fitzgerald's available records do not indicate Belliveau was overcharged.

4 c. Bond number NA15 162391 underwritten by National American in the amount of
5 \$13,700 on or about May 2, 1998 on behalf of Kim Belliveau for a bond premium and
6 related charges of \$1,400 financed by Respondent at 18% interest.

7 d. Bond number NA100 101812 underwritten by National American in the amount of
8 \$67,500 on or about June 20, 1998 on behalf of Robert Scott Sowders for a bond
9 premium and related charges of \$6,850 financed by Respondent at 18% interest.

10 e. Bond number NA15 164710 underwritten by National American in the amount of
11 \$6,750 on or about July 30, 1998 on behalf of Bruce Allen Faron for a bond premium
12 and related charges of \$825 financed by Respondent at 18% interest. Although the
13 bond was exonerated on November 10, 1998, Respondent did not provide a final
14 accounting to the indemnitor. Although Fitzgerald failed to provide the required final
15 accounting, Fitzgerald's available records do not indicate Faron was overcharged.

16 f. Bond number NA15 164952 underwritten by National American in the amount of
17 \$13,700 on or about August 13, 1998 on behalf of Dan Allen for a bond premium and
18 related charges of \$1,500 financed by Respondent at 18% interest. Although the bond
19 was exonerated on December 29, 1998, Respondent did not provide a final accounting
20 to the arrestee/indemnitor. Although Fitzgerald failed to provide the required final
21 accounting, Fitzgerald's available records do not indicate Allen was overcharged.

22 g. Bond number NA100 101858 underwritten by National American in the amount of
23 \$75,000 on or about August 22, 1998 on behalf of Cesar Holguin for a bond premium
24 and related charges of \$7,600 financed by Respondent at 18% interest. The first
25 promissory note was signed by Fredrico and Eriberto Alvarez and Yvonne Holguin.
26 On or about February 26, 1999, Respondent entered into a second promissory note in

1 the amount of \$3,824.32 for bond premium and interest that remained owing under the
2 first promissory note. The second promissory note was signed by Silviano and Alicia
3 Holguin and financed by Respondent at 8% interest.

4 h. Bond number NA15 167145 underwritten by National American in the amount of
5 \$15,000 on or about November 13, 1998 on behalf of Christopher Allison for a bond
6 premium and related charges of \$1,510. And, bond number NA5 598511 underwritten
7 by National American in the amount of \$4,750 on or about November 14, 1998 on
8 behalf of Christopher Allison for a bond premium and related charges of \$488.
9 Respondent obtained a handwritten promissory note from Donna Allison dated
10 November 13, 1998 agreeing to pay \$3,248 on these bonds. Although the bonds were
11 exonerated on April 6, 1999, Respondent did not provide a final accounting to the
12 indemnitor. Although Fitzgerald failed to provide the required final accounting,
13 Fitzgerald's available records do not indicate Allison was overcharged.

14 i. Bond number NA100 101882 underwritten by National American in the amount of
15 \$87,500 on or about December 12, 1998 on behalf of Amos T. Matley for a bond
16 premium and related charges of \$8,850. Respondent obtained two promissory notes on
17 this bond. Both notes were for the total bond premium and charges of \$8,850 at 18%
18 interest. The first note was signed by Amos T. Matley and the second note was signed
19 by Michael and Rebecca Wagner. Although the bond was exonerated on December 12,
20 1998, Respondent did not provide a final accounting to the indemnitors.
21 Although Fitzgerald failed to provide the required final accounting, Fitzgerald's
22 available records do not indicate Matley was overcharged.

23 j. Bond number NA25 121768 underwritten by National American in the amount of
24 \$15,000 on or about February 10, 1998 on behalf of John Dow O'Dell for a bond
25 premium and related charges of \$1,800 financed by Respondent at 18% interest.
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CONCLUSIONS OF LAW

16. The Director has jurisdiction over this matter.

17. Respondent's conduct as alleged above constitutes the violation of any provision of this title, or any rule, subpoena or order of the director, within the meaning of A.R.S. § 20-295(A)(2).

18. Respondent's conduct as alleged above demonstrates directly or indirectly charging or collecting monies or other valuable consideration from any person for purposes other than to pay premium at the rates established by the surety insurer and approved by the Director and to be reimbursed for actual and reasonable expenses incurred in connection with the individual bail transaction, within the meaning of A.R.S. § 20-340.03(D)(1) and (D)(3) and A.A.C. R20-6-601(E)(2)(a) and (c).

19. Respondent's conduct as alleged above constitutes knowingly charging premium not in accordance with any applicable filing on file with the Director, in violation of A.R.S. § 20-451 and A.A.C. R20-6-601(E)(1).

20. Grounds exist to suspend, revoke or refuse to renew Fitzgerald's bail bond agent license, order him to cease and desist, order restitution and/or impose a civil penalty upon him pursuant to A.R.S. §§20-295(A) and (B) and 20-292.

ORDER

IT IS ORDERED THAT:

1. Respondent and his agents and employees shall immediately cease and desist from directly or indirectly charging or collecting monies or other valuable consideration from any person for purposes other than to pay premium at the rates established by the surety insurer and approved by the Director and to be reimbursed for actual and reasonable expenses incurred in connection with the individual bail transaction.

2. Respondent and his agents and employees shall immediately cease and desist from knowingly charging premium not in accordance with any applicable filing on file with the Director.

3. Respondent shall pay restitution in the amount of one thousand six hundred fifteen

1 dollars and forty five cents to (\$1615.45) made payable by cashier's check or money order to the
2 Sutton's upon entry of this Order.

3 4. The administrative hearing, which is scheduled to convene on June 18, 2002, is vacated.

4 DATED AND EFFECTIVE this 25th day of June, 2002.

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7 CHARLES R. COHEN, Director
8 Arizona Department of Insurance

9 **CONSENT TO ORDER**

10 1. Respondent has reviewed the foregoing Findings of Fact, Conclusions of Law and
11 Order.

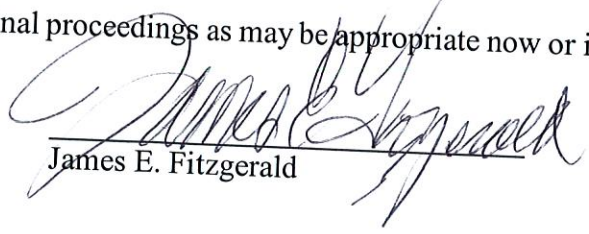
12 2. Respondent admits the jurisdiction of the Director of Insurance, State of Arizona and
13 admits the foregoing Findings of Fact and consents to the entry of the foregoing Conclusions of Law
14 and Order.

15 3. Respondent is aware of his right to notice and a hearing at which he may be represented
16 by counsel, present evidence and cross-examine witnesses. Respondent irrevocable waives his right
17 to such notice and hearing and to any court appeals relating to this Consent Order.

18 4. Respondent states that no promise of any kind of nature whatsoever, except as expressly
19 contained in this Consent Order, was made to him to induce him to enter into this Consent Order, was
20 made to him to induce him to enter into this Consent Order and that he has entered into this Consent
21 Order voluntarily.

22 5. Respondent acknowledges that the acceptance of this Consent Order by the Director
23 is solely to settle this matter against him and does not preclude any other agency, officer or subdivision
24 of this state from instituting civil or criminal proceedings as may be appropriate now or in the future.

25 6-23-02
26 Date


James E. Fitzgerald

1 COPY of the foregoing mailed this
2 26th day of June, 2002, to:

3 Lewis D. Kowal, Administrative Law Judge
4 Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007

5 Moira McCarthy, Assistant Attorney General
6 1275 West Washington Street
Phoenix, Arizona 85007
Attorney for the Department

7 James E. Fitzgerald
8 dba Fitzgerald Bail Bond
9 989 Cooper Basin Road
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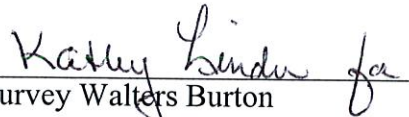
10 National American Insurance Company
11 Post Office Drawer 9
1008 Manvel Avenue
Chandler, OK 74834

12 Ranger Insurance Company
13 10777 Westheimer Road, Suite 4 South
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