

JAN 13 2012

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY CS

In the Matter of:

NEW BREED CONSTRUCTION, INC.,

Respondent.

No. 11A-140-INS

**ORDER TO CEASE
AND DESIST**

The Arizona Department of Insurance ("Department") has received evidence that **New Breed Construction, Inc.** has unlawfully acted as an adjuster in the State of Arizona. Accordingly, the Director of Insurance of the State of Arizona (the "Director") makes the following Findings of Fact and Conclusions of Law and enters the following Order pursuant to A.R.S. § 20-292.

FINDINGS OF FACT

1. New Breed Construction, Inc. ("Respondent" or "New Breed") is not licensed with the Department as an adjuster. New Breed is not exempt from the licensing requirement.
2. New Breed's address is: 15610 N. 35th Ave., #4, Phoenix, Arizona 85053.
3. Heidi Dye is the Chief Financial Officer of New Breed.
4. On September 26, 2011, Richard Campbell ("Campbell") filed a Complaint with the Department stating that New Breed was acting as an unlicensed insurance agent.
5. On or about January 1, 2011, Campbell signed an Agreement with New Breed to complete repairs to his home ("Agreement"). The Payment Schedule of the Agreement indicated that all amounts due to New Breed were to be determined. Paragraph 11 of the Agreement states: If this agreement is cancelled by the customer, customer shall pay to the company twenty-five percent (25%) of the total agreement

1 amount as liquidated damages, not as a penalty, and the company agrees to accept such
2 as a reasonable amount and just compensation for said cancellation.

3 6. On or about January 1, 2011, Campbell also signed a New Breed
4 Construction Authorization to Represent.

5 7. From or about January 1, 2011 to January 18, 2011, New Breed spent many
6 hours negotiating Campbell's insurance claim eventually raising the value of the claim from
7 \$6,585.56 to \$32,746.90.

8 8. On or about February 17, 2011, Campbell notified New Breed that he
9 intended to cancel the Agreement.

10 9. On or about September 6, 2011, New Breed, through their attorney, sent a
11 demand letter to Campbell for payment of \$6,637.19 for cancelling the Agreement.

12 10. On September 22, 2011, Heidi Dye ("Dye") sent a letter regarding the
13 Campbell cancellation. In the letter Dye states in pertinent part:

14 "The Campbell's signed our Agreement and Authorization to represent them with
15 respect to their insurance claim with USAA Claim #xxxxx7070-91A-3-4509 on
16 January 1, 2011. . . New Breed immediately began work on Campbell's behalf with
17 USAA to ensure all damages incurred were being recognized and paid for through
18 their insurance claim. . . After many hours spent negotiating with USAA, we were
19 able to raise the Campbell's storm damage claim to \$32,746.90. Our negotiations
20 increased the Campbell's insurance claim by \$26,161.34. . . Per our contract we do
21 not charge our customer's for the lengthy insurance negotiations completed on their
22 behalf. . . Under the terms of our contract if the customer cancels their contract prior
23 to the completion of the repairs they agree to pay New Breed 25% of the total claim
24 amount negotiated with their insurance provider."

25 11. New Breed never performed any of the repairs on the Campbell home.
26

1 **CONCLUSIONS OF LAW**

2 1. The Director has jurisdiction over this matter.

3 2. An adjuster means any person who for compensation, fee or commission
4 either adjusts, investigates or negotiates settlement of claims arising under insurance
5 contracts on behalf of an insured or holds oneself out to perform those services, within the
6 meaning of A.R.S. § 20-321(A).

7 3. Respondent is not exempt from the licensing requirement, within the meaning
8 of A.R.S. § 20-321(B).

9 4. Respondent's conduct, as alleged above, constitutes acting as or claiming to
10 be an adjuster without being licensed as an adjuster, in violation of A.R.S. § 20-321.01(A).

11 5. Grounds exist to issue a cease and desist order to Respondent for acting as
12 or claiming to be an adjuster without being licensed, within the meaning of A.R.S. §20-292
13 as applied to adjusters under A.R.S. § 20-321.02.

14 **ORDER**

15 IT IS THEREFORE ORDERED:

16 1. Respondent shall immediately cease and desist from unlawfully acting as or
17 claiming to be an adjuster.

18 2. This Order shall become effective immediately and shall remain in full force
19 and effect until otherwise stayed, modified, vacated or set aside.

20 **NOTICE OF OPPORTUNITY FOR HEARING**

21 Pursuant to Title 20 of the Arizona Revised Statutes, Respondents are hereby
22 notified that they may request a hearing pursuant to A.R.S. § 20-161 to contest the order to
23 cease and desist. Such a request must be in writing and received at the following address
24 within thirty (30) days from the date hereof:

25 Arizona Department of Insurance
26 2910 North 44th Street, Suite 210

Phoenix, Arizona 85012
ATTN: Director's Office

Upon receipt of a timely written request for hearing, the Director will issue an order setting the time and place of the hearing.

DATED AND EFFECTIVE this 13th day of January, 2012.

Christina Urias
for CHRISTINA URIAS, Director
Arizona Department of Insurance

COPY of the foregoing mailed,
return receipt requested, this
13th day of January, 2012 to:

Heidi Dye, Director
New Breed Construction, Inc.
15610 N. 35th Ave., #4
Phoenix, Arizona 85053
Respondent

New Breed Construction, Inc.
c/o James A. Kuzmich
633 E. Ray Road, #106
Gilbert, Arizona 85296
Attorney for Respondent

COPY of the foregoing mailed this
13th day of January, 2012 to:

Lynette Evans
Assistant Attorney General
1275 West Washington
Phoenix, Arizona 85007
Attorney for the Department

Heidi Dye, Director
New Breed Construction, Inc.
15610 N. 35th Ave., #4
Phoenix, Arizona 85053
Respondent

New Breed Construction, Inc.
c/o James A. Kuzmich

1 633 E. Ray Road, #106
2 Gilbert, Arizona 85296
3 Attorney for Respondent

4 Gerrie Marks, Deputy Director
5 Mary E. Kosinski, Exec. Assistant for Reg. Affairs
6 Catherine M. O'Neil, Consumer Legal Affairs Officer
7 Mary Butterfield, Assistant Director
8 Charles Gregory, Investigations Supervisor
9 Arnold Sniegowski, Investigations
10 Department of Insurance
11 2910 North 44th Street, Suite 210
12 Phoenix, Arizona 85018

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