

JUN 13 2006

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPT OF INSURANCE  
BY CB

In the Matter of: )  
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)  
DAVID W. MURPHY; MURPHY )  
& ASSOCIATES; INSURANCE )  
SERVICES, INC.; COLLEEN WATTS; )  
MURPHY; EXPRESS PROTECTION )  
INSURANCE SERVICES., )  
)  
Respondents. )  
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Docket No. 05A-158-INS

**ORDER**

On June 7, 2006, the Office of Administrative Hearings, through Administrative Law Judge ("ALJ") Thomas Shedden, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on June 8, 2006, 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.
2. The licenses of Respondents David William Murphy, Murphy & Associates Insurance Services, Inc., Colleen Watts Murphy, Express Protection Insurance Agency, Inc., and Nicholas Jon Murphy shall be revoked.
3. Respondents David William Murphy, Colleen Watts Murphy and Nicholas Jon Murphy shall pay a civil penalty of \$7,500.
4. Respondent David William Murphy shall pay an additional civil penalty of \$2,000.



1 Office of Administrative Hearings  
1400 W. Washington, Suite 101  
2 Phoenix, AZ 85007

3 Moira McCarthy  
Assistant Attorney General  
4 1275 W. Washington  
Phoenix, AZ 85007

5 David William Murphy  
6 10937 N. 123<sup>rd</sup> Street  
Scottsdale, AZ 85259

7 Murphy & Associates Insurance Services, Inc.  
8 8436 E. Shea, #100  
Scottsdale, AZ 85260

9 Colleen Watts Murphy  
10 10937 N. 123<sup>rd</sup> Street  
Scottsdale, AZ 85259

11 Xpress Protection Insurance Services, Inc.  
c/o Colleen Watts Murphy  
12 10937 N. 123<sup>rd</sup> Street  
13 Scottsdale, AZ 85259

14 Nicholas Jon Murphy  
c/o David Murphy  
15 10937 N. 123<sup>rd</sup> Street  
Scottsdale, AZ 85259

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**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of:

**No. 05A-158-INS**

DAVID W. MURPHY; MURPHY &  
ASSOCIATES  
INSURANCE SERVICES, INC.; COLLEEN  
WATTS  
MURPHY; XPRESS PROTECTION  
INSURANCE

**ADMINISTRATIVE LAW JUDGE  
DECISION**

SERVICES,

Respondents.

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**HEARING:** May 18, 2006.

**APPEARANCES:** No one appeared for any of the Respondents; Assistant Attorney General Moira A. McCarthy appeared on behalf of the Arizona Department of Insurance.

**ADMINISTRATIVE LAW JUDGE:** Thomas Shedden

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The Arizona Department of Insurance sought to revoke each Respondent's license and civil penalties based on numerous alleged violations of A.R.S. Title 20.

**FINDINGS OF FACT**

1. Respondent David William Murphy is licensed by the Department as a property, casualty, life/accident and variable life/variable annuities producer, license number 38619. License number 38619 expired on March 31, 2006. See Exhibit 1.
2. Respondent Murphy & Associates Insurance Services, Inc. ("Murphy & Associates") is an Arizona corporation licensed by the Department as a property, casualty, life/accident and variable life/variable annuities producer, license number 134342. License number 134342 expires on June 30, 2006. See Exhibit 2.
3. David Murphy is the President/CEO of Murphy & Associates. See Exhibit 3.

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- 1 4. Respondent Colleen Watts Murphy is licensed by the Department as a property,  
2 casualty, life accident/health producer, license number 115416. License number  
3 115416 expires on February 28, 2009. See Exhibit 4.
- 4 5. Colleen Murphy is the Secretary and Statutory Agent for Murphy & Associates.  
5 See Exhibit 3.
- 6 6. Colleen Murphy and David Murphy are husband and wife.
- 7 7. Respondent Xpress Protection Insurance Agency, Inc. ("Xpress ") is licensed by  
8 the Department as a property, casualty, life accident/health producer, license number  
9 159166. License number 159166 expired on August 31, 2005. See Exhibit 5.
- 10 8. Colleen Murphy is the President and the sole Director of Xpress. See Exhibit 6.
- 11 9. Respondent Nicholas Jon ("Nick") Murphy is licensed by the Department as a  
12 property, casualty, life accident/health producer, license number 163071. License  
13 number 163071 expired on October 31, 2005. See Exhibit 7.
- 14 10. Nicholas Murphy is David Murphy's son.
- 15 11. On June 2, 2005 the Department received a complaint about David Murphy from  
16 Ms. Nikki Summerville, owner of Agronomic Resource Group, Inc.
- 17 12. The Department conducted an investigation, which included an Examination  
18 Under Oath ("EUO") of David Murphy and an Examination Under Oath of Colleen  
19 Murphy. See Exhibits 20 and 21.
- 20 13. On March 27, 2006 the Department issued a Notice of Hearing in which it  
21 alleged that grounds existed to revoke all Respondents' licenses. The Department  
22 alleged that Respondents had: (1) intentionally misrepresented the terms of an actual  
23 or proposed insurance contract or application in violation of A.R.S. § 20-295(A)(5); (2)  
24 engaged in conduct constituting fraudulent or dishonest practices and or incompetence,  
25 untrustworthiness or financial irresponsibility in the conduct of business in violation of  
26 A.R.S. § 20-295(A)(8); (3) knowingly prepared an application for the issuance or  
27 renewal of insurance that contains untrue statements of material fact in violation of  
28 A.R.S. § 20-463(A)(1)(a); and (4) violated provisions of A.R.S. Title 20, in violation of  
29 A.R.S. § 20-295(A)(2). See Notice of Hearing.

1 14. The Department also alleged that Colleen Murphy had improperly withheld,  
2 misappropriated or converted money received in the course of doing insurance  
3 business in violation of A.R.S. § 20-295(A)(4). See Notice of Hearing.

4 15. The Department also alleged that David Murphy (1) had offered to pay as an  
5 inducement a rebate of premiums payable on a contract in violation of A.R.S. § 20-449;  
6 and (2) engaged in conduct that constitutes forging another's name to any document  
7 related to an insurance transaction in violation of A.R.S. § 20-295(A)(10). See Notice of  
8 Hearing.

9 16. Based on these allegations the Department seeks revoke or to refuse to renew  
10 each Respondent's License and the imposition of civil penalties.

11 17. The Notice of Hearing set the matter for 1:00 p.m. on May 18, 2006. By Minute  
12 Entry dated March 29, 2006 the start time was moved to 1:30 p.m. on May 18, 2006.

13 18. At 1:30 p.m. on May 18, 2006 no representative for any of the Respondents was  
14 present, and no good cause was given for their failure to appear. After a 15 minute  
15 grace period the Administrative Law Judge convened the hearing in Respondents'  
16 absence.

17 19. The Department presented the testimony of Ms. Nikki Summerville, Mr. David  
18 Pettycrew, Ms. Erin Driver, and Mr. Bob Hill. The Department had 23 exhibits admitted  
19 into evidence (some exhibits have subparts designated by letter, e.g. 12, 12 a, 12 b...).

20 Ms. Summerville's Testimony

21 20. Ms. Summerville is the owner and administrator of Agronomic Resource Group,  
22 Inc. ("Agronomic"). Ms. Summerville wanted to replace the existing group health  
23 coverage for her employees and was introduced to David Murphy, who sold her a  
24 United Health Care ("United") Policy.

25 21. Agronomic also wanted a workman's compensation policy for Agronomic's  
26 operations in Nevada. David Murphy purportedly arranged for such a policy through  
27 Cybercomp, and Agronomics paid \$765.00 for the policy, however, no such policy was  
28 ever issued.

29 22. On June 2, 2005 Ms. Summerville contacted the Department to request its help  
30 on these matters. See Exhibit 10.

*United Health Care Policy*

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23. Ms. Summerville and David Murphy had several conversations and she received two or three quotes on the United policy from David Murphy.

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24. Ms. Summerville bought the United policy. See Exhibit 11 (application naming Nick Murphy as the broker and Xpress Protection as the agency and purportedly bearing Nick Murphy's signature).

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25. Ms. Summerville never had any contact in person or by telephone with Nick Murphy but now understands that he is David Murphy's son. Ms. Summerville also had no contact with Colleen Murphy during the negotiations.

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26. Ms. Summerville did not know that David Murphy was not an authorized representative of United.

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27. David Murphy and Colleen Murphy went to California where these two met with and discussed the United policy with Agronomic's employees that lived and worked in that state.

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28. Those Agronomic's employees that wanted the United coverage filled out applications that were forwarded to David Murphy. See Exhibit 13a – 13g (original applications showing California mailing addresses). Exhibits 12a – 12g are the copies of these original applications in which the employee addresses have been changed to Arizona.

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29. The California based employees' "welcome" packets from United were sent to Ms. Summerville in Arizona. These packets had Arizona addresses listed for the California employees. See Exhibit 15 (cover pages only).

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30. The proof of coverage cards (ID cards) for the California employees were also sent to Ms. Summerville in Arizona, and these had Arizona addresses for the employees, who all live in California. Ms. Summerville contacted David Murphy and he told her that United had made a mistake. A second set of cards arrived in Arizona and these also had Arizona addresses. Ms. Summerville was able to print temporary cards and send these to her employees.

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31. Ms. Summerville contacted United and spoke to Ms. Driver. Ms. Driver informed her that United was not allowed to write health care policies in California because it had a non-compete arrangement with another insurer.

1 32. United canceled the Agronomic policy and Agronomic had to scramble to get  
2 replacement coverage. Some employees had medical bills that were not covered  
3 because of the address and ID card problems. Ms. Summerville had to pay some of  
4 these bills and United helped out with others. Several employees left Agronomic  
5 because of the problems with the health insurance.

6 33. The United policy was to be paid for through payroll deductions, and Agronomic  
7 was to reimburse the company administering its payroll, Paytech.

8 34. A Paytech representative told Ms. Summerville that Paytech was paying out  
9 more than Agronomic was reimbursing it. Ms. Summerville was reimbursing Paytech at  
10 the rate that David Murphy had quoted her. When Ms. Summerville brought this  
11 discrepancy to David Murphy's attention he told her that he would make up the  
12 difference each month. See also Exhibit 16 (emails from Ms. Summerville requesting  
13 confirmation of the agreement); Exhibit 17; and Exhibit 10.

14 35. David Murphy never actually reimbursed Agronomic for the amounts it paid over  
15 the quoted price. See Exhibits 22 (invoice) and 23 (credit memo writing off the balance).

16 *Cybercomp Workers Compensation Policy*

17 36. Agronomic needed a workers compensation policy to cover its employee in  
18 Nevada. Ms. Summerville gave David Murphy a check for \$765 that was made out to  
19 Cybercomp, and for which he led her to believe Agronomic was getting coverage. See  
20 Exhibit 18.

21 37. Ms. Summerville called David Murphy repeatedly in an effort to get the  
22 certificate of liability, and in August 2004 he faxed a Certificate of Liability Insurance to  
23 her. Exhibit 19.

24 38. Ms. Summerville later found out that she had not actually purchased a workers  
25 compensation policy.

26 39. The Certificate of Liability names Xpress Protection Insurance Services, Inc. as  
27 the producer and bears Nick Murphy's signature. Exhibit 19. Ms. Summerville did not  
28 meet or deal with either Nick Murphy or Colleen Murphy.

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1 40. The Agronomic check to Cybercomp was dated June 17, 2004 but was not  
2 cashed until December 2004. Ms. Summerville was not able to find out why there was  
3 such a long delay.

4 41. Ms. Summerville was contacted by a representative from Allstate Insurance  
5 about David Murphy. After her discussion with that representative she contacted  
6 Cybercomp and found that Agronomics had never been covered and that Cybercomp  
7 had not received the Agronomic check.

8 Ms. Driver's Testimony

9 42. Ms. Driver is United's Director of Account Management for small businesses.

10 43. Ms. Driver knew Nick Murphy as an agent authorized to write and sell United  
11 policies.

12 44. David Murphy was not authorized to write or sell United policies.

13 45. Colleen Murphy was not authorized to write or sell United policies.

14 46. United was not allowed to offer group health policies to businesses that had  
15 more than 20% of their employees in California. United has account executives that are  
16 aware of this limitation and these account executives, and other United personnel, are  
17 available to assist United agents.

18 47. Ms. Driver's opinion is that a competent producer/agent would have contacted  
19 an account executive to get help when writing a policy for out of state employees.

20 48. Ms. Driver was aware of Agronomic and its problems related to the United  
21 policy. In about January 2005, after Ms. Summerville called United, members of  
22 United's staff became concerned and alerted Ms. Driver that problems existed.

23 49. Initially the problem was in getting the employees their ID cards. But then the  
24 altered applications and that many of Agronomic's employees lived in California, not  
25 Arizona, were discovered.

26 50. United had received only one set of enrollment forms (these had Arizona  
27 addresses) and had no reason to believe that these Agronomic employees did not live  
28 in Arizona.

29 51. Ms. Driver contacted United's fraud group to investigate.  
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1 52. Agronomic's United policy was required to be terminated because it was issued  
2 in violation of United's non-compete agreement.

3 53. United terminated its agreement with Nick Murphy for cause (fraud), and so  
4 alerted the Department. See Exhibit 9.

5 54. United alerted the Department's fraud unit about the Agronomic's policy in  
6 March 2005.

7 Mr. Pettycrew's testimony

8 55. Mr. Pettycrew is the marketing director for a company that offers insurance  
9 under the GE Cybercomp trade name. Insurance is offered through several companies,  
10 with Westport Insurance, Co. the primary one.

11 56. An agent must be appointed in order to offer insurance with the Cybercomp  
12 name. None of the Respondents was appointed or authorized to offer a Cybercomp  
13 policy.

14 57. None of the Respondents contacted Mr. Pettycrew or his company in June  
15 2004. Agronomic did not contact Mr. Pettycrew or his company in June 2004.

16 58. Cybercomp did not receive a \$765.00 check from Agronomic.

17 59. Mr. Pettycrew had never seen the Certificate of Liability that was issued to  
18 Agronomic. See Exhibit 19. His company would not issue such a certificate.

19 Mr. Hill's testimony

20 60. Mr. Hill is a senior investigator with the Department. He has been an investigator  
21 for more than 10 years.

22 61. Mr. Hill was familiar with David Murphy, Colleen Murphy, Nick Murphy, Xpress  
23 and Murphy & Associates.

24 62. As part of his investigation into the complaint by Agronomic, Mr. Hill conducted  
25 the EUO of David Murphy. Mr. Hill had read the transcript of that EUO and the transcript  
26 is an accurate account of the examination. See Exhibit 20.

27 63. As part of his investigation into the complaint by Agronomic, Mr. Hill conducted  
28 the EUO of Colleen Murphy. Mr. Hill had read the transcript of that EUO and the  
29 transcript is an accurate account of the examination. See Exhibit 21.  
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**CONCLUSIONS OF LAW**

1. The Department bears the burden of proof, and the standard of proof on all issues in this matter is by a preponderance of the evidence. See A.R.S. § 41-1092.07; A.A.C. R2-19-119.

2. A preponderance of the evidence is "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1182 (6<sup>th</sup> ed. 1990).

**A.R.S. § 20-295(A)(5)**

3. The Department alleged that Respondents had intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance in violation of A.R.S. § 20-295(A)(5).

4. Ms. Driver provided credible testimony that United received only one set of set of enrollment forms, which had Arizona addresses. Ms. Summerville provided credible testimony that Agronomic's employees had filled out the application forms and these were sent to David Murphy. David Murphy signed Nick Murphy's name to the application. See Exhibits 20 and 21. The weight of evidence shows that Respondents intentionally violated A.R.S. § 20-295(A)(5) by submitting applications that misrepresented where the Agronomic employees lived, and because Nick Murphy did not actually sign the documents.

**A.R.S. § 20-295(A)(8)**

5. The Department alleged that Respondents engaged in conduct constituting fraudulent or dishonest practices and or incompetence, untrustworthiness or financial irresponsibility in the conduct of business in violation of A.R.S. § 20-295(A)(8).

6. Ms. Driver provided credible testimony that Respondents' failure to contact United's account executives to get assistance in the transaction with Agronomic's California employees demonstrates incompetence. Ms. Summerville and Ms. Driver provided credible testimony showing that David Murphy was dishonest as to why the Agronomic employees did not receive their ID cards. Respondents provided Agronomics with a Certificate of Liability and took Agronomic's money but did not

1 actually provide the workers compensation policy that Agronomic thought it had  
2 purchased showing dishonesty and untrustworthiness.

3 7. The weight of evidence shows that Respondents repeatedly and intentionally  
4 violated A.R.S. § 20-295(A)(8).

5 A.R.S. § 20-463(A)(1)(a)

6 8. The Department alleged that Respondents knowingly prepared an application  
7 for the issuance or renewal of insurance that contains untrue statements of material  
8 fact in violation of A.R.S. § 20-463(A)(1)(a).

9 9. The weight of evidence shows that Respondents intentionally violated A.R.S. §  
10 20-463(A)(1)(a) by submitting an application that had the incorrect addresses for 7  
11 employees, which are material facts because United could not, and would not have  
12 written insurance for those employees at their correct addresses.

13 A.R.S. § 20-295(A)(2)

14 10. The Department alleged that Respondents violated provisions of A.R.S. Title 20,  
15 in violation of A.R.S. § 20-295(A)(2).

16 11. The weight of evidence shows that Respondents did violate A.R.S. § 20-  
17 295(A)(2) by their intentional violations of A.R.S. §§ 20-295(A)(5), 20-295(A)(8) and 20-  
18 463(A)(1)(a).

19 A.R.S. § 20-295(A)(4)

20 12. The Department alleged that Colleen Murphy had improperly withheld,  
21 misappropriated or converted money received in the course of doing insurance  
22 business in violation of A.R.S. § 20-295(A)(4).

23 13. The weight of the evidence shows that Colleen Murphy intentionally violated  
24 A.R.S. § 20-295(A)(4) by cashing the Agronomic check even though no insurance  
25 policy was issued. See Exhibit 21 at pp. 35 - 38.

26 A.R.S. § 20-449

27 14. The Department alleged that David Murphy had offered to pay as an  
28 inducement a rebate of premiums payable on a contract in violation of A.R.S. § 20-449.

1 15. Ms. Summerville provided credible testimony that David Murphy offered her a  
2 rebate on the United premium. The weight of evidence shows that David Murphy  
3 intentionally violated A.R.S. § 20-449.

4 A.R.S. § 20-295(A)(10)

5 16. The Department alleged that David Murphy engaged in conduct that constitutes  
6 forging another's name to any document related to an insurance transaction in violation  
7 of A.R.S. § 20-295(A)(10).

8 17. The weight of the evidence shows that David Murphy signed Nick Murphy's  
9 name to numerous documents intentionally violating A.R.S. § 20-295(A)(10).

10 18. The weight of evidence shows that Respondents have committed multiple  
11 violations of A.R.S. Title 20 and therefore the Department may revoke each license and  
12 or impose civil penalties. See A.R.S. §§ 20-295(A), 20-295(H) and 20-295(F).

13 Aggravating Factors

14 19. Respondents' actions related to the United policy caused Agronomic actual  
15 harm. See Finding of Fact 32 and 35.

16 20. Respondents' actions related to the United policy caused United to violate its  
17 non-compete agreement.

18 21. Respondents' actions in falsifying the addresses on the United policy  
19 applications are egregious.

20 22. Respondents' actions related to the Cybercomp policy are egregious.

21 23. Respondents committed multiple acts in violation of numerous provisions of  
22 A.R.S. Title 20.

23 24. Respondents did not appear at the hearing, showing a lack of respect for the  
24 Director's authority and the Office of Administrative Hearings' authority.

25 ORDER

26 **IT IS ORDERED** that Respondent David William Murphy's license number 38619 be  
27 revoked.

28 **IT IS ORDERED** that Respondent Murphy & Associates Insurance Services, Inc.'s  
29 license number 134342 be revoked.

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1 **IT IS ORDERED** that Respondent Colleen Watts Murphy's license number 115416 be  
2 revoked.

3 **IT IS ORDERED** that Respondent Xpress Protection Insurance Agency, Inc.'s license  
4 number 159166 be revoked.

5 **IT IS ORDERED** that Respondent Nicholas Jon Murphy's license number 163071 be  
6 revoked.

7 **IT IS ORDERED** that Respondents David William Murphy, Colleen Watts Murphy and  
8 Nicholas Jon Murphy pay a civil penalty of \$7,500.00 based Respondents' collective  
9 violations of A.R.S. §§ 20-295(A)(5), 20-295(A)(8), and 20-463(A)(1)(a).

10 **IT IS ORDERED** that Respondent David William Murphy pay an additional civil penalty  
11 of \$2,000.00 based his violations of A.R.S. §§ 20-449 and 20-295(A)(10).

12 **IT IS ORDERED** that Respondent Colleen Watts Murphy pay an additional civil penalty  
13 of \$2,500.00 based her violation of A.R.S. § 20-295(A)(4).

14  
15 Done this day, June 7, 2006.

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18 \_\_\_\_\_  
19 Thomas Shedden  
20 Administrative Law Judge

21 Original transmitted by mail this

22 7 day of June, 2006, to:

23  
24 Christina Urias, Director  
25 Department of Insurance  
26 2910 North 44th Street, Ste. 210  
27 Phoenix, AZ 85018

28 By  \_\_\_\_\_