

STATE OF ARIZONA
FILED

FEB 17 2015

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY MS

In the Matter of:

MERRIAM, DARRELL STEVE
(Arizona License No. 1040640)
(National Producer No. 16899278)

Respondent.

No. 14A-104-INS

ORDER

On February 12, 2015, the Office of Administrative Hearings, through Administrative Law Judge Diane Mihalsky, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on February 12, 2015, 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:

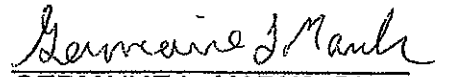
1. The Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Director revokes the Arizona resident bail bond agent license, No. 1040640, of **Darrell Steve Merriam** effective immediately.

NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Respondent may request a rehearing with respect to this order by filing a written motion with the Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis for relief under A.A.C. R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to Superior Court.

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

5 DATED this 13th day of February 2015.

6
7 
8 GERMAINE L. MARKS, Director
Arizona Department of Insurance

9 COPY of the foregoing mailed this
10 17th day of February, 2015 to:

11 Darrell Steve Merriam
12 12 N. Center Street
Mesa, Arizona 85201
Respondent

13 Mary Kosinski, Executive Assistant for Regulatory Affairs
14 Darren Ellingson, Deputy Director
15 Catherine O'Neil, Consumer Legal Affairs Officer
16 Yvonne Hunter, Consumer Affairs Assistant Director
17 Steven Fromholtz, Licensing Director
Barbara Beltran, Business Office
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

18 Liane Kido
19 Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

20 Office of Administrative Hearings
21 1400 West Washington, Suite 101
Phoenix, Arizona 85007

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23 
24 Maidene Scheiner

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

RECEIVED

FEB 12 2015

AZ DEPT. OF INSURANCE
ADMINISTRATIVE SERVICES

In the Matter of the Insurance License of:

No. 14A-104-INS

MERRIAM, DARRELL STEVE
(Arizona License No. 1040640)
(National Producer No. 16899278),

ADMINISTRATIVE LAW JUDGE

DECISION

Respondent.

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HEARING: February 12, 2015, at 1:00 p.m.

APPEARANCES: The Arizona Department of Insurance ("the Department") was represented by Liane Kido, Esq., Assistant Attorney General; Darrell Steve Merriam ("Respondent") failed to appear.

ADMINISTRATIVE LAW JUDGE: Diane Mihalsky

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FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. The Department referred this matter to the Office of Administrative Hearings ("the OAH"), an independent state agency, for an evidentiary hearing on whether cause existed to discipline Respondent's Arizona bail bond agent's license.

2. On or about December 16, 2014, the Department's Deputy Director issued a Notice of Hearing that alleged certain facts, cited applicable law, and was set an evidentiary hearing at the OAH on February 12, 2015, at 1:00 p.m. The Department mailed the Notice of Hearing via certified and regular mail to Respondent's business and residential addresses of record.

3. A hearing was held on February 12, 2015. The Department presented the testimony of Steven Fromholtz, its Producer Licensing Administrator, and submitted three exhibits.

4. Respondent did not request to appear telephonically at the duly noticed hearing and did not request that the hearing be continued. Although the start of the hearing was delayed eighteen minutes to allow Respondent additional travel time,

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

1 Respondent did not appear, personally or through an attorney, and did not contact the
2 OAH to request that the start of the hearing be further delayed. Consequently,
3 Respondent did not present any evidence to defend his license.

4 ADDITIONAL HEARING EVIDENCE

5 5. Respondent is, and was at all times material, licensed as a resident bail bond
6 agent, Arizona license number 1040640, which will expire on March 31, 2016.¹

7 6. On or about July 31, 2014, the Maricopa County Superior Court convicted
8 Respondent in the case *State of Arizona v. Darrell S. Merriam*, Case No. CR2014-
9 128368, of Amended Facilitation to Commit Possession of Marijuana for Sale, a Class 6
10 felony.²

11 7. Mr. Fromholtz testified that Respondent did not inform the Department within
12 30 days of pretrial conferences that were held on July 2, 2014, and July 7, 2014,³ in
13 Maricopa County Superior Court Case No. CR2014-128368.

14 8. Mr. Fromholtz testified that A.R.S. § 20-340.06⁴ made applicable to bail bond
15 agents the following requirement:

16 Within thirty days after the initial pretrial hearing date, an
17 insurance producer shall report to the director any criminal
18 prosecution of the producer taken in any jurisdiction. The
19 report shall include a copy of the initial complaint filed, the
20 order resulting from the hearing and all other relevant legal
21 documents.

22 A.R.S. § 20-301(B). Mr. Fromholtz testified that the Department interpreted A.R.S. § 20-
23 301(B) as affording no discretion but to revoke regulated persons' licenses who failed
24 to report criminal prosecutions.

25 9. Mr. Fromholtz testified that because Respondent has been convicted of a
26 felony, A.R.S. § 20-340.03(A)(9) provided another basis for imposing discipline on
27 Respondent's bail bond agent's license.⁵ Mr. Fromholtz explained that because the

28 ¹ See the Department's Exhibit 1.

29 ² See the Department's Exhibit 2 at 2.

30 ³ See the Department's Exhibit 3.

⁴ A.R.S. § 20-340.06 provides that "[t]o the extent not inconsistent with this article, sections . . . 20-301 . . .
[and] 20-295 . . . apply to bail bond agents."

⁵ A.R.S. § 20-340.03(A)(9) provides that "[a] bail bond agent shall not . . . [e]mploy or assist in the

1 Department views bail bond agents as being self-employed, A.R.S. § 20-301(B)
2 prohibited a convicted felon from continuing to work as a bail bond agent.

3 **CONCLUSIONS OF LAW**

4 1. This matter lies within the Department's jurisdiction.⁶

5 2. The Notice of Hearing that the Department mailed to Respondent at his
6 addresses of record was reasonable and he is deemed to have received notice of the
7 hearing.⁷

8 3. The Department bears the burden of proof to establish cause to discipline
9 Respondent's bail bond agent's license by a preponderance of the evidence.⁸

10 4. "A preponderance of the evidence is such proof as convinces the trier of fact
11 that the contention is more probably true than not."⁹

12 5. The Department established that Respondent's conduct, as described above,
13 constitutes failure to report to the Director, within thirty days of the initial pretrial
14 hearing date, any prosecution of the producer taken in any jurisdiction, within the
15 meaning of A.R.S. § 20-301(B) as applied to bail bond agents pursuant to A.R.S. § 20-
16 340.06.

17 6. The Department established that Respondent's conduct, as described above,
18 constitutes employing or assisting in the employment of any person who has been
19 convicted in any jurisdiction of any felony, within the meaning of A.R.S. § 20-
20 340.03(A)(9).

21 7. Respondent's conduct, as described above, provides cause for the Director
22 of the Department to suspend or revoke his bail bond agent license pursuant to A.R.S.
23 § 20-295(A)(2) and (6)¹⁰ as applied to bail bond agents pursuant to A.R.S. § 20-340.06.

24 _____
25 employment of any person who has been convicted in any jurisdiction . . . of any felony"

26 ⁶ See A.R.S. § 20-340 *et seq.*

27 ⁷ See A.R.S. §§ 41-1092.04; 41-1092.05(D).

28 ⁸ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and A.A.C. R2-19-119(B)(1); *see also Vazanno v.*
29 *Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

30 ⁹ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

¹⁰ A.R.S. § 20-395(A)(2) and (6) provide as follows:

The director may deny, suspend for not more than twelve months,
revoke or refuse to renew an insurance producer's license or may
impose a civil penalty in accordance with subsection F of this section or
any combination of actions for any one or more of the following causes:

1 Respondent's failure to report the criminal prosecution or to appear for the duly noticed
2 hearing indicates that at this time, he cannot be regulated.

3 **RECOMMENDED ORDER**

4 Based on the foregoing, it is recommended that the Director revoke Respondent
5 Darrell Steve Merriam's Arizona License Number 1040640.

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

9 Done this day, February 12, 2015.

10 /s/ Diane Mihalsky
11 Administrative Law Judge

12 Transmitted electronically to:

13 Darren Ellingson, Deputy Director
14 Arizona Department of Insurance
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29 2. Violating any provision of this title or any rule, subpoena or order of
the director.

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6. Having been convicted of a felony.