

MAR 6 2017

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY MS

In the Matter of:

**STONE, KEITH PERRY dba
NASA ADVISORS**
(Arizona License No. 112176)
(National Producer No. 6740829)

No. 16A-070-INS

ORDER

Respondent.

On February 24, 2017, the Office of Administrative Hearings, through Administrative Law Judge Suzanne Marwil, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on February 24, 2017, a copy of which is attached and incorporated by this reference. The Interim Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:


1. The Interim Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Interim Director revokes the Arizona resident insurance producer license, No. 112176, of **Keith Perry Stone dba NASA Advisors** 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 Interim 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 Interim Director to the Superior
2 Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an
3 appeal must notify the Office of Administrative Hearings of the appeal within ten days after
4 filing the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

5 DATED this 28th day of February, 2017.

6
7 
8 Leslie R. Hess, Interim Director
9 Arizona Department of Insurance

10 COPY of the foregoing mailed this
11 6th day of March, 2017, to:

12 Keith Perry Stone
13 1307 E. Southern
14 Mesa, AZ 85254
15 Respondent

16 Keith Perry Stone
17 1307 E. Southern
18 Phoenix, AZ 85040-3509
19 Respondent

20 Keith Perry Stone
21 6609 E. Fourth Street
22 Scottsdale, AZ 85251
23 Respondent

24 Mary Kosinski, Regulatory Legal Affairs Officer
25 Catherine O'Neil, Consumer Legal Affairs Officer
26 Steven Fromholtz, Assistant Director – Consumer Protection Division
Gloria Barnes-Jackson, Supervisor
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

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

1 Office of Administrative Hearings
1400 West Washington, Suite 101
2 Phoenix, Arizona 85007

3 *Maidene Scheiner*
4 Maidene Scheiner

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FEB 24 2017

DEPT. OF INSURANCE
BY: MEK

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 16A-070-INS

STONE, KEITH PERRY dba
NASA ADVISORS
(Arizona License # 112176),
(National Producer # 6740829),

ADMINISTRATIVE LAW JUDGE

DECISION

Petitioner.

HEARING: February 15, 2017

APPEARANCES: Petitioner Keith Perry Stone appeared on his own behalf.

The Arizona Department of Insurance was represented by Assistant Attorney General Liane C. Kido.

ADMINISTRATIVE LAW JUDGE: Suzanne Marwil

The issues in this matter is whether Petitioner's expired insurance license should be revoked and whether his application for renewal of that license was appropriately denied. Based on the evidence presented by the Department of Insurance (Department) the Administrative Law Judge recommends that the Interim Director of the Department revoke Petitioner's expired license and deny his renewal application for the reasons set forth in the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Respondent was issued resident accident/health and life insurance producer license number 112176 on June 12, 2001. This license expired on July 31, 2016.

2. Respondent's addresses of record with the Department were: 1307 E. Southern, Mesa, Arizona 85254 (business) and 7135 E. Camelback, #230, Scottsdale, Arizona 85251 (mailing).

3. On or about March 17, 2013, Ada S. Friedman ("Friedman") filed a complaint with the Department. Friedman's complaint alleged that:

- a. Respondent sold her two annuities in December 2010. In December 2011, after Friedman requested information on

1 disbursements, Respondent persuaded Friedman to surrender two
2 annuities for a replacement annuity with Phoenix Life. Friedman
3 stated that Stone knew that she lived in New York and was not
4 eligible for the Phoenix Life annuity.

5 b. Respondent made false and misleading statements on Friedman's
6 annuity contract application to Phoenix Life, stating that he was
7 Friedman's stepson and naming himself as a primary beneficiary
8 under Friedman's contract without her knowledge or consent.

9 c. Respondent forged another agent's name [Barry M. Hyland] on the
10 annuity contract application without Friedman's knowledge.

11 d. Respondent falsified the state in which Friedman signed the
12 annuity contract application.

13 4. On January 4, 2013, Friedman signed a settlement agreement with PHL
14 Variable Insurance Company ("Phoenix") in which Phoenix agreed to void the Phoenix
15 Index Select Gold Bonus Fixed Annuity contract number 28154285 (the "Contract") and
16 issue a check for \$119,180.00, which represents the initial premiums paid to the Contract,
17 minus withdrawals, without charge (\$118,000) and one percent (1%) interest (\$1,180).
18 Phoenix Stated that it would not have issued Friedman the Policy if it had known that she
19 resided in New York.

20 5. In a letter dated January 17, 2014, Barry M. Hyland ("Hyland") stated that
21 he had no knowledge of Friedman and that he was not involved in the sale of any policy
22 for Friedman. Hyland acknowledged that he had a relationship with Respondent in the
23 past during which he was approved as a writing agent for Phoenix. Hyland denied making
24 a single penny from his relationship with Respondent, leading him to pursue other
25 opportunities. He expressly stated (Exhibit 4):

26 I have never at any time gave Mr. Stone authorization to EVER use
27 my name or Insurance ID number to sign a policy for Ada Freidman
28 or any other person. I had absolutely no knowledge or had I given
29 consent of my Involvement in any writing of any policy for Mrs.
30 Freidman or any other policy holder. I was completely unaware of
any of these occurrences. Mr. Stone executed this without any of my
knowledge. Upon confronting him, he openly admitted he did it
without any of my consent.

1 6. With his letter, Hyland provided a notarized statement from Respondent
2 (Exhibit 5) in which Stone stated that "Hyland was not involved in direct transactions with
3 Ada Friedman." Respondent further noted: "I can assure you that [Hyland] never worked
4 on the Friedmans case and had no direct knowledge of their holdings."

5 7. On February 11, 2014, the Department sent, by certified mail, a "Second
6 Request" letter asking Respondent for a response regarding the Friedman matter. The
7 Post Office returned the certified mailing as "Return to Sender, Not Deliverable as
8 Addressed, Unable to Forward."

9 8. On May 1, 2014, the Department sent, by certified mail, a "Final Request"
10 letter seeking a Respondent's response to the Friedman matter. The Post Office returned
11 the certified mailing as "Return to Sender, Attempted - Not Known, Unable to Forward."

12 9. On April 12, 2016, the Department sent by certified mail a Subpoena Duces
13 Tecum to Respondent at his business and mailing address of record. The Post Office
14 returned the certified mailing as "Return to Sender, Insufficient Address, Unable to
15 Forward."

16 10. On or about July 14, 2016, Respondent provided the Department with an
17 updated address.

18 11. On November 2, 2016, Respondent submitted an online application for
19 individual resident insurance license renewal.

20 12. On November 7, 2016, the Department sent Respondent, by certified mail,
21 a letter denying his application for an insurance license and advising him of his right to
22 appeal.

23 13. On November 15, 2016, Respondent appealed the denial of his insurance
24 license.

25 14. At hearing, Respondent testified that he and Friedman were friends and that
26 she agreed to purchase the annuity from Phoenix and to use Respondent's address as
27 her home address in Arizona. Respondent emphasized that Friedman had agreed to list
28 him as a beneficiary on the annuity in recognition of all that he had done to help her over
29 the years. Respondent contended that Friedman signed the delivery receipt for the
30 annuity and knew at all times the information on the application, but could not produce the

1 delivery receipt. He believed she had filed her complaint with the Department because
2 she was angry with him for not keeping in contact with her and dropping everything to
3 come visit her in New York. He further believed that Friedman wanted out of the annuity
4 so someone else could handle her insurance needs.

5 15. Respondent testified that Hyland had recently apologized to him and
6 informed him that Hyland's attorney had told him to deny everything related to the
7 Department's inquiry. Respondent maintained that Hyland had given him permission to
8 sign his name and license number on applications and suggested that Hyland himself may
9 have signed the Friedman application for Phoenix.

10 16. Respondent indicated that he was not aware that the Department lacked a
11 current address for him and had thought he had updated his address with the Department.
12 Respondent commented that he had no previous complaints with the Department. He
13 said he knew of other insurance agents who had done things much worse than alleged in
14 the Notice of Hearing and were still licensed.

15 17. Respondent requested that he be permitted to renew his license.

16 18. Gloria Barnes-Jackson, a supervisor with the Consumer Protection Division
17 of the Department, testified that she had received the Friedman complaint and had spoken
18 to Friedman about the complaint. She indicated that Friedman told her she had tried
19 without success to obtain a copy of the annuity application and policy from Respondent
20 and that when she finally received the policy and application from Phoenix, Friedman filed
21 a complaint with the Department because the application contained fraudulent information
22 relating to her residence address, the intended beneficiaries and the agent who sold her
23 the policy.

24 19. Barnes-Jackson said that even if Hyland had given Respondent permission
25 to sign his name to the Friedman application, doing so would violate A.R.S. §20-
26 295(A)(10) which prohibits an insurance agent from signing another agent's name on an
27 application.

28 20. The Department's position was that Respondent's license should not be
29 renewed, that his expired license should be revoked and that Respondent should be
30 assessed a civil penalty for the violations he committed.

CONCLUSIONS OF LAW

1 1. This matter lies within the jurisdiction of the Department. See A.R.S. §§ 20-
281 to 302.

2 2. The Department bears the burden of proof and must establish cause to
3 revoke or otherwise penalize Respondent's expired license as well as the decision to deny
4 renewal of Respondent's license by a preponderance of the evidence. See A.R.S. § 41-
5 1092.07(G)(2); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372,
6 249 P.2d 837 (1952).

7 3. "A preponderance of the evidence is such proof as convinces the trier of fact
8 that the contention is more probably true than not." MORRIS K. UDALL, ARIZONA LAW OF
9 EVIDENCE § 5 (1960). A preponderance of the evidence is "[t]he greater weight of the
10 evidence, not necessarily established by the greater number of witnesses testifying to a fact
11 but by evidence that has the most convincing force; superior evidentiary weight that, though
12 not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a
13 fair and impartial mind to one side of the issue rather than the other." BLACK'S LAW
14 DICTIONARY at 1220 (8th ed. 1999).

15 4. A.R.S. § 20-286(C)(1) provides that "[a] licensee shall inform the director in
16 writing within thirty days of any change in the licensee's[] . . .Residential, business or e-
17 mail address."

18 5. The record reflects that Respondent failed to provide an updated address to
19 the Department, resulting in the Department's inability to reach him by mail and obtain a
20 timely response to Friedman's complaint.

21 6. A.R.S. § 20-295(A) provides, in pertinent part:

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

26 1. Providing incorrect, misleading, incomplete or materially untrue
information in the license application.

27 2. Violating any provision of this title or any rule, subpoena or order of the
28 director.

29

30 5. Intentionally misrepresenting the terms of an actual or proposed
insurance contract or application for insurance.

1
2 8. Using fraudulent, coercive or dishonest practices, or demonstrating
3 incompetence, untrustworthiness or financial irresponsibility in the conduct
4 of business in this state or elsewhere.

5
6 10. Forging another's name to any document related to an insurance
7 transaction.

8 7. A.R.S. § 20-463(A)(1) provides that:

9 A. It is a fraudulent practice and unlawful for a person to knowingly:

10 1. Present, cause to be presented or prepare with the knowledge or
11 belief that it will be presented an oral or written statement, including
12 computer generated documents, to or by an insurer, reinsurer,
13 purported insurer or reinsurer, insurance producer or agent of a
14 reinsurer that contains untrue statements of material fact or that fails to
15 state any material fact with respect to any of the following:

16 (a) An application for the issuance or renewal of an insurance policy.

17 (b) The rating of an insurance policy.

18 (c) A claim for payment or benefit pursuant to an insurance policy.

19 (d) Premiums paid on any insurance policy.

20 (e) Payments made pursuant to the terms of any insurance policy.

21 (f) An application for a certificate of authority.

22 (g) The financial condition of an insurer, reinsurer or purported insurer
23 or reinsurer.

24 8. Respondent's failure to notify the Interim Director of the Department of a
25 change in his residential, business or mailing address within 30 days provided cause
26 under A.R.S. § 20-295(A)(2) and A.R.S. § 20-286(C)(1) for the Interim Director of the
27 Department to sanction and or not renew Respondent's expired license.

28 9. The admitted inaccuracies on Friedman's annuity application relating to
29 Friedman's mailing address/state of residency, Respondent's status as Friedman's
30 stepson and the use of Hyland's producer license all provided cause under A.R.S. 20-

1 295(A)(1), (A)(5), (A)(8), (A)(10) and A.R.S. 20-463(A)(1) for the Interim Director of the
2 Department to sanction or not renew Respondent's expired license.

3 10. Respondent seeks to minimize his behavior regarding the Friedman
4 application by suggesting that he had the permission of both Friedman and Hyland to
5 provide the fraudulent information on the application. This notion that Friedman or Hyland
6 gave Respondent permission is not credible given the facts in the record and is at odds
7 with Respondent's own prior statements. *See e.g.*, Exhibit 5. Even if Respondent secured
8 permission from Friedman and Hyland, however, he still violated his duty to Phoenix and
9 the Department to provide truthful and accurate information, raising valid regulatory
10 concerns.

11 11. The Department therefore has borne its burden to establish cause to revoke
12 Respondent's expired license and to deny renewal of that license.

13 12. The Department also seeks a civil penalty based on the aforementioned
14 violations. A.R.S. § 20-295(F) provides, in pertinent part:

15 F. In addition to or instead of any suspension, revocation or refusal to
16 renew a license pursuant to this section, after a hearing the director
17 may:

18 1. Impose a civil penalty of not more than two hundred fifty dollars for
19 each unintentional failure or violation, up to an aggregate civil penalty
20 of two thousand five hundred dollars.

21 2. Impose a civil penalty of not more than two thousand five hundred
22 dollars for each intentional failure or violation, up to an aggregate civil
23 penalty of fifteen thousand dollars.

24 3. Order the licensee to provide restitution to any party injured by the
25 licensee's action.

26 13. Given that Friedman did not suffer any financial loss as a result of
27 Respondent's intentional violations described above and in light of the fact that
28 Respondent's license has now been revoked, a civil penalty seems excessive and
29 unnecessary.

30 **RECOMMENDED ORDER**

1 Based on the foregoing, it is recommended that the Director of the Department
2 revoke Respondent's license no. 112176.

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

6
7 Done this day, February 24, 2017.

8
9 /s/ Suzanne Marwil
10 Administrative Law Judge

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12 Transmitted electronically to:

13 Leslie R. Hess, Interim Director
14 Arizona Department of Insurance
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