

JUN 23 2006

DEPT OF INSURANCE  
BY                     

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

In the Matter of:

**MATTHEW REESE MASON**  
Respondent.

**No. 06A-045-INS**  
**ORDER**

On June 21, 2006, the Office of Administrative Hearings, through Administrative Law Judge ("ALJ") Lewis Kowal, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on June 22, 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. No disciplinary action will be taken against Respondent's license at this time.


NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Respondent 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.

Respondent may appeal the final decision of the Director 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).

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DATED this 22<sup>nd</sup> day of June, 2006.

  
CHRISTINA URIAS, Director  
Arizona Department of Insurance

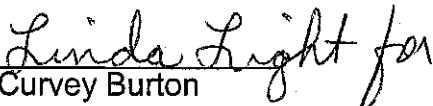
COPY of the foregoing mailed this  
23<sup>rd</sup> day of June, 2006 to:

Mary Kosinski, Executive Assistant for Regulatory Affairs  
Catherine O'Neil, Consumer Legal Affairs Officer  
Steve Fromholtz, Licensing Director  
Arizona Department of Insurance  
2910 North 44th Street, Suite 210  
Phoenix, Arizona 85018

Moira McCarthy  
Assistant Attorney General  
1275 West Washington Street  
Phoenix, Arizona 85007-2926

Matthew Reese Mason  
c/o Countrywide Insurance and Financial Services  
5416 E. Southern Ave., Suite 106  
Mesa, AZ 85206  
Respondent

Matthew Reese Mason  
2325 W. Hayden Peak  
Queen Creek, AZ 85242  
Respondent

  
Curvey Burton

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**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of:

**No. 06A-045-INS**

**MATTHEW REESE MASON**

**ADMINISTRATIVE  
LAW JUDGE DECISION**

Respondent.

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**HEARING:** June 1, 2006

**APPEARANCES:** Assistant Attorney General Moira McCarthy on behalf of the Arizona Department of Insurance; Matthew Reese Mason did not appear at the hearing

**ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal

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**FINDINGS OF FACT**

1. On August 22, 2002, the Arizona Department of Insurance ("Department") issued to Matthew Reese Mason ("Respondent") an accident/health producer's license and a life producer's license. On September 26, 2002, the Department issued Respondent a variable life/variable annuities license. On January 19, 2005, the Department issued Respondent a casualty and property producer's license
2. On November 2, 2005 Respondent filed a Clearance Letter Request Form (Exhibit 3) notifying the Department of his intention to relocate to Texas and a request that his Arizona Producer's license be converted from resident to non-resident status.
3. On November 9, 2005, the Department issued a Clearance Letter (Exhibit 4) canceling Respondent's resident license. The Department also issued to Respondent a notification that his ability to transact insurance as a nonresident was contingent upon Respondent submitting certification of licensure by the new home state within thirty days of becoming licensed in that state.
4. Steve Fromholtz ("Mr. Fromholtz"), the Department's Licensing Administrator, testified:
  - a. The Department has a procedure in place to assist licensees who hold a resident producer's license in Arizona and who wish to convert the license to a nonresident license.

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1           b.       The first step in the process is for the licensee to complete and file with  
2           the Department a Clearance Letter Request Form.

3           c.       Upon receipt of the Clearance Letter Request Form, the Department's  
4           staff reviews the form to make sure that the information contained therein is up to  
5           date. If staff determines that the form is complete, the Department issues a  
6           Clearance Letter.

7           d.       The Clearance Letter Form provides the licensee with an opportunity to  
8           either convert the resident license to a nonresident license or to surrender the  
9           resident license.

10          e.       The Clearance Letter contains a blank space for an address where the  
11          Clearance Letter is to be sent.

12          f.       It is not unusual to have an administrative office or agency listed in the  
13          Clearance Letter Request Form as to where the Clearance Letter should be sent.

14       5.       The Clearance Letter provides that "the information to the left is the name and  
15       address of the person to whom the licensee has requested the clearance letter be sent  
16       and is not intended to represent an address of the licensee."

17       6.       According to Mr. Fromholtz, the above cited Clearance Letter language provides  
18       notice that the address where the Clearance Letter is to be sent does not act as a  
19       notification of a change of address for the licensee.

20       7.       Respondent's addresses of record with the Department are as follows:  
21       Countrywide insurance and Financial Services, 5416 E. Southern Avenue, Suite 106,  
22       Mesa, AZ 85206 (business) and 2325 W. Hayden Peak, Queen Creek, AZ 85242  
23       (residential).

24       8.       The Clearance Letter provides that "the licensee's ability to transact insurance in  
25       Arizona as a nonresident is contingent upon the licensee submitting certification of  
26       license status from the new home state within 30 days of becoming licensed in that  
27       state." (Exhibit 4)

28       9.       On April 11, 2006, the Department issued a Notice of Hearing alleging that  
29       Respondent had not submitted certification of licensure in a new home state and  
30       Respondent had also failed to notify the Department of Respondent's new business

1 and residential address within thirty days of moving. Based on such allegations, at the  
2 instant hearing, the Department requested that Respondent's nonresident license be  
3 revoked.

4 10. Mr. Fromholtz testified that the Department has not received certification from  
5 Respondent that a resident license had been issued to Respondent in any other state  
6 nor has the Department received from Respondent any change of business or  
7 residential address. Mr. Fromholtz acknowledged that without a new resident license, a  
8 new place of business cannot exist in the new home state.

9 11. The Department asserted that pursuant to A.R.S. § 20-287(A)(1,) in conjunction  
10 with A.R.S. § 20-287(B), a nonresident licensee must hold a resident license in the  
11 licensee's home state and be in good standing in order to be able to transact insurance  
12 business with the nonresident license. The Department also maintained that the  
13 licensee must provide the Department with certification of the resident license within  
14 thirty days of issuance and provide the Department a change of address (business and  
15 residential).

16 12. Mr. Fromholtz testified that A.R.S. § 20-287 is derived from the Producer  
17 Licensing Model Act adopted by the National Association of Insurance Commissioners,  
18 which has been adopted in thirty-six jurisdictions.

19 13. According to Mr. Fromholtz, the Department issues a nonresident license to a  
20 licensee holding an Arizona resident license wishing to convert to nonresident status in  
21 order to make the transition process of becoming licensed as a resident in another state  
22 and having the license status in Arizona change from resident to nonresident a  
23 seamless process.

24 14. Mr. Fromholtz testified that the Clearance Letter process avoids having the  
25 licensee who intends to relocate to another state and maintain licensure in Arizona  
26 have to surrender the Arizona resident license and wait one year before applying for a  
27 nonresident license and also avoid having to take a license examination in the new  
28 home state.

29 15. Respondent did not appear at the hearing of this matter when it convened on  
30 June 1, 2006, and failed to present any evidence to refute or rebut the evidence that  
was presented by the Department.

## APPLICABLE LAW

1  
2 1. A.R.S. § 20-287(A)(1) provides that "Unless the director denies a license  
3 pursuant to section 20-295, the director shall issue a nonresident person a nonresident  
4 producer license if all of the following apply: 1. The person is currently licensed as a  
5 resident and in good standing in the person's home state."

6 2. A.R.S. § 20-287(B) requires a nonresident insurance producer who moves from  
7 one state to another state or a resident insurance producer who moves from this state  
8 to another state to file a change of address form as prescribed in A.R.S. § 20-286(C)  
9 and provide the Director of the Department ("Director") with certification of licensure  
10 from a new home state within thirty days after receiving the new resident license.

11 3. A.R.S. § 20-281 defines the term "home state" as the District of Columbia and  
12 any state or territory of the United States in which:

13 (a) An individual insurance producer maintains a principal place of  
14 residence or principal place of business and is licensed to act as a  
15 resident insurance producer.

16 (b) A business entity insurance producer maintains its principal place of business  
17 and is licensed to act as a resident insurance producer.

18 4. A licensee is to inform the Director in writing as to a change of residential or  
19 business address within thirty days of such change. A.R.S. § 20-286(C).

20 5. A.R.S. § 20-285(G) provides that "A nonresident person who is licensed as an  
21 insurance producer in another state, who becomes a resident of this state and who  
22 continues to act as an insurance producer shall apply to become a resident licensee  
23 pursuant to this section within ninety days."

24 6. Pursuant to A.R.S. § 20-142, the Director has such powers and authority  
25 expressly conferred by or reasonably implied from the provisions of Arizona Revised  
26 Statutes, Title 20.

27 7. The Director may deny, suspend for not more than 12 months revoke or refuse  
28 to renew a license for certain stated violations of A.R.S., Title 20, rule, subpoena or  
29 order of the Director. A.R.S. § 20-295(A).  
30

1 CONCLUSIONS OF LAW

2 1. This matter is a disciplinary proceeding wherein the Department must prove by a  
3 preponderance of the evidence that Respondent violated the State's Insurance Laws.

4 See A.AC. R2-19-119.

5 2. A preponderance of the evidence is "such proof as convinces the trier of fact that  
6 the contention is more probably true than not." Morris K. Udall, ARIZONA LAW OF  
7 EVIDENCE § 5 (1960). It is "evidence which is of greater weight or more convincing than  
8 the evidence which is offered in opposition to it; that is, evidence which as a whole  
9 shows that the fact sought to be proved is more probable than not." BLACK'S LAW  
10 DICTIONARY 1182 (6<sup>th</sup> ed. 1990).

11 3. The violations cited by the Department in the Notice of Hearing issued in this  
12 matter are A.R.S. §§ 20-287(A) and (B) and 20-286(C). None of those provisions apply  
13 to this matter, as further elaborated below.

14 4. The evidence presented by the Department established that Respondent  
15 intended to relocate to Texas, and intended to obtain a Texas insurance producer's  
16 license and have his Arizona resident producer's license converted to a nonresident  
17 license.

18 5. The sole express statutory authority that the Department relied upon for issuance  
19 of a nonresident license is A.R.S. § 20-287.

20 6. The Administrative Law Judge concludes that A.R.S. § 20-287(A) contemplates  
21 a situation where an individual holds a resident license in another state and wishes to  
22 obtain a nonresident license in Arizona. The provisions of A.R.S. § 287(A), if  
23 considered separately from the remaining provisions of the statute do not contemplate  
24 the situation where an Arizona resident license holder wants to convert the license to a  
25 nonresident license.

26 7. A.R.S. § 20-287(B) addresses the situation when a resident insurance producer  
27 moves to another state/ Specifically, that producer is to file a change of address form  
28 as required in A.R.S. § 20-286(C) and provide the Director with certification of licensure  
29 from the new home state after receiving the new resident license.

1 8. A.R.S. § 20-287(B) does not provide a time frame by which a licensee holding a  
2 resident license in Arizona is to have a resident license issued in a new home state nor  
3 does it provide a time frame by which the licensee's residential and business address is  
4 to be changed. It does, however, provide that when such licensure or change of  
5 address occurs,<sup>1</sup> the licensee is required to notify the Department within thirty days.

6 9. A.R.S. § 20-287(B) presumes that the licensee moves to another state and  
7 obtains a resident license from that state, both of which might not occur. However, the  
8 manner or means of accomplishing a conversion from a resident to a nonresident  
9 license is accomplished by the Department's administrative process of issuing a  
10 Clearance Letter and is not specifically addressed by statute.

11 10. It appears that the intent of the Arizona Legislature in enacting A.R.S. § 20-287  
12 was that there should not be an active nonresident license if the holder of that license  
13 has not been issued a resident license in that person's "new home state"<sup>2</sup>.

14 11. The Department's Clearance Letter process does not track the language or  
15 process set forth in A.R.S. §§ 20-287 (A) and (B). However, the Administrative Law  
16 Judge concludes that under the Director's general powers as set forth in A.R.S. § 20-  
17 142 and, by virtue of the implied intent of A.R.S. § 20-287, the Department may convert  
18 a resident license to a nonresident license and utilize the Clearance Letter process to  
19 accomplish the conversion.

20 12. The Clearance Letter (Exhibit 4) does not provide a time frame within which a  
21 licensee must obtain a new resident license and there is no indication that the Director  
22 issued an Order that required the Respondent to have a resident license issued in a  
23 new home state. The Clearance Letter that was issued only provides that the licensee  
24 is to provide certification of licensure in a new home state within thirty days of such  
25 licensure.

26 13. There was no evidence presented that Respondent was ever issued a license in  
27 his new home state. Therefore, the thirty day time frame for notifying the Department of  
28 certification of new licensure has not begun to run.

29 <sup>1</sup> A.R.S. § 20-287(B) refers to the change of address form required in A.R.S. § 20-286(C).

30 <sup>2</sup> This encompasses the state that the licensee actually moves to as well as the state that the licensee has notified the Department of the intent to move to in contemplation of receiving a nonresident license.



1 14. The Department presented credible evidence that it never received any  
2 notification that Respondent changed his business address. Although in this case Mr.  
3 Fromholtz obtained information from the Arizona Attorney General's office that  
4 Respondent had relocated to Texas, there was no specific information presented as to  
5 when that relocation occurred. Only after thirty days from such change of address does  
6 the time provision of A.R.S. § 20-286(C) begin to run concerning notification to the  
7 Director. Therefore, without such information the Administrative Law Judge cannot find  
8 a violation of A.R.S. §§ 20-186(C) or 20-287(B).<sup>3</sup>

9 15. The Department maintained that reconciling A.R.S. § 20-287(A) with A.R.S. §  
10 20-287(B), the intent of the statute is not to have a nonresident license become active  
11 unless and until the licensee obtains a resident license in the new home state and that  
12 certification of licensure and change of address be provided to the Department,  
13 respectively, within thirty days of receiving the new license and change of address.

14 16. Although the Director has the implied authority to convert an Arizona resident  
15 license to nonresident status and can effectuate such change through the Clearance  
16 Letter process, in the absence of any subsequent Clearance Letter having been issued  
17 containing time frames for issuance of a resident license in a new home state or of a  
18 when a change of address (business and residential) is to be effectuated, or an Order  
19 issued by the Director requiring that Respondent obtain a resident license and change  
20 his residential and business address within a stated period of time as a condition  
21 precedent for the nonresident license to take effect, the time for notification to the  
22 Director of such licensure and change of address does not begin to run.

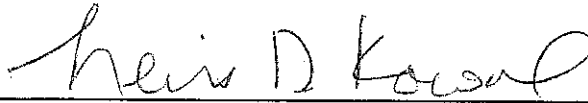
23 17. The Department has failed to prove by a preponderance of the evidence that  
24 Respondent violated the provisions of A.R.S. § 20-287(A) or (B) or § 20-286(C), and  
25 failed to prove grounds exist to revoke Respondent's nonresident license or impose a  
26 civil penalty under A.R.S. §§ 20-295(A) or (F).

27  
28  
29 <sup>3</sup> Consistent with the above legal analysis, the Director can utilize the Clearance Letter process and/or  
30 issue an Order to require that the change of address is to occur within a specified time frame.

ORDER

Based on the above, no disciplinary action shall be taken at this time against Respondent's nonresident license.

Done this day, June 20, 2006.



\_\_\_\_\_  
Lewis D. Kowal  
Administrative Law Judge

Original transmitted by mail this  
21 day of June, 2006, to:

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

By Chris Fishler