

STATE OF ARIZONA

STATE OF ARIZONA  
FILED

DEPARTMENT OF INSURANCE

SEP 13 1996

DEPT. OF INSURANCE  
BY KHL

5	In the Matter of:	)	Docket No. 96A-122-INS
		)	
6	M G F FUNDING, INC.,	)	<b>ORDER</b>
		)	
7	Applicant.	)	
		)	
8	_____	)	

9

10 On September 10, 1996, the Office of Administrative Hearings, through Administrative Law

11 Judge Richard N. Blair submitted "Recommended Decision of Administrative Law Judge", a copy of

12 which is attached and incorporated by this reference. The Director of the Arizona Department of

13 Insurance has reviewed the recommendation, and enters the following order:

- 14 1. The recommended findings of fact and conclusions of law are adopted.
- 15 2. The applications for a corporate life and disability insurance agent license and a corporate
- 16 full lines property and casualty insurance agent license submitted to the Department by MGF Funding,
- 17 Inc., on May 13, 1996, is denied.

NOTIFICATION OF RIGHTS

18

19 The aggrieved party may request a rehearing with respect to this Order by filing a written petition

20 with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the basis


21 for such relief pursuant to A.A.C. R20-6-114(B).

22 ...

23 ...

1 The final decision of the Director may be appealed to the Superior Court of Maricopa County for  
2 judicial review pursuant to A.R.S. § 20-166.

3 EFFECTIVE this 12<sup>th</sup> day of September, 1996

4  
5   
6 John King  
7 Director of Insurance

8 A copy of the foregoing  
9 mailed this 13<sup>th</sup> day of  
10 September, 1996

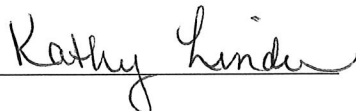
11 Charles R. Cohen, Deputy Director  
12 Catherine O'Neil, Assistant Director  
13 John Gagne, Assistant Director  
14 Maureen Catalioto, Supervisor  
15 Department of Insurance  
16 2910 North 44th Street, Suite 210  
17 Phoenix, AZ 85007

18 Office of Administrative Hearings  
19 1700 West Washington, Suite 602  
20 Phoenix, AZ 85007

21 Kathryn Leonard  
22 Assistant Attorney General  
23 1275 West Washington, Room 259  
Phoenix, AZ 85012

MGF Funding, Inc.  
P.O. Box 41941  
Mesa, AZ 85274

Brian A. Mortensen  
Statutory Agent  
MGF Funding, Inc.  
2322 S. Rogers, #15  
Mesa, AZ 85202

24 

1                                   **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2  
3   In the Matter of:

No. 96A-122-INS

4   **M G F FUNDING, INC.,**

**RECOMMENDED DECISION  
OF ADMINISTRATIVE  
LAW JUDGE**

5  
6                                   Applicant.

7  
8  
9  

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**HEARING:** September 6, 1996

10  
11  
12                                   **APPEARANCES:** Brian Mortensen, on behalf of Applicant;  
13   Assistant Attorney General Kathryn Leonard, on behalf of  
14   the Arizona Department of Insurance.

15  
16                                   **ADMINISTRATIVE LAW JUDGE:** Richard N. Blair

17  
18                                   Based upon the entire record , the following recommended Findings of Fact,  
19   Conclusions of Law, and Recommended Order are made:

20   **FINDINGS OF FACT**

21                                   1.     On May 13, 1996, MGF Funding, Inc. ("MGF") submitted applications for a  
22   corporate life and disability insurance agent license and a corporate full lines property  
23   and casualty insurance agent license ( the "Applications") to the Arizona Department of  
24   Insurance ("Department").

25                                   2.     At all times relevant to this matter Scott Gould was and is the President of  
26   MGF and a 50% stockholder of MGF.

27                                   3.     At all times relevant to this matter Mr. Gould and Brian Mortensen were  
28   the only officers and directors of MGF and were indicated in the Applications to be the  
29   individuals designated in MGF's Arizona insurance licenses.

30   . . .

. . .

Office of Administrative Hearings  
1700 West Washington, Suite 602  
Phoenix, Arizona 85007  
(602) 542-9826

1           4.       Since May 1993, MGF's principal business is servicing loan agreements  
2 purchased from automobile dealers. Mr. Mortensen credibly testified that MGF is  
3 currently licensed with the Arizona State Banking Department and that no disciplinary  
4 action has ever been taken against that license.

5           5.       MGF answered "YES" to Questions 9 and 11 in Section G of the  
6 Applications which asks:

7                     9. Has agency applicant or any individual designated in the  
8 license EVER been refused an insurance, securities, or  
9 other license by a public authority of any jurisdiction and  
10 any license if issued to agency applicant or any other  
11 individual designated in the license, ever been suspended,  
12 revoked or denied by a public authority of any jurisdiction?

13                    11. Has agency applicant or any individual designated in the  
14 license ever been a defendant or respondent in any civil,  
15 criminal or administrative case involving allegations of fraud,  
16 misappropriation, conversion, misrepresentation, dishonesty  
17 or breach of fiduciary duty?

18           6.       It is uncontroverted that on April 5, 1995, the Arizona Corporation  
19 Commission ("ACC") issued an Order To Cease And Desist; Order Denying Application  
20 For Investment Adviser Licensure; Order Of Rescission; Order Assessing  
21 Administrative Penalty; And Consent To Same (the "Order"), Docket No. S-3049-I,  
22 In The Matter of the Investment Management Application of and Offering of Securities  
23 By: Scott A. Gould, Decision No. 59055 ("Decision No. 59055"). Mr. Gould admitted to  
24 the ACC's Findings of Fact and Conclusions of Law and consented to the entry of the  
25 Order.

26           7.       In Decision No, 59055, the ACC concluded as a matter of law that Mr.  
27 Gould, although not registered as a securities dealer, offered for sale and sold  
28 unregistered securities in violation of A.R.S. §§ 44-1841 and 44-1842 and violated the  
29 anti-fraud provisions of A.R.S. § 44-1991. The ACC also concluded that Mr. Gould: filed  
30 an application for licensure as an investment adviser which was inaccurate or misleading

1 within the meaning of A.R.S. § 44-3201(A)(1) ; was subject to a bar from membership in a  
2 National Securities Association under the Securities Exchange Act of 1934, within the  
3 meaning of A.R.S. 44-3201(A)(10); and that Mr. Gould had been found to engage in  
4 dishonest or unethical practices in the securities industry pursuant to A.R.S. § 44-  
5 3201(A)(13). The ACC ordered Mr. Gould to cease and desist from the above-described  
6 activities. The ACC further ordered Mr. Gould to make a rescission offer to the investors  
7 and pay a \$5,000.00 administrative penalty within 45 days of the entry of the Order. Mr.  
8 Gould's application for an Investment Adviser License was denied by the ACC and Mr.  
9 Gould was ordered not to apply for registration as a securities dealer, securities salesman  
10 or investment adviser representative under the Securities Act or Investment Management  
11 Act of Arizona for a period of ten years from the entry of the Order.

12 8. On June 13, 1996, the Department denied MGF's Applications .

13 9. On June 25, 1996, MGF timely filed with the Department a demand for  
14 hearing concerning this matter.

15 10. It was undisputed that Mr. Mortensen made full disclosure in the  
16 Applications concerning the 1995 ACC Order entered against Mr. Gould.

17 11. Mr. Mortensen contended that the Department should grant the  
18 Applications since MGF had no involvement in Mr. Gould's prior activity of selling  
19 unlicensed securities and Mr. Gould would not actively participate in MGF's insurance  
20 transactions.

21 **CONCLUSIONS OF LAW**

22 1. The Director has jurisdiction over this matter pursuant to A.R.S. § 20-161  
23 and 20-290.

24 2. Pursuant to A.R.S. § 20-290(B)(2), the Director may refuse to issue MGF an  
25 insurance license if, after hearing, the Director finds a record of dishonesty in business or  
26 financial matters on the part of MGF or any individual designated in MGF's license.

27 3. Scott Gould is listed in the Applications as an individual to be designated in  
28 MGF's Arizona insurance licenses if issued by the Department.  
29  
30

1 4. Mr. Gould's conduct as described above in the Findings of Fact constitutes  
2 a record of dishonesty in business or financial matters within the meaning of A.R.S. § 20-  
3 290(B)(2).

4 **RECOMMENDED ORDER**

5 Based on the foregoing, the undersigned Administrative Law Judge recommends  
6 that the Applications for a corporate life and disability insurance agent license and a  
7 corporate full lines property and casualty insurance agent license submitted to the  
8 Department by MGF Funding, Inc. on May 13, 1996, be denied.

9 Done this day, September 10, 1996.  
10

11 OFFICE OF ADMINISTRATIVE HEARINGS

12 

13 \_\_\_\_\_  
14 Richard N. Blair  
15 Administrative Law Judge  
16

17 *Original*

18 Copy transmitted by mail

19 September 10, 1996.

20 by Chris Crawford; to:

21 John King, Director  
22 Department of Insurance  
23 ATTN: Curvey Burton  
24 2910 North 44th Street, #210  
25 Phoenix, AZ 85018-7256  
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28  
29  
30