

OCT 30 2018

STATE OF ARIZONA

DEPT OF INSURANCE
BY MEK

DEPARTMENT OF INSURANCE

In the Matter of:

QUACH, DINH
(National Producer Number 17892102)

No. 18A-060-INS

Respondent

ORDER

On October 29, 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 October 29, 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:

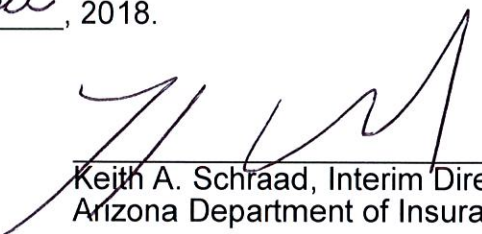
1. The Interim Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Interim Director revokes the Arizona non-resident insurance producer license of **Dinh Quach**, National Producer Number 17892102, effective immediately.

NOTIFICATION OF RIGHTS

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

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

5 DATED this 30th day of October, 2018.

6
7
8 
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
Keith A. Schraad, Interim Director
Arizona Department of Insurance

11 **COPY** of the foregoing mailed this
12 31st day of October, 2018, to:

13 Dinh Quach
14 2099 Gold St., #212
15 Alviso, CA 95002
16 Respondent

17 Dinh Quach
18 1317 Morse Ave.
19 Sacramento, CA 95864
20 Respondent

21 Office of Administrative Hearings
22 1740 West Adams St., Lower Level
23 Phoenix, Arizona 85007

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

25 Mary Kosinski, Regulatory Legal Affairs Officer
26 Catherine O'Neil, Consumer Legal Affairs Officer
Steven Fromholtz, Assistant Director – Consumer Protection Division
Aqueelah Currie, Licensing Supervisor
Sharyn Kerr, Consumer Protection Division
Arizona Department of Insurance
100 North 15th Ave., Suite 102
Phoenix, Arizona 85007-2624

1 **COPY** sent same date via electronic mail to:

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

6 
7 _____
8 Francine Martinez

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

OCT 29 2018

DEPT. OF INSURANCE
BY: MEK

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

Quach, Dinh
(National Producer Number 17892102),

Respondent.

No. 18A-060-INS-RES2

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING: October 18, 2018, at 1:00 p.m.

APPEARANCES: The Arizona Department of Insurance ("the Department") was represented by Deian Ousounov, Esq., Assistant Attorney General; Dinh Quach ("Respondent") failed to appear.

ADMINISTRATIVE LAW JUDGE: Diane Mihalsky

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. The Department referred this matter to the Office of Administrative Hearings ("OAH"), an independent agency, for an evidentiary hearing.
2. On August 22, 2018, the Department issued a Notice of Hearing, setting a hearing on October 18, 2018, at 1:00 p.m., alleging certain facts and charging violations of statutes regulating licensed insurance producers in Arizona. The Department sent copies of the Notice of Hearing to Respondent's addresses of record.
3. A hearing was held on October 18, 2018. The Department presented the testimony of Wendy Greenwood, its Investigator and, since April 2018, Administrator of its Enforcement Unit, and submitted five exhibits.
4. Respondent did not request to appear telephonically and did not request that the hearing be continued. Although the Department did not complete its presentation of evidence until approximately 1:45 p.m., Respondent did not appear, personally or through an attorney, and did not contact OAH about this matter. Consequently, Respondent did not present any evidence to defend his Arizona non-resident insurance producer's license.

HEARING EVIDENCE

1
2 5. On or about June 23, 2017, the Department issued a non-resident insurance
3 producer's license to Respondent, authorizing Respondent to sell Life and Accident
4 and Health or Sickness insurance in Arizona. Respondent was domiciled in
5 Sacramento, California, and was licensed as an insurance producer in California.
6 Respondent's Arizona license is due to expire on April 30, 2021.¹

7 6. On February 22, 2018, the Department received a letter from New York Life
8 Insurance Company stating that Respondent had been terminated effective January 22,
9 2018, after he admitted selling his brother a life insurance policy, on which his nephew
10 was the named beneficiary, and after his brother passed, withholding death benefit
11 proceeds totaling \$99,757.85 from his nephew and using \$3,566.00 to pay a premium
12 for his own life insurance policy. Respondent also admitted to forging his nephew's
13 name on an insurance application without his authorization or consent.²

14 7. Ms. Greenwood testified that Respondent never contacted the Department
15 about the incident.

16 8. New York Life Insurance Company provided to the Department a summary of
17 its employee Mark Spagnuolo's January 10, 2018, interview of Respondent.
18 Respondent stated that he had sold his brother, Mike Quach, a life insurance policy in
19 December 2016, which named Mike's son, Paul, as the sole beneficiary. Respondent
20 admitted that after Mike passed, Respondent filled out the death claim form and forged
21 Paul Quach's signature on it. Respondent then opened a joint account in his own and
22 Paul Quach's name, without Paul Quach's knowledge or consent.³

23 9. Although Respondent stated that he emailed the paperwork to Paul Quach,
24 when Paul Quach was interviewed, he denied receiving any paperwork. In a
25 handwritten statement, Paul Quach indicated that he was not aware of any insurance
26 proceeds from his father's death, did not sign any claim forms, and did not open a joint
27 account with his uncle, Respondent.⁴

28 ¹ See the Department's Exhibit 1.

29 ² See the Department's Exhibit 3.

30 ³ See the Department's Exhibit 4.

⁴ See the Department's Exhibit 5.

1 10. Ms. Greenwood testified that Respondent's conversion of client funds and
2 forgeries were especially concerning because those acts violated the fiduciary duty that
3 insurance agents owe to their clients. In addition, if Respondent would defraud a family
4 member, he is probably even more likely to defraud a member of the public. Ms.
5 Greenwood testified that the Department's objective is to promote a safe, strong, and
6 competitive insurance marketplace for consumers and businesses. Its main role is to
7 protect consumers.

8 11. On March 31, 2018, Respondent's California insurance license expired.⁵
9 Ms. Greenwood testified that a non-resident insurance producer is required to maintain
10 an active license in his state of residence. She had checked the website and
11 Respondent's California license was still in expired status on the date of the hearing.

12 CONCLUSIONS OF LAW

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

14 2. The Notice of Hearing that the Department mailed to Respondent at his
15 addresses of record were reasonable.⁷ Respondent is deemed to have received notice
16 of the hearing.⁸

17 3. The Department bears the burden of proof to establish cause to discipline
18 Respondent's non-resident insurance producer's license by a preponderance of the
19 evidence.⁹ "A preponderance of the evidence is such proof as convinces the trier of
20 fact that the contention is more probably true than not."¹⁰

21 4. By depositing the proceeds of his brother Mike's life insurance policy into a
22 joint account that the beneficiary of the policy, Respondent's nephew Paul, did not
23 know about and using some of the proceeds to purchase life insurance for himself,
24
25

26 ⁵ See the Department's Exhibit 2.

27 ⁶ See A.R.S. §§ 20-281 to 20-301.

28 ⁷ A.R.S. § 20-286(C)(1) required Respondent to notify the Department within 30 days of any change in
his residential or business address. He has not done so.

29 ⁸ See A.R.S. §§ 41-1092.04; 41-1092.05(D).

30 ⁹ See A.R.S. § 41-1092.07(G)(1); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369,
372, 249 P.2d 837 (1952).

¹⁰ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 Respondent violated A.R.S. § 20-295(A)(4)¹¹ by converting monies that Respondent
2 had received for the benefit of another. This violation furnishes cause for the
3 Department to revoke Respondent's non-resident insurance producer's license.

4 5. By forging Paul's name onto the claim form and onto the documents opening
5 the joint checking account, Respondent violated A.R.S. § 20-295(A)(10).¹² This
6 violation furnishes additional cause for the Department to revoke Respondent's non-
7 resident insurance producer's license.

8 6. By forging Paul's name and converting the insurance proceeds to his own
9 use, Respondent engaged in dishonest practices, in violation A.R.S. § 20-295(A)(8).¹³
10 This violation furnishes additional cause for the Department to revoke Respondent's
11 non-resident insurance producer's license.

12 7. A.R.S. § 20-287(A)(1) requires that a person be "currently licensed as a
13 resident and in good standing in the person's home state" to hold a non-resident
14 insurance producer's license. Because the Department established that Respondent's
15 California license has expired, the Department established additional cause to revoke
16 Respondent's non-resident insurance producer's license under A.R.S. § 20-295(A)(2).¹⁴

17 **ORDER**

18 Based upon the above, Respondent Dinh Quach's non-resident insurance
19 producer's license shall be revoked on the effective date of the Order entered in this
20 matter.

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

24 *////*

25
26

¹¹ A.R.S. § 20-295(A)(4) includes among the grounds to revoke an insurance license "[i]mproperly
27 withholding, misappropriating or converting any monies or properties received in the course of doing
insurance business."

28 ¹² A.R.S. § 20-295(A)(10) includes among the grounds to revoke an insurance license "[f]orging
another's name to any document related to an insurance transaction."

29 ¹³ A.R.S. § 20-295(A)(8) includes among the grounds to revoke an insurance license "[u]sing fraudulent,
30 coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial
irresponsibility in the conduct of business in this state or elsewhere."

1 Done this day, October 29, 2018.

2 /s/ Diane Mihalsky
3 Administrative Law Judge

4 Transmitted electronically to:

5 Keith A. Schraad, Interim Director
6 Arizona Department of Insurance
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

29 ¹⁴ A.R.S. § 20-295(A)(2) includes among the grounds to revoke an insurance license “[v]iolating any
30 provision of this title or any rule, subpoena or order of the director.”