

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Removal and the Prohibition of:

No. 07F-BD052-BNK

3 **CLAUDIA DENISE RAMSEY**
4 16324 East Montrose Drive
5 Fountain Hills, AZ 85268

**SUPERINTENDENT'S FINAL
DECISION AND ORDER**

6 Respondent.

7 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the record
8 in this matter, including the transcript of the March 13, 2007 administrative hearing, and the,
9 Administrative Law Judge Decision attached and incorporated herein by this reference, adopts the
10 Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Decision.

11 ORDER

12 IT IS ORDERED that Respondent is removed from further participation in any manner in the
13 affairs of any financial institution or enterprise in the State of Arizona.

14 NOTICE

15 The parties are advised that, pursuant to A.R.S. § 41-1092.09, this Order shall be final unless
16 Petitioners submit a written motion for rehearing no later than thirty (30) days after service of this
17 decision. The motion for rehearing or review must specify the particular grounds upon which it is
18 based as set forth in A.A.C. R20-4-1219. A copy shall be served upon all other parties to the hearing,
19 including the Attorney General, if the Attorney General is not the party filing the claim of error. In the
20 alternative, the parties may seek judicial review of this decision pursuant to A.R.S. § 41-1092.08(H).

21 DATED this 19th day of April, 2007.

22 
23 _____
24 Felecia Rotellini
25 Superintendent of Financial Institutions
26
27 ...
28 ...

1 ORIGINAL filed this 19th day of
April, 2007, in the office of:

2 Felecia Rotellini
3 Superintendent of Financial Institutions
4 Arizona Department of Financial Institutions
5 ATTN: June Beckwith
6 2910 North 44th Street, Suite 310
7 Phoenix, Arizona 85018

8 COPY of the foregoing mailed/hand delivered
9 This same date to:

10 Gary R. Strickland, Administrative Law Judge
11 Office of Administrative Hearings
12 1400 West Washington, Suite 101
13 Phoenix, AZ 85007

14 Erin O. Gallagher, Assistant Attorney General
15 Office of the Attorney General
16 1275 West Washington
17 Phoenix, AZ 85007

18 Robert D. Charlton, Assistant Superintendent
19 Arizona Department of Financial Institutions
20 2910 N. 44th Street, Suite 310
21 Phoenix, AZ 85018

22 Claudia Denise Ramsey
23 16324 East Montrose Drive
24 Fountain Hills, AZ 85268

25 AND COPY MAILED SAME DATE by
26 Certified Mail, Return Receipt Requested, to:

27 Barry Mitchell, Esq.
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, AZ 85016-9225
Attorney for Respondent.

BY: June Beckwith

1
2
3
4
5
6
7
8
9

STATE OF ARIZONA
IN THE OFFICE OF ADMINISTRATIVE HEARINGS

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

In The Matter Of:

No. 07F-BD052-BNK

**DENISE CLAUDIA RAMSEY AKA
CLAUDIA DENISE RAMSEY,

RESPONDENT.**

**ADMINISTRATIVE LAW

JUDGE
DECISION**

HEARING: March 13, 2007

APPEARANCES: State : The Office of the Attorney General, Assistant Attorney General Erin Gallagher, appeared for the ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS. Testifying was Robert D. Charlton, Assistant Superintendent.

Gallagher & Kennedy, P.A., Barry Mitchell, Esq. appeared for Claudia Denise Ramsey. Ms. Ramsey testified on her own behalf.

ADMINISTRATIVE LAW JUDGE: Gary B. Strickland

This is a proceeding initiated by the ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS (hereinafter also, "the DEPARTMENT"), as authorized by Arizona Revised Statutes ("A.R.S.") Title 6, Chapter 1 and Title 41, Chapter 6, Article 10, to authorize the DEPARTMENT'S determination to preclude Respondent Denise Claudia Ramsey's (hereinafter also, "the Respondent") continued participation as director, officer, employee, or agent in and of a licensed Arizona financial institution.

Has the DEPARTMENT properly sought to preclude Denise Claudia Ramsey from continued and further participation as director, officer, employee, or agent in and of a properly-licensed Arizona financial institution under A.R.S. § 6-161(A)(1) and (6)? Has Ms. Ramsey acted in a manner demonstrating dishonesty¹?

¹ See WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 650 (2002): "dishonesty: 2 : characterized by lack of truth, honesty, probity, or trustworthiness or by an inclination to mislead, lie, cheat, or defraud"

1 As will be seen below, the DEPARTMENT has basis to issue a removal order
2 under A.R.S. § 6-161(E).

3 Having heard the testimony of the witnesses and having read and considered the
4 entire record,² Administrative Law Judge ("ALJ") Gary B. Strickland submits this
5 Recommended Decision and Order to the Executive Director of the ARIZONA
6 DEPARTMENT OF FINANCIAL INSTITUTIONS.

7 FINDINGS OF FACT

8 *Background and Procedure*

9 1. Respondent Denise Claudia Ramsey, a.k.a. Claudia Ramsey was formerly
10 employed as an escrow officer by *Land America Financial Group, Inc.* dba LAWYER'S
11 TITLE OF ARIZONA, INC. ("LAWYER'S TITLE").

12 2. LAWYER'S TITLE is licensed by the DEPARTMENT as an escrow agent, Lic.
13 No. EA-0008453.

14 3. After Respondent had left her employment with LAWYER'S TITLE, a
15 LAWYER'S TITLE employee closing Respondent's files raised question about a certain
16 transfer of funds directed by Respondent during her processing of one of the accounts.
17 Upon further investigation, it was determined that between July 1, 2005 and July 12, 2005
18 Respondent had used her position as an escrow officer to divert escrow funds from a
19 LAWYER'S TITLE into an account owned by an entity named *Rusty Rose, L.L.C.* Further
20 LAWYER'S TITLE inquiry revealed that Respondent and her husband, Gary Ramsey, were
21 managers of *Rusty Rose, L.L.C.*

22 4. The funds diverted by Respondent from LAWYER'S TITLE into *Rusty Rose,*
23 *L.L.C.* totaled approximately \$3,250.24.

24 5. On May 9, 2006, a Direct Complaint³ was filed against Respondent in *State*
25 *v. Denise Claudia Ramsey* (001), Maricopa County Superior Court No. CR2006-124583-

26 _____
27 ² The parties stipulated that the official record consists of that record having been stenographically recorded by a
28 certified court reporter, as well as the exhibits that were offered at the hearing and documentation in the
29 DEPARTMENT'S case file. The DEPARTMENT offered six exhibits, numbered S-A through S-F. Respondent offered
30 eight exhibits, marked R-1 through R-8. All of the exhibits have been received.

³ Exhibits S-A and S-C.

1 001-SE, charging Defendant therein/Respondent herein with one (1) count of Theft, a
2 Class 3 Felony, in violation of A.R.S. §§ 13-1801, 13-1802, 13-701, 13-702, 13-702.01,
3 and 13-801. The Complaint charged the Defendant with knowingly controlling funds from
4 LAWYER'S TITLE in excess of \$3,000. with the intent to deprive LAWYER'S TITLE of the
5 property between July 1, 2005 and July 12, 2005.

6 6. On July 17, 2006, the Court accepted Defendant's Plea Agreement
7 whereby Defendant pled guilty to one (1) count of Theft, a Class 6 Undesignated
8 Offense.⁴

9 7. On August 1, 2006, the Court found Defendant guilty of one (1) count of
10 Theft, a Class 6 Undesignated Offense, and suspended imposition of sentence. The
11 Court placed the Defendant on supervised probation for six (6) months and ordered her to
12 complete twenty five (25) hours of community work service and to participate in and
13 cooperate with counseling directed by the Adult Probation Department.⁵

14 8. The DEPARTMENT issued a NOTICE OF HEARING AND INTENT TO REMOVE
15 AND PROHIBIT [RESPONDENT] FROM PARTICIPATION IN ANY MANNER IN THE CONDUCT OF
16 THE AFFAIRS OF A FINANCIAL INSTITUTION OR ENTERPRISE AND COMPLAINT on January
17 23, 2007 directing that a Hearing be conducted by the Office of Administrative Hearings
18 under the authority of A.R.S. §§ 6-138, 6-161, and 41-1092.02.⁶

19 9. Most recently, on March 5, 2007, a Maricopa County Superior Court Judge
20 ordered that the Class 6 Undesignated Offense to which Defendant had pled in No.
21 CR2006-124583-001-SE be designated a Misdemeanor upon motion of Defendant. The
22 Court further ordered as follows:

23 IT IS FURTHER ORDERED vacating and setting aside any judgment or record
24 relating to [No. CR2006-124583-001-SE], dismissing any accusations in this case, and
25 completely relieving the Defendant of any penalties and/or disabilities that might result
26 from this case.⁷

27 ⁴ Exhibit S-B.

28 ⁵ Exhibit S-E.

29 ⁶ Within the Agency Hearing file.

30 ⁷ Exhibit R-7. The language of the Order, "relieving the Defendant of any penalties and/or disabilities that might result from this case" (under the authority of A.R.S. § 13-907 wherein, as an exception to its application, is specifically

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

Material Hearing Testimony
THE STATE'S CASE

22
23

Testimony of Robert D. Charlton, Assistant Superintendent

24
25
26
27

10. Robert D. Charlton, Assistant Superintendent, testified for the DEPARTMENT explaining why and on what grounds the DEPARTMENT was seeking to preclude Respondent's continued participation as director, officer, employee, or agent in and of a licensed Arizona financial institution.

11. Mr. Charlton related that from the DEPARTMENT'S perspective and through its interpretation of the governing state, a conviction is not a prerequisite to the DEPARTMENT'S action under A.R.S. § 6-161. The statute *requires* that Respondent not be permitted to continue to participate in the Arizona financial institution industry without prior approval for, among other things, an act demonstrating personal dishonesty.

12. Noting that it was a letter from the LAWYER'S TITLE escrow agent that induced the present A.R.S. § 6-161 action, Mr. Charlton observed that the infraction goes to the heart of fiduciary responsibility; the question is simply one of dishonesty, a trait inimical to fiduciary capacity. Having acknowledged her transgression does not relive Respondent from the consequences thereof.

13. Upon cross-examination, Mr. Charlton related that the DEPARTMENT does not intend by its action to impose the "death penalty," as implied by the question posed; rather, the DEPARTMENT is fulfilling its legislatively-imposed obligation.

28
29
30

RESPONDENT'S CASE

Testimony of Claudia Denise Ramsey

14. Respondent testified on her own behalf. She related that her action for which she has been charged and for which she fulfilled the requirements of the Court was personally anomalous, an aberration quite out of line with her character. She states that her transgression, while stress-induced, is by her inexplicable as to ultimate cause.⁸

identified the *Department of Transportation* and the *Game and Fish Commission*), poses an interesting challenge vis-à-vis the legislative enablement of A.R.S. § 6-161(E).

⁸ See Hearing Transcript ("HT") at page 36, lns. 3-9.

The Weight of the Evidence and Analysis

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
27
28
29
30

18. The weight and sufficiency of the evidence preponderates that Denise Claudia Ramsey, a.k.a. Claudia Ramsey falls within that class of individuals addressed by A.R.S. § 6-161. Further, it is uncontested that, at this stage, a “removal order” has not been made final. The act for which she was convicted and the offense for which her conviction has been reclassified was one of dishonesty. Respondent does not deny the act, an unauthorized diversion of escrow funds from LAWYER'S TITLE into an entity named *Rusty Rose, L.L.C.* While Respondent cannot account for her action, assertedly anomalous as to her overall character, the act itself is demonstrative¹² of dishonesty.

19. Further, it is uncontested that a “removal order” and application for dispensation and exception, prerequisites to reentry into the field of activity, have not been accomplished. Therefore, it is premature at this juncture to address the force and effect of the Court’s “relieving the Defendant of any penalties and/or disabilities that might result from this case [under the authority of A.R.S. § 13-907]” language and to assess whether preclusion involves an abuse of the Superintendent’s discretion.

CONCLUSIONS OF LAW

1. The ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS is authorized to regulate persons engaged in the escrow agent business and to enforce the statutes and regulations that have been promulgated in an effort prescribe the nature and extent of that enforcement.

2. Respondent’s admission of the act in question, an unauthorized diversion of escrow funds from LAWYER'S TITLE into an entity named *Rusty Rose, L.L.C.*, evinces occurrence of a violation of the prescriptions and proscriptions of A.R.S. §§ 6-834(A)¹³ and 6-841.01(A).¹⁴

¹² See A.R.S. § 6-161(A)(1).

¹³ A.R.S. § 6-834(A):

A. Unless all of the parties to the escrow otherwise instruct the escrow agent in writing, the escrow agent shall deposit and maintain all monies deposited in escrow to be delivered on the close of the escrow or on any other contingency in a bank, savings bank or savings and loan association doing business in this state and the escrow agent shall keep all of the escrow monies separate, distinct and apart from monies belonging

1 3. Respondent's conduct, to which she freely admits,¹⁵ constituted an act
2 demonstrative of personal dishonesty permitting her removal from and prohibition
3 against continued employment as an escrow agent under the authority of A.R.S. § 6-
4 161(A)(1). While the act itself does not necessarily attest to a character *trait* of
5 dishonesty, it nonetheless constituted an *act* ("has engaged in") of personal dishonesty.
6 That is all that the statute requires.

7 4. Respondent's conduct, to which she freely admits, violated the
8 prescriptions and proscriptions of A.R.S. §§ 6-834(A) and 6-841.01(A) and constitutes
9 grounds for the DEPARTMENT to foreclose, by final order, her continued participation as
10 director, officer, employee, or agent in and of a licensed Arizona financial institution.

11 6. Respondent's conduct, to which she freely admits, constitutes grounds
12 upon which the Superintendent may order her removal from and prohibition against
13 continued employment as an escrow agent under the authority of A.R.S. § 6-161(A),
14 subject to application for dispensation by a prospective employing financial institution
15 under A.R.S. § 6-161(E).

16 7. The burden of persuasion generally at an administrative Hearing falls to
17 the party asserting a claim, right or entitlement or seeking to impose a penalty.¹⁶

18 to the escrow agent. Notwithstanding the parties' instructions to the escrow agent, the escrow agent shall not
19 deposit the escrow monies in an institution outside the United States. When deposited, the monies shall be
20 designated as "escrow accounts" or given some other appropriate designation indicating that the monies are
21 not the monies of the escrow agent. These monies shall be deposited immediately on receipt or as soon
22 thereafter as is reasonably practicable.

23 ¹⁴ A.R.S. § 6-841.01(A):

24 A. An escrow agent is the trustee of all monies received or collected and held in escrow. An agent shall not
25 knowingly or negligently commingle trust monies with the escrow agent's own monies or with monies held
26 in any other capacity. Every escrow agent and every officer, director and employee of an escrow agent who
27 has actual knowledge of fraud or dishonesty in the application of escrow monies, owes a fiduciary duty as
28 trustee to the owner of the monies held in escrow.

29 ¹⁵ See FINDING OF FACT ¶ 14, above.

30 ¹⁶ See A.R.S. § 41-1092.07(G):

G. Except as otherwise provided by law:

1 Moreover, the standard of proof generally is that of the "preponderance of the
2 evidence".¹⁷ Proof by a preponderance means that the evidence is sufficient to
3 persuade the finder of fact that the proposition is ". . . more likely true than not."¹⁸ The
4 evidence taken as a whole must convince the decision maker that the party who bears
5 the overall burden of persuasion is more probably correct on the issue(s) in dispute.

6 8. In this proceeding, the DEPARTMENT has borne its burden.

7 9. The underlying purpose of ARIZONA DEPARTMENT OF FINANCIAL
8 INSTITUTIONS oversight is to protect the public interest.¹⁹

9 10. The Arizona legislature has directed that statutes be liberally construed in
10 an effort to affect their objects and promote justice.²⁰ Statutes wherein penalty may be
11 imposed pursuant to application thereof, such as that found at Title 6, Chapter 1, are to
12 be construed according to the fair import of their terms.²¹ At this stage of the
13 assessment, given the procedure required by the statute, the legislative language has
14 been construed according to the fair import of its terms.

15 . . .

16 . . .

17 . . .

18 2. At a hearing on an agency action to suspend, revoke, terminate or modify on its own initiative material
19 conditions of a license or permit, the agency has the burden of persuasion.

20 ¹⁷ See *Culpepper v. Arizona Board of Nursing*, 187 Ariz. 431, 930 P.2d 508 (App. 1997); See also Ariz. Admin.
21 Code R2-19-119(A).

22 ¹⁸ See *In re Arnold and Baker Farms*, 177 B.R. 648, 654 (9th Cir. BAP (Ariz.) 1994) citing *In re Winship*, 397 U.S.
23 358, 371 (1970). ("A preponderance of the evidence standard . . . simply requires the trier of fact 'to believe that the
24 existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the
25 burden to persuade the [judge] of the fact's existence.'"). See also J. LIVERMORE, R. BARTELS, & A. HAMEROFF,
26 LAW OF EVIDENCE § 301.1(4th ed. 2000) (One party bears the overall burden of persuasion on each fact material to
the party's claims and defenses. Further, the party with the burden of persuasion on a particular fact is required to
satisfy the burden of production of enough qualitative evidence sufficient to support a finding of the existence of the
fact, following a reasonable person standard.)

27 ¹⁹ A.R.S. § 6-124(A); A.R.S. § 6-817(A); and A.R.S. § 6-841.01.

28 ²⁰ A.R.S. § 1-201(B);

29 ²¹ A.R.S. § 1-201(C).

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
27
28
29
30

RECOMMENDED ORDER

IT IS RECOMMENDED that the ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS issue a final order precluding Respondent Denise Claudia Ramsey's continued participation as director, officer, employee, or agent in and of a licensed Arizona financial institution.

Done this 27th day of March 2007.



Gary B. Strickland
Administrative Law Judge

Original transmitted by mail this
28th day of March 2007 to:

ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS
Felecia Rotellini, Superintendent
Att'n: June Beckwith
2910 North 44th Street, Suite 310
Phoenix, AZ 85018

By  _____