

NOV 25 2002

DEPT. OF INSURANCE
BY Kate

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:)
)
5 CARL ARNAL, SAGUARO PUBLIC)
ADJUSTERS, INC. and)
6 THE CONSORTIUM OF PUBLIC)
ADJUSTERS,)
7)
Respondents.)
8)

Docket No. 02A-038-INS

ORDER

9 On November 15, 2002, the Office of Administrative Hearings, through Administrative
10 Law Judge Lewis D. Kowal, issued an Administrative Law Judge Decision ("Recommended Decision"),
11 a copy of which is attached and incorporated by this reference. The Director of the Department of
12 Insurance has reviewed the Recommended Decision and enters the following Order:

13 1. The recommended Findings of Fact and Conclusions of Law are adopted, except
14 for Conclusion of Law no. 9, which is rejected.

15 2. The recommended Order is modified, as follows: all insurance licenses issued by
16 the Department to the Respondents, Carl Arnal, Saguaro Public Adjusters, Inc., and The Consortium of
17 Public Adjusters shall be revoked effective the date of this Order. Respondents shall be jointly and
18 severally responsible to make restitution as follows: (a) \$271,193.99 to Sucasa Produce Partnership; (b)
19 \$244,876.41 to Temple La Hermosa Church and Academy; and (c) \$104,925.52 to Red Dog Rebuilders,
20 L.L.C.

JUSTIFICATION FOR REJECTION AND MODIFICATIONS

22 The Administrative Law Judge took pains to fashion a restitution order that would be a
23 technically appropriate disposition of the monetary damage elements of this matter by a court of
24

1 The final decision of the Director may be appealed to the Superior Court of Maricopa
2 County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office
3 of Administrative Hearings of the appeal within ten days after filing the complaint commencing the
4 appeal, pursuant to A.R.S. § 12-904(B).

5 DATED this 22nd of November, 2002

6 

7 _____
8 Charles R. Cohen
9 Director of Insurance

10
11 A copy of the foregoing mailed
12 this 25th day of November, 2002

13 Sara M. Begley, Deputy Director
14 Gerrie Marks, Executive Assistant for Regulatory Affairs
15 Mary Butterfield, Assistant Director
16 Scott Greenberg, Chief Operating Officer
17 Catherine O'Neil, Consumer Legal Affairs Officer
18 Arnold Sniegowski, Investigations Supervisor
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Carl Arnal
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Tucson, AZ 85718

1 Saguaro Public Adjusters, Inc.
2200 E. River Road, #120
2 Tucson, AZ 85718

3 The Consortium of Public Adjusters
2200 E. River Road, #120
4 Tucson, AZ 85718

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Kathy Lander

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1 Consortium of Public Adjusters also known as CPA was at all times material to this
2 matter and currently is licensed as an adjuster in the state of Arizona.

3 5. In an application Mr. Arnal filed with the Department on July 10, 1998, for the
4 Consortium to receive an adjuster's license as a corporation (the Application), the
5 Consortium represented that it was an Arizona corporation.

6 6. The evidence of record established that although the Consortium filed Articles of
7 Incorporation with the Arizona Corporation Commission, the Articles of Incorporation
8 were not accepted to effectuate the incorporation process and that document was
9 returned to the Consortium to resubmit with further information. The Consortium did not
10 resubmit the Articles of Incorporation with the Arizona Corporation Commission and did
11 not complete the filing process to be incorporated in the state of Arizona.

12 7. At all times material to this matter, Saguaro Public Adjusters, Inc. (Saguaro) was
13 licensed as an adjuster in the state of Arizona.

14 8. The Affidavit of Verification on the Application, executed by Mr. Arnal, states in
15 relevant part, that the Consortium "is organized under the laws of the State of Arizona
16 or possesses official authority to do business in Arizona."

17 9. The Application lists Mr. Arnal as the Consortium's president and vice-president.

18 10. Attached to the Application submitted to the Department was a copy of the
19 Consortium's Articles of Incorporation indicating it was date-stamped by the Arizona
20 Corporation Commission on November 10, 1997 and the Articles of Incorporation has a
21 stamp displaying the word "Expedited".

22 11. Based on the Application and attached Articles of Incorporation of the
23 Consortium, the Department issued the above-mentioned adjuster's license to the
24 Consortium.

25 12. Department Investigator Marcia Croddy (Investigator Croddy) testified that
26 subsequent to the issuance of an adjuster's license to the Consortium, the Department
27 discovered that the Consortium did not complete its filing of Articles of Incorporation
28 with the Arizona Corporation Commission and that the records of the Arizona
29 Corporation Commission do not show the Consortium as being a corporation authorized
30 to do business in the State of Arizona.

Sucasa Produce Partnership's Claim

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2 13. At all times material to this matter, Sucasa Produce Partnership (Sucasa) was
3 and currently is engaged in the fresh fruit and vegetable sale and distribution business.

4 14. In July 1999, one of Sucasa's warehouses had been destroyed and the other
5 three warehouses sustained fire damage.

6 15. During the time of the above-mentioned fire, Sucasa was insured by Hartford
7 Casualty Company (Hartford) for coverage of fire damage and loss.

8 16. Shortly after the fire, Mr. Arnal contacted Sucasa on behalf of the Consortium to
9 be hired as an adjuster for Sucasa to negotiate its fire damage/loss claim regarding the
10 warehouses.

11 17. On July 23, 1999, Sucasa executed an Adjuster's Authorization, a written
12 contract, authorizing the Consortium to advise and assist in the adjustment of a fire
13 damage/loss claim on behalf of Sucasa in exchange for 10% of the amount recovered.

14 18. Lester Sugino (Mr. Sugino), Sucasa's general manager, testified that the
15 Consortium investigated, negotiated, and adjusted Success's fire claim with Hartford.

16 19. The evidence of record established that Hartford issued several checks made
17 jointly payable to Sucasa and the Consortium.

18 20. Mr. Sugino testified that the above-mentioned checks were endorsed by Sucasa
19 and forwarded to the Consortium for endorsement.

20 21. Copies of the above-mentioned checks (State's Exhibit 7) established that the
21 Consortium endorsed the checks and deposited them in the Consortium's trust account.

22 22. Mr. Sugino testified that despite demands made by Sucasa for release of the
23 funds provided by Hartford in settlement of Sucasa's fire damage/loss claim, the
24 Consortium did not release the funds to Sucasa.

25 23. Jeff Nieder (Mr. Nieder), Sucasa's chief financial officer, testified that on behalf
26 of and with Sucasa's authorization, the Consortium distributed payment to contractors
27 for rebuilding the warehouse. According to Mr. Nieder, \$292,500.00 is the net sum that
28 the Consortium owes Sucasa from the funds received by Hartford after deducting the
29 above-mentioned construction costs and 10% fee due the Consortium.
30

1 24. The evidence of record established that Sucasa endorsed and forwarded to the
2 Consortium six checks issued by Hartford totaling \$778,899.00, which the Consortium
3 endorsed and deposited into its checking account.

4 25. The total amount that was agreed to by Sucasa and Hartford for settlement of
5 the fire damage/loss claim regarding the warehouses, excluding the HVAC system
6 located in warehouse building C and the tomato packaging machine control panel, was
7 \$850,000.00.

8 26. Sucasa initiated a lawsuit in the Pima County Superior Court to collect the
9 monies that the Consortium did not release to Sucasa. Sucasa obtained a Default
10 Judgment in the principal sum of \$377,566.09 with interest on that sum at the rate of
11 10% per annum from May 17, 2000 and for Sucasa's costs of \$302.00.

12 27. Mark L. Collins (Mr. Collins), Sucasa's attorney in the above-referenced civil
13 matter, testified that Sucasa has received no payments in satisfaction of the Default
14 Judgment and has recovered \$122,803.28 for a Bank of Tucson bank account and
15 \$21,306.00 from a Bank of Arizona bank account through garnishment proceedings.

16 28. Mr. Collins testified that \$104,925.52 of the \$122,803.28 obtained from the Bank
17 of Tucson bank account is currently the subject of litigation between Sucasa and Red
18 Dog Rebuilders, L.L.C. (Red Dog), Respondents' client and another claimant whose
19 situation is addressed below. Mr. Collins testified that a trial regarding that sum is
20 expected to take place in February 2003.

21 Red Dog's Claim

22 29. On February 3, 2000 Red Dog's property at 325 East 36th Street, Tucson,
23 Arizona, sustained fire damage. Red Dog was insured by Westport Insurance
24 Corporation (Westport).

25 30. Mr. Arnal solicited Red Dog concerning Respondents' adjuster services.

26 31. On February 29, 2000, Red Dog executed an Adjuster's Authorization with the
27 Consortium whereby in exchange for Consortium's services in adjusting Red Dog's
28 insurance claim with respect to the above-mentioned fire, the Consortium would receive
29 10% of any amount recovered from the insurer.

30 32. On September 8, 2000, Westport issued check number 004660, payable to Red
Dog, AZ Bank its Success and Assigns, Consortium Public Adjusters, Inc. c/o Paul

1 Gilbert Crawford & Co. in the amount of \$104,925.52. On September 19, 2000, the
2 Consortium deposited the above-mentioned check into its trust account with the Bank
3 of Tucson.

4 33. On October 2, 2000, the Consortium issued a check from its Bank of Tucson
5 trust account, check number 7055 issued to Shamalta Construction on behalf of Red
6 Dog in the amount of \$25,000.00. The check was returned to Shamalta Construction
7 marked by the Bank of Tucson as "Refer to Maker".

8 34. On November 1, 2000, Red Dog terminated the above-mentioned agreement
9 with the Consortium and demanded payment of \$104,925.52

10 35. On November 21, 2000, Red Dog instituted a lawsuit in the Pima County
11 Superior Court against the Consortium, Mr. Arnal and his wife, Saguaro, and Public
12 Adjusters Bureau, L.L.C. Pima County Superior Court Case Number C2000-5870.

13 36. On May 3, 2001, Red Dog obtained a Default Judgment in the above-mentioned
14 case against Mr. Arnal, the Consortium, Saguaro, and Public Adjusters Bureau, L.L.C.
15 in the amount of \$205,552.30 and punitive damages in the amount of \$200,000.00
16 together with costs of \$519.00 and attorneys' fees in the amount of \$37,944.51 plus
17 interest thereon at the rate of 10% per annum.

18 37. Investigator Croddy testified as to the above and supporting documentation that
19 the Department received from Red Dog.

20 38. Inspector Croddy also testified that Red Dog has not received any payments
21 from the Respondents in satisfaction of the Default Judgment.

22 Temple La Hermosa Church and Academy's Claim

23 39. Temple La Hermosa Church and Academy (the Church) sustained fire damage
24 to one of its buildings in early 1997. At the time of the fire, the Church was insured by
25 Preferred Risk Mutual Insurance Company for fire loss.

26 40. Ernest Baird (Mr. Baird), counsel for the Church and Mr. Moises Herrera (Mr.
27 Herrera), the pastor and former owner of the above-mentioned Church property,
28 testified that he handled the insurance claim regarding the above-mentioned fire loss.

29 41. Mr. Baird testified during the course of handling of the Church's claim, Preferred
30 became known as Guide One Insurance Company (Guide One) and Guide One
became the responsible entity handling the Church's fire loss claim.

1 42. After the fire loss, Mr. Herrera hired Saguario to adjust the Church's fire loss
2 claim. Mr. Herrera dealt with Mr. Arnal, who acted on behalf of Saguario.

3 43. Mr. Baird testified that he could not locate a written agreement between Saguario
4 and the Church concerning the hiring of Saguario as an adjuster. However, Mr. Baird
5 testified that during the course of the handling the Church's insurance claim, Mr. Arnal
6 never disputed that Saguario and the Church had entered into a contractual
7 arrangement for Saguario to act as a public adjuster for the Church in exchange for 10%
8 of the amount recovered from the insurer.

9 44. Mr. Baird testified that during the course of handling the Church's fire loss claim,
10 the Consortium took over as public adjuster for Saguario and continued to work in
11 adjusting the fire loss claim on behalf of the Church.

12 45. The evidence of record established that Respondents acted as a public adjuster
13 on behalf of the Church/Mr. Herrera and retained the above-mentioned 10% fee.

14 46. Saguario/the Consortium negotiated a settlement on behalf of the Church with
15 Guide One in the amount of \$407,640.46. Guide One checks in that amount were
16 issued, endorsed by the Church and forwarded to Saguario/the Consortium where they
17 were endorsed and deposited into a trust account.

18 47. The Consortium withdrew \$40,764.06 from the insurance settlement proceeds
19 pursuant to its agreement with the Church, representing its fee of 10% of the amount
20 recovered.

21 48. On the Church's behalf, the Consortium made payments totaling \$122,000.00 to
22 Shamalta Construction Company, who was the contractor hired by the Church to
23 rebuild the building that had sustained fire damage.

24 49. Despite demands made by the Church, the Consortium held and did not release
25 to the Church the net sum of \$244,876.40 representing the amount that Saguario/the
26 Consortium had received in settlement of the above-mentioned fire loss claim less
27 payment made to Shamalta Construction Company and the 10% fee owed to
28 Saguario/the Consortium.

29 50. On December 15, 2000, Mr. Herrera and the Consortium instituted a lawsuit
30 against Mr. Arnal, the Consortium and Saguario in the Maricopa Country Superior Court.

1 51. On June 11, 2002, the Church obtained a Default Judgment against the
2 Respondents in the above-mentioned case in the principal sum of \$244,876.41, with
3 interest thereon at the rate of 10% per annum and costs in the amount of \$294.00.

4 52. Mr. Baird testified that to date, none of the Respondents have paid any amount
5 to satisfy the above-mentioned Default Judgment.

6 Department's Subpoena

7 53. Investigator Croddy testified that on March 1, 2001, she caused the Department
8 to issue a Subpoena Duces Tecum to Mr. Arnal on behalf of the Consortium requesting
9 certain documents relating to the Church, Sucasa, and Red Dog and Mr. Arnal's
10 appearance for an examination under oath on March 14, 2001.

11 54. Investigator Croddy testified that on March 7, 2001, the Department received the
12 signed receipt indicating that the Consortium received the subpoena.

13 55. Mr. Allen, a former employee of the Consortium, testified that while he was
14 employed by the Consortium he became aware that Mr. Arnal had received the above-
15 mentioned subpoena.

16 56. On March 13, 2001, Mr. Arnal sent a request to the Department for additional
17 time to prepare documentation for the examination under oath. Investigator Croddy
18 testified that she was present when the Department placed a telephone call to Mr. Arnal
19 and left a message with his secretary that he had ten days to contact the Department to
20 reschedule the examination under oath. Neither the Consortium nor Mr. Arnal
21 contacted the Department to reschedule the examination under oath.

22 57. Investigator Croddy testified that to date, Mr. Arnal and the Consortium have
23 failed to comply with the above-mentioned subpoena.

24 58. Inspector Croddy testified that a Consent Order was entered into by Mr. Arnal,
25 Saguaro, and the Department *In the Matter of Carl Arnal and Saguaro Public Adjusters,*
26 *Inc.*, Docket number 00A-047-INS, wherein Mr. Arnal and Saguaro admitted to having
27 engaged in conduct that constituted a record of dishonesty in business or financial
28 matters. By virtue of the Consent Order, Mr. Arnal and Saguaro's adjuster licenses
29 were suspended for forty-five days and Mr. Arnal was ordered to pay a civil penalty in
30 the sum of \$2,000.00.

1 59. The above-mentioned Consent Order was considered in determining the nature
2 of the discipline to be imposed in the instant matter.

3 60. The testimony of all of the above-mentioned witnesses for the Department is
4 determined to be credible and accordingly, given great weight.

5 **CONCLUSIONS OF LAW**

6 1. Pursuant to A.R.S. § 20-295(H), the Director of the Department (Director) has
7 the authority to enforce A.R.S., Title 20 and to impose any penalty or remedy
8 authorized thereunder against any person who is under investigation or charged with a
9 violation of that title even if the persons license has been surrendered or lapsed by
10 operation of law.

11 2. Mr. Arnal's filing of documents in conjunction with the Consortium's application
12 for licensure as a public adjuster constitutes providing incorrect, misleading, incomplete
13 or materially untrue information in a license application within the meaning of A.R.S. §§
14 20-295(A)(1) and 20-321.02.

15 3. The above-mentioned conduct of the Respondents constitutes improperly
16 withholding, misappropriation or conversion of monies received in the course of doing
17 insurance business within the meaning of A.R.S. §§ 20-295(A)(4) and 20-321.02.

18 4. The above-mentioned conduct of Respondents constitutes using fraudulent,
19 coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or
20 financial irresponsibility in the conduct of business in the state of Arizona within the
21 meaning of A.R.S. §§ 20-295(A)(8) and 20-321.02.

22 5. The conduct of the Respondents as set forth above, constitutes a violation of any
23 provisions of A.R.S. Title 20, or any rule, subpoena or order of the Director within the
24 meaning of A.R.S. §§ 20-295(A)(2) and 20-321.02.

25 6. Grounds exist to suspend, revoke or refuse to renew Respondents' insurance
26 licenses and/or impose a civil penalty and or impose restitution pursuant to A.R.S. §§
27 20-295(A), 20-295(F), and 20-321.02.

28 7. The weight of the evidence of record established that Respondents withheld
29 monies form Sucasa, Red Dog, and the Church and failed to provide the monies to the
30 above-mentioned clients when requested to do so.

1 8. The weight of the evidence of record established that Respondents withheld the
2 sum of \$292,499.99 from Sucasa, withheld the sum of \$104,925.52 from Red Dog, and
3 withheld the sum of \$244,876.41 from the Church, which monies represent settlement
4 funds obtained as a result of settlement of fire loss claims made with their respective
5 carriers.

6 9. Although the Administrative Law Judge find that Respondents withheld certain
7 funds from the Red Dog, Sucasa, and the Church, restitution for the full sum is not
8 warranted. Restitution is defined as [a]n equitable remedy under which a person is
9 restored to his or her original position prior to loss or injury, or placed in the position he
10 or she would have been, had the breach not occurred." BLACKS LAW DICTIONARY 1313
11 (6th ed .1990). In this case, the sum of \$104,925.52 that Sucasa obtained through
12 garnishment proceedings against Respondents is the subject of litigation between
13 Sucasa and Red Dog. That means that, ultimately, one of those two entities will be
14 successful in obtaining that sum, or perhaps both entities may recover a lesser amount
15 derived from the garnishment.

16 As a result of the pending litigation, should Red Dog or Sucasa retain any portion
17 of the \$104,925.52, the amount that those entities would be entitled to receive as
18 restitution from Respondents would be reduced by the recovery amount. Consequently,
19 if any amount were to be awarded in this proceeding, that could result in Red Dog,
20 Sucasa or both of them potentially being made more than whole depending on the
21 outcome of the pending litigation.

22 As noted above, the purpose of restitution is to be made whole. At this point in
23 time, it is premature and inappropriate for the Administrative Law Judge to make a
24 recommendation for the \$104,925.52 to either Red Dog or Sucasa because of the
25 potential for recovery by those entities. The Administrative Law Judge determines that
26 any restitution to be awarded in this proceeding must be reduced by \$104,925.52 with
27 respect to both Sucasa and Red Dog. Thus, for Sucasa the restitution amount should
28 be \$148,390.71 (\$144,109.28 obtained through garnishment, of which \$104,925.52 is
29 the subject of pending litigation being subtracted from the total amount of \$292,499.99
30 that was determined to have been withheld by Respondents) and no restitution is

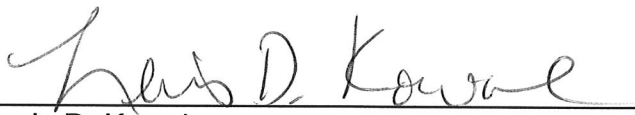
1 awarded Red Dog because the amount withheld (\$104,925.52) equals the amount that
2 is the subject of pending litigation.

3 **RECOMMENDED DECISION**

4 IT IS RECOMMENDED that all insurance licenses issued by the Department to
5 the Respondents Mr. Arnal, Saguario, and the Consortium be revoked on the effective
6 date of the Order entered in this matter.

7 IT IS ALSO RECOMMENDED that Respondents be jointly and severally
8 responsible to submit to the Department restitution payments within forty-five days of
9 the effective date of the Order entered in this matter as follows: (a) \$148,390.71 to
10 Sucasa and (b) \$244,876.41 to the Church.

11 Done this day, November 15, 2002.

12
13 

14 Lewis D. Kowal
15 Administrative Law Judge
16
17

18 Original transmitted by mail this
19 15 day of November, 2002, to:

20 Department of Insurance
21 Charles R. Cohen
22 ATTN: Kathy Linder
23 2910 North 44th Street, Ste. 210
24 Phoenix, AZ 85018

25 By Chris Crawford Thomas
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30