

MAY 12 2009

DEPT OF INSURANCE
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STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

NATIONAL HOME PROTECTION, INC.,
Petitioner.

No. 09A-003-INS
ORDER

On April 28, 2009, the Office of Administrative Hearings, through Administrative Law Judge (“ALJ”) Diane Mihalsky, issued an Administrative Law Judge Decision (“Recommended Decision”), received by the Director of the Department of Insurance (“Director”) on May 6, 2009, a copy of which is attached and incorporated by this reference.

The Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The Director adopts the Recommended Findings of Fact and Conclusions of Law.

2. The Director orders National Home Protection, Inc. (“NHP”) to immediately cease and desist from offering or soliciting warranty service contract applications, taking or proposing to make any warranty service contract, taking or receiving any application for warranty service contracts, taking or collecting any premium, fees, commission, or any other consideration for any warranty service contract, issuing or delivering warranty service contracts to residents of this state, or otherwise offering or issuing service contracts to Arizona residents.


3. The Director orders NHP to pay all valid claims arising out of acts covered by any and all service contracts issued by them to Arizona residents for so long as such claims may legally be brought against the contract holders.

1 National Home Protection, Inc.
42 W. 38th Street, Suite 800
2 New York, New York 10018
3 Petitioner

4 Victor Hakim
National Home Protection, Inc.
5 42 W. 38th Street, Suite 800
New York, New York 10018
6 Petitioner

7 Ron Lazar
Aini & Lazar, PLLC
8 2218 East 3rd Street
Brooklyn, New York 11233
9 Attorney for Petitioner

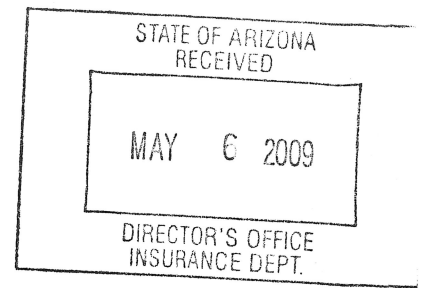
10 Office of Administrative Hearings
11 1400 West Washington, Suite 101
Phoenix, Arizona 85007

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14 Curvey Burton

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS



In the Matter of:

NATIONAL HOME PROTECTION, INC.

Respondent.

No. 09A-003-INS

**ADMINISTRATIVE
LAW JUDGE DECISION**

HEARING: April 16, 2009 at 9:00 a.m.

APPEARANCES: The Arizona Department of Insurance appeared through Lynette Evans, Esq., Assistant Attorney General; Respondent National Home Protection, Inc. did not appear.

ADMINISTRATIVE LAW JUDGE: Diane Mihalsky

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. Respondent National Home Protection, Inc. ("NHP") is domiciled and incorporated in the State of New York. NHP's address of record with the New York State Department of State, Division of Corporations is 42 West 38th Street, New York, NY 10018.

2. On January 22, 2009, the Arizona Department of Insurance ("the Department") issued a Cease and Desist Order to NHP, which ordered NHP to cease and desist from offering or soliciting warranty service contract applications, making or proposing to make any warranty service contract, taking or receiving any application for warranty service contracts, taking or collecting any premium, fees, commission, or any other consideration for any warranty service contract, issuing or delivering warranty service contracts to residents of Arizona or otherwise offering or issuing service contracts to Arizona residents ("the Department's Order").

3. The Department's Order was mailed to NHP at 42 W. 38th Street, Suite 800, New York, New York 10018.

4. NHP through its attorney appealed the Department's Order.

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1400 West Washington, Suite 101
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1 5. The Department referred NHP's appeal to the Office of Administrative
2 Hearings, an independent state agency.

3 6. On March 12, 2009, the Department issued a Notice of Hearing, which set an
4 administrative fair hearing on NHP's appeal on April 16, 2009 at 9:00 a.m.

5 7. The Department e-mailed the Notice of Hearing to NHP's attorney at an e-mail
6 address previously provided.

7 8. A hearing was held on April 16, 2009 at 9:00 a.m.

8 9. Although the beginning of the duly noticed hearing was delayed fifteen
9 minutes to allow NHP additional travel time, it neither appeared, contacted the Office of
10 Administrative Hearings to request a continuance or that the time for the hearing be
11 further delayed, nor presented any evidence at the hearing to support its appeal.

12 10. The Department appeared through its attorney, presented the testimony of
13 Investigator III Daniel Ray, and submitted thirteen exhibits.

14 **HEARING EVIDENCE**

15 11. NHP does not hold a permit to offer or issue service contracts in the State of
16 Arizona.

17 12. NHP is not exempt from the permit requirement.

18 13. On or about December 22, 2006, NHP issued a Home Warranty Contract to
19 Andrew Kaczowka covering his home in Scottsdale, Arizona. On or about August 26,
20 2008, Mr. Kaczowka filed a Complaint with the Department stating that NHP denied his
21 claim for breakdown of his pool motor.

22 14. On or about January 1, 2007, NHP issued a Home Warranty Contract to
23 Wayne J. Curry covering his home in Tucson, Arizona. On or about June 7, 2007, Mr.
24 Curry filed a Complaint with the Department stating that NHP failed to pay his claim for
25 breakdown of his refrigerator.

26 15. On or about April 11, 2007, NHP issued a Home Warranty Contract to
27 Rhonda J. Morano covering her home in Glendale, Arizona. On or about December 4,
28 2007, Ms. Morano filed a Complaint with the Department stating that NHP failed to pay
29 her claim for breakdown of her air conditioning unit.

30 16. On or about August 1, 2007, NHP issued a Home Warranty Contract to
Beatriz Del Carmen covering her home in Mesa, Arizona. On or about February 13,

1 2008, Ms. Del Carmen filed a Complaint with the Department stating that NHP failed to
2 pay her claim for breakdown of her pool motor.

3 17. On or about September 14, 2007, NHP issued a Home Warranty Contract to
4 Alonzo and Linda Russell covering their home in Mesa, Arizona. On or about February 6,
5 2008, Mr. and Mrs. Russell filed a Complaint with the Department stating that NHP failed
6 to pay their claim for breakdown of their furnace.

7 18. On or about September 27, 2007, NHP issued a Home Warranty Contract to
8 Clotilde Bermudez covering her home in Surprise, Arizona. On or about January 25,
9 2008, Ms. Bermudez filed a Complaint with the Department stating that NHP failed to pay
10 her claim for breakdown of her garbage disposal unit.

11 19. On or about October 2, 2007, NHP issued a Home Warranty Contract to
12 Debra Warner covering her home in Tucson, Arizona. On or about June 11, 2008, Ms.
13 Warner filed a Complaint with the Department stating that NHP failed to provide her with
14 a \$250 Home Depot rebate with was promised upon her purchase of the Home Warranty
15 Contract from NHP.

16 20. On or about March 30, 2008, NHP issued a Home Warranty Contract to Amy
17 D. Smith covering her home in Lake Havasu, Arizona. On or about June 19, 2008, Ms.
18 Smith filed a Complaint with the Department stating that NHP failed to pay her claim for
19 breakdown of her pool motor.

20 21. On December 17, 2008, the Department issued a Subpoena Duces Tecum
21 ("the Department's Subpoena") to NHP requesting NHP to produce, on January 6, 2008,
22 proof that it was licensed to do business in Arizona and claim files for Ms. Morano, Mr.
23 Kaczowka, Ms. Bermudez, Ms. Warner, Ms. Smith, Mr. and Mrs. Russell, Ms. Del
24 Carmen, and Mr. Curry.

25 22. NHP has not responded to the Department's Subpoena.

26 23. On January 9, 2009, the Attorney General of Texas filed an Application for
27 Injunctive Relief seeking to enjoin NHP from its unlicensed sale of residential service
28 contracts to consumers in Texas.
29
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CONCLUSIONS OF LAW

1 1. The Director of the Department has jurisdiction over this matter.¹

2 2. The notice of the hearing that the Department e-mailed to NHP's attorney
3 was reasonable and NHP is deemed to have received notice of the hearing.²

4 3. The Department bears the burden of proof and must establish that the
5 Department's Order is supported by the evidence and applicable law by a preponderance
6 of the evidence.³

7 4. "A preponderance of the evidence is such proof as convinces the trier of fact
8 that the contention is more probably true than not."⁴ A preponderance of the evidence is
9 "[t]he greater weight of the evidence, not necessarily established by the greater number of
10 witnesses testifying to a fact but by evidence that has the most convincing force; superior
11 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
12 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather
13 than the other."⁵

14 5. The Department has established that NHP committed acts in Arizona that
15 constitute offering and issuing service contracts to residents of Arizona purporting to
16 cover real property, fixtures, and other property located in Arizona.⁶

17 6. The Department has established that its Director has not issued a permit to
18 NHP and that NHP is not exempt from the statutory requirement of a permit.⁷

19 7. The Department therefore has established that NHP violated applicable law
20 by issuing service contracts in Arizona.⁸

21 8. The service contracts that NHP issued to the eight consumers identified
22 above are enforceable and valid contracts.⁹

24 ¹ See A.R.S. § 20-1095 *et seq.*

25 ² See A.R.S. §§ 41-1092.04; 41-1092.05(D); 41-1061(A).

26 ³ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119; *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

27 ⁴ Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

28 ⁵ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

29 ⁶ See A.R.S. § 20-1095(8).

30 ⁷ See A.R.S. § 20-1095.02.

⁸ See A.R.S. § 20-1095.01(A), which provides that "[n]o service company may offer or issue a service contract unless the service company has qualified for and been issued a permit by the director."

⁹ See A.R.S. § 20-1095.05 ("Any service company contract issued in violation of this article is an enforceable and valid contract unless invalidated for other reasons.").

RECOMMENDED ORDER

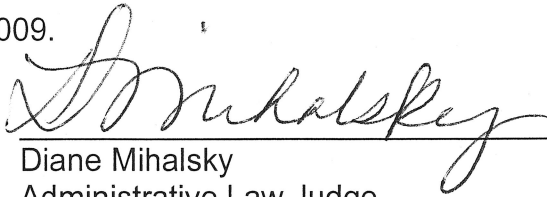
Based on the foregoing, it is recommended that the Director of the Department of Insurance order Respondent NHP to do the following on or before the effective date of the Director's order:

1. NHP shall cease and desist from offering or soliciting warranty service contract applications, making or proposing to make any warranty service contract, taking or receiving any application for warranty service contracts, taking or collecting any premium, fees, commission, or any other consideration for any warranty service contract, issuing or delivering warranty service contracts to residents of the State of Arizona, or otherwise offering or issuing service contracts to Arizona residents.

2. NHP shall pay all valid claims arising out of acts covered by any and all service contract issued by NHP to Arizona residents for so long as such claims may legally be brought against the contract holders.

3. If the Director of the Office of Administrative Hearings certifies this Administrative Law Judge Decision, the effective date of the order will be forty days from the date of certification.

Done this day, April 28, 2009.



Diane Mihalsky
Administrative Law Judge

Original transmitted by mail this 4 day of May, 2009, to:

Christina Urias, Director
Department of Insurance
2910 North 44th Street, Ste. 210
Phoenix, AZ 85018

By _____