

JUL 24 2018

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY ms

In the Matter of:

BLACK DOG BAIL BONDS, LLC,
(Unlicensed)
MALLEN, MATTHEW JOHN
(National Producer Number 15767749)
(Arizona Legacy License No. 966246)
and
ROSENTHAL, STACIE LYNNE
(Unlicensed)

Petitioners.

No. 18A-033-INS

ORDER

On July 12, 2018, the Office of Administrative Hearings, through Administrative Law Judge Diane Mihalsky, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Interim Director of the Department of Insurance ("Interim Director") on July 13, 2018, 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 except to make the following corrections:
 - a. Findings of Fact, Paragraph 3, the last sentence should be corrected to read: "Ms. Rosenthal's license expired on February 28, 2017 and on March 1, 2018, her license became inactive."
 - b. Findings of Fact, Paragraph 19, the first sentence should be corrected to read: "Ms. Greenwood acknowledged that the Department received the

1 forms to comply with the May 11, 2017 Consent Order from Mr. Mallen
2 and Black Dog on or about April 10, 2017.”

- 3 2. The Interim Director rejects the Recommended Order because the
4 Department lacks the authority to issue a probationary license and is not
5 subject to A.R.S. § 41-1064. The Interim Director issues the following Order
6 pursuant A.R.S. § 20-295:

7 **ORDER**

8 Based on the foregoing, **IT IS ORDERED** affirming the Department's April 11,
9 2018 Order Summarily Suspending Matthew John Mallen's bail bond agent's
10 License No. 15767749 and Ordering Black Dog Bail Bonds LLC to
11 immediately cease and desist from conducting business in Arizona as a bail
12 bond agent.

13 **IT IS FURTHER ORDERED** that Mr. Mallen's bail bond agent's License No.
14 15767749 shall be suspended for a period of twelve months from the filing
15 date of this Order pursuant to A.R.S. § 20-295 and subject to the following
16 terms:

- 17 (1) Mr. Mallen shall not conduct any new bail bond business either under his
18 name or under the name of Black Dog Bail Bonds, LLC. Mr. Mallen may
19 continue to service existing bail bond business during the period of
20 suspension but may not sell, solicit or negotiate new bail bonds under
21 either his own name or the name of Black Dog Bail Bonds, LLC during the
22 suspension period;
- 23 (2) Within ten business days of the filing date of this Order, Mr. Mallen shall
24 submit Black Dog's Bail Bond Log for the period from February 28, 2017
25 through July 12, 2018;

1 (3) Before the Department unsuspends Mr. Mallen's bail bond agent's
2 License no. 15767749, Mr. Mallen shall either dissolve Black Dog Bail
3 Bonds, LLC as a corporation and register the name Black Dog Bail Bonds
4 as a tradename with the Department or file an application for a bail bond
5 agent license for Black Dog Bail Bonds, LLC; and

6 (4) If Mr. Mallen fails to comply with the terms of this Order, the Department
7 shall immediately initiate an administrative action for revocation of Mr.
8 Mallen's bail bond agent's License no. 15767749.

9 **NOTIFICATION OF RIGHTS**

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

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

19 DATED this 24th day of July, 2018.

20
21 
22 Keith A. Schraad, Interim Director
Arizona Department of Insurance

23 ...
24 ...
25 ...
26

1 **COPY** of the foregoing mailed this
2 24th day of July, 2018, to:

3 Marc A. Adair, Esq.
4 2942 N. 24th St., Suite 114
5 Phoenix, AZ 85016-7849
6 Attorney for Petitioners

7 Lynette Evans
8 Assistant Attorney General
9 State Government Division
10 Agency Counsel Section
11 15 S. 15th Ave.
12 Phoenix, Arizona 85007

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

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

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

26 
Maidene Scheiner

JUL 13 2018

DEPT. OF INSURANCE
BY: MEK

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 18A-033-INS

BLACK DOG BAIL BONDS LLC,
(Unlicensed)
MALLEN, MATTHEW JOHN
(License Number 15767749)
(Legacy License ID 966246)
and
ROSENTHAL, STACIE LYNNE
(Unlicensed)

ADMINISTRATIVE LAW JUDGE
DECISION

Respondents.

HEARING: July 3, 2018, at 1:00 p.m.

APPEARANCES: The Arizona Department of Insurance ("the Department") was represented by Lynette Evans, Esq., Assistant Attorney General; Respondents Black Dog Bail Bonds LLC ("Black Dog") and Matthew John Mallen ("Mr. Mallen") were represented by Marc A. Adair, Esq.

ADMINISTRATIVE LAW JUDGE: Diane Mihalsky

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. Black Dog was licensed as an Arizona resident bail bond agent on October 9, 2009, Legacy License Number 95925. Black Dog's business and mailing addresses of record with the Department were both 1010 E. Indian School Road, Phoenix, Arizona 85014.¹

2. Black Dog's license expired on October 31, 2017. When Black Dog's license expired, Stacy Lynne Rosenthal a/k/a Stacie Lynne Mallen ("Ms. Rosenthal") was listed on the Department's records as Black Dog's Designated Responsible Licensed Producer.²

¹ See the Department's Exhibit 1.

² See *id.*

1 3. Ms. Rosenthal became licensed as an Arizona resident bail bond agent on
2 October 1, 2009, National Producer Number 15018839. Ms. Rosenthal's business and
3 mailing addresses of record with the Department were both 6 E. Palo Verde Street, Suite
4 3, Gilbert, Arizona 85296-1020. Ms. Rosenthal's license expired on October 31, 2017,
5 and on March 1, 2018, her license became inactive.³

6 4. Mr. Mallen became licensed as an Arizona resident bail bond agent on May 14,
7 2010, National Producer Number 15767749. Mr. Mallen's business and mailing
8 addresses of record with the Department were both 6 E. Palo Verde Street, Suite 3,
9 Gilbert, Arizona 85296-1020 and matt@blackdogbailbonds.com (business email). His
10 license will expire on October 31, 2021.⁴

11 5. On April 11, 2018, the Department issued an order summarily suspending Mr.
12 Mallen's license and ordering Black Dog to cease and desist acting as a bail bond agent
13 in the State of Arizona without a valid license.⁵

14 6. On or about May 10, 2018, Black Dog and Mr. Mallen's attorney filed a request
15 for hearing on the order.

16 7. The Department referred the matter to the Office of Administrative Hearings
17 ("the OAH"), an independent state agency, for an evidentiary hearing on whether cause
18 existed to discipline Black Dog's and Mr. Mallen's Arizona bail bond agent's licenses.

19 8. On or about May 25, 2018, the Department issued a Notice of Hearing. The
20 Notice of Hearing alleged the following grounds to support summarily suspending Mr.
21 Mallen's license and ordering Black Dog to cease and desist from engaging in bail bond
22 business in the State of Arizona:

- 23 a. Their failure to file a Form L-177 to comply with a May 16,
24 2017 Consent Order in Case No. 17A-040-INS, in violation
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29 ³ See the Department's Exhibit 3.

30 ⁴ See the Department's Exhibit 2.

⁵ See the Department's Exhibit 12.

1 of A.R.S. §§ 20-286(C)(1) and (2),⁶ and 20-295(A)(2),⁷
2 made applicable to bail bond agents by A.R.S. § 20-
3 340.06;⁸

- 4 b. Their failure to comply with the Department's January 23,
5 2018 subpoena to produce its bond log on or before
6 February 9, 2018, in violation of A.R.S. § 20-295(A)(2),
7 made applicable to bail bond agents by A.R.S. § 20-
8 340.06; and
- 9 c. Black Dog's conduct of the business of a bail bond agent
10 after its license expired, constituting unlicensed activity
11 under A.R.S. § 20-282,⁹ made applicable to bail bond
12 agents under A.R.S. § 20-340.06 and providing support for
13 the cease and desist order under A.R.S. § 20-292.¹⁰

14
15 ⁶ A.R.S. § 20-286(C) provides in relevant part as follows:

16 C. A licensee shall inform the director in writing within thirty days of any
17 change in the licensee's:

18 1. Residential, business or e-mail address.

19 2. Members, directors, officers or designated producer. The director may
20 require that a licensee who notifies the director of a change pursuant to
21 this paragraph submit a full set of fingerprints of each new member,
22 director, officer or designated producer to the director for the purpose of
23 obtaining a state and federal criminal records check pursuant to section
24 41-1750 and Public Law 92-544. The department of public safety may
25 exchange this fingerprint data with the federal bureau of investigation.

26 ⁷ A.R.S. § 20-295(A)(2) provides in relevant part as follows:

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

31
32 2. Violating any provision of this title or any rule, subpoena or order of
33 the director.

34 ⁸ A.R.S. § 20-340.06 provides as follows:

35 To the extent not inconsistent with this article, sections 20-281, 20-284
36 and 20-285, section 20-286, subsections B, C and D, section 20-288,
37 subsection B and sections 20-289, 20-289.01, 20-292, 20-295, 20-296,
38 20-297, 20-298, 20-299, 20-301 and 20-302 apply to bail bond agents.

39 ⁹ A.R.S. § 20-282 provides as follows:

40 A person shall not sell, solicit or negotiate insurance in this state for any
class or classes of insurance unless the person is licensed for that line of
authority in accordance with this article.

¹⁰ A.R.S. § 20-292 provides in relevant part as follows:

1 9. On July 3, 2018, a hearing was held before the OAH. The Department's
2 attorney submitted fifteen exhibits, presented the testimony of its Administrative
3 Enforcement Investigator, Wendy Greenwood, and made legal argument on its behalf.
4 Black Dog and Mr. Mallen's attorney cross-examined Ms. Greenwood, asserted certain
5 facts, and made legal argument on their behalf.

6 **ADDITIONAL HEARING EVIDENCE**

7 10. On or about September 4, 2014, the Department issued a Consent Order In
8 Case No. 14A-095-INS against Ms. Rosenthal and Black Dog based Black Dog's conduct
9 of its insurance business after its resident bail bond agent license expired, failure to
10 comply with the Department's subpoena, and failure to return cash collateral to a client.
11 As a result, Ms. Mallen and Black Dog agreed to pay a civil penalty in the amount of
12 \$4,950.00 and to return cash collateral to the client in the amount of \$2,200.00.¹¹

13 11. No evidence was submitted that Ms. Rosenthal and Black Dog failed to
14 comply with the Consent Order in Case No. 14A-095-INS. Because the Consent Order
15 was based on similar factual allegations as the charges against Black Dog and Mr. Mallen
16 in this matter, the consent order is considered as a potential factor in aggravation of the
17 penalty.

18 **Violation of A.R.S. § 20-286(C) and May 11, 2017 Consent Order**

19 12. According to the records of the Arizona Corporation Commission ("ACC"),
20 Black Dog was incorporated on August 19, 2009. Black Dog's domestic address on the
21 ACC's records is 6 E. Palo Verde Street, Suite 3, Gilbert, Arizona 85296.¹²

22 13. Ms. Rosenthal was the sole Member/Manager of Black Dog on the articles of
23 incorporation filed with the ACC. On or about July 25, 2014, Black Dog submitted an
24 Article of Amendment to the ACC removing Ms. Rosenthal as the sole Manager/Member
25 of Black Dog and adding Mr. Mallen as the sole Manager/Member of Black Dog.¹³

26
27
28 If the director has cause to believe that any person is violating or about
29 to violate section 20-282. . . , the director may order the person to cease
30 and desist

¹¹ See the Department's Exhibit 15.

¹² See the Department's Exhibit 4.

¹³ See the Department's Exhibit 6 at 2; Exhibit 7.

1 14. Black Dog and Ms. Rosenthal failed to notify the Department of the
2 substitution within 30 days, as required by A.R.S. § 20-286(C)(2). Black Dog also never
3 updated its business and mailing addresses of record, as required by A.R.S. § 20-
4 286(C)(1).¹⁴ A different bail bond company occupies the premises at 1010 E. Indian
5 School Road, Phoenix, Arizona 85014.

6 15. On or about May 16, 2017, the Department issued a Consent Order in Case
7 No. 17A-040-INS, in which Ms. Rosenthal and Mr. Mallen on behalf of Black Dog
8 admitted that their violation of A.R.S. § 20-286(C)(2) furnished grounds for the
9 Department to deny, suspend, revoke, or refuse to renew their insurance producer's
10 licenses under A.R.S. § 20-295(A) and (B).¹⁵

11 16. As a result of Ms. Rosenthal's and Black Dog's admitted violation of
12 applicable statutes, in the May 11, 2017 Consent Order, they agreed to pay a \$250.00
13 civil penalty and to immediately submit to the Department the following documents:

- 14 a. Form L-177 – Report of a Change to Members, Officers,
15 or Directors;
- 16 b. Form L-CHG – License Information Change;
- 17 c. Fingerprints for Mr. Mallen;
- 18 d. \$22.00 for fingerprint processing fee; and
- 19 e. Form L-FPV – Fingerprint Verification from Mr. Mallen.¹⁶

20 17. Ms. Greenwood testified that Mr. Mallen and Black Dog had submitted all
21 documents required to comply with the May 11, 2017 Consent Order except the Form L-
22 177 to report a Change to Members, Officers, or Directors.

23
24 ¹⁴ A.R.S. § 20-286(C) provides in relevant part as follows:

- 25 C. A licensee shall inform the director in writing within thirty days of any
26 change in the licensee's:
27 1. Residential, business or e-mail address.
28 2. Members, directors, officers or designated producer. The director may
29 require that a licensee who notifies the director of a change pursuant to
30 this paragraph submit a full set of fingerprints of each new member,
director, officer or designated producer to the director for the purpose of
obtaining a state and federal criminal records check pursuant to section
41-1750 and Public Law 92-544. The department of public safety may
exchange this fingerprint data with the federal bureau of investigation.

¹⁵ See the Department's Exhibit 6.

¹⁶ The Department's Exhibit 6 at 3.

1 18. Mr. Mallen's and Black Dog's attorney asserted that Mr. Mallen's position was
2 that he had submitted the Form L-177 to the Department. As noted above, Mr. Mallen did
3 not testify at the hearing.

4 19. Ms. Greenwood acknowledged that the Department provided the forms to
5 comply with the May 11, 2017 Consent Order to Mr. Mallen and Black Dog on or about
6 April 10, 2017. Ms. Greenwood testified that she checked the Department's electronic
7 records and did not find a completed Form L-177 for Black Dog.

8 20. Ms. Greenwood acknowledged that before April 20, 2017, the Department
9 was accepting hard copies of documents while it was converting to a paperless web-
10 based record system. Ms. Greenwood testified that during the transition, Department
11 staff scanned hard copies of documents it received to be entered into the electronic
12 records.

13 21. Ms. Greenwood testified that because the Department only has two
14 Enforcement Investigators, it is not possible to contact licensees multiple times about
15 documents that are missing from the Department's files.

16 **Black Dog's Violation of A.R.S. § 20-295(A)(2) by Failing to Comply with**
17 **Department's January 23, 2018 Subpoena**

18 22. At all relevant times, Ms. Rosenthal has remained as Black Dog's statutory
19 agent on the ACC's records.

20 23. On January 23, 2018, the Department issued a subpoena to Ms. Rosenthal to
21 appear before the Department on February 9, 2018, and produce Black Dog's bond log
22 for the dates of February 28, 2017, through January 30, 2018.

23 24. The Department served the subpoena by certified mail on Ms. Rosenthal at
24 her business and mailing address of record with the Department and Black Dog's
25 domestic address of record with the ACC, 6 E. Palo Verde Street, Suite 3, Gilbert,
26 Arizona 85296. The certified mail receipt was signed on January 30, 2018; although the
27 signature is illegible, Ms. Rosenthal's printed name appears beneath the signature.¹⁷

28 25. Neither Black Dog nor Ms. Rosenthal complied with the Department's
29 subpoena to produce Black Dog's bond log.

30

¹⁷ See the Department's Exhibit 7.

1 26. Mr. Mallen and Black Dog's attorney argued that because the subpoena was
2 addressed to Ms. Rosenthal, the Department had failed to establish that Mr. Mallen or
3 Black Dog ever received the subpoena.

4 **Black Dog's Violation of A.R.S. § 20-282 by Continuing to Engage in Insurance**
5 **Business after its License Expired**

6 27. As noted above, Black Dog's bail bond agent's license expired on October 31,
7 2017. On or about January 30, 2018, Mr. Mallen sent an email to Daniel W. Ray, the
8 Department's Enforcement Investigator assigned to the case at the time, from the email
9 address matt@blackdogbailbonds.com. Mr. Mallen stated that, "So there is no confusion
10 though, we are still open and nobody is looking for any collateral from us that I'm aware
11 of."¹⁸

12 28. On or about March 26, 2018, Black Dog's client/indemnitor, Laura Heath, filed
13 a Request for Assistance with the Department against Black Dog, alleging that she had
14 retained Mr. Mallen's and Black Dog's services on November 18, 2017, that she had
15 difficulty contacting Mr. Mallen, that he had understated the collateral that she provided to
16 him, and that he was overcharging her for fees for Black Dog's bail bond agent services.¹⁹
17 Ms. Heath attached to her Request for Assistance a receipt from Black Dog dated
18 November 18, 2018, in the amount of \$2,700.00,²⁰ and an unsigned, undated letter on
19 Black Dog's letterhead stating that Ms. Heath's son Kevin was bonded out on November
20 18, 2017, and showing the collateral of \$2,430.00, various charges, and a refund in the
21 amount of \$963.00.²¹

22 29. Ms. Heath's Request for Assistance was pending as of the date of the hearing
23 and the merits of her complaints had not yet been determined.

24 30. The Department submitted a printout dated May 23, 2018, from Black Dog's
25 website that solicited bail bond business by advertising its services, stating in relevant
26 part as follows:

27 We are a licensed Bail Bond Agent Organization. We
28 specialize in Arizona [. We] understand that is a difficult
29 process for you! Black Dog is a Woman-Owned business and

30 ¹⁸ The Department's Exhibit 8.

¹⁹ See the Department's Exhibit 9.

²⁰ See the Department's Exhibit 10.

²¹ See the Department's Exhibit 11.

1 is registered with the Arizona Department of Insurance with
2 License #952925. . . .²²

3 Ms. Greenwood pointed out that Black Dog is no longer a woman-owned business.

4 31. Ms. Greenwood testified that if a person chooses to do business through a
5 business entity registered with the ACC, the business entity as well as the responsible
6 officers or managers must be licensed.²³

7 32. Ms. Greenwood acknowledged that if Mr. Mallen had chosen to do business
8 through Black Dog as an individual doing business as (“DBA”) Black Dog, rather having
9 Black Dog registered with the ACC as a business entity, Black Dog would not have
10 needed a separate license as long as Mr. Mallen was licensed as a bail bond agent. If
11 Black Dog were Mr. Mallen’s DBA, since Mr. Mallen’s license was current, Black Dog
12 would not have needed its own license to engage in insurance business and would not
13 have committed unlicensed activity by continuing to conduct insurance business after its
14 license expired.

15 33. Ms. Greenwood testified that if Mr. Mallen had chosen to do business through
16 Black Dog as a DBA, he would have had to register the DBA by submitting a completed
17 Form L-193 to the Department. Ms. Greenwood testified that some bail bond agents use
18 multiple DBAs. Ms. Greenwood testified that Mr. Mallen had not submitted a completed
19 Form L-193 to the Department.

20 34. Mr. Mallen and Black Dog’s attorney argued that because everyone knew that
21 Black Dog was Mr. Mallen, Mr. Mallen’s license should not be penalized due to Black
22 Dog’s unlicensed activity.

23 **CONCLUSIONS OF LAW**

24 1. This matter lies within the Department’s jurisdiction.²⁴

25 ²² The Department’s Exhibit 14.

26 ²³ See A.R.S § 20-340.01, which provides in relevant part as follows:

27 A. A person shall not act as a bail bond agent in this state unless the
28 person is licensed by the director in accordance with this article. . . .

29
30 C. The director shall not license a resident business entity as a bail bond
agent unless each owner and shareholder is individually licensed as a
bail bond agent.

A.R.S. § 20-281(1) defines “business entity” as “any corporation, association, partnership, limited liability
company, limited liability partnership or other legal entity except an individual or sole proprietorship.”

²⁴ See A.R.S. § 20-340 *et seq.*

1 2. The Department bears the burden to establish cause to discipline Mr. Mallen's
2 bail bond agent's license and to order Black Dog to cease and desist from conducting
3 insurance business by a preponderance of the evidence.²⁵ Mr. Mallen and Black Dog
4 bear the burden to establish affirmative defenses and factors in mitigation of the penalty
5 by the same evidentiary standard.²⁶

6 3. "A preponderance of the evidence is such proof as convinces the trier of fact
7 that the contention is more probably true than not."²⁷ A preponderance of the evidence is
8 "[t]he greater weight of the evidence, not necessarily established by the greater number of
9 witnesses testifying to a fact but by evidence that has the most convincing force; superior
10 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
11 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather
12 than the other."²⁸

13 4. The Department established that Mr. Mallen and Black Dog failed to file a
14 Form L-177 to comply with the May 16, 2017 Consent Order in Case No. 17A-040-INS.
15 No sworn testimony was given or receipt from the Department for the Form L-177 was
16 submitted. Therefore, the Department established cause to discipline Mr. Mallen's
17 insurance license under A.R.S. §§ 20-286(C)(1) and 20-295(A)(2), as made applicable
18 to bail bond agents by A.R.S. § 20-340.06.

19 5. The Department established that it sent the January 23, 2018 subpoena to
20 Black Dog's statutory agent at Black Dog's address of record with the ACC, which is the
21 same as the statutory agent's and Mr. Mallen's business and mailing addresses with the
22 Department and that the statutory agent or Mr. Mallen signed the certified mail receipt.
23 That is all that it is required to do. Since Black Dog failed to comply with the subpoena
24 and Mr. Mallen is the only licensed bond agent listed as Black Dog's owner with the
25 ACC and, if Mr. Mallen and Black Dog had complied with the May 16, 2017 Consent
26 Order by filing a Form L-177, listed on the Department's records, the Department
27

28 ²⁵ 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
29 Ariz. 369, 372, 249 P.2d 837 (1952).

30 ²⁶ See A.A.C. R2-19-119(B)(2).

²⁷ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

²⁸ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 established additional cause to discipline Mr. Mallen's bail bond agent's license under
2 A.R.S. § 20-295(A)(2), as made applicable to bail bond agents by A.R.S. § 20-340.06.

3 6. The Department established that because Black Dog was a business entity
4 and Mr. Mallen never filed a completed Form L-193 with the Department, Black Dog
5 was required to be licensed and that Black Dog continued to do business as a bail bond
6 agent after its license expired on October 31, 2017. As noted above, Mr. Mallen is
7 Black Dog's only owner and is responsible for its unlicensed activity. Therefore, the
8 Department established cause to discipline Mr. Mallen's bail bond agent's license and
9 to order Black Dog to cease and desist from engaging in unlicensed activity under
10 A.R.S. § 20-282, as made applicable to bail bond agents by A.R.S. § 20-340.06.

11 7. Mr. Mallen and Black Dog's primary defenses are that the Department did not
12 establish that any consumer has been harmed by Mr. Mallen's and Black Dog's
13 statutory violations at this time. Mr. Mallen and Black Dog argued that the charged
14 violations were only technical, since the Department eventually became aware of the
15 ACC's records that showed Mr. Mallen had been substituted for Ms. Rosenthal as Black
16 Dog's only member and Black Dog's current address and that Black Dog would not
17 have needed its own license if Mr. Mallen had filed a form to register it as a DBA.

18 8. The Arizona legislature created the Department "to administer the state
19 insurance laws, protect the citizens of this state who purchase insurance, [and] provide
20 a better response to the needs of persons who purchase insurance" ²⁹ These
21 purposes would not be served by ignoring licensees' repeated failure to comply with
22 applicable statutes until a member of the public is shown to have been harmed by the
23 licensees' violations. Until 2017, when the Department became aware of the ACC's
24 records, neither the Department nor any member of the public who consulted the
25 Department's records would have been aware who controlled Black Dog or what its
26 business and mailing addresses were. It is not clear on this record whether Mr. Mallen
27 can be regulated. At a minimum, at this time, Mr. Mallen's cavalier attitude toward the
28 Department's regulation of his bail bond agent business justifies discipline to protect the
29 public in the future.

30 _____
²⁹ Laws 1954, Ch. 64, Art. 1, § 7; Laws 2000, Ch. 306, § 3.

RECOMMENDED ORDER

1
2 Based on the foregoing, **IT IS ORDERED** affirming the Department's April 11,
3 2018 Order Summarily Suspending Matthew John Mallen's bail bond agent's License
4 No. 15767749 and Ordering Black Dog Bail Bonds LLC to immediately cease and desist
5 from conducting business in Arizona as a bail bond agent.

6 **IT IS FURTHER ORDERED** that Mr. Mallen's bail bond agent's License No.
7 15767749 shall be placed on probation for a period of three years, subject to the
8 following terms:

9 (1) Mr. Mallen shall not use Black Dog to conduct bail bond business in
10 Arizona until he either submits an application to renew Black Dog's bail bond agent's
11 license or submits a Form L-193 to make Black Dog his DBA and the Department either
12 grants the license renewal or processes the Form L-193;

13 (2) Within ten business days of the effective date of the final order in this
14 matter, Mr. Mallen shall submit a completed Form L-177 for Black Dog;

15 (3) With ten business days of the effective date of the final order in this matter,
16 Mr. Mallen shall submit Black Dog's Bail Bond Log from February 28, 2017, through
17 July 12, 2018.

18 (4) Thereafter, on or before October 5, January 5, April 5, and July 5 of every
19 year that he is on probation, Mr. Mallen shall submit Black Dog's Bail Bond Log for
20 every quarter during the period of his probation, beginning July 12, 2018, through
21 September 30, 2018, and every three-month period thereafter;

22 (5) If Mr. Mallen fails to comply with the terms of his probation or the
23 Department receives information that it deems credible that Mr. Mallen has violated any
24 statutes that govern bail bond agents, the Department shall summarily suspend Mr.
25 Mallen's bail bond agent's license and refer the matter to the Office of Administrative
26 Hearings for an expedited evidentiary hearing pursuant to A.R.S. § 41-1064(C) for
27 revocation of the license.

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

////

Done this day, July 12, 2018.

/s/ Diane Mihalsky
Administrative Law Judge

Transmitted electronically to:

Keith A. Schraad, Interim Director
Arizona Department of Insurance

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