

MAR 21 2018

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY MS

In the Matter of:

LOISELLE, BRIAN LEROY,
(National Producer No. 9493631)
(Legacy License No. 896824)

No. 17A-066-INS

**ORDER DENYING REQUEST
FOR REHEARING**

and

VESTA INSURANCE GROUP, LLC
(Arizona License No. 1800007304)
(Legacy License No. 950783)

Respondents.

FINDINGS OF FACT

1. On October 31, 2017, the Department of Insurance ("Department") mailed, by Regular First Class mail and by Certified Mail, a Notice of Hearing In the Matter of Loisel, Brian Leroy and Vesta Insurance Group, LLC, Docket No. 17A-066-INS ("Docket No. 17A-066-INS") setting a hearing for December 14, 2017 (Exhibit A).

2. On January 22, 2018, after the Administrative Law Judge ("ALJ") granted one continuance, the Office of Administrative Hearings ("OAH") conducted a hearing in Docket No. 17A-066-INS.

3. On or about February 5, 2018, the Administrative Law Judge ("ALJ") issued an Administrative Law Judge Decision ("ALJ's Decision"), received by the Acting Director on that same date. (Exhibit B.)

4. On February 9, 2018, the Acting Director filed an Order adopting the ALJ's Decision (except to make some minor corrections) and revoking Respondents' resident insurance producer licenses. (Exhibit C without ALJ's Decision attached.)

5. On March 5, 2018, Respondent timely filed a request with the Department which the Department treated as a request for a rehearing pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09. (Exhibit D.)

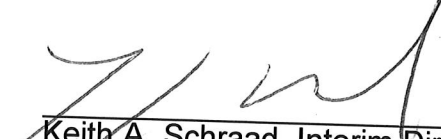
1 Rehearing and finds that Respondent has failed to establish a ground upon which to grant
2 a rehearing or review pursuant to A.A.C. R20-6-114.

3 **ORDER**

4 IT IS ORDERED:

5 1. Respondents' request for rehearing is denied.

6 DATED this 20th day of March, 2018.

7
8 
9 Keith A. Schraad, Interim Director
Arizona Department of Insurance

10
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12
13 **COPY** with exhibits of the foregoing delivered electronically
14 this 21st day of March, 2018, to:

15 Administrative Law Judge Diane Mihalsky
Office of Administrative Hearings

16 **COPY** with exhibits mailed same date by Regular Mail
17 and Certified Mail, Return Receipt Requested, to:

18 Brian Leroy Loiselle
Vesta Insurance Group, LLC
19 1355 N. Greenfield Rd.
Mesa, Arizona 85205
20 Respondents

21 **COPY** of the foregoing delivered same date (without exhibits) to:

22 Mary Kosinski, Regulatory Legal Affairs Officer
23 Steven Fromholtz, Assistant Director
Wendy Greenwood, Investigator
24 Arizona Department of Insurance
2910 North 44th Street, Suite 210
25 Phoenix, Arizona 85018
26

1 **COPY** sent same date via electronic mail (without exhibits) to:

2 Liane Kido
3 Assistant Attorney General
4 AdminLaw@azag.gov
5 Attorney for the Department of Insurance

6 *Maidene Scheiner*
7 Maidene Scheiner

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Exhibit A

Docket No. 17A-066-INS

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STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

LOISELLE, BRIAN LEROY
(National Producer Number 9493631)
(Legacy License Number 896824)

and

VESTA INSURANCE GROUP LLC
(National Producer Number 14874456)
(License Number 1800007304)
(Legacy License Number 950783)

Respondents.

Docket No. 17A-066-INS

NOTICE OF HEARING

(ALJ Thomas Shedden)

13 PLEASE TAKE NOTICE that the above-captioned matter will be heard before the
14 Interim Director of Insurance of the State of Arizona (the "Interim Director") or a duly
15 designated representative on December 14, 2017 at 1:00 p.m. at the Office of
16 **Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona 85007¹.**

17 If you wish to continue this hearing to another date, you must file a motion in writing with
18 the Office of Administrative Hearings not less than 15 days before the scheduled hearing date.
19 Please send it to the attention of the Administrative Law Judge ("ALJ") and include the docket
20 number listed above. You must also mail or hand-deliver a copy of any motion to continue to
21 the Department of Insurance on the same date you file it with the Office of Administrative
22 Hearings.

23
24 ¹ As authorized under Arizona Revised Statutes ("A.R.S.") §§ 20-161 through and including 20-165 and Title 41, Chapter 6, Article 10 (A.R.S. § 41-1092 *et seq.*).

1 You are not required to have an attorney represent you. However, if you are
2 represented, your attorney must be licensed to practice law in the State of Arizona. An
3 insurance company may be represented by a corporate officer. A.R.S. § 20-161(B).

4 You are entitled to be present during the giving of all evidence and you will have a
5 reasonable opportunity to inspect all documentary evidence, examine witnesses, present
6 evidence that supports your case and to request that the ALJ issue subpoenas to compel the
7 attendance of witnesses and production of evidence. A.R.S. § 20-164(B).

8 A clear and accurate record of the proceedings will be made either by a court reporter
9 or by electronic means. A.R.S. § 41-1092.07(E). If you want a copy of an electronic recording,
10 you must contact the Office of Administrative Hearings at (602) 542-9826. If the hearing was
11 transcribed by a court reporter and you want a copy of the transcript, you must pay the cost of
12 the transcript to the court reporter or other transcriber.

13 Questions concerning issues raised in this Notice of Hearing should be directed to
14 Assistant Attorney General Liane Kido, telephone number (602) 542-8011, 1275 West
15 Washington Street, Phoenix, Arizona 85007-2926, Liane.Kido@azag.gov.

16 **NOTICE OF APPLICABLE RULES**

17 On January 23, 1992, we adopted the rules of practice and procedure applicable in
18 contested cases before the Interim Director of Insurance. The hearing will be conducted
19 pursuant to these rules. A.A.C. R20-6-101 through R20-6-115.

20 YOU MUST FILE A WRITTEN RESPONSE (ANSWER) TO THE ALLEGATIONS IN
21 THIS NOTICE WITH US WITHIN **20 DAYS** AFTER WE ISSUE THIS NOTICE. A.A.C.
22 R20-6-106. YOUR RESPONSE SHOULD STATE YOUR POSITION OR DEFENSE AND
23 SHOULD SPECIFICALLY ADMIT OR DENY EACH ASSERTION IN THE NOTICE. IF YOU
24

1 DO NOT SPECIFICALLY DENY AN ASSERTION, WE WILL CONSIDER IT ADMITTED. ANY
2 DEFENSE YOU DO NOT RAISE WILL BE CONSIDERED WAIVED.

3 IF YOU DO NOT FILE YOUR RESPONSE ON TIME, WE WILL CONSIDER YOU IN
4 DEFAULT AND THE DIRECTOR MAY DEEM THE ALLEGATIONS IN THE NOTICE AS
5 TRUE. ACCORDINGLY, WE WILL TAKE WHATEVER ACTION IS APPROPRIATE
6 INCLUDING SUSPENSION, REVOCATION, IMPOSITION OF A CIVIL PENALTY AND
7 ORDERING RESTITUTION TO ANY INJURED PERSON.

8 **PERSONS WITH DISABILITIES**

9 PERSONS WITH DISABILITIES MAY REQUEST REASONABLE
10 ACCOMMODATIONS SUCH AS INTERPRETERS, ALTERNATIVE FORMATS, OR
11 ASSISTANCE WITH PHYSICAL ACCESSIBILITY. REQUESTS FOR ACCOMMODATIONS
12 SHOULD BE MADE AS EARLY AS POSSIBLE TO ALLOW TIME TO ARRANGE THE
13 ACCOMMODATIONS. IF YOU REQUIRE ACCOMMODATIONS, PLEASE CONTACT THE
14 OFFICE OF ADMINISTRATIVE HEARINGS AT (602) 542-9826.

15 The allegations supporting this Notice of Hearing are as follows:

16 1. Brian Leroy Loiselle ("Loiselle") is, and was at all material times, licensed as an
17 Arizona resident insurance producer with the following lines of authority: casualty, property,
18 life, accident and health or sickness, and variable life and variable annuities. The Department
19 initially licensed Loiselle on July 23, 2007, and his license is scheduled to expire on November
20 30, 2018.

21 2. Loiselle's address of record is: 1355 N. Greenfield Road, Mesa, Arizona, 85205
22 (business and mailing).

23 3. Vesta Insurance Group LLC ("Vesta") is, and was at all material times, licensed
24 as an Arizona resident insurance producer with the following lines of authority: casualty,

1 property, life, accident and health or sickness, and variable life and variable annuities. The
2 Department initially licensed Vesta on September 9, 2009. Vesta's license expires on
3 September 30, 2021.

4 4. Vesta's address of record is 1355 N. Greenfield Road, Mesa, Arizona 85205
5 (business and mailing). Vesta's business e-mail is: brian@ewronline.net.

6 5. Loiselle is the Statutory Agent and the only Manager and Member of, and the
7 Designated Responsible Licensed Producer ("DRLP") for, Vesta.

8 **Arizona Department of Real Estate Administrative Action**

9 6. At all times material, Loiselle also held a real estate salesperson's license,
10 number SA584833000, from the Arizona Department of Real Estate ("ADRE").

11 7. On May 12, 2015, the ADRE Commissioner adopted the Administrative Law
12 Judge's (ALJ) "Recommended Order" and revoked Loiselle's real estate license and ordered
13 Loiselle to pay a \$3,000.00 civil penalty ("Commissioner's Final Order").

14 8. In the ALJ's Recommended Order, the ALJ found that Loiselle:

- 15 • Failed to promptly place all cash, checks, or other items of value received
16 as payment in connection with a real estate transaction in the care of the
17 designated broker;
- 18 • Accepted compensation as a licensee from a person other than the
19 licensed broker to whom the licensee is licensed or the licensed limited
20 liability company of which the licensee is a member or manager;
- 21 • Commingled the money of clients with his own;
- 22 • Demonstrated negligence and incompetence to perform duties as a
23 licensee; and
24

- Failed to fulfill his fiduciary duty to his clients and failed to protect the client's interest or deal fairly with all parties to a transaction.

9. On May 15, 2017, the ADRE advised the Department that Loiselle had failed to pay the civil penalty imposed by the Commissioner's "Final Order."

10. Pursuant to A.R.S. § 20-301(A), Loiselle had a duty to report ADRE's administrative action to the director within 30 days after final disposition of the matter. Therefore, Loiselle should have notified the [interim] director of his license revocation no later than June 11, 2015. He failed to do so.

CONCLUSIONS OF LAW

1. The Interim Director has jurisdiction over this matter.

2. Respondents' conduct, as described above, constitutes a violation of any provision of Title 20, any rule, subpoena or order of the Director, within the meaning of A.R.S. § 20-295(A)(2).

3. Respondents' conduct, as described above, constitutes using fraudulent or dishonest practices or demonstrating untrustworthiness in the conduct of business in this state or elsewhere within the meaning of A.R.S. § 20-295(A)(8).

4. Respondents' conduct, as described above, constitutes having an insurance producer license, or its equivalent, denied, suspended or revoked in any state, province, district or territory within the meaning of A.R.S. § 20-295(A)(9).

5. Respondents' conduct, as described above, constitutes failing to report to the director any administrative action taken against the producer in another jurisdiction within 30 days of final disposition of the matter, within the meaning of A.R.S. § 20-301(A).

6. Grounds exist for the Interim Director to suspend, revoke, or refuse to renew Respondents' insurance licenses pursuant to A.R.S. §§ 20-295(A) and (B).

1 WHEREFORE, if after hearing, the Interim Director finds the grounds alleged above, the
2 Interim Director may deny, suspend, or revoke Respondents insurance licenses. A.R.S. § 20-
3 295(A) and (B).

4 The Interim Director delegates the authority vested in her to the Director of the Office of
5 Administrative Hearings or his designee to preside over the hearing of this matter as the
6 Administrative Law Judge, to make written recommendations to the Interim Director consisting
7 of proposed findings of fact, proposed conclusions of law, and a proposed order. This
8 delegation does not include delegation of the authority of the Interim Director to make an order
9 on the hearing or any other final decision in this matter. A.R.S. § 20-150.

10 Pursuant to A.R.S. § 41-1092.01, your hearing will be conducted through the Office of
11 Administrative Hearings, an independent agency. Further hearing information may be found at
12 the Office of Administrative Hearings website: www.azoah.com.

13 DATED this 30th day of October, 2017.

14
15 
16 Mary Kosinski, Regulatory Legal Affairs Officer
 Arizona Department of Insurance

17 E-FILE of the foregoing delivered electronically
18 this 31st day of October, 2017, to:

19 ALJ Thomas Shedden
 Office of Administrative Hearings

20 COPY of the foregoing delivered same date to:

21 Mary Kosinski, Regulatory Legal Affairs Officer
22 Steven Fromholtz, Assistant Director for Consumer Protection
23 Wendy Greenwood, Investigator
 Consumer Protection Division
24 Arizona Department of Insurance
 2910 North 44th Street, Suite 210
 Phoenix, Arizona 85018

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COPY mailed same date by Regular Mail
and Certified Mail, Return Receipt Requested, to:

Brian Leroy Loiselle
Vesta Insurance Group LLC
1355 N. Greenfield Rd.,
Mesa, Arizona 85205
Respondents

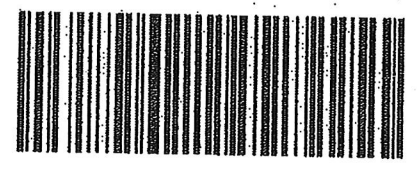
COPY sent same date via electronic mail to:

Vesta Insurance Group, LLC
brian@ewronline.net
Respondent

Liane Kido
Assistant Attorney General
Admin.Law@azag.gov
Attorney for the Department of Insurance

Maidene Scheiner
Maidene Scheiner
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Exhibit B

Docket No. 17A-066-INS

FEB 05 2018

DEPT. OF INSURANCE
BY: MEK

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 17A-066-INS

Loiselle, Brian Leroy
(National Producer Number 9493631)
(Legacy License Number 896824)

ADMINISTRATIVE LAW JUDGE

and

DECISION

Vesta Insurance Group LLC
(Arizona License Number 1800007304)
(Legacy License Number 950783)

Respondents.

HEARING: January 22, 2018, at 1:00 p.m.

APPEARANCES: Brian Leroy Loiselle appeared on his own behalf and on behalf of Vesta Insurance Group (collectively, "Respondents"); the Arizona Department of Insurance ("the Department") was represented by Liane C. Kido, Esq., Assistant Attorney General.

ADMINISTRATIVE LAW JUDGE: Diane Mihalsky

FINDINGS OF FACT

1. Brian Leroy Loiselle holds Department-issued National Producer License Number 9493631. The expiration date of Mr. Loiselle's license is November 30, 2018.¹
2. Business entity Vesta Insurance Group LLC ("Vesta") holds Department-issued insurance producer License Number 1800007304. Mr. Loiselle is the only member of and the designated responsible producer for Vesta's license. The expiration date of Vesta's license is September 30, 2021.²
3. According to the public database of the Arizona Department of Real Estate ("ADRE"), Mr. Loiselle's real estate salesperson's License No. SA584833000 was revoked on May 12, 2015, in case no. 13F-DI-136.³

¹ See the Department's Exhibit 1. The license was first active on July 23, 2007.

² See the Department's Exhibit 2.

³ See the Department's Exhibit 3.

1 4. On May 12, 2015, the Commissioner of ADRE issued the final order in case
2 no. 13F-DI-136 revoking Mr. Loiselle's real estate salesperson's license and imposing a
3 civil penalty against him based on the Administrative Law Judge's ("ALJ's") decision
4 rendered after a hearing.⁴

5 5. The ALJ found in case no. 13F-DI-136 that Mr. Loiselle had been employed
6 as a real estate salesperson by brokers Beshk Group and Midland Real Estate Alliance.
7 Although Beshk Group formerly provided property management services while it
8 employed Mr. Loiselle, after he started working for Midland Real Estate Alliance, Beshk
9 Group updated its policies and procedures to specifically exclude property management
10 services. After Mr. Loiselle returned to work for Beshk Group, he acted as a
11 salesperson to list a house for a Mr. and Mrs. Stafford, with Beshk Group as the
12 designated broker. Mr. Loiselle also signed a residential lease agreement with Mr. and
13 Mrs. Stafford, as well as a lease with Mr. and Mrs. Tow as tenants, that showed his
14 company, Loiselle PLLC, as the landlord and property manager. The ALJ found that
15 Mr. Loiselle acted without Beshk Group's authorization in acting as property manager
16 and deposited rent into his own account, comingling rent proceeds with his personal
17 funds, although there was no evidence that Mr. Loiselle had diverted funds to his own
18 use. Because a real estate salesperson can only receive funds from his designated
19 broker, Beshk Group terminated Mr. Loiselle's employment.

20 6. The ALJ found, and ADRE accepted, in case no. 13F-DI-136 that Mr. Loiselle
21 had violated five statutes that govern licensed real estate salespersons, as follows:

22 3. The evidence of record established that Respondent
23 failed to promptly place all cash, checks, or other items of
24 value received as payment in connection with a real estate
25 transaction in the care of the designated broker in violation
26 of A.R.S. § 32-2151.01(D).

27 4. The evidence of record established that Respondent
28 accepted compensation as a licensee from a person other
29 than the licensed broker to whom the licensee is licensed or
30 the licensed professional limited liability company of which
the licensee is a member or manager in violation of A.R.S. §
32-2153(A)(7)

⁴ See the Department's Exhibit 4.

1 5. The evidence of record established that Respondent
2 commingled the money of clients with his own in violation of
3 A.R.S. § 32-2153(A)(16).

4 6. The evidence of record established that Respondent
5 had demonstrated negligence and incompetence to perform
6 duties as a licensee in violation of A.R.S. § 32-2153(A)(22)
7 and A.R.S. § 32-2153(B)(8).

8 7. The evidence of record established that Respondent
9 failed to fulfill his fiduciary duty to his clients and failed to
10 protect and promote the client's interest or deal fairly with all
11 other parties to a transaction in violation of A.A.C. R4-28-
12 1101(A).⁵

13 7. Mr. Loiselle did not overturn on appeal ADRE's final order in case no. 13F-DI-
14 136.

15 8. After ADRE informed the Department that Mr. Loiselle had failed to pay the
16 civil penalty imposed in Case No. 13F-DI-136, the Department referred its intended
17 action against Mr. Loiselle's and Vesta's licenses to the Office of Administrative
18 Hearings, an independent state agency, for an evidentiary hearing.

19 9. On October 30, 2017, the Department issued a Notice of Hearing, which cited
20 A.R.S. § 20-295(A)(2), (A)(8), (A)(7), (A)(8), and (A)(9) and A.R.S. § 20-301(A) as
21 grounds to suspend, revoke, or refuse to renew Respondents' licenses.

22 10. The hearing was continued to January 22, 2018, at Mr. Loiselle's request to
23 resolve a conflict in his calendar and to allow him more time to retain counsel.

24 11. No attorney filed a notice of appearance on Respondents' behalf. On
25 January 17, 2018, Mr. Loiselle filed a second motion to continue the hearing because
26 his witness had influenza and he had been unable to contact his attorney.

27 12. On January 18, 2018, the Department opposed Mr. Loiselle's second
28 motion to continue the hearing because in further communication with the Department's
29 counsel, Mr. Loiselle had acknowledged that Respondent had not retained counsel. In
30 addition, the Department's counsel stated that the witness could recover from influenza
in the five days that remained before the hearing.

⁵ The Department's Exhibit 4 at 4-5.

1 13. On January 18, 2018, Mr. Loiselle filed a Clarification and Response to the
2 Department's response in opposition to Respondent's second motion to continue,
3 arguing (1) Mr. Loiselle believed that Respondents were represented by counsel, but
4 the attorney had not returned his telephone calls since January 10, 2018; (2) Although
5 Mr. Loiselle hoped his witness would recover quickly; the doctors were not willing to
6 make such a prediction; (3) The witness would provide testimony to establish that
7 ADRE's witness in case no. 13F-DI-136 had committed perjury to protect his teaching
8 position at Maricopa Community College; (4) Mr. Loiselle had completed all
9 requirements to apply to ADRE for a new real estate salesperson's license and was
10 waiting for a hearing date; (5) Mr. Loiselle wanted to hire an attorney to represent
11 Respondent's at the Department's hearing and himself at ADRE's hearing on his license
12 application; (6) The Department had been made aware that Mr. Loiselle had obtained
13 summary judgment in a civil complaint filed by ADRE's witness against Mr. Loiselle; and
14 (7) There was no need to protect the public because no one had ever filed a complaint
15 against Mr. Loiselle's insurance producer's license.

16 14. On January 19, 2018, the Administrative Law Judge issued an order
17 denying Respondents' second request for continuance.

18 15. A hearing was held on January 22, 2018. The Department submitted five
19 exhibits and presented the testimony of Wendy Greenwood, its investigator.
20 Respondent testified on his own behalf.

21 16. Ms. Greenwood testified that the Department views a real estate
22 salesperson's license as the equivalent of an insurance producer's license because both
23 are professional licenses. Ms. Greenwood testified that ADRE had revoked Mr. Loiselle's
24 real estate salesperson's license based at least in part on his poor business practices.

25 17. Ms. Greenwood acknowledged that attorney Aaron Green had called the
26 Department's attention to ADRE's final order in case no. 13F-DI-136.

27 18. Ms. Greenwood acknowledged that Nalin Ratnaisky had filed a complaint
28 with ADRE, which led to the hearing and final order in case no. 13F-DI-136, and that Mr.
29 Loiselle recently had obtained a summary judgment in Mr. Loiselle's favor in Mr.
30 Ratnaisky's civil action against Mr. Loiselle.

1 19. Ms. Greenwood testified that Mr. Loisel did not report ADRE's final order
2 revoking his real estate license to the Department within 30 days.

3 20. Ms. Greenwood testified that it was possible that Mr. Loisel had reported
4 ADRE's final order in case no. 13F-DI-136 on Vesta's last application to renew its
5 license, which was submitted in late September or early October 2017, but that she
6 would not have seen such application because she is not part of the Department's
7 licensing department. Ms. Greenwood pointed out that if Mr. Loisel had disclosed
8 ADRE's final order in Vesta's license renewal application, the disclosure would have
9 been more than two years after ADRE's May 12, 2015 final order.

10 21. Mr. Loisel testified that he contacted the Department for advice on
11 reporting ADRE's final decision in case no. 13F-DI-136 to the Department. Mr. Loisel
12 testified that a gentleman at the Department's front desk said the order need not be
13 disclosed until a license renewal application.

14 22. Mr. Loisel testified that he appealed ADRE's final decision in case no.
15 13F-DI-136, but withdrew the appeal five months later after his attorney said ADRE's
16 attorney said Mr. Loisel could reapply for a real estate salesperson's license one year
17 after the ADRE's commissioner's final order in case no. 13F-DI-136.

18 CONCLUSIONS OF LAW

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

20 2. The Department bears the burden of proof to establish cause to suspend or
21 revoke Respondents' licenses by a preponderance of the evidence.⁷ Respondents bear
22 the burden to establish affirmative defenses and factors in mitigation of the penalty by the
23 same evidentiary standard.⁸

24 3. "A preponderance of the evidence is such proof as convinces the trier of fact
25 that the contention is more probably true than not."⁹ A preponderance of the evidence is
26 "evidence which is of greater weight or more convincing than evidence which is offered in
27

28 ⁶ See A.R.S. §§ 20-281 through 20-301.

29 ⁷ See A.R.S. § 41-1092.07(G)(1); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74
30 Ariz. 369, 372, 249 P.2d 837 (1952).

⁸ See A.A.C. R2-19-119(B)(2).

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

1 opposition to it; that is, evidence which as a whole shows that the fact sought to be
2 proved is more probable than not.”¹⁰

3 4. At the earliest, Mr. Loiselle may have disclosed ADRE’s May 12, 2015
4 revocation of his real estate salesperson’s license in the September or October 2017
5 renewal of Vesta’s license. Mr. Loiselle implicitly argued that the Department should be
6 estopped¹¹ from suspending or revoking Respondents’ licenses because he was told by
7 an unnamed employee of the Department that he did not need to report ADRE’s
8 revocation until he filed a license renewal with the Department.

9 5. Everyone is presumed to know the law.¹² “As a matter of public policy, all
10 persons are charged with knowledge of law pertaining to their transactions”¹³
11 Because everyone is presumed to know the law’s requirements, a mistake as to such
12 requirements does not excuse failure to meet them.¹⁴ Mr. Loiselle’s ignorance of the
13 law that required him to report to the Department ADRE’s final order revoking his real
14 estate salesperson’s license does not excuse his failure to timely report the revocation
15 to the Department.

16 6. “[E]stoppel may apply against the state only when the public interest will not
17 be unduly damaged and when its application will not substantially and adversely affect
18 the exercise of government powers.”¹⁵ Estoppel should not apply if its application
19 “would frustrate the purpose of . . . licensing requirements, which is to promote uniform
20 standards of quality.”¹⁶ In addition, for estoppel to lie against a state agency, the
21 agency’s communication giving rise to the estoppel must be formal, usually in writing,
22 and made by “a person authorized to act in the area under consideration.”¹⁷ “In general,
23 the state may not be estopped due to the casual acts, advice, or instructions issued by
24

25 ¹⁰ BLACK’S LAW DICTIONARY at page 1182 (6th ed. 1990).

26 ¹¹ “Estop” means “[t]o stop, bar, or impede; to prevent; to preclude.” BLACK’S LAW DICTIONARY, *supra*, at
27 551. “‘Estoppel’ means that a party is prevented by his own acts from claiming a right to detriment of
28 other party who was entitled to rely on such conduct and has acted accordingly. *Id.* (citing *Graham v.*

29 *Asbury*, 112 Ariz. 184, 186, 540 P.2d 656, 658 (1975)).

30 ¹² See *Conway v. State Consolidated Publishing Co.*, 57 Ariz. 162, 171, 112 P.2d 218 (1941).

¹³ *Turner v. State Employees Retirement System*, 485 So. 2d 765 (Ala. App. 1986).

¹⁴ See *Newman v. Fidelity Savings and Loan Ass’n*, 14 Ariz. 354, 359, 128 P. 53 (1912).

¹⁵ *Valencia Energy Co. v. Arizona Dept. of Revenue*, 191 Ariz. 565, 578, 959 P.2d 1256, 1269 (1998).

¹⁶ *Hansson v. State Board of Dental Examiners*, 195 Ariz. 66, 70, 985 P.2d 551, 555 (App. 1999).

¹⁷ See *Valencia Energy Co.*, 191 Ariz. at 577, 959 P.2d at 1268.

1 nonsupervisory employees.”¹⁸ Under this law, the Department’s unnamed employee’s
2 alleged bad advice to Mr. Loiselle cannot estop the Department from enforcing
3 insurance licensing statutes against Respondents’ licenses.

4 7. Therefore, the Department established that Mr. Loiselle failed to report the
5 ADRE’s Commissioner’s final order in case no. 13F-DI-136 within thirty days, as
6 required by A.R.S. § 20-301(A).¹⁹

7 8. Mr. Loiselle did not pursue his appeal of ADRE’s Commissioner’s final order
8 in case no. 13F-DI-136. Therefore, under the doctrine of collateral estoppel,
9 Respondents cannot present evidence to attempt to discredit the facts that were found
10 in the Commissioner’s final order in case no. 13F-DI-136 in a hearing on the
11 Department’s intent to suspend or revoke Respondents’ licenses based on the
12 Commissioner’s revocation of Mr. Loiselle’s real estate salesperson’s license.²⁰

13 9. The Department established that ADRE conclusively found that Mr. Loiselle
14 violated statutes that govern real estate salespersons by taking monies from the lessors
15 under the property management contract, rather than from his designated broker, and
16 commingling such monies with his own funds, thereby demonstrating negligence and
17 incompetence and breaching the fiduciary duty that he owed to his clients. Therefore,
18 the Department established cause to suspend or deny Respondents’ licenses under
19 A.R.S. § 20-295(A)(2), (A)(8), and (A)(9).²¹

20 ¹⁸ *Id.*

21 ¹⁹ A.R.S. § 20-301(A) provides that “[w]ithin thirty days after the final disposition of the matter, an
22 insurance producer shall report to the director any administrative action taken against the producer in
23 another jurisdiction or by another governmental agency in this state. The report shall include a copy of
24 the order, consent to order or other relevant dispositive document.”

25 ²⁰ The Arizona Court of Appeals has held:

26 The doctrine of “collateral estoppel” is a doctrine of issue
27 preclusion. It bars a party from relitigating an issue identical to one he
28 has previously litigated to a determination on the merits in another
29 action. The elements necessary to invoke collateral estoppel are: the
30 issue is actually litigated in the previous proceeding, there is a full and
fair opportunity to litigate the issue, resolution of such issue is essential
to the decision, there is a valid and final decision on the merits, and there
is a common identity of the parties.

Gilbert v. Board of Medical Examiners, 155 Ariz. 169, 174, 745 P.2d 617, 622 (App. 1987)

²¹ A.R.S. § 20-295(A)(2), (A)(8), and (A)(9) provide in relevant part 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

1 10. Since the Department has established cause to suspend or revoke Mr.
2 Loisel's insurance producer's license and he is the only member and designated
3 responsible producer on Vesta's license, the Department has also established cause to
4 suspend or revoke Vesta's insurance producer's license under A.R.S. § 20-295(B).²²

5 11. With respect to the appropriate penalty, ADRE found that Mr. Loisel's
6 violations of statutes governing real estate salespersons were serious, even though
7 ADRE's final order specifically found that although there was no evidence that Mr.
8 Loisel had diverted funds to his own use. Because ADRE found that Mr. Loisel's
9 statutory violations warranted revocation of his real estate salesperson's license and
10 ADRE's finding cannot be attacked in this matter under the doctrine of collateral
11 estoppel, ADRE's final order also supports revocation of Respondents' insurance
12 producer's licenses, even without the additional statutory violation of failure to report
13 ADRE's final decision to the Department within thirty days.

14 ////

15 ////

16 _____
17 impose a civil penalty in accordance with subsection F of this section or
18 any combination of actions for any one or more of the following causes:

19
20 2. Violating any provision of this title or any rule, subpoena or order of
21 the director.

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

26 9. Having an insurance producer license, or its equivalent, denied,
27 suspended or revoked in any state, province, district or territory.

28 If Mr. Loisel succeeds in establishing rehabilitation or grounds to set aside the ADRE's Commissioner's
29 final order in case no. 13F-DI-136, resulting in a grant of a real estate salesperson's license to him, the
30 Director may consider that evidence as grounds to grant a rehearing in this matter or, at some point in the
future, as grounds to issue new insurance producer's licenses to Respondents.

²² A.R.S. § 20-295(B) provides as follows:

The director may deny, suspend for not more than twelve months,
revoke or refuse to renew the license of a business entity:

1. For any of the causes prescribed in subsection A of this section if the
cause relates to the designated producer or any member, officer, director
or manager of the business entity.

2. If the director finds that an individual insurance producer's violation
was known or should have been known by the designated producer or
one or more of the members, officers, directors or managers acting on
behalf of the business entity and the violation was not seasonably
reported to the director and no reasonable corrective action was taken.

RECOMMENDED ORDER

1
2 Based on the foregoing, it is recommended that on the effective date of the final
3 order in this matter, Respondent Brian Leroy Loiselle's insurance producer's License
4 No. 9493631 shall be revoked.

5 It is further recommended that on the effective date of the final order in this
6 matter, Respondent Vesta Insurance Group LLC's insurance producer License No.
7 14874456 shall be revoked.

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

11 Done this day, February 5, 2018.

12 /s/ Diane Mihalšky
13 Administrative Law Judge

14 Transmitted electronically to:

15 Leslie R. Hess, Interim Director
16 Arizona Department of Insurance

Exhibit C

Docket No. 17A-066-INS

FEB 9 2018

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY MS

In the Matter of:

LOISELLE, BRIAN LEROY
(National Producer Number 9493631)
(Arizona Legacy License No. 896824)

No. 17A-066-INS

ORDER

and

VESTA INSURANCE GROUP, LLC
(Arizona License Number 1800007304)
(Legacy License Number 950783)

Respondents.

On February 5, 2018, 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 February 5, 2018, 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 except to make the following corrections:
 - a. Page 3, line 17-18 should be changed to read: "A.R.S. § 20-295(A)(2), (A)(8) and (A)(9) and A.R.S. § 20-301(A) as"
 - b. Page 4, lines 4-6 should be changed to read: "Mr. Loiselles hoped his witness would recover quickly: "We aren't doctors to make such a prediction;" (3) The witness would provide testimony to establish that"
 - c. Page 4, line 10-11 should be changed to read: "Respondents' at

1 the Department's hearing and himself at ADRE's hearing on his
2 license"

3 d. Page 4, line 12-13 should be changed to read: "summary judgment
4 in a civil complaint filed by Mr. Ratnaike against Mr. Loiselle; and"

5 e. Page 4, line 26-27 should be changed to read: "18. Ms.

6 Greenwood acknowledged that Nalin Ratnaike had filed a complaint"

7 2. The Acting Director revokes the Arizona resident insurance producer license
8 of **Brian Leroy Loiselle** effective immediately.

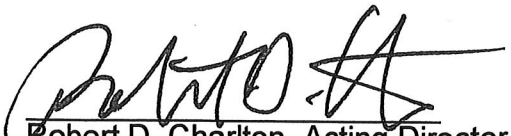
9 3. The Acting Director revokes the Arizona resident insurance producer license
10 of **Vesta Insurance Group, LLC** effective immediately.

11 **NOTIFICATION OF RIGHTS**

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

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

21 DATED this 7 day of February, 2018.

22
23 
24 Robert D. Charlton, Acting Director
25 Arizona Department of Insurance
26

1 **COPY** of the foregoing mailed this
2 9th day of February, 2018, to:

3 Brian Leroy Loiselle
4 Vesta Insurance Group LLC
5 1355 N. Greenfield Rd.,
6 Mesa, Arizona 85205
7 Respondents

8 Liane Kido
9 Assistant Attorney General
10 State Government Division
11 Agency Counsel Section
12 15 S. 15th Ave.
13 Phoenix, Arizona 85007

14 Office of Administrative Hearings
15 1400 West Washington, Suite 101
16 Phoenix, Arizona 85007

17 **COPY** of the foregoing delivered, same date, to:

18 Mary Kosinski, Regulatory Legal Affairs Officer
19 Catherine O'Neil, Consumer Legal Affairs Officer
20 Steven Fromholtz, Assistant Director – Consumer Protection Division
21 Wendy Greenwood, Investigator
22 Sharyn Kerr, Consumer Protection Division
23 Arizona Department of Insurance
24 2910 North 44th Street, Suite 210
25 Phoenix, Arizona 85018

26 **COPY** of the foregoing delivered electronically, same date, to:

27 Vesta Insurance Group, LLC
28 brian@ewronline.net
29 Respondent

30 Maidene Scheiner
31 Maidene Scheiner

32

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35

36

37

Exhibit D

Docket No. 17A-066-INS

MAR 05 2018

DEPARTMENT OF INSURANCE
BY MER

BRIAN LOISELLE
1355 N Greenfield Rd
Mesa, AZ 85205
Brian@ewronline.net
Pro Se

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:

LOISELLE, BRIAN LEROY
(National Producer Number 9493631)
(Legacy License Number 896824)

and

VESTA INSURANCE GROUP LLC
(National Producer Number 14874456)
(License Number 1800007304)
(Legacy License Number 950783)

Respondents.

Docket No. 17A-066-INS

Motion for Reconsideration on
Administrative Law Judge Decision

(ALJ Diane Mihalsky)

COMES NOW, BRIAN LOISELLE and VESTA INSURANCE GROUP,
Respondents, by and through Pro Se undersigned, and hereby respectfully request
Reconsideration on Administrative Law Judge Decision on the Hearing scheduled on
January 22, 2018, at 1:00 p.m. pursuant to ARS 41-1092.08, ARS 41-1092.09 and any other
applicable rule or law, for reconsideration on ALJ's Decision.

MEMORANDUM OF FACTS

1. Agreed to the facts.

Sale approval, for the benefit of the Owners that stopped making mortgage payments were able to receive the rents. Respondent only assisted with Property Managing properties, if the Owner'(s) Deed of Trust was for Owner Occupied. John BeshK NEVER terminated Brian Loiselle employment when he received the Complaint. During the phone conversation BeshK asked if I wanted to continue property managing my own properties and short sale purchases. I told him "yes" and we mutually agreed move my license. BeshK also wrote up explanation departure was mutual. BeshK didn't want to open the Trust account again. Yes "again". In written response to the Complaint, BeshK state he NEVER allowed Property Management. He had to retract the statement once Respondent provide checks and password for the Trust Account, BeshK set up for the Respondent when he was first employed by the BeshK Group.

6. Broker was AWARE and ALLOWED property management. If the Broker decided to open a Trust Account for Respondent; Respondent wouldn't have violated the five statutes, but Assuming Broker was AWARE and ALLOWED:
 - (3). Respondent holds a Finance Degree and Master Business in Administration. And provided proper accounting. Testimony from AZDRE Investigator stated she doesn't hold any advance degree in finance or accounting. No knowledge of GAAP. Her testimony was considered credible that the accounting was inaccurate and difficult to understand.
 - (4). The BeshK was AWARE and ALLOWED, if he decided to open a Trust Account after his conversation with Legal Hotline, all rents would have been placed in a Trust Account like before. Since BeshK decided not to open a Trust Account, Respondent received the rents in his AZDRE approved Brian Loiselle PLLC account. Respondent never tried to conceal Brian Loiselle PLLC account since the Broker ALLOWED and he felt these were his own properties to manage.

of the license – meant lost of sole means to support Respondent’s family. And required to pay a fine when no “victims” were found to be financially damaged by Respondent’s “act of kindness”. Respondent believed and during testimony by Ms. Greenwood confirmed Mr. Ratnaike filed an Insurance Complaint. Mr. Ratnaike was a Plaintiff in a lawsuit allegedly wrong doing by Respondent. Ever since Respondent’s license was revoked. Several lawsuits have been filed against Respondent always claiming Respondent was guilty because his license has been revoked. At a large financial cost all suits have been defended and just like Mr. Ratnaike case, Respondent has won and monetary amount has been awarded. Mr. Ratnaike, with a bit of investigation based upon understanding the Complaint filed by Mr. Ratnaike, the claim was not creditable. Mr. Ratnaike entered into (5) real estate transactions with Respondent’s company to work towards an E-3 Visa (small business Visa). In the meantime, Respondent’s company provided an E-2 Visa (work visa for Australians). Respondent’s company sponsored Mr. Ratnaike. Mr. Ratnaike never showed up for work and Respondent was only able to communicate with Mr. Ratnaike by email and phone. During the sponsorship Mr. Ratnaike was able to obtain a TIN, residence and AZ driver’s license. With that documentation, as an illegal foreigner, Mr. Ratnaike was able to get approved for his AZ Real Estate sale’s person license. After (4) months past closing date and cure notices, Mr. Ratnaike canceled the transaction and requested his earnest funds. The earnest funds were used to pay the mortgages on the properties while he continued to “deceive” us that he would close. We agreed to a Settlement and our Company preformed. After receiving the items in the Settlement, Mr. Ratnaike sued us anyways. After spending \$21,000 defending a “frivolous” lawsuit, the Court ruled in our favor for the Motion of Summary Judgment. Judge’s ruling stated Respondent “promote[s] the client’s interest or deal fairly with all other parties to a transaction”.

this revelation. In Ms. Greenwood testimony, she wasn't familiar with the case or who Mr. Ratnaike.

20. -21. Respondent contacted the Department of Insurance within 30 days when finding out Attorney Smith didn't file additional documentation for the appeal. Respondent contacted the Department of Insurance, customer service (don't remember the name, but remember it was a male) stated to file notification at time of the renewal. Respondent filed the notice of the revocation before the September 2017 expiration. Ms. Greenwood stated, "it was possible that Mr. Loiselle had reported ADRE's final order in no. 13-DI-136 on Vesta's last application to renew its license, which was submitted in late September or early October 2017, but that she would not have seen such application because she is not part of the Department's licensing department." Since she isn't familiar with the Department licensing, Ms. Greenwood wouldn't have known the information the Department's customer service provided to Respondent in 2015 either. In fact when Respondent paid for the Vesta's renew at the Department counter Sept 2017, the customer service person (male) provided the same information to file at renewal.
22. Agreed to the facts. Attorney Smith didn't file additional documentation for the appeal. Respondent contacted the Department of Insurance, customer service stated to file notification at time of the renewal.

CONCLUSION OF LAW

1. Agreed the matter lies within the Department's jurisdiction.
2. Agreed the Department bears the burden of proof to establish cause to suspend or revoke Respondents' licenses by a preponderance of evidence and factors in mitigation of the penalty by the same evidentiary standard.
3. Agreed to preponderance of the evidence statement.

7. The Respondent followed the instructions of the customer service person at the Department. When the Respondent paid for renew at the counter, Respondent asked customer service at the Department's counter, employee stated issues to be reported at renewal. The Respondent paid and filed the renewal application reporting the revocation. Unbeknownst until the hearing, the Department approved the renewal.
8. Respondent's attorney Smith filed the appeal and unbeknownst to the Respondent, his attorney discontinued. Once Respondent found out appeal wasn't being pursued and Respondent could apply for his sale's person license (12) months from the Department Order because of cost and time; made no financial sense to pursue. Also Respondent didn't realize Department of Insurance would pursue revocation of the insurance license. New evidence came to be known this summer, Darling collaborating the Respondent's testimony that the Broker was AWARE and ALLOWED property management because she contacted the Broker (3) months before Stafford filed the Complaint. BeshK's response to Complaint, hearing testimony and in Department Insurance Order states BeshK "terminated Mr. Loiselle's employment" once Complaint was received. Darling was upset with Respondent because the rents were not being paid on time, Darling wanted Stafford's evicted and Respondent would not loan her funds for the 2nd time. Darling believed since Respondent was likely going to get the Short Sale purchase approved, she felt she should receive some compensation.
9. "Department establishedfound that Mr. Loiselle violated statutes..." Broker was AWARE and ALLOWED of the property management. Broker didn't want to establish a Trust Account for Owned properties after calling Legal Hotline. Since Broker felt property were Owned or will be Owned by licensee, no Trust Account was required. Respondent used AZDRE approved Brian Loiselle PLLC to collect rents, disbursed funds (commingling violation by paying rents for

RESPECTFULLY SUBMITTED this 1^h day of March, 2018

RESENDENT

Brian Loiselle

Brian Loiselle

RESENDENT

Brian Loiselle

Brian Loiselle

Managing member for Vesta Insurance Group, LLC

Electronically mailed or USPS mailed this 8th day of December 2017:

Liane Kido
Assistant Attorney General
Admin.Law@azag.gov

Consumer Protection Division
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

Exhibit E

Docket No. 17A-066-INS

MAR 20 2018

DEPARTMENT OF INSURANCE
BY MEK

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MARK BRNOVICH
Attorney General
Firm Bar No. 14000

Liane C. Kido
Assistant Attorney General
State Bar No. #023696
2005 N. Central Avenue
Phoenix, Arizona 85004
Telephone: (602) 542-8011
Facsimile: (602) 542-4385
Attorneys for Department of Insurance

BEFORE THE ARIZONA DEPARTMENT OF INSURANCE

No. 17A-066-INS

In the Matter of:

LOISELLE, BRIAN LEROY
(National Producer Number 9493631)
(Legacy License Number 896824)

and

VESTA INSURANCE GROUP LLC,
(Arizona License Number 1800007304)
(Legacy License Number 950783)

Respondents.

**DEPARTMENT'S RESPONSE TO
MOTION FOR RECONSIDERATION
ON ADMINISTRATIVE LAW JUDGE
DECISION**

The Arizona Department of Insurance ("Department"), by and through undersigned counsel, hereby responds to Brian Leroy Loisel and Vesta Insurance Group LLC's (collectively, "Respondents") Motion for Reconsideration on Administrative Law Judge Decision ("Motion for Reconsideration"). The Department requests that Respondents' motion be denied. This Response is supported by the following Memorandum of Points and Authorities.

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DATED this 20th day of March, 2018.

MARK BRNOVICH, Attorney General

BY: /s/ Liane C. Kido
Liane C. Kido
Assistant Attorney General
Attorneys for the Department

STATE OF ALASKA DEPARTMENT OF REVENUE

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF THE FACTS**

3 On July 23, 2007, Brian Leroy Loisel (‘‘Loiselle’’) was issued an insurance producer
4 license by the Department. See State’s Exhibit 1. Respondent’s license was active during all
5 relevant times in this matter, and is due to expire on November 30, 2018.

6 On September 9, 2009, Vesta Insurance Group LLC (‘‘Vesta’’) was issued an
7 insurance producer license by the Department. Loisel is the Designated Responsible
8 Licensed Producer and sole member of Vesta. See State’s Exhibit 2.

9 On May 12, 2015, the Commissioner for the Arizona Department of Real Estate
10 issued an order (‘‘ADRE Order’’) revoking Loisel’s Arizona real estate license and
11 assessing a \$3,000.00 civil penalty against Loisel. The ADRE Order found that Loisel
12 had failed to properly handle money, had accepted compensation as a licensee from a person
13 other than his broker, commingled trust monies, demonstrated negligence and incompetence
14 as a licensee, failed to fulfill his fiduciary duty to his clients and promote his client’s interest
15 or deal fairly with other parties and that Loisel had demonstrated an ‘‘unwillingness or
16 inability to appreciate the consequences of his actions.’’ The See State’s Exhibit 4.

17 Respondents failed to inform the Arizona Department of Insurance of the revocation
18 of Loisel’s real estate license within 30 days, as required by law.

19 **II. PROCEDURAL HISTORY**

20 On October 31, 2017, the Department issued its Notice of Hearing against
21 Respondents, which set a hearing date of December 14, 2017.

22 On December 8, 2017, Respondents filed an untimely Motion to Continue citing,
23 among other reasons, a need for time to hire an attorney to represent Respondents. The
24 Department did not oppose the continuance and on December 11, 2017, an order was issued
25 granting the continuance. The hearing was re-set for January 22, 2018.
26

1 On January 17, 2018, Respondents filed a second, untimely Motion to Continue. The
2 Department opposed the Motion to Continue. The Motion to Continue was denied on
3 January 19, 2018.

4 On January 22, 2018, the scheduled hearing proceeded with all parties present.

5 On February 9, 2018, the Acting Director issued the Order ("Order") in this matter,
6 adopting the Administrative Law Judge's Recommended Findings of Fact and Conclusions
7 of Law, with certain limited modifications to the Recommended Findings of Fact.
8 Respondents have not challenged those modifications in their Motion for Reconsideration.
9 The Order revoked Respondents' insurance producers' licenses.

10 On March 5, 2018, Respondents filed their Motion for Reconsideration.¹

11 **III. STATEMENT OF THE ISSUES**

12 A. Respondents' Motion for Reconsideration fails to state a claim for which relief
13 can be granted under A.A.C. R20-6-114.

14 B. Respondents appear to take issue with their inability present their witness to
15 challenge the underlying ADRE Order. The Department will treat this as an argument of
16 irregularity in the hearing proceedings or any order or abuse of discretion whereby the party
17 seeking rehearing or review was deprived of a fair hearing, under A.A.C. R20-6-114(B)(1).

18 C. Respondents claim they have new evidence which was not available to them at
19 their hearing regarding Loiselle's ADRE license, which the Department will treat as an
20 argument regarding newly discovered material evidence under A.A.C. R20-6-114(B)(4).

21 D. Respondents allege that they attempted to inform the Department of the
22 revocation of Loiselle's real estate license in late September or early October 2017, and
23 therefore Respondents did not fail to report an administrative action to the director within 30
24 days within the meaning of A.R.S. § 20-301(A) and 20-295(A)(2).

25
26 ¹ Respondents' Motion for Reconsideration is not contemplated by the Arizona Administrative Code or the Arizona Revised Statutes, therefore, this Response and Memorandum of Points and Authorities shall treat it as a Request for Rehearing or Review under A.A.C. R20-6-114

1 **IV. ARGUMENT**

2 **A. Respondents' Motion for Reconsideration Fails to State a Claim Upon**
3 **Which Relief Can Be Granted.**

4 The grounds for granting a rehearing or review are identified in Arizona
5 Administrative Code ("A.A.C.") R20-6-114(B). In addition, a motion for rehearing or review
6 must specify the grounds upon which the motion is based, and set forth specific facts and law
7 supporting rehearing or review according to A.A.C. R20-6-114(C).

8 A.A.C. R20-6-114(B) states:

9 A rehearing or review of the decision may be granted for any one of the
10 following causes that materially affect the moving party's rights:

- 11 1. Irregularity in the hearing proceedings or any order or abuse of discretion
12 whereby the party seeking rehearing or review was deprived of a fair
hearing;
- 13 2. Misconduct by the Director, the hearing officer, or any party to the hearing;
- 14 3. Accident or surprise which could not have been prevented by ordinary
prudence;
- 15 4. Newly discovered material evidence which could not have been discovered
with reasonable diligence and produced at the hearing;
- 16 5. Excessive or insufficient sanctions or penalties imposed;
- 17 6. Error in the admission or rejection of evidence, or errors of law occurring
at the hearing or during the course of the hearing;
- 18 7. Bias or prejudice of the Director or hearing officer;
- 19 8. That the order, decision, or findings of fact are not supported by the
evidence or is contrary to law.

20 Respondents, in their Motion for Reconsideration, fail to state any specific legal
21 grounds for rehearing, as required by A.A.C. R20-6-114(C), therefore their Motion for
22 Reconsideration should be denied.

23 **B. Respondent Was Provided With a Fair Hearing Under A.A.C. R20-6-**
24 **114(B)(1).**

25 The Department issued the Notice of Hearing in this matter on October 31, 2017. The
26 hearing was held on January 22, 2018. Respondents were provided with ample time to
gather evidence and secure counsel for the hearing.

1 Respondents also persist in their attempt to re-litigate the underlying ADRE Order.
2 This is inappropriate. Mr. Loiselle had the opportunity to present his case and litigate the
3 ADRE Order. If he felt that the ADRE Order was inappropriate or flawed, he had the
4 opportunity to challenge that ADRE Order. Mr. Loiselle testified that he withdrew his
5 appeal of the ADRE Order, thereby forgoing his opportunity to challenge the ADRE Order.
6 See ALJ Decision, page 5, #22.

7 Mr. Loiselle cannot re-litigate his ADRE Order at the hearing for his and Vesta's
8 insurance producers' licenses. The hearing for Respondents' insurance producers' license is
9 an inappropriate and incorrect forum for challenging the ADRE Order.

10 Further, the ADRE Order is a final order and must be given its due weight. The
11 Department must address the facts before it. At no point does Mr. Loiselle dispute that his
12 real estate license was revoked. Based on this undisputed fact, the Department had grounds
13 to revoke Respondents' insurance producers license pursuant to A.R.S. § 20-295(A)(9).

14 Additionally, the ALJ acted appropriately in not allowing Respondents to re-litigate
15 the ADRE Order, and Respondents were provided a fair hearing and are not entitled to
16 review or rehearing under A.A.C. R20-6-114(B)(1).

17 **C. Respondents Do Not Have Newly Discovered Material Evidence Which**
18 **Would Entitle Them to Review Or Rehearing Under A.A.C. R20-6-**
19 **114(B)(4).**

20 Respondents have alleged that they have new evidence regarding the ADRE Order.
21 As discussed above, it would be inappropriate for the (Interim/Acting) Director to entertain a
22 challenge to a final order of another agency. A.A.C. R20-6-114(B)(4) contemplates new
23 evidence in the matter at issue, not to allow parties a second bite at the apple in a subsequent
24 matter. The appropriate time to challenge the Department of Real Estate's action was at the
25 hearing for Mr. Loiselle's real estate license or in an appeal of the ADRE Order.
26

1 Respondents have not presented any evidence that the Department may legally
2 consider and therefore have not provided grounds for granting a review or rehearing under
3 A.A.C. R20-6-114(B)(4).

4 **D. Respondents Failed to Inform the Department of an Administrative**
5 **Action Within 30 Days.**

6 In Respondents' Motion for Reconsideration, page 7, #20, Respondents state,
7 "Respondent contacted the Department of Insurance within 30 days when finding out
8 Attorney Smith didn't file additional documentation for the appeal." In the ALJ Decision,
9 page 5, #22, it states, "Mr. Loiselle testified that he appealed ADRE's final decision in case
10 no. 13F-DI-136, but withdrew the appeal five months later..."

11 The Department has no record that Respondents reported the ADRE Order to the
12 Department. However, Respondents argue that they did try to verbally report the matter to
13 the Department. This argument is flawed. The evidence in the record shows that even if
14 Respondents could prove that they verbally informed the Department, their reporting would
15 have been done far outside of the required 30 days after an administrative action.

16 Respondents misconstrue the statute in their Motion for Reconsideration. Once a
17 final order was entered in the administrative action, Respondents had 30 days to report that
18 to the Department under A.R.S. § 20-301(A). The time to report an action does not toll
19 because an appeal is being made.

20 By Respondents' own admission, the earliest time at which they may have attempted
21 to inform the Department of the ADRE Order was after they decided to forgo the appeal of
22 the ADRE Order. By Mr. Loiselle's testimony, he withdrew his appeal five months after the
23 ADRE Order was entered. Therefore, Respondents failed to report an administrative action
24 to the Department within 30 days.

1 Respondents' argument that they did not violate A.R.S. § 20-301(A) is wholly
2 without merit and does not provide grounds for rehearing or review under A.A.C. R20-6-
3 114.

4 **V. CONCLUSION**

5 Respondents have not established the requisite grounds upon which a review or
6 rehearing may be properly granted, pursuant to A.A.C. R20-6-114(B) and (C). Review or
7 rehearing in this matter would be inappropriate. Therefore, the Department respectfully
8 requests that Respondents' Motion for Reconsideration be denied.

9 RESPECTFULLY SUBMITTED this 20th day of March, 2018.

10 MARK BRNOVICH, Attorney General

11
12 BY: /s/ Liane C. Kido
13 Liane C. Kido
14 Assistant Attorney General
15 Attorneys for the Department of Insurance

16 **FILED** via electronic mail this 20th
17 day of March, 2018, with:

18 Keith Schraad, Interim Director
19 Arizona Department of Insurance

20 **COPY** of the foregoing sent electronically
21 and mailed same date to:

22 Brian Loiselle
23 Vesta Insurance Group LLC
24 1355 N. Greenfield Road
25 Mesa, Arizona 85205
26 Brian@ewronline.net
Respondents

/s/ Teresa Carranza
6903934