

APR 04 2019

DEPT OF INSURANCE
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STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

MALLEN, MATTHEW JOHN
(National Producer Number 15767749)

Respondent.

No. 18A-139-INS

ORDER

On April 2, 2019, the Office of Administrative Hearings, through Administrative Law Judge Kay Abramsohn, issued an Administrative Law Judge Decision (“Recommended Decision”), received by the Director of the Department of Insurance (“Director”) on April 2, 2019, a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The Director adopts the Recommended Findings of Fact, Conclusions of Law and Recommended Order.
2. The Director revokes the Arizona resident insurance bail bond agent license of **Matthew John Mallen**, National Producer Number 15767749, 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 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 Director to the Superior Court of
2 Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal
3 must notify the Office of Administrative Hearings of the appeal within ten days after filing
4 the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

5 DATED this 3rd day of April, 2019.

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12 Keith A. Schraad, Director
13 Arizona Department of Insurance

11 **COPY** of the foregoing mailed this
12 5th day of April, 2019, to:

13 John Matthew Mallen
14 6 E. Palo Verde St., Ste. 3
15 Gilbert, AZ 85296-1020
16 Respondent

17 John Matthew Mallen
18 2760 E. Vallejo Ct.
19 Gilbert, AZ 85298
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
Wendy Greenwood, Investigations Supervisor
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 Deian Ousounov
3 Assistant Attorney General
4 AdminLaw@azag.gov
5 Attorney for the Department of Insurance

6 Susan Hack
7 Susan.hack@azag.gov
8 Attorney General Paralegal

9

10 
11 Francine Martinez

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APR 02 2019

DEPT. OF INSURANCE
BY: mek

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 18A-139-INS

Mallen, Matthew John
National Producer No. 15767749
Respondent.

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING: March 13, 2019.

APPEARANCES: Assistant Attorney General Deian Ousounov represented the Arizona Department of Insurance (Department). Matthew John Mallen (Respondent) failed to appear.

ADMINISTRATIVE LAW JUDGE: Kay Abramsohn

FINDINGS OF FACT

1. Respondent was licensed by the Department as a bail bond agent as of May 2010; his license expires on October 31, 2021. Respondent's business and mailing addresses with the Department are the same: 6 East Palo Verde, Suite 3, Gilbert, Arizona 85296.

2. On April 11, 2018, the Department summarily suspended Respondent's license for unlicensed activity and violations of a Director's subpoena.

3. At the noticed hearing conducted on July 12, 2018, Respondent's attorney appeared on behalf of Respondent, who did not appear to present any testimony.

4. Following receipt of the Administrative Law Judge's recommended decision,¹ the Director issued a Final Order on July 24, 2018, suspending Respondent's license for a period of twelve months.² That Final Order required Respondent to submit his bail bond logs to the Department within 10 days of the Final Order.

5. On August 3, 2018, the Department issued three subpoenas to Respondent; the Department issued them by certified mail, on August 6, 2018, to Respondent's

¹ The Administrative Law Judge recommended upholding the summary suspension, a three-year provisional licensure and a requirement to submit the logs every quarter. In its Final Order, the Department rejected that recommended decision.

² Respondent did not appeal the Final Order.

1 business and residential addressed. The Department also mailed copies to
2 Respondent's business email address and to Respondent's attorney of record.

3 6. The mailed subpoenas (to the business and residential addresses) were
4 returned by the postal service to the Department as unclaimed and unable to be
5 forwarded.

6 7. At no time did the Department receive the bail logs.

7 8. The matter was not resolved informally and on January 28, 2018, the
8 Department issued its Notice of Hearing with regard to the matter; it was sent to
9 Respondent's business and residential addresses.

10 9. At the time of the noticed hearing, Respondent did not appear himself or
11 through any other designated representative.

12 10. The Department requested that Respondent's license be revoked to protect
13 the public interest regarding proper conducting of bail bond services. The Department
14 argued that the lack of contact, lack of response to the subpoenas, and returned mail
15 demonstrated that Respondent could not be regulated to protect the public.

16 **CONCLUSIONS OF LAW**

17 1. This matter lies within the Department's jurisdiction.³

18 2. The Department bears the burden of proof to establish cause to discipline
19 Respondent's bail bond agent's license by a preponderance of the evidence.⁴

20 3. "A preponderance of the evidence is such proof as convinces the trier of fact
21 that the contention is more probably true than not."⁵

22 4. The Department established that Respondent's conduct, as described above,
23 constituted violations of the applicable statutes and rules, and orders and subpoenas of
24 the Director, within the meaning of A.R.S. § 20-295(A)(2) as applied to bail bond agents
25 under A.R.S. § 20-340.06.

26 5. The Department established that Respondent's conduct, as described above,
27 most likely demonstrates failure to inform the Department of any change in residential,
28

29 ³ See A.R.S. § 20-340 *et seq.*

30 ⁴ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and A.A.C. R2-19-119(B)(1); *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

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

1 business, and e-mail addresses, within the meaning of A.R.S. § 20-286(C)(1) as
2 applied to bail bond agents under A.R.S. § 20-340.06.

3 6. Respondent's conduct, as described above, provides grounds for the Director
4 of the Department to suspend or revoke the license and to impose a civil penalty and/or
5 order restitution, pursuant to A.R.S. § 20-295(A) and (F) as applied to bail bond agents
6 pursuant to A.R.S. § 20-340.06.

7 **RECOMMENDED ORDER**

8 Based on the foregoing, it is recommended that the Director revoke Respondent
9 Matthew John Mallen's National Producer License No. 15767749.

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

13 Done this day, April 2, 2019.

14 /s/ Kay Abramsohn
15 Administrative Law Judge

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17
18 Transmitted electronically to:

19
20 Keith A. Schraad, Director
21 Arizona Department of Insurance