

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  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

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

e. Page 4, line 26-27 should be changed to read: "18. Ms. Greenwood acknowledged that Nalin Ratnaike had filed a complaint"

- 2. The Acting Director revokes the Arizona resident insurance producer license of **Brian Leroy Loiselle** effective immediately.
- 3. The Acting Director revokes the Arizona resident insurance producer license of **Vesta Insurance Group, LLC** effective immediately.

**NOTIFICATION OF RIGHTS**

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Respondents may request a rehearing with respect to this order by filing a written motion with the Acting 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.

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

DATED this 7 day of February, 2018.

  
Robert D. Charlton, Acting Director  
Arizona Department of Insurance

1 **COPY** of the foregoing mailed this  
2 9<sup>th</sup> 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. 15<sup>th</sup> 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](mailto:brian@ewronline.net)  
29 Respondent

30   
31 Maidene Scheiner

32  
33  
34  
35  
36

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  
DECISION

and

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.<sup>1</sup>
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.<sup>2</sup>
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.<sup>3</sup>

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

<sup>2</sup> See the Department's Exhibit 2.

<sup>3</sup> 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.<sup>4</sup>

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)

---

<sup>4</sup> 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).<sup>5</sup>

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.

---

<sup>5</sup> 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. Loiselle 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. Loiselle 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. Loiselle 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. Loiselle 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. Loiselle  
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. Loiselle 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. Loiselle 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.<sup>6</sup>

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.<sup>7</sup> Respondents bear  
22 the burden to establish affirmative defenses and factors in mitigation of the penalty by the  
23 same evidentiary standard.<sup>8</sup>

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."<sup>9</sup> A preponderance of the evidence is  
26 "evidence which is of greater weight or more convincing than evidence which is offered in  
27

28 <sup>6</sup> See A.R.S. §§ 20-281 through 20-301.

29 <sup>7</sup> 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).

<sup>8</sup> See A.A.C. R2-19-119(B)(2).

<sup>9</sup> 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.”<sup>10</sup>

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 estopped<sup>11</sup> 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.<sup>12</sup> “As a matter of public policy, all  
10 persons are charged with knowledge of law pertaining to their transactions . . . .”<sup>13</sup>  
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.<sup>14</sup> 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.”<sup>15</sup> Estoppel should not apply if its application  
19 “would frustrate the purpose of . . . licensing requirements, which is to promote uniform  
20 standards of quality.”<sup>16</sup> 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.”<sup>17</sup> “In general,  
23 the state may not be estopped due to the casual acts, advice, or instructions issued by  
24

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

26 <sup>11</sup> “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 <sup>12</sup> See *Conway v. State Consolidated Publishing Co.*, 57 Ariz. 162, 171, 112 P.2d 218 (1941).

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

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

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

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

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

1 nonsupervisory employees.”<sup>18</sup> 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).<sup>19</sup>

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.<sup>20</sup>

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).<sup>21</sup>

20 <sup>18</sup> *Id.*

21 <sup>19</sup> 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 <sup>20</sup> 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.

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

32 <sup>21</sup> A.R.S. § 20-295(A)(2), (A)(8), and (A)(9) provide in relevant part as follows:

33 The director may deny, suspend for not more than twelve months,  
34 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 Loiselle'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).<sup>22</sup>

5 11. With respect to the appropriate penalty, ADRE found that Mr. Loiselle'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 Loiselle had diverted funds to his own use. Because ADRE found that Mr. Loiselle'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. Loiselle 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.

<sup>22</sup> 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 Based on the foregoing, it is recommended that on the effective date of the final  
2 order in this matter, Respondent Brian Leroy Loiselle's insurance producer's License  
3 No. 9493631 shall be revoked.  
4

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 Mihalsky  
13 Administrative Law Judge

14 Transmitted electronically to:

15 Leslie R. Hess, Interim Director  
16 Arizona Department of Insurance  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30