

STATE OF ARIZONA
FILED

SEP 15 2015

DEPT OF INSURANCE
BY MS

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

GUTSCHLAG, JOHN PAUL
(Arizona License No. 9196)
(National Producer No. 235691)

No. 15A-059-INS

ORDER

Respondent.

On September 14, 2015, the Office of Administrative Hearings, through Administrative Law Judge M. Douglas, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on September 14, 2015, a copy of which is attached and incorporated by this reference. The Acting Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

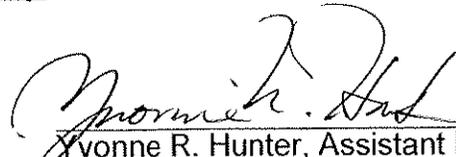
1. The Acting Director adopts the Recommended Findings of Fact and Conclusions of Law except to correct the reference "National Products Number" to "National Producer Number" throughout.
2. The Acting Director revokes the Arizona non-resident insurance producer license, No. 9196, of **John Paul Gutschlag** effective immediately.

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 filling a written motion with the Acting 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.

1 Respondent may appeal the final decision of the Acting Director to the Superior
2 Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an
3 appeal must notify the Office of Administrative Hearings of the appeal within ten days after
4 filing the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

5 DATED this 15th day of September, 2015.

6
7 
8 Yvonne R. Hunter, Assistant Director for
Darren T. Ellingson, Acting Director
9 Arizona Department of Insurance
10

11 COPY of the foregoing mailed this
12 15th day of September, 2015 to:

13 John Paul Gutschlag
14 GM-Southwest
6946 Lebanon Rd.
15 Frisco, TX 75034-6741
Respondent

16 John Paul Gutschlag – No.17308-084
17 FCI Fort Worth
Federal Correctional Institution
18 P.O. Box 15330
Fort Worth, TX 76119
Respondent

19 John Paul Gutschlag
20 11113 Amelina Lane
Frisco, TX 75035
21 Respondent

22 Mary Kosinski, Executive Assistant for Regulatory Affairs
23 Catherine O'Neil, Consumer Legal Affairs Officer
Yvonne Hunter, Consumer Affairs Assistant Director
24 Steven Fromholtz, Licensing Director
Barbara Beltran, Business Office
25 Arizona Department of Insurance
2910 North 44th Street, Suite 210
26 Phoenix, Arizona 85018

1 Liane Kido
Assistant Attorney General
2 1275 West Washington Street
Phoenix, Arizona 85007-2926

3 Office of Administrative Hearings
4 1400 West Washington, Suite 101
Phoenix, Arizona 85007

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6 *Maidene Scheiner*
Maidene Scheiner

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RECEIVED

SEP 14 2015

AZ DEPT. OF INSURANCE
ADMINISTRATIVE SERVICES

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 15A-059-INS

GUTSCHLAG, JOHN PAUL,
(Arizona License Number 9196)
(National Products Number 235691)

ADMINISTRATIVE
LAW JUDGE DECISION

Respondent.

HEARING: September 10, at 1:00 p.m.

APPEARANCES: The Arizona Department of Insurance (hereinafter "Department") was represented by Liane Kido, Esq., Assistant Attorney General; John Paul Gutschlag (Arizona License Number 9196) (National Products Number 235691) (hereinafter "Respondent") failed to appear.

ADMINISTRATIVE LAW JUDGE: M. Douglas

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. The Department referred this matter to the Office of Administrative Hearings ("the OAH"), an independent state agency, for an evidentiary hearing on whether cause existed to discipline Respondent's Arizona non-resident accident/health and life insurance producer Arizona License Number 9196 (National Products Number 235691).
2. On or about July 29, 2015, the Department's Deputy Director issued a Notice of Hearing that alleged certain facts, cited applicable law, and set an evidentiary hearing at the OAH on September 10, 2015, at 1:00 p.m. The Department mailed the Notice of Hearing via certified and regular mail to Respondent's business and residential addresses of record.
3. A hearing was held on September 10, 2015. The Department presented the testimony of Steven Fromholtz, its Producer Licensing Administrator, and submitted six (6) exhibits.

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

1 4. Respondent did not request to appear telephonically at the duly noticed hearing and
2 did not request that the hearing be continued. Although the start of the hearing was
3 delayed at least fifteen minutes to allow Respondent additional travel time, Respondent
4 did not appear, personally or through an attorney, and did not contact the OAH to
5 request that the start of the hearing be further delayed. Consequently, Respondent did
6 not present any evidence to defend his license.

7 **ADDITIONAL HEARING EVIDENCE**

8 5. Respondent is, and was at all material times, licensed as an Arizona non-resident
9 Accident/Health and Life Insurance Producer Arizona license number 9196, which will
10 expire on March 31, 2017.¹

11 6. Respondent's Home State is Texas. Respondent's address of record is: GM-
12 Southwest, 6946 Lebanon Rd., Frisco, Texas 75034-6741.

13 7. On or about May 27, 2014, the Texas Department of Insurance accepted the
14 voluntary surrender of Respondent's insurance producer resident License.²

15 8. On or about April 22, 2015, the North Dakota Insurance Department revoked
16 Respondent's insurance producer non-resident licensee for failure to respond, criminal
17 proceedings, and no resident producer license.³

18 9. Respondent failed to notify the Department within thirty (30) days of the
19 administrative action taken in North Dakota.

20 10. On or about March 5, 2015, the Vermont Department of Financial Regulation--
21 Insurance Division revoked Respondent's insurance producer license for the other
22 states' actions, fiduciary violation, and criminal proceedings.⁴

23 11. Respondent failed to notify the Department within thirty (30) days of the
24 administrative action taken in Vermont.

25 12. On or about December 9, 2014, the Oklahoma Insurance Department revoked
26 Respondent's insurance producer license for fraud.⁵

27
28 ¹ See Department's Exhibit 1.

29 ² See Department's Exhibit 3.

30 ³ See Department's Exhibit 3.

⁴ See Department's Exhibit 3.

⁵ See Department's Exhibit 3.

1 13. Respondent failed to notify the Department within thirty (30) day of the
2 administrative action taken in Oklahoma.

3 14. On or about September 17, 2014, the Idaho Department of Insurance revoked
4 Respondent's insurance producer license for demonstrating lack of fitness or
5 trustworthiness, other states' actions, and criminal proceedings.⁶

6 15. Respondent failed to notify the Department within thirty (30) days of the
7 administrative action taken in Idaho.

8 16. On or about July 5, 2014, the Colorado Department of Regulatory Agencies--
9 Division of Insurance accepted the surrender of Respondent's insurance producer
10 license for demonstrating a lack of fitness or trustworthiness, failure to report other
11 states' actions, criminal record/history, and no resident license.⁷

12 17. Respondent failed to notify the Department within thirty (30) days of the
13 administrative action taken in Colorado.

14 18. On or about June 18, 2014, the Florida Office of Insurance Regulation revoked
15 Respondent's insurance producer license for criminal proceedings.⁸

16 19. Respondent failed to notify the Department within thirty (30) days of the
17 administrative action taken in Florida.

18 20. On or about May 29, 2014, the Virginia Department of Insurance accepted the
19 voluntary surrender of Respondent's insurance producer license for demonstrating lack
20 of fitness or trustworthiness and for having a felony conviction.⁹

21 21. Respondent failed to notify the Department within thirty (30) days of the
22 administrative action taken in Virginia.

23 22. On or about September 5, 2013, Respondent pled guilty to conspiracy to violate
24 the Racketeer Influenced and Corrupt Organizations Act and engaging in monetary
25 transactions in property derived from wire fraud and mail fraud.¹⁰

26
27
28 ⁶See Department's Exhibit 3.

29 ⁷See Department's Exhibit 3.

30 ⁸See Department's Exhibit 3.

⁹See Department's Exhibit 3.

¹⁰ See Department's Exhibit 4.

1 23. On or about May 21, 2014, Respondent was sentenced to eighteen (18) months of
2 incarceration to be followed with one (1) year of probation and two (2) years of
3 supervised release. Respondent was also ordered to pay restitution in the amount of
4 \$1,200,000.00.

5 24. Respondent is currently in the custody of the Federal Bureau of Prisons facility in
6 Fort Worth, Texas. His expected release date is October 28, 2015.¹¹

7 CONCLUSIONS OF LAW

8 1. This matter lies within the Department's jurisdiction.¹²

9 2. The Notice of Hearing that the Department mailed to Respondent at his addresses
10 of record was reasonable and he is deemed to have received notice of the hearing.¹³

11 3. The Department bears the burden of proof to establish cause to discipline
12 Respondent's Arizona non-resident accident/health and life insurance producer Arizona
13 License Number 9196 (National Products Number 235691) by a preponderance of the
14 evidence.¹⁴

15 4. "A preponderance of the evidence is such proof as convinces the trier of fact that
16 the contention is more probably true than not."¹⁵

17 5. The Department established that Respondent's conduct, as described above,
18 constitutes failure to report to the Director, within thirty (30) days after the final
19 disposition of a matter, any administrative action taken against the producer in another
20 jurisdiction or by another government agency, within the meaning of A.R.S. § 20-
21 301(A).

22 6. The Department established that Respondent's conduct, as described above,
23 constitutes failing to be licensed as a resident and in good standing in the producer's
24 home state, within the meaning of A.R.S. § 20-287(A)(1).

25 7. The Department established that Respondent's conduct, as described above,
26 constitutes a violation of Title 20, within the meaning of A.R.S. § 20-295(A)(2).

27
28 ¹¹ See Department's Exhibit 4.

29 ¹² See A.R.S. § 20-340 *et seq.*

30 ¹³ See A.R.S. §§ 41-1092.04; 41-1092.05(D).

¹⁴ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and A.A.C. R2-19-119(B)(1); *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

1 8. The Department established that Respondent's conduct, as described above,
2 constitutes having been convicted of a felony, within the meaning of A.R.S. § 20-
3 295(A)(6).

4 9. The Department established that Respondent's conduct, as described above,
5 constitutes having an insurance producer license denied, suspended, or revoked in any
6 state, province, district, or territory, within the meaning of A.R.S. § 20-295(A)(9).

7 10. Respondent's conduct, as described above, provides cause for the Director of the
8 Department to suspend, revoke, or refuse to renew Respondent's insurance producer
9 license and to impose a civil penalty and/or to order restitution pursuant to A.R.S. § 20-
10 295(A) and (F).

11 11. Respondent's failure to report within thirty (30) days after the final disposition of a
12 matter the administrative actions taken against him in other jurisdictions, Respondent's
13 failure to report having been convicted of a felony, Respondent's failure to be licensed
14 as a resident and in good standing in his home state, and Respondent's failure to
15 appear for the duly noticed hearing establish that Respondent cannot be regulated at
16 this time.

17 **RECOMMENDED ORDER**

18 Based on the foregoing, it is recommended that the Director revoke
19 Respondent's Arizona non-resident accident/health and life insurance producer Arizona
20 License Number 9196 (National Products Number 235691).

21 *In the event of certification of the Administrative Law Judge Decision by the*
22 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
23 *five days from the date of that certification.*

24 Done this day, September 14, 2015.

25 /s/ M. Douglas
26 Administrative Law Judge

27 Transmitted electronically to:

28 Darren Ellingson, Deputy Director
29

30 ¹⁵ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

Arizona Department of Insurance

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