STATE OF ARIZONA
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DEPT. OF INSURANCE
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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of: CARL ARNAL, SAGUARO PUBLIC ADJUSTERS, INC. and THE CONSORTIUM OF PUBLIC ADJUSTERS, Respondents.	)))))))))	Docket No. 02A-038-INS **ORDER**

On November 15, 2002, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, issued an Administrative Law Judge Decision ("Recommended Decision"), 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 recommended Findings of Fact and Conclusions of Law are adopted, except for Conclusion of Law no. 9, which is rejected.

2. The recommended Order is modified, as follows: all insurance licenses issued by the Department to the Respondents, Carl Arnal, Saguaro Public Adjusters, Inc., and The Consortium of Public Adjusters shall be revoked effective the date of this Order. Respondents shall be jointly and severally responsible to make restitution as follows: (a) $271,193.99 to Sucasa Produce Partnership; (b) $244,876.41 to Temple La Hermosa Church and Academy; and (c) $104,925.52 to Red Dog Rebuilders, L.L.C.

JUSTIFICATION FOR REJECTION AND MODIFICATIONS

The Administrative Law Judge took pains to fashion a restitution order that would be a technically appropriate disposition of the monetary damage elements of this matter by a court of

competent jurisdiction to make and enforce such awards. He was careful to consider what restitution the victims may yet receive via legal proceedings, so as not to duplicate any awards. However, unlike the awards in the legal proceedings of concern to the ALJ, restitution ordered in this case is not legally enforceable in and of itself. There is no reason, nor equity, in limiting the amount of the restitution ordered herein for technical reasons. There is no danger of duplicate recovery arising from this order.

The undersigned wishes the disposition of this matter to reflect that the Respondents' are ordered, jointly and severally, to make restitution to their victims of the full amount of transactional monetary damage caused by their subject misconduct, less any amounts already restored. The restitution ordered herein is limited to the unsatisfied damages arising directly out of the transactions performed under the authority of the licenses granted by this agency. Interest, costs, attorneys' fees and punitive damages are all creatures of the judicial proceedings instituted to resolve the legal disputes arising out of the conduct in question. It would not be relevant or appropriate for the undersigned to order payment of those amounts.

Future payments to the victims on the Respondents' account will be regarded as satisfaction of the restitution ordered herein, *pro tanto*, regardless whether that same restitution is subsequently ordered or enforced elsewhere.

NOTIFICATION OF RIGHTS

Pursuant to A.R.S. § 41-1092.09, the aggrieved party 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.

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

DATED this 22nd of November, 2002

Charles R. Cohen
Director of Insurance

A copy of the foregoing mailed
this 25th day of November, 2002

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Gerrie Marks, Executive Assistant for Regulatory Affairs
Mary Butterfield, Assistant Director
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Kathy Lundin

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:	No. 02A-038-INS
CARL ARNAL, SAGUARO PUBLIC ADJUSTERS, INC., and THE CONSORTIUM OF PUBLIC ADJUSTERS,	**ADMINISTRATIVE LAW JUDGE DECISION**
Respondents.	

HEARING: October 17, 2002. Record closed on October 28, 2002, upon submission of written closing argument.

APPEARANCES: Assistant Attorney General Mary Kosinski appeared on behalf of the Arizona Department of Insurance; Respondents Carl Arnel, Saguaro Public Adjusters, Inc., and the Consortium of Public Adjusters failed to appear at the hearing.

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

FINDINGS OF FACT

1. At the commencement of the hearing, the Arizona Department of Insurance (Department) represented that Mr. Allen entered into a Consent Order with the Department and requested that the caption be amended to delete Mr. Allen as a named respondent in this matter. The motion was granted by the Administrative Law Judge.

2. At all times material to this matter, Carl Arnal (Mr. Arnal) was licensed as an adjuster in the state of Arizona.

3. Adan Marin Allen (Mr. Allen) was at all times material to this matter, and currently is, licensed as an adjuster in the state of Arizona.

4. The Consortium of Public Adjusters, Inc. (Consortium) doing business as the

. . .

. . .

Consortium of Public Adjusters also known as CPA was at all times material to this matter and currently is licensed as an adjuster in the state of Arizona.

5. In an application Mr. Arnal filed with the Department on July 10, 1998, for the Consortium to receive an adjuster's license as a corporation (the Application), the Consortium represented that it was an Arizona corporation.

6. The evidence of record established that although the Consortium filed Articles of Incorporation with the Arizona Corporation Commission, the Articles of Incorporation were not accepted to effectuate the incorporation process and that document was returned to the Consortium to resubmit with further information. The Consortium did not resubmit the Articles of Incorporation with the Arizona Corporation Commission and did not complete the filing process to be incorporated in the state of Arizona.

7. At all times material to this matter, Saguaro Public Adjusters, Inc. (Saguaro) was licensed as an adjuster in the state of Arizona.

8. The Affidavit of Verification on the Application, executed by Mr. Arnal, states in relevant part, that the Consortium "is organized under the laws of the State of Arizona or possesses official authority to do business in Arizona."

9. The Application lists Mr. Arnal as the Consortium's president and vice-president.

10. Attached to the Application submitted to the Department was a copy of the Consortium's Articles of Incorporation indicating it was date-stamped by the Arizona Corporation Commission on November 10, 1997 and the Articles of Incorporation has a stamp displaying the word "Expedited".

11. Based on the Application and attached Articles of Incorporation of the Consortium, the Department issued the above-mentioned adjuster's license to the Consortium.

12. Department Investigator Marcia Croddy (Investigator Croddy) testified that subsequent to the issuance of an adjuster's license to the Consortium, the Department discovered that the Consortium did not complete its filing of Articles of Incorporation with the Arizona Corporation Commission and that the records of the Arizona Corporation Commission do not show the Consortium as being a corporation authorized to do business in the State of Arizona.

Sucasa Produce Partnership's Claim

13. At all times material to this matter, Sucasa Produce Partnership (Sucasa) was and currently is engaged in the fresh fruit and vegetable sale and distribution business.

14. In July 1999, one of Sucasa's warehouses had been destroyed and the other three warehouses sustained fire damage.

15. During the time of the above-mentioned fire, Sucasa was insured by Hartford Casualty Company (Hartford) for coverage of fire damage and loss.

16. Shortly after the fire, Mr. Arnal contacted Sucasa on behalf of the Consortium to be hired as an adjuster for Sucasa to negotiate its fire damage/loss claim regarding the warehouses.

17. On July 23, 1999, Sucasa executed an Adjuster's Authorization, a written contract, authorizing the Consortium to advise and assist in the adjustment of a fire damage/loss claim on behalf of Sucasa in exchange for 10% of the amount recovered.

18. Lester Sugino (Mr. Sugino), Sucasa's general manager, testified that the Consortium investigated, negotiated, and adjusted Success's fire claim with Hartford.

19. The evidence of record established that Hartford issued several checks made jointly payable to Sucasa and the Consortium.

20. Mr. Sugino testified that the above-mentioned checks were endorsed by Sucasa and forwarded to the Consortium for endorsement.

21. Copies of the above-mentioned checks (State's Exhibit 7) established that the Consortium endorsed the checks and deposited them in the Consortium's trust account.

22. Mr. Sugino testified that despite demands made by Sucasa for release of the funds provided by Hartford in settlement of Sucasa's fire damage/loss claim, the Consortium did not release the funds to Sucasa.

23. Jeff Nieder (Mr. Nieder), Sucasa's chief financial officer, testified that on behalf of and with Sucasa's authorization, the Consortium distributed payment to contractors for rebuilding the warehouse. According to Mr. Nieder, $292,500.00 is the net sum that the Consortium owes Sucasa from the funds received by Hartford after deducting the above-mentioned construction costs and 10% fee due the Consortium.

. . .

24. The evidence of record established that Sucasa endorsed and forwarded to the Consortium six checks issued by Hartford totaling $778,899.00, which the Consortium endorsed and deposited into its checking account.

25. The total amount that was agreed to by Sucasa and Hartford for settlement of the fire damage/loss claim regarding the warehouses, excluding the HVAC system located in warehouse building C and the tomato packaging machine control panel, was $850,000.00.

26. Sucasa initiated a lawsuit in the Pima County Superior Court to collect the monies that the Consortium did not release to Sucasa. Sucasa obtained a Default Judgment in the principal sum of $377,566.09 with interest on that sum at the rate of 10% per annum from May 17, 2000 and for Sucasa's costs of $302.00.

27. Mark L. Collins (Mr. Collins), Sucasa's attorney in the above-referenced civil matter, testified that Sucasa has received no payments in satisfaction of the Default Judgment and has recovered $122,803.28 for a Bank of Tucson bank account and $21,306.00 from a Bank of Arizona bank account through garnishment proceedings.

28. Mr. Collins testified that $104,925.52 of the $122,803.28 obtained from the Bank of Tucson bank account is currently the subject of litigation between Sucasa and Red Dog Rebuilders, L.L.C. (Red Dog), Respondents' client and another claimant whose situation is addressed below. Mr. Collins testified that a trial regarding that sum is expected to take place in February 2003.

Red Dog's Claim

29. On February 3, 2000 Red Dog's property at 325 East 36th Street, Tucson, Arizona, sustained fire damage. Red Dog was insured by Westport Insurance Corporation (Westport).

30. Mr. Arnal solicited Red Dog concerning Respondents' adjuster services.

31. On February 29, 2000, Red Dog executed an Adjuster's Authorization with the Consortium whereby in exchange for Consortium's services in adjusting Red Dog's insurance claim with respect to the above-mentioned fire, the Consortium would receive 10% of any amount recovered from the insurer.

32. On September 8, 2000, Westport issued check number 004660, payable to Red Dog, AZ Bank its Success and Assigns, Consortium Public Adjusters, Inc. c/o Paul

Gilbert Crawford & Co. in the amount of $104,925.52. On September 19, 2000, the Consortium deposited the above-mentioned check into its trust account with the Bank of Tucson.

33. On October 2, 2000, the Consortium issued a check from its Bank of Tucson trust account, check number 7055 issued to Shamalta Construction on behalf of Red Dog in the amount of $25,000.00. The check was returned to Shamalta Construction marked by the Bank of Tucson as "Refer to Maker".

34. On November 1, 2000, Red Dog terminated the above-mentioned agreement with the Consortium and demanded payment of $104,925.52

35. On November 21, 2000, Red Dog instituted a lawsuit in the Pima County Superior Court against the Consortium, Mr. Arnal and his wife, Saguaro, and Public Adjusters Bureau, L.L.C. Pima County Superior Court Case Number C2000-5870.

36. On May 3, 2001, Red Dog obtained a Default Judgment in the above-mentioned case against Mr. Arnal, the Consortium, Saguaro, and Public Adjusters Bureau, L.L.C. in the amount of $205,552.30 and punitive damages in the amount of $200,000.00 together with costs of $519.00 and attorneys' fees in the amount of $37,944.51 plus interest thereon at the rate of 10% per annum.

37. Investigator Croddy testified as to the above and supporting documentation that the Department received from Red Dog.

38. Inspector Croddy also testified that Red Dog has not received any payments from the Respondents in satisfaction of the Default Judgment.

Temple La Hermosa Church and Academy's Claim

39. Temple La Hermosa Church and Academy (the Church) sustained fire damage to one of its buildings in early 1997. At the time of the fire, the Church was insured by Preferred Risk Mutual Insurance Company for fire loss.

40. Ernest Baird (Mr. Baird), counsel for the Church and Mr. Moises Herrera (Mr. Herrera), the pastor and former owner of the above-mentioned Church property, testified that he handled the insurance claim regarding the above-mentioned fire loss.

41. Mr. Baird testified during the course of handling of the Church's claim, Preferred became known as Guide One Insurance Company (Guide One) and Guide One became the responsible entity handling the Church's fire loss claim.

42. After the fire loss, Mr. Herrera hired Saguaro to adjust the Church's fire loss claim. Mr. Herrera dealt with Mr. Arnal, who acted on behalf of Saguaro.

43. Mr. Baird testified that he could not locate a written agreement between Saguaro and the Church concerning the hiring of Saguaro as an adjuster. However, Mr. Baird testified that during the course of the handling the Church's insurance claim, Mr. Arnal never disputed that Saguaro and the Church had entered into a contractual arrangement for Saguaro to act as a public adjuster for the Church in exchange for 10% of the amount recovered from the insurer.

44. Mr. Baird testified that during the course of handling the Church's fire loss claim, the Consortium took over as public adjuster for Saguaro and continued to work in adjusting the fire loss claim on behalf of the Church.

45. The evidence of record established that Respondents acted as a public adjuster on behalf of the Church/Mr. Herrera and retained the above-mentioned 10% fee.

46. Saguaro/the Consortium negotiated a settlement on behalf of the Church with Guide One in the amount of $407,640.46. Guide One checks in that amount were issued, endorsed by the Church and forwarded to Saguaro/the Consortium where they were endorsed and deposited into a trust account.

47. The Consortium withdrew $40,764.06 from the insurance settlement proceeds pursuant to its agreement with the Church, representing its fee of 10% of the amount recovered.

48. On the Church's behalf, the Consortium made payments totaling $122,000.00 to Shamalta Construction Company, who was the contractor hired by the Church to rebuild the building that had sustained fire damage.

49. Despite demands made by the Church, the Consortium held and did not release to the Church the net sum of $244,876.40 representing the amount that Saguaro/the Consortium had received in settlement of the above-mentioned fire loss claim less payment made to Shamalta Construction Company and the 10% fee owed to Saguaro/the Consortium.

50. On December 15, 2000, Mr. Herrera and the Consortium instituted a lawsuit against Mr. Arnal, the Consortium and Saguaro in the Maricopa Country Superior Court.

51. On June 11, 2002, the Church obtained a Default Judgment against the Respondents in the above-mentioned case in the principal sum of $244,876.41, with interest thereon at the rate of 10% per annum and costs in the amount of $294.00.

52. Mr. Baird testified that to date, none of the Respondents have paid any amount to satisfy the above-mentioned Default Judgment.

Department's Subpoena

53. Investigator Croddy testified that on March 1, 2001, she caused the Department to issue a Subpoena Duces Tecum to Mr. Arnal on behalf of the Consortium requesting certain documents relating to the Church, Sucasa, and Red Dog and Mr. Arnal's appearance for an examination under oath on March 14, 2001.

54. Investigator Croddy testified that on March 7, 2001, the Department received the signed receipt indicating that the Consortium received the subpoena.

55. Mr. Allen, a former employee of the Consortium, testified that while he was employed by the Consortium he became aware that Mr. Arnal had received the above-mentioned subpoena.

56. On March 13, 2001, Mr. Arnal sent a request to the Department for additional time to prepare documentation for the examination under oath. Investigator Croddy testified that she was present when the Department placed a telephone call to Mr. Arnal and left a message with his secretary that he had ten days to contact the Department to reschedule the examination under oath. Neither the Consortium nor Mr. Arnal contacted the Department to reschedule the examination under oath.

57. Investigator Croddy testified that to date, Mr. Arnal and the Consortium have failed to comply with the above-mentioned subpoena.

58. Inspector Croddy testified that a Consent Order was entered into by Mr. Arnal, Saguaro, and the Department *In the Matter of Carl Arnal and Saguaro Public Adjusters, Inc.*, Docket number 00A-047-INS, wherein Mr. Arnal and Saguaro admitted to having engaged in conduct that constituted a record of dishonesty in business or financial matters. By virtue of the Consent Order, Mr. Arnal and Saguaro's adjuster licenses were suspended for forty-five days and Mr. Arnal was ordered to pay a civil penalty in the sum of $2,000.00.

59. The above-mentioned Consent Order was considered in determining the nature of the discipline to be imposed in the instant matter.

60. The testimony of all of the above-mentioned witnesses for the Department is determined to be credible and accordingly, given great weight.

CONCLUSIONS OF LAW

1. Pursuant to A.R.S. § 20-295(H), the Director of the Department (Director) has the authority to enforce A.R.S., Title 20 and to impose any penalty or remedy authorized thereunder against any person who is under investigation or charged with a violation of that title even if the persons license has been surrendered or lapsed by operation of law.

2. Mr. Arnal's filing of documents in conjunction with the Consortium's application for licensure as a public adjuster constitutes providing incorrect, misleading, incomplete or materially untrue information in a license application within the meaning of A.R.S. §§ 20-295(A)(1) and 20-321.02.

3. The above-mentioned conduct of the Respondents constitutes improperly withholding, misappropriation or conversion of monies received in the course of doing insurance business within the meaning of A.R.S. §§ 20-295(A)(4) and 20-321.02.

4. The above-mentioned conduct of Respondents constitutes using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the state of Arizona within the meaning of A.R.S. §§ 20-295(A)(8) and 20-321.02.

5. The conduct of the Respondents as set forth above, constitutes a violation of any provisions of A.R.S. Title 20, or any rule, subpoena or order of the Director within the meaning of A.R.S. §§ 20-295(A)(2) and 20-321.02.

6. Grounds exist to suspend, revoke or refuse to renew Respondents' insurance licenses and/or impose a civil penalty and or impose restitution pursuant to A.R.S. §§ 20-295(A), 20-295(F), and 20-321.02.

7. The weight of the evidence of record established that Respondents withheld monies form Sucasa, Red Dog, and the Church and failed to provide the monies to the above-mentioned clients when requested to do so.

8. The weight of the evidence of record established that Respondents withheld the sum of $292,499.99 from Sucasa, withheld the sum of $104,925.52 from Red Dog, and withheld the sum of $244,876.41 from the Church, which monies represent settlement funds obtained as a result of settlement of fire loss claims made with their respective carriers.

9. Although the Administrative Law Judge find that Respondents withheld certain funds from the Red Dog, Sucasa, and the Church, restitution for the full sum is not warranted. Restitution is defined as [a]n equitable remedy under which a person is restored to his or her original position prior to loss or injury, or placed in the position he or she would have been, had the breach not occurred." BLACKS LAW DICTIONARY 1313 (6th ed .1990). In this case, the sum of $104,925.52 that Sucasa obtained through garnishment proceedings against Respondents is the subject of litigation between Sucasa and Red Dog. That means that, ultimately, one of those two entities will be successful in obtaining that sum, or perhaps both entities may recover a lesser amount derived from the garnishment.

As a result of the pending litigation, should Red Dog or Sucasa retain any portion of the $104,925.52, the amount that those entities would be entitled to receive as restitution from Respondents would be reduced by the recovery amount. Consequently, if any amount were to be awarded in this proceeding, that could result in Red Dog, Sucasa or both of them potentially being made more than whole depending on the outcome of the pending litigation.

As noted above, the purpose of restitution is to be made whole. At this point in time, it is premature and inappropriate for the Administrative Law Judge to make a recommendation for the $104,925.52 to either Red Dog or Sucasa because of the potential for recovery by those entities. The Administrative Law Judge determines that any restitution to be awarded in this proceeding must be reduced by $104,925.52 with respect to both Sucasa and Red Dog. Thus, for Sucasa the restitution amount should be $148,390.71 ($144,109.28 obtained through garnishment, of which $104,925.52 is the subject of pending litigation being subtracted from the total amount of $292,499.99 that was determined to have been withheld by Respondents) and no restitution is

awarded Red Dog because the amount withheld ($104,925.52) equals the amount that is the subject of pending litigation.

RECOMMENDED DECISION

IT IS RECOMMENDED that all insurance licenses issued by the Department to the Respondents Mr. Arnal, Saguaro, and the Consortium be revoked on the effective date of the Order entered in this matter.

IT IS ALSO RECOMMENDED that Respondents be jointly and severally responsible to submit to the Department restitution payments within forty-five days of the effective date of the Order entered in this matter as follows: (a) $148,390.71 to Sucasa and (b) $244,876.41 to the Church.

Done this day, November 15, 2002.

Lewis D. Kowal
Administrative Law Judge

Original transmitted by mail this
15 day of November, 2002, to:

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By Chris Crawford Thomson