

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 must
3 notify the Office of Administrative Hearings of the appeal within ten days after filing the
4 complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

5 DATED this 10th of April, 2006

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7 
8 CHRISTINA URIAS
Director of Insurance

9 A copy of the foregoing mailed
10 this 11th day of April, 2006

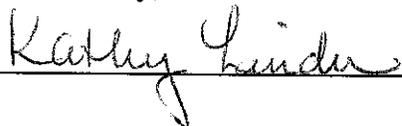
11 Mary Kosinski, Executive Assistant for Regulatory Affairs ✓
12 Catherine O'Neil, Consumer Legal Affairs Officer
13 Steve Fromholtz, Producer Licensing Administrator
Arizona Department of Insurance
2910 N. 44th Street, Suite 210
Phoenix, AZ 85018

14 Office of Administrative Hearings
15 1400 W. Washington, Suite 101
Phoenix, AZ 85007

16 Moira McCarthy
17 Assistant Attorney General
1275 W. Washington
Phoenix, AZ 85007

18 Dale Lewis Cash
19 10153 E. Calle Del Este
Tucson, AZ 85748

20 Dale Lewis Cash
21 c/o Bank One Insurance
151 Esperanza
22 Green Valley, AZ 85614

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In The Matter Of:

No. 06A-005-INS

DALE LEWIS CASH

**ADMINISTRATIVE LAW JUDGE
DECISION**

Respondent.

HEARING: March 30, 2006.

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

ADMINISTRATIVE LAW JUDGE: Thomas Shedden

The Department of Insurance seeks to revoke Respondent's non-resident insurance producers' license for failure to provide certification of licensure in another state and failure to inform the Director of his current address.

FINDINGS OF FACT

1. On March 4, 2005 the Arizona Department of Insurance issued to Dale Lewis Cash ("Respondent") a Producer's License. The license gave Respondent Accident/Health Producer License, Life Producer, and Variable Life/Variable Annuity authority. See Exhibit 2.
2. On September 13, 2005 Respondent submitted to the Department a Clearance Letter Request Form. Exhibit 3.
3. The Clearance Letter Request Form stated that Respondent was relocating to Alabama, and requested that Respondent's Arizona License be changed from resident to non-resident. Exhibit 3.
4. On September 23, 2005 the Department issued the Clearance Letter. Exhibit 4.
5. The Clearance Letter advised Respondent that his Arizona License was canceled,

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

1 and that he would be able to transact insurance in Arizona as a non-resident only if he
2 filed certification that he was licensed in his new home state within 30-days of such
3 licensure. See Exhibit 4.

4 6. On February 1, 2006 the Department issued a Notice of Hearing alleging that
5 Respondent had not submitted certification of licensure as required. That Notice also
6 alleged that Respondent, within 30 days of moving, had failed to provide the Department
7 with his new mailing address, his new business address, and his new home address. As
8 a result, the Department intended to revoke Respondent's non-resident license.

9 7. The Notice of Hearing set the matter for March 29, 2006 at the Office of
10 Administrative Hearings ("OAH"). The matter was continued until 9:30 a.m. on March 30,
11 2006. See Order dated February 27, 2006.

12 8. Respondent did not appear at 9:30 a.m. on March 30, 2006, nor did Respondent
13 provide the OAH or the Department with good cause for his failure to appear. After a 15
14 minute grace period the ALJ convened the matter in Respondent's absence.

15 9. Mr. Steven Fromholtz, the Department's Producer License Administrator testified
16 at the hearing. Mr. Fromholtz was familiar with Respondent's license and licensing
17 history.

18 10. Mr. Fromholtz testified that a Clearance Letter will allow a non-resident licensee,
19 such as Respondent, to obtain a license in his new state without taking an exam. In
20 Arizona to be eligible for a non-resident license, the licensee must show that he is
21 licensed in his new home state.

22 11. Mr. Fromholtz testified that the Department had sent the Clearance Letter to the
23 address that Respondent had requested it be sent, which was to the Wachovia Licensing
24 Department in Charlotte, North Carolina. See *also* Exhibit 4. Mr. Fromholtz testified that it
25 was not unusual for a party to request that a Clearance Letter be sent to a business
26 address other than the licensee's address of record. The Clearance Letters have a
27 warning that these are being sent to the address requested by the licensee, but that
28 address may not be an address of record. See Exhibit 4.

29 12. Mr. Fromholtz testified that the Department had not received the required
30 certification from Respondent to show that Respondent is licensed in his home state.

1 13. Mr. Fromholtz also testified that the Department had not received any change of
2 address forms for Respondent's home, mailing or business addresses. See Exhibit 1
3 (license application giving Arizona addresses).

4 **CONCLUSIONS OF LAW**

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

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

12 3. The Department's Director shall issue a non-resident license if, among other
13 requirements, a person is currently licensed as a resident and in good standing in his
14 home state. See A.R.S. § 20-287. A licensee that moves from one state to another must
15 file a change of address and must provide the Director with certification of licensure in the
16 new state within 30 days after receipt of the new license. *Id.* (citing A.R.S. § 20-286). It is
17 undisputed that Respondent has not provided the Department the address-change
18 records as required. It is also undisputed that Respondent has not provided certification
19 that he is licensed in his home state. Therefore, under the terms of A.R.S. § 20-287
20 Respondent is not eligible to hold an Arizona non-resident license.

21 4. The Department has met the burden of proof to show that Respondent's non-
22 resident license should be revoked.

23 **RECOMMENDED ORDER**

24 **IT IS RECOMMENDED** that the Director of the Arizona Department of Insurance revoke
25 Respondent's non-resident license.
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Done this day, April 5, 2006.



Thomas Shedden
Administrative Law Judge

Original transmitted by mail this
6 day of April, 2006, to:

Christina Urias, Director
Department of Insurance
2910 North 44th Street, Ste. 210
Phoenix, AZ 85018

By _____