


JUL 16 2012

DEPT OF INSURANCE
BY 

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

1 In the Matter of:)
2)
3)
4 **OCHOA, JUDY ANNE,**)
5 **(Arizona License Number 941886)**)
6 **(National Producer Number 7255772)**)
7 Respondent.)
_____)

No. 12A-075 - INS

CONSENT ORDER

8 The State of Arizona Department of Insurance ("Department") has received
9 evidence that **Judy Anne Ochoa ("Respondent")** violated Arizona Revised Statutes
10 ("A.R.S.") §20-295(A)(2), specifically by not participating in providing information to the
11 Department, based upon a subpoena issued by the Director of Department, that was
12 properly served upon her. Respondent wishes to resolve this matter without the
13 commencement of formal proceedings, and admits the following Findings of Fact are true and
14 consents to entry of the following Conclusions of Law and Order.

15 **FINDINGS OF FACT**

16 1. Respondent is, and was at all material times licensed as an Arizona resident
17 casualty and property insurance producer, Arizona license number 941886, which expires on
18 January 31, 2013.

19 2. On or about March 28, 2012, the Department received a referral from the
20 National Insurance Crime Bureau (NICB) alleging that Respondent inflated her claim to
21 Traveler's Insurance Company with a date of loss of April 20, 2011 ("Traveler's claim number
22 HGX3932").
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ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent's license is revoked effective immediately upon entry of this Order.

DATED AND EFFECTIVE this 16th day of July, 2012.


GERMAINE L. MARKS
Acting Director of Insurance

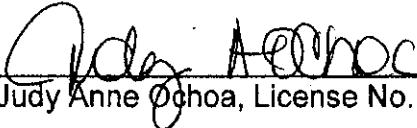
CONSENT TO ORDER

1. Respondent has reviewed the foregoing Findings of Fact, Conclusions of Law and Order.
2. Respondent admits the jurisdiction of the Director of Insurance, State of Arizona, and admits the foregoing Findings of Fact and consents to the entry of the foregoing Conclusions of Law and Order.
3. Respondent is aware of her right to notice and a hearing at which she may be represented by counsel, present evidence and examine witnesses. Respondent irrevocably waives her right to such notice and hearing and to any court appeals relating to this Consent Order.
4. Respondent states that no promise of any kind or nature whatsoever, except as expressly contained in this Consent Order, was made to her to induce her to enter into this Consent Order and that she has entered into this Consent Order voluntarily.
5. Respondent acknowledges that the acceptance of this Consent Order by the Director is solely to settle this matter against her and does not preclude any other agency,

1 officer, or subdivision of this state including the Department from instituting civil or criminal
2 proceedings as may be appropriate now or in the future.

3 6. Respondent acknowledges that this Consent Order is an administrative action
4 that the Department will report to the National Association of Insurance Commissioners (NAIC)
5 and that she may have to report this administrative action on any future licensing applications
6 either to the Department or other states' Departments of Insurance.

7 7/13/12
8 Date

9 
10 Judy Anne Ochoa, License No. 941886

11 COPIES of the foregoing mailed/delivered
12 this 16th day of July, 2012, to:

13 Kirk Smith
14 Davis Miles Law Firm
15 Suite 401,
16 80 E. Rio Salado Pkwy
17 Tempe, AZ 85281
18 (Attorney for Respondent)

19 Brian Wright
20 Traveler's Insurance Co.
21 2401 West Peoria Ave.
22 Phoenix, AZ 85029

23 Mary Kosinski, Executive Assistant for Regulatory Affairs
24 Catherine M. O'Neil, Consumer Legal Affairs Officer
Steve Fromholtz, Licensing Supervisor
Charles Gregory, Investigations Supervisor
Randy Markham, Investigator
Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

25 
26 Curvey Walters Burton

LAW OFFICES OF

DAVIS MILES MCGUIRE GARDNER, PLLC

80 E. Rio Salado Pkwy., Ste. 401
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Telephone: (480) 733-6800
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FAX

TO: Arizona Department of Insurance

FAX NO.: 602-364-2400

FROM: Kirk Smith

DATE: May 29, 2012

DESCRIPTION: Letter re: Subpoena Duces Tecum

CLIENT: Judy A. Ochoa

MATTER: 77428-001

NUMBER OF PAGES: 3, including this cover.

COMMENTS:

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Davis Miles McGuire Gardner

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May 28, 2012

Re: Subpoena Duces Tecum dated May 9, 2012

To the Director of Insurance for the State of Arizona or their Lawful Representative:

On May 29, 2012, Judy Anne Ochoa had been served a subpoena to testify and provide documentation to the Arizona Department of Insurance at 2910 N. 44th St. Suite-210. Phoenix, Arizona 85018.

I have been retained to represent Ms. Ochoa in these proceedings and give notice to the Arizona Department of Insurance that Ms. Ochoa intends on pleading the 5th and 14th Amendments of the United State's Constitution and its Arizona counter-parts, and wishes to remain silent at this hearing.

Arizona Revised Statutes, § 41-1066 states;

A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture **unless it constitutes the compelled testimony or the private papers of the person which would be privileged evidence either pursuant to the fifth amendment of the Constitution of the United States or article II, § 10, Constitution of Arizona, and the person claims the privilege prior to the production of the testimony or papers.**

B. If a person asserts his privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, it may, with the prior written approval of the attorney general, issue a written order compelling the testimony or production of documents in proceedings and investigations before the agency or apply to the appropriate court for such an order in other actions or proceedings.

C. Evidence produced pursuant to subsection B is not admissible in evidence or usable in any manner in a criminal prosecution, except for

May 28, 2012

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perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing his private papers.

(emphasis added) (hereinafter "§ 41-1066")

Section 41-1066 requires an administrative body, such as the State of Arizona Department of Insurance, to acquire "written approval of the Attorney General", **after** an individual pleads the 5th Amendment, before it can issue a written order compelling the testimony or documents sought. (emphasis added)

Ms. Ochoa is now asserting her right to remain silent at the aforementioned hearing, however, the Arizona Department of Insurance issued the existing subpoena long before. Section 41-1066 states that after an individual pleads the 5th "and" the State wishes to compel their cooperation the State "may" with prior written approval from the Attorney General's Office issue an order for compliance.

It is uncertain whether the State in this case obtained the written permission discussed in § 41-1066 from the Attorney General's office to acquire the existing subpoena that was signed on May 9, 2012. Regardless of this issue once Ms. Ochoa asserts her rights, it then falls upon the administrative body, in this case the Arizona Department of Insurance, to acquire the Attorney General's permission. This permission could not have been obtained on May 9, 2012, because Ms. Ochoa's had not yet exercised her rights, which is the trigger requiring the administrative body to seek permission from the Attorney General's Office.

Even if the State acquired written permission from the Attorney General's Office prior to May 9, 2012 for the existing subpoena, that permission would not satisfy the requirements of § 41-1033. Without the foreknowledge, on the part of the Attorney General's Office, that Ms. Ochoa wished to exercise her Constitutional rights, the Attorney General's Office did not have the necessary trigger nor information beforehand, to allow it to provide the statutory permission required under § 41-1033 for the existing subpoena.

Please let me know if you have any questions regarding these specific issues.

Very truly yours,



Kirk Smith
Attorney