

MAR 6 2013

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY 

In the Matter of:

| | | |
|---|---|------------------------------|
| |) | No. 12A-030-INS |
| 4 |) | |
| 4 |) | |
| 5 |) | NOTICE OF DECLINATION |
| |) | TO REVIEW |
| 6 |) | RECOMMENDED DECISION |
| |) | |
| 7 |) | (ALJ Tammy Eigenheer) |
| |) | |
| 8 |) | |

On February 7, 2013, the Office of Administrative Hearing, through Administrative Law Judge ("ALJ") Tammy L. Eigenheer, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on February 8, 2013. Pursuant to Arizona Revised Statutes ("A.R.S.") §41-1092.08(B), the Director declines to review the Recommended Decision. The Director does not accept, reject or modify the Recommended Decision, therefore, pursuant to A.R.S. §41-1092.08(D), the Office of Administrative Hearings shall certify the Recommended Decision as the final decision. The certification of the Recommended Decision shall include the applicable Notification of Rights regarding the aggrieved parties' right to request a rehearing or file an appeal with the Superior Court. A copy of the Notice shall be placed in the Department's permanent records, and a copy of the recommended Decision, together with this Notice, provided to the Respondents.

21 . . .
 22 . . .
 23 . . .

1 Mary E. Kosinski, Exec. Assistant for Reg. Affairs
Mary Butterfield, Assistant Director
2 Catherine M. O'Neil, Consumer Legal Affairs Officer
Charles Gregory, Investigations Supervisor
3 Dan Ray, Investigator
Department of Insurance
4 2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

5 
6 Curvey Burton

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FEB 8 2013

DIRECTOR'S OFFICE
INSURANCE DEPT.

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In The Matter Of:

No. 12A-030-INS

RANDOLPH & CO. BAIL BONDS INC. and
RANDOLPH, TONY ANN, and
RANDOLPH, KELBY REESE,

ADMINISTRATIVE
LAW JUDGE DECISION

Respondents.

HEARING: December 18, 2012 and December 19, 2012 with the record held open until January 18, 2013.

APPEARANCES: Respondents were represented by Tamra Facciola, Esq. The Department of Insurance was represented by Assistant Attorney General Alyse Meislik.

ADMINISTRATIVE LAW JUDGE: Tammy L. Eigenheer

FINDINGS OF FACT

1. Randolph & Co. Bail Bonds Inc. (Randolph & Co) is, and at all times material was, licensed by the Department of Insurance (Department) as a resident bail bond agent, Arizona license number 145821, which expires on January 31, 2015.
2. Randolph & Co's address of record with the Department is as follows: 49 S. Mesa Dr., Mesa, Arizona 85210 (business and mailing).
3. Tony Ann Randolph (Ms. Randolph) is, and at all times material was, licensed by the Department as a resident bail bond agent, Arizona license number 1454773, which expires on July 31, 2016. Ms. Randolph is the President and Designated Responsible Licensed Producer of Randolph and Co.
4. Ms. Randolph's addresses of record with the Department are as follows: c/o Randolph & Co Bail Bonds, Inc., 49 S. Mesa Dr., Mesa, Arizona 85210 (business and mailing); and 1628 E. Hampton, Mesa, Arizona 85204 (residence).
5. Kelby Reese Randolph (Mr. Randolph) is, and at all times material was, licensed by the Department as a resident bail bond agent, Arizona license number 156868,

1 which expires on December 31, 2012. Mr. Randolph is the Vice President of Randolph
2 and Co.

3 6. Mr. Randolph's addresses of record with the Department are as follows: c/o
4 Randolph & Co Bail Bonds, Inc., 49 S. Mesa Dr., Mesa, Arizona 85210 (business and
5 mailing); and 1628 E. Hampton, Mesa, Arizona 85204 (residence).

6 7. On September 16, 2011, Margaret Gleason (Ms. Gleason) filed a Request for
7 Assistance with the Department.

8 8. Ms. Gleason sought assistance from the Department after hiring Randolph & Co
9 to post bail bonds for her husband, Sean Gleason (Mr. Gleason), after his arrest on
10 May 23, 2011. Ms. Gleason complained to the Department that Randolph & Co had
11 wrongfully surrendered her husband into custody on two separate occasions and failed
12 to return her premium. Ms. Gleason also complained that the collateral she provided to
13 Randolph & Co in the form of a lien on her house and motorcycle and eventual physical
14 possession of the motorcycle were never released and returned even after the court
15 exonerated the bond.

16 **FIRST BOND**

17 9. On May 26, 2011, Ms. Gleason hired Randolph & Co to post a \$27,000 bond for
18 Sean Gleason in Maricopa County Superior Court, case CR2011-126092. Jeannie
19 Johnston paid \$2,500 to Randolph & Co as partial premium for the bond. Ernest Clark
20 had a credit balance with Randolph & Co, and he used \$200 of the balance as partial
21 premium for the bond. Ms. Gleason collateralized the bond with titles to a 2007 Harley
22 Davidson motorcycle (2007 Harley) and a 1995 Harley Davidson motorcycle (1995
23 Harley). Ms. Gleason was notified Mr. Gleason would need to sign paperwork once he
24 was released from custody.

25 10. On May 27, 2011, Randolph & Co posted the \$27,000 bond in case CR2011-
26 126092 through Bankers Surety Company.

27 11. On May 31, 2011, Randolph & Co added itself as a lien holder on the titles of the
28 two motorcycles.

29 12. On June 2, 2011, Mr. Randolph went to Ms. Gleason's home, found the house
30 "looking like a tornado hit it," and observed Mr. Gleason working on the 1995 Harley

1 with various parts removed. Mr. Randolph took Mr. Gleason to the Randolph & Co
2 office. Ms. Gleason also went to the Randolph & Co office to speak to Mr. Gleason.

3 13. At the office, Mr. Gleason signed the paperwork required by Randolph & Co.

4 14. Initially, Mr. Randolph agreed to let Mr. Gleason remain out of custody but
5 indicated he would have to take possession of the motorcycles to protect the collateral.

6 15. Mr. Gleason became agitated and pushed Ms. Gleason away from him with
7 enough force to damage the office counter. Randolph & Co's recovery agents then
8 tased Mr. Gleason.

9 16. The Mesa Police Department arrived at Randolph & Co's office in response to
10 the incident. Mr. Gleason was not arrested at that time.

11 17. Randolph & Co's recovery agent arrested Mr. Gleason and surrendered him to
12 the custody of the Maricopa County Sheriff's Office.

13 18. On June 2, 2011, Randolph & Co filed an affidavit for exoneration of the first
14 bond.

15 19. Respondents charged the Gleasons \$2,700 for the arrest and \$150 to repair
16 damages to the office counter. Respondents did not provide the Gleasons with any
17 statements, invoices, or demands for payment for the charges.

18 **SECOND BOND**

19 20. On June 6, 2011, Randolph & Co posted a second \$27,000 bond for Mr.
20 Gleason in case CR2011-126092 through Bankers Surety Company.

21 21. According to Respondents, Mr. Gleason agreed to use the proceeds from the
22 sale of the 1995 Harley as payment for the premium for the second bond and payment
23 for the recovery fees related to the first bond. Randolph & Co retained the lien on the
24 2007 Harley and required additional collateral for the second bond. Ms. Gleason
25 allowed Randolph & Co to put a lien on her home as additional collateral. On June 10,
26 2011, Randolph & Co recorded a Deed of Trust and Assignment of Rents against Ms.
27 Gleason's home, recording number 2011-0485547, at the Maricopa County Recorder's
28 Office.

29 22. On July 7, 2011, Randolph & Co sold the 1995 Harley for \$5,500. Mr. Randolph
30 applied the proceeds of the sale to the outstanding balance due for the surrender on

1 the first bond and the premium for the second bond. Mr. Randolph did not provide the
2 Gleasons with written notification the motorcycle was being sold or that it had been
3 sold.

4 23. On the evening of September 5, 2011, Ms. Gleason contacted Mr. Randolph to
5 inquire if he had any knowledge as to where Mr. Gleason was. Ms. Gleason believed
6 Mr. Randolph was the last person to see Mr. Gleason on September 3, 2011. Ms.
7 Gleason indicated she was concerned that Mr. Gleason may have been in a motorcycle
8 accident or had been arrested. Ms. Gleason asked Mr. Randolph what would happen if
9 Mr. Gleason did not make his court appearance on September 6, 2011.

10 24. Mr. Gleason returned to the home sometime the night of September 5, 2011.

11 25. On the morning of September 6, 2011, Mr. Gleason contacted Ms. Gleason to
12 tell her the motorcycle would not start and he was going to be late to his court
13 appearance. Ms. Gleason contacted the public defender to inform her of Mr. Gleason's
14 delay.

15 26. On September 6, 2011, at 10:06 a.m., the Maricopa County Superior Court
16 issued a bench warrant for Mr. Gleason and increased the amount of his bond as a
17 result of his failure to appear in court in CR2011-126092. The Minute Entry stated that
18 "[d]efense counsel received message that the Defendant was running late, but it has
19 been an hour later."

20 27. One of Randolph & Co's recovery agents was in the courtroom waiting for Mr.
21 Gleason to appear in court that morning. When the court issued the bench warrant, the
22 agent left the courtroom.

23 28. At 10:17 a.m., when Mr. Gleason appeared at the court, the court quashed the
24 bench warrant and bond.

25 29. At some point during the morning of September 6, 2011, Mr. Randolph called
26 Ms. Gleason to inform her that Mr. Gleason did not appear in court on time and was
27 running around the courthouse trying to escape. Ms. Gleason explained to Mr.
28 Randolph that Mr. Gleason was delayed because the motorcycle wouldn't start and the
29 public defender had been notified. Ms. Gleason acknowledged Mr. Gleason was most
30

1 likely trying to avoid the recovery agents because he had residual anxiety stemming
2 from the tasing incident on June 2, 2011.

3 30. Randolph & Co's recovery agents arrested Mr. Gleason at the courthouse.

4 31. While Ms. Gleason was on her lunch break, she received a call from Mr.
5 Gleason. He informed her that he was in Mr. Randolph's van because Randolph &
6 Co's recovery agents had arrested him. Mr. Gleason also notified Ms. Gleason that the
7 judge had issued a warrant for his arrest, but had quashed it. Ms. Gleason heard Mr.
8 Randolph tell Mr. Gleason to get off the phone. Ms. Gleason then spoke to Mr.
9 Randolph who indicated he was taking Mr. Gleason back to jail because Mr. Gleason
10 failed to appear in court on time.

11 32. At 4:08 p.m., Randolph & Co's recovery agents surrendered Mr. Gleason to the
12 custody of the Maricopa County Sheriff's Office and filed an exoneration of bond.

13 33. When Randolph & Co surrendered Mr. Gleason into custody, it took possession
14 of the 2007 Harley and towed it back to its office.

15 34. Respondents charged the Gleasons \$2,700 for the arrest.

16 35. Mr. Gleason passed away on February 15, 2012.

17 36. On March 27, 2012, the court exonerated the bond previously posted.

18 37. As of the date of the hearing, Respondents had not released the lien on Ms.
19 Gleason's home or on the 2007 Harley. Following the hearing, the Administrative Law
20 Judge received evidence Respondent released the lien on Ms. Gleason's home on
21 December 28, 2012.

22 **SUSPENSION OF NOTARY LICENSE**

23 38. On August 6, 2012, the Secretary of State suspended Ms. Randolph's Notary
24 Commission.

25 39. Ms. Randolph did not report the suspension of her Notary Commission to the
26 Department.

27 **DEPARTMENT INVESTIGATION**

28 40. On September 27, 2011, the Department investigator, Dan Ray, sent a letter to
29 Respondents requesting a complete and legible copy of the Gleason bail bond file, a
30 detailed chronology of events, and a detailed list of fees.

1 41. On October 4, 2011, Mr. Randolph provided the Department with a handwritten
2 letter and the first page of the September 6, 2011 Minute Entry in CR2011-126092.
3 The complete Minute Entry was six pages.

4 42. Page one of the Minute Entry ordered the issuance of a bench warrant based on
5 Mr. Gleason's failure to appear. The Minute Entry contained the order that the bench
6 warrant be quashed on page six.

7 43. The Gleason bail bond file provided by Mr. Randolph did not include numerous
8 documents required to be maintained by a bail bond agent.

9
10 **CONCLUSIONS OF LAW**

11 1. The Department has jurisdiction over Respondents and the subject matter in this
12 case. A.R.S. § 20-340 *et seq.*

13 2. The Department bears the burden of proof and must establish cause to penalize
14 Respondents' resident bail bond agent licenses by a preponderance of the evidence.
15 See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); *see also Vazanno v.*
16 *Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

17 3. "A preponderance of the evidence is such proof as convinces the trier of fact that
18 the contention is more probably true than not." MORRIS K. UDALL, ARIZONA LAW OF
19 EVIDENCE § 5 (1960). A preponderance of the evidence is "evidence which is of greater
20 weight or more convincing than evidence which is offered in opposition to it; that is,
21 evidence which as a whole shows that the fact sought to be proved is more probable
22 than not." BLACK'S LAW DICTIONARY 1120 (8th ed. 2004).

23 **RECEIPTS FOR PREMIUMS PAID AND COLLATERAL RECEIVED**

24 4. The Department alleged Respondents' conduct constituted a violation of A.R.S.
25 § 20-340.01(F);¹ A.R.S § 20-340.01(G);² and A.A.C. R20-6-601(E)(3).³

26
27 ¹ A.R.S. § 20-340.01(F) provides:

28 As a minimum requirement for permanent office records, each bail bond agent and
29 general lines agent who is engaged in the bail bond business shall maintain a daily bond
30 register that is the original and permanent record of all bonds or undertakings executed
by the licensee and that states the:

1. Number of the power of attorney form.

1 5. The uncontroverted evidence at hearing established Respondents failed to
2 provide appropriate receipts for the premiums paid and the collateral received and
3 failed to maintain a copy of the required receipts in the office records.

4 6. Mr. Randolph indicated he did not provide the Gleasons with a copy of the
5 premium receipt for the first bond because he did not accept any money from them. Mr.
6 Randolph also stated he did not provide the Gleasons with a receipt for the collateral
7 because he did not actually take possession of the collateral at the time it was pledged.
8 Mr. Randolph indicated he believed the placement of a lien acted as a receipt of sorts.
9 While Respondents may have held a good faith belief they were acting in accordance

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- 10 2. Date the bond was executed.
 - 11 3. Name of the principal.
 - 12 4. Amount of the bond.
 - 13 5. Premium charged.
 - 14 6. Premium reported to the surety company.
 - 15 7. Security or collateral received.
 - 16 8. Date the security or collateral was received and the date released.
 - 17 9. Indemnity agreements.
 - 18 10. Disposition of the bond.
 - 19 11. Date of disposition.

20 ² A.R.S. § 20-340.01(G) provides:

21 Each bail bond agent and general lines agent who is engaged in the bail bond business
22 and who accepts monies or any other consideration for any bail bond undertaking shall
23 for each payment received give to the person paying the monies or giving the
24 consideration a prenumbered receipt as evidence of payment. The receipt must state the
25 date, the name of the principal, a description of the consideration or amount of monies
26 received and the purpose for which received, the number of the power of attorney form
27 attached to the bond, the penal sum of the bond, the name of the person making the
28 payment or giving the consideration and the terms under which the monies or other
29 consideration shall be released. Each bail bond agent shall retain a duplicate copy of
30 each receipt issued as part of the agent's records.

³ A.A.C. R20-6-601(E)(3) provides:

Delivery of documents to arrestee

a. Every bail bond agent shall, at the time of obtaining the release of an arrestee on bail or immediately thereafter, deliver to such arrestee or to the principal person with whom negotiations were made, if other than the arrestee, a copy of the bail bond premium agreement, which shall include:

i. The name of the surety insurer and the name and business address of the bail bond agent.

ii. The amount of bail and the premium thereof.

b. The bail bond agent shall also deliver at such time a statement detailing all charges in addition to the premium, the amount received on account, the unpaid balance if any, and a description of and a receipt for any collateral received.

1 with the statutory and regulatory requirements, such a belief does not excuse their
2 failure to comply.

3 7. As such, the Department established by a preponderance of the evidence that
4 Respondents' conduct constituted a violation of A.R.S. § 20-340.01(F); A.R.S § 20-
5 340.01(G); and A.A.C. R20-6-601(E)(3).

6 **PREMIUM REFUND UPON SURRENDER OF ARRESTEE**

7 8. The Department alleged Respondents' conduct constituted a violation of A.A.C.
8 R20-6-601(E)(5).⁴

9 9. The Department argued that none of the exceptions identified in the rule applied
10 to the situation at hand and therefore, Respondents were obligated to refund the
11 premiums for the first bond and the second bond. In so arguing, the Department
12 asserted its position that "a material and substantial increase in the hazard assumed"
13 refers only to the amount of money the bail bond agent stands to lose as a result of the
14 transaction. The Department did not provide any legal authority for this proposed
15 interpretation of the regulation.

16 10. Hazard is defined as "[t]he risk or probability of loss or injury, esp. a loss or
17 injury covered by an insurance policy." BLACK'S LAW DICTIONARY 736 (8th ed. 2004).
18 Therefore, based on the plain language of the regulation, a material and substantial
19 increase in the hazard assumed should be read to mean a material and substantial
20 increase in *the risk or probability* of loss or injury assumed, not a material and
21 substantial increase in *the amount* of loss or injury assumed.

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23
24 ⁴ A.A.C. R20-6-601(E)(5) provides:

25 Premium refund upon surrender of arrestee. No bail bond agent shall surrender an
26 arrestee to custody prior to the time specified in the bail bond for the appearance of the
27 arrestee, or prior to any other occasion when the presence of the arrestee in court is
28 lawfully required, without returning all premium paid therefor, unless as a result of
29 judicial action, or material misrepresentation by the arrestee or his indemnitor with
30 respect to the execution of the bail bond agreement, or a material and substantial
increase in the hazard assumed. Failure of the arrestee to pay the premium, or charges
permitted under these regulations or any part thereof, and failure to furnish collateral
required by the bail bond agent, shall not be considered a material and substantial
increase in the hazard assumed.

1 11. Given the circumstances surrounding the June 2, 2011 surrender, including Mr.
2 Gleason's assault of Ms. Gleason in the presence of Respondents, it was reasonable
3 for Respondents to conclude there was a material and substantial increase in their risk
4 or probability of loss or injury as related to the bail bond transaction. While the Mesa
5 Police Department did not arrest Mr. Gleason at the scene, that did not preclude a
6 subsequent arrest for the same incident, which would result in a forfeiture of the bond.

7 12. Accordingly, Respondents were not required to refund the premium for the first
8 bond upon the surrender of Mr. Gleason.

9 13. As to the June 6, 2011 surrender, Mr. Randolph had received a phone call from
10 Ms. Gleason the previous evening expressing her concern over Mr. Gleason's
11 whereabouts and the possibility he would miss his court date, Mr. Gleason was late for
12 his court appearance, a bench warrant was issued for Mr. Gleason's arrest based on
13 his failure to appear, and Mr. Gleason attempted to flee from the recovery agents at the
14 courthouse. These factors together made it reasonable for Respondents to conclude
15 there was a material and substantial increase in their risk or probability of loss or injury
16 as related to the second bail bond transaction. The fact that the court quashed the
17 bench warrant eleven minutes after it was entered did not diminish the overall
18 circumstances that contributed to Respondents' decision to surrender Mr. Gleason.⁵

19 14. Accordingly, Respondents were not required to refund the premium for the
20 second bond upon the surrender of Mr. Gleason.

21 15. The Department failed to establish by a preponderance of the evidence that
22 Respondents' conduct constituted a violation of A.A.C. R20-6-601(E)(5).

23 **PROMPT RETURN OF COLLATERAL**

24 16. The Department alleged Respondents' conduct constituted a violation of A.R.S.
25 § 20-340.03(6)⁶ and A.A.C. R20-6-601(E)(4)(b).⁷

26
27 ⁵ No evidence was submitted to indicate Respondents had any knowledge the bench warrant was
quashed at the time Mr. Gleason was surrendered.

28 ⁶ A.R.S. § 20-340.03(6) provides a bail bond agent shall not:

29 Accept anything of value from a principal except the premium and expenses. The bail
30 bond agent may accept collateral security or other indemnity from the principal or on
behalf of the principal that the bail bond agent shall return on final termination of liability

1 17. The Department argued Respondents' failure to release the deed of trust on Ms.
2 Gleason's home and the lien on the 2007 Harley and return the motorcycle to Ms.
3 Gleason when Mr. Gleason was returned to custody on June 6, 2011, was a failure to
4 promptly return the collateral pledged for the second bond.

5 18. Despite Mr. Randolph filing an exoneration of the second bond with the court on
6 June 6, 2011, the court did not exonerate the bond until March 27, 2012. Therefore,
7 the earliest date Respondents may have had an obligation to return the collateral was
8 March 27, 2012.

9 19. Respondents argued they were entitled to maintain the collateral based on the
10 existing dispute regarding fees owed to the bonding company in accordance with
11 A.A.C. R20-6-601(E)(4)(c).⁸ According to Respondents, Ms. Gleason still owed
12 Randolph & Co fees relating to the June 6, 2011 surrender.

13 20. Mr. Randolph provided Ms. Gleason with a bill for the fees relating to the June 6,
14 2011 surrender and requested payment. Mr. Randolph testified he offered to let Ms.
15 Gleason pay only the fee paid to the two recovery agents rather than the full billed
16 amount which included a fee for Mr. Randolph acting as a recovery agent.

17
18 on the bond unless the collateral has been forfeited because the defendant did not
19 appear in court. The collateral security or other indemnity required by the bail bond agent
20 must be reasonable in relation to the amount of the bond.

21 ⁷ A.A.C. R20-6-601(E)(4)(b) provides:

22 Any collateral received shall be returned to the person who deposited it with the bail
23 bond agent or any assignee as soon as the obligation, the satisfaction of which was
24 secured by the collateral, is discharged. Where such collateral has been deposited to
25 secure the obligation of a bond, it shall be returned immediately upon the entry of any
26 order by an authorized official by virtue of which liability under the bond is terminated,
27 or, if any bail bond agent fails to cooperate fully with any authorized official to secure the
28 termination of such liability, immediately upon the accrual of any right to secure an order
29 of termination of liability.

30 ⁸ A.A.C. R20-6-601(E)(4)(c) provides:

When such collateral has been deposited as security for unpaid premium or charges
and, if such premium or charges remained unpaid at the time of exoneration and after
demand therefor has thereafter been made by the bail bond agent, collateral other than
cash may be levied upon in the manner provided by law and cash collateral up to the
amount of such unpaid premium or charges may be applied in payment thereof.

1 21. Given the previous finding that Respondents were entitled to retain the premium
2 for the second bond following the June 6, 2011 surrender, and because Ms. Gleason
3 failed to pay either the entire bill or the reduced bill for the fees relating to that
4 surrender, Respondents were justified in maintaining the collateral.

5 22. The Department failed to establish by a preponderance of the evidence that
6 Respondents' conduct constituted a violation of A.R.S. § 20-340.03(6) and A.A.C. R20-
7 6-601(E)(4)(b).

8 **IMPROPERLY WITHHOLDING MONIES RECEIVED**

9 23. The Department alleged Respondents' conduct constituted a violation of A.R.S.
10 § 20-295(A)(4), as applied to bail bond agents under A.R.S. § 20-340.06.⁹

11 24. Based on the above findings that Respondents were not required to return the
12 premiums paid on either bond and that Respondents were justified in maintaining the
13 collateral for unpaid fees and charges, the Department failed to establish by a
14 preponderance of the evidence that Respondents' conduct constituted a violation of
15 A.R.S. § 20-295(A)(4), as applied to bail bond agents under A.R.S. § 20-340.06.

16 25. The Department also alleged Respondents improperly sold and retained the
17 proceeds of the sale of the 1995 Harley. The Department indicated such an act was in
18 violation of A.A.C. R20-6-601(E)(4)(c).

19 26. Ms. Gleason testified that Mr. Gleason informed her Mr. Randolph was holding
20 the 1995 Harley until Mr. Gleason was able to collect the funds necessary to pay the
21 premium on the second bond.

22 27. Mr. Randolph testified Mr. Gleason agreed the 1995 Harley would act as
23 payment for the premium on the second bond and the outstanding recovery fees
24 related to the surrender on the first bond.

25 28. Based on the absence of paperwork relating to the transaction, the exact nature
26 of the parties' understanding cannot be determined.

27
28 ⁹ A.R.S. § 20-295(A)(4) provides the Department may discipline a license or may impose a civil penalty
29 for "[i]mproperly withholding, misappropriating or converting any monies or properties received in the
30 course of doing insurance business."
A.R.S. § 20-340.06 provides that "[t]o the extent not inconsistent with this article, sections . . . 20-295
[and] 20-301 . . . apply to bail bond agents."

1 29. Given Mr. Randolph's account of the events, the 1995 Harley would not be
2 considered "collateral deposited as security for unpaid premium or charges," but would
3 be considered as the payment for the premium and unpaid charges. In that case,
4 Respondents did not act in violation of A.A.C. R20-6-601(E)(4)(c).

5 30. Given Ms. Gleason's account of the events, the 1995 Harley would be
6 considered collateral for the premium. In that case, Respondents sale of the 1995
7 Harley prior to the exoneration of the bond and making a demand for the unpaid
8 premium and fees was a violation of A.A.C. R20-6-601(E)(4)(c).

9 31. The Department established by a preponderance of the evidence that the sale of
10 the 1995 Harley resulted in a violation of A.A.C. R20-6-601(E)(4)(c) and therefore a
11 violation of A.R.S. § 20-295(A)(4), as applied to bail bond agents under A.R.S. § 20-
12 340.06.

13 **FAILURE TO REPORT AN ADMINISTRATIVE ACTION TAKEN BY ANOTHER**
14 **GOVERNMENTAL AGENCY IN THE STATE**

15 32. The Department alleged Ms. Randolph's conduct constituted a violation of
16 A.R.S. § 20-301(A),¹⁰ as applied to bail bond agents under A.R.S. § 20-340.06.

17 33. Ms. Randolph had a statutory obligation to report to the Department the August
18 6, 2012 suspension of her Notary Commission by the Secretary of State.

19 34. Ms. Randolph testified she did not believe she needed to report the suspension
20 because the suspension was the result of a report from the Department to the
21 Secretary of State that she was improperly charging for notary services. Ms. Randolph
22 stated she believed that the Department already knew of the suspension based on its
23 actions and therefore she did not need to report it to the Department.

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26
27 ¹⁰ A.R.S. § 20-301(A) provides:

28 Within thirty days after the final disposition of the matter, an insurance producer shall
29 report to the director any administrative action taken against the producer in another
30 jurisdiction or by another governmental agency in this state. The report shall include a
copy of the order, consent to order or other relevant dispositive document.

1 35. The Department established by a preponderance of the evidence that Ms.
2 Randolph's conduct constituted a violation of A.R.S. § 20-301(A), as applied to bail
3 bond agents under A.R.S. § 20-340.06.

4 **INCOMPETENCE OR UNTRUSTWORTHINESS**

5 36. The Department alleged Respondents' conduct constituted a violation of A.R.S.
6 § 20-295(A)(8),¹¹ as applied to bail bond agents under A.R.S. § 20-340.06.

7 37. Respondents' failure to maintain proper documentation relating to bail bond
8 transactions does represent a deficiency in Respondents' business practices.
9 However, it is not the opinion of the Administrative Law Judge that such deficiencies
10 rise to the level of incompetence or untrustworthiness.

11 38. The Department failed to establish by a preponderance of the evidence that
12 Respondents' conduct constituted a violation of A.R.S. § 20-295(A)(8), as applied to
13 bail bond agents under A.R.S. § 20-340.06.

14 **FAILURE TO FULLY RESPOND TO THE DEPARTMENT'S INQUIRY**

15 39. The Department alleged Mr. Randolph's conduct constituted a violation of A.R.S.
16 § 20-340.01(H)¹² and A.A.C. R20-6-601(D)(7)(b).¹³

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18
19 ¹¹ A.R.S. § 20-295(A)(8) provides the Department may discipline a license or may impose a civil penalty
20 for:

21 Using fraudulent, coercive or dishonest practices, or demonstrating incompetence,
22 untrustworthiness or financial irresponsibility in the conduct of business in this state or
23 elsewhere.

24 ¹² A.R.S. § 20-340.01(H) provides:

25 The bail bond agent shall keep at the agent's place of business the usual and customary
26 records pertaining to transactions made under the license. The licensee shall keep all the
27 records as to any particular transaction available and open to the inspection of the
28 director at any business time during the three years immediately after the date of
29 completion of the transaction.

30 ¹³ A.A.C. R20-6-601(D)(7)(b) provides:

Every bail bond agent shall truthfully and fully answer every question asked him by the
Director or his representative respecting his bail transactions and matters relating to the
conduct of his bail business. Any bail bond agent may have his attorney present when he
answers any such question.

1 40. The Department cited Mr. Randolph's failure to provide a full and complete copy
2 of the bail bond transaction file as an example of his failure to fully respond. However,
3 the evidence indicated Mr. Randolph provided the Department with the documents he
4 had in his possession. As previously addressed, Respondents failed to maintain all the
5 records required by the Department. As such, Respondents were unable to provide the
6 Department with all the documents it requested. There was an implication that
7 Respondents may have been withholding some documents, but nothing in the record
8 supports such a conclusion.

9 41. The Department also relied on Mr. Randolph's failure to provide the full six-page
10 Minute Entry as it related to the June 6, 2011 surrender. The Department alleged Mr.
11 Randolph was attempting to deceive the Department by omitting the page of the Minute
12 Entry that indicated the bench warrant had been quashed. However, the first page of
13 the Minute Entry that was provided is titled as follows:

14 COMPREHENSIVE PRETRIAL CONFERENCE/TRIAL ORDERS
15 BENCH WARRANT ORDERED
16 BENCH WARRANT QUASHED

17 As such, the fact that the bench warrant was quashed is apparent on the face of the
18 document provided.

19 42. From the testimony presented, Respondents did not understand the gravity of
20 the Department's inquiry when they initially responded. Mr. Randolph testified
21 Respondents had never had any complaints against them prior to this incident and they
22 were unfamiliar with the Department's procedures.

23 43. The Department failed to establish by a preponderance of the evidence that Mr.
24 Randolph's conduct constituted a violation of A.R.S. § 20-340.01(H) and A.A.C. R20-6-
25 601(D)(7)(b).

26 **VIOLATING ANY PROVISION, RULE, SUBPOENA, OR ORDER**

27 44. The Department alleged Respondents' conduct constituted a violation of A.R.S.
28 § 20-295(A)(2),¹⁴ as applied to bail bond agents under A.R.S. § 20-340.06.

29 _____
30 ¹⁴ A.R.S. § 20-295(A)(8) provides the Department may discipline a license or may impose a civil penalty for "[v]iolating any provision of this title or any rule, subpoena or order of the director."

1 45. Those violations identified previously may also be considered a violation of this
2 provision. Accordingly, the Department established by a preponderance of the
3 evidence that Respondents' conduct constituted a violation of A.R.S. § 20-295(A)(2), as
4 applied to bail bond agents under A.R.S. § 20-340.06.

5
6 **RECOMMENDED ORDER**

7 Based on the foregoing, it is recommended that the Director of the Department
8 suspend Respondents' resident bail bond agent licenses for a period of twelve months.

9 It is further recommended that within 60 days of the effective date of the Order
10 entered in this matter, Respondents be held jointly and severally liable to pay to the
11 Department a civil penalty in the amount of \$2,500.00, and such payment shall be
12 made by cashier's check or money order made payable to the Department.

13 *In the event of certification of the Administrative Law Judge Decision by the*
14 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
15 *five days from the date of that certification.*

16 Done this day, February 7, 2013.

17
18 /s/ Tammy L. Eigenheer
19 Administrative Law Judge

20
21 Transmitted electronically to:

22
23 Germaine L. Marks, Acting Director
24 Department of Insurance
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