

AUG 19 2015

DEPT OF INSURANCE
BY ms

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

CHARLES, JAMES MARTIN
(Arizona License No. 211112)
(National Producer No. 3136778)

No. 15A-042-INS

and

ORDER

**ENSURETY BONDS AND INSURANCE
AGENCY, INC. dba ENSURETY**
(Arizona License No. 1042004)

Respondents.

On August 12, 2015, the Office of Administrative Hearings, through Administrative Law Judge Diane Mihalsky, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Acting Director of the Department of Insurance ("Acting Director") on August 14, 2015, a copy of which is attached and incorporated by this reference. The Acting Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The Acting Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Acting Director revokes the Arizona resident insurance producer license, No. 211112, of **James Martin Charles** effective immediately.
3. The Acting Director revokes the Arizona resident insurance producer license, No. 1042004, of **Ensurety Bonds and Insurance Agency, Inc. dba Ensurety** effective immediately.

1 James Martin Charles
37441 N. Kohuana Place
2 Cave Creek, Arizona 85331
3 Respondent

4 Mary Kosinski, Executive Assistant for Regulatory Affairs
Catherine O'Neil, Consumer Legal Affairs Officer
5 Yvonne Hunter, Consumer Affairs Assistant Director
Charles Gregory, Special Agent Supervisor
6 Gloria Barnes-Jackson, Investigator
Steven Fromholtz, Licensing Administrator
7 Barbara Beltran, Business Office
Arizona Department of Insurance
8 2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

9 Liane Kido
Assistant Attorney General
10 1275 West Washington Street
Phoenix, Arizona 85007-2926

11 Office of Administrative Hearings
12 1400 West Washington, Suite 101
Phoenix, Arizona 85007

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15 Maidene Scheiner

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1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

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3 In the Matter of the Insurance Licenses of:

No. 15A-042-INS

4 CHARLES, JAMES MARTIN
5 (Arizona License Number 211112)
6 (National Producer Number 3136778)

**ADMINISTRATIVE
LAW JUDGE DECISION**

7 and

8 ENSURETY BONDS AND INSURANCE
9 AGENCY, INC. dba ENSURETY
10 (Arizona License Number 1042004)

11 Respondents.

RECEIVED

AUG 14 2015

ARIZONA DEPT. OF INSURANCE
ADMINISTRATIVE SERVICES

12
13 **HEARING:** August 4, 2015, at 1:00 p.m.

14 **APPEARANCES:** The Arizona Department of Real Estate ("the Department")
15 was represented by Liane C. Kido, Esq., Assistant Attorney General; James Martin
16 Charles and Ensurety Bonds and Insurance Agency, Inc. dba Ensurety (respectively,
17 "Mr. Charles" and "Ensurety," or collectively, "Respondents") failed to appear.

18 **ADMINISTRATIVE LAW JUDGE:** Diane Mihalsky

19
20 **FINDINGS OF FACT**

21 **BACKGROUND AND PROCEDURE**

- 22 1. The Department is responsible to licensing and regulating insurance
23 producers in the State of Arizona.
- 24 2. The Department referred this matter to the Office of Administrative Hearings
25 ("the OAH"), an independent state agency, for an evidentiary hearing on whether cause
26 existed to discipline Respondents' insurance producer's licenses.
- 27 3. On or about June 9, 2015, the Department's Deputy Director issued a Notice
28 of Hearing and Complaint that alleged certain facts, cited applicable law, and set an
29 evidentiary hearing at the OAH on August 4, 2015, at 1:00 p.m. The Department
30 mailed the Notice of Hearing via certified and regular mail to Respondents' business

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

1 address of record and to an address at 37441 N. Kohuana Place, Cave Creek, Arizona
2 85331.

3 4. A hearing was held on August 4, 2015. The Department presented the
4 testimony of Gloria Barnes-Jackson, an investigator in its Administrative Enforcement
5 Section, and submitted eleven exhibits.

6 5. Respondents did not request to appear telephonically at the duly noticed
7 hearing and did not request that the hearing be continued. Although the start of the
8 hearing was delayed sixteen minutes to allow Respondents additional travel time, they
9 did not appear, personally or through an attorney, and did not contact the OAH to
10 request that the start of the hearing be further delayed. Consequently, Respondents
11 did not present any evidence to defend their licenses.

12 **ADDITIONAL HEARING EVIDENCE**

13 6. Mr. Charles is and was, at all relevant times, licensed as an Arizona resident
14 property and casualty producer, License No. 211112, which expires on August 31,
15 2017. Mr. Charles' address of record for both business and mailing is 6042 E. Valley
16 Way, Suite 6, Cave Creek, Arizona 85331.¹

17 7. Ensurety is and was, at all relevant times, licensed as an Arizona resident
18 property and casualty insurance producer, License No. 1042004, which expires on
19 March 31, 2017. Mr. Charles is the Designated Responsible Licensed Producer for
20 Ensurety. Ensurety's address of record is 6042 E. Valley Way, Suite 6, Cave Creek,
21 Arizona 85331.²

22 **Misappropriation of Funds**

23 8. On or about June 10, 2014, the Department received a complaint from HCC
24 Surety Group ("HCC") alleging that Respondents had failed to submit premium
25 payments totaling \$5,463.00 for bonds issued to three companies:

26 8.1 Magna Development, LLC in the amount of \$150.00;

27 8.2 Finish Line Auto Sales, LL in the amount of \$2,500.00; and

28
29
30 ¹ See the Department's Exhibit 1.

² See the Department's Exhibit 2.

1 8.3 Duane Livingston Trucking in the amount of \$2,813.00.³

2 9. Ms. Barnes-Jackson explained that the Department did not allege that
3 Respondents misappropriated the premiums that Magna Development allegedly paid
4 because it had failed to respond to HCC's request for documents to evidence the
5 premium payments. HCC attached to its complaint copies of Finish Line Auto Sales,
6 LL's and Duane Livingston Trucking's checks to Ensurety for premium payments that
7 showed Ensurety's endorsement.⁴

8 10. Ms. Barnes-Jackson contacted HCC to verify the information in its
9 complaint.⁵ Exclusive of the commissions that Respondents would have earned had
10 they correctly processed the premium payments, Ms. Barnes-Jackson confirmed that
11 Respondents had misappropriated a total of \$4,531.70 that should have gone to pay
12 the pay the premiums for the policies.⁶

13 **Failure to Report a Change in Members, Directors, or Officers**

14 11. Ms. Barnes-Jackson testified that on or about April 15, 2015, the
15 Department obtained the records of the Arizona Corporation Commission ("the
16 Commission") for Ensurety. On January 11, 2013, Ensurety filed its Articles of
17 Incorporation that named as its directors Mr. Charles and Heath Viall.⁷ The
18 Commission's records also showed that on November 27, 2013, Heath Viall was
19 removed as Ensurety's director.⁸

20 12. Ms. Barnes-Jackson testified that Mr. Charles and Ensurety was required to
21 notify the Director of the Department within 30 days of removing a director, but that
22 neither Mr. Charles nor Ensurety informed the Department that Heath Viall had been
23 removed as a director.

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27 ³ See the Department's Exhibit 3 at 1-3.

28 ⁴ See the Department's Exhibit 3 at 4 and 5.

29 ⁵ See the Department's Exhibit 4.

30 ⁶ See the Department's Exhibit 4 at 2.

⁷ See the Department's Exhibit 5 at 2.

⁸ See the Department's Exhibits 6, 6A.

Failure to Notify Department of Address Change

13. Ensurety's website shows an address of 37441 N. Kohuana Pl., Cave Creek, Arizona 85331,⁹ which is different from Ensurety's and Mr. Charles' address of record with the Department. Ms. Barnes-Jackson testified that Respondents were required to inform the Director of the Department within 30 days of any change of address, but that neither Mr. Charles nor Ensurety had ever informed the Department that their address had changed.

14. Ms. Barnes-Jackson testified that on February 18, 2015, she sent a consent order to Respondents at their address of record via certified mail, but that the United States Postal Service ("USPS") returned the mail as undeliverable as addressed.¹⁰

15. Ms. Barnes-Jackson testified that on February 18, 2015, she also sent the consent order to Respondents at the address on N. Kohuana Place in Cave Creek via certified mail, but that the USPS also returned the mail as undeliverable as addressed.¹¹

CONCLUSIONS OF LAW

1. This matter lies within the Department's jurisdiction.¹²

2. The Notice of Hearing that the Department mailed to Respondents at their address of record and at the address on Ensurety's website was reasonable and they are deemed to have received notice of the hearing.¹³

3. The Department bears the burden of proof to establish cause to discipline Respondents' insurance producer's licenses by a preponderance of the evidence.¹⁴ "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."¹⁵

4. The Department established that Respondents failed to report a change in their business or residential address to the Director within thirty days, thereby violating

⁹ See the Department's Exhibit 7.

¹⁰ See the Department's Exhibit 8.

¹¹ See the Department's Exhibit 10.

¹² See A.R.S. § 20-340 *et seq.*

¹³ See A.R.S. §§ 41-1092.04; 41-1092.05(D).

¹⁴ 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. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

1 A.R.S. § 20-286(C)(1) and furnishing cause to revoke their insurance producer's
2 licenses under A.R.S. § 20-295(A)(2).

3 5. The Department established that Respondents failed to report a change in
4 Ensurety's directors to the Director within thirty days, thereby violating A.R.S. § 20-
5 286(C)(2) and furnishing cause to revoke their insurance producer's licenses under
6 A.R.S. § 20-295(A)(2).

7 6. The Department established that Respondents improperly withheld,
8 misappropriated, or converted monies that they received from customers for premium
9 payments in the course of doing insurance business, thereby furnishing cause to
10 revoke their insurance producer's licenses under A.R.S. § 20-295(A)(4).

11 7. The Department established that Respondents used fraudulent, coercive, or
12 dishonest practices, or demonstrated incompetence, untrustworthiness, or financial
13 irresponsibility in the conduct of their insurance business in the State of Arizona,
14 thereby furnishing cause to revoke their insurance producer's licenses under A.R.S. §
15 20-295(A)(8).

16 8. Respondents' failures to keep the Department apprised of their addresses, to
17 respond to the Department's inquiries, or to appear for the duly noticed hearing
18 indicates that at this time, they cannot be regulated.

19 **RECOMMENDED ORDER**

20 Based on the foregoing, it is recommended that the Director of the Department
21 revoke Respondent James Martin Charles' License No. 211112.

22 It is further recommended that the Director revoke Respondent Ensurety Bonds
23 and Insurance Agency, Inc. dba Ensurety's License No. 1042004.

24 It is further recommended that pursuant to A.R.S. § 20-295(F)(3), the Director
25 order Respondents, jointly and severally, to pay as restitution \$2,500.00 to Finish Line
26 Auto Sales, LL, and \$2,813.00 to Duane Livingston Trucking.

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

30

¹⁵ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

Done this day, August 12, 2015.

/s/ Diane Mihalsky
Administrative Law Judge

Transmitted electronically to:

Darren Ellingson, Deputy Director
Arizona Department of Insurance

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