

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Activity of:

3 **JHASS GROUP L.L.C. a/k/a J. HASS GROUP,**
4 **LLC,**
5 **JASON D. HASS, PRESIDENT AND MEMBER,**
6 **JEREMY R. HASS; MANAGING MEMBER,**
7 **and**
8 **JEFFREY HASS MANAGING MEMBER**
16425 N. Pima Road, Suite 325
Scottsdale, AZ 85260

Petitioners.

No. 12F-BD006-BNK

**SUPERINTENDENT'S FINAL
DECISION AND ORDER**

9 The Superintendent of the Arizona Department of Financial Institutions (the "Superintendent") having
10 reviewed the record in this matter, including the Administrative Law Judge Decision attached and
11 incorporated herein by this reference, adopts the Administrative Law Judge's Findings of Fact, Conclusions
12 of Law and Order as follows:

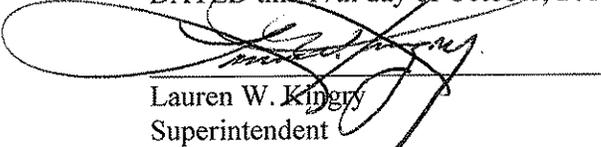
13 ORDER

14 **IT IS ORDERED** that the Cease and Desist Order issued on September 29, 2011 Docket Number
15 12F-BD021-SBD is affirmed, and within forty-five (45) days of the effective date of this Order, JHASS
16 Entity and JHASS individuals are jointly and severally liable to pay the Department a civil money penalty
17 in the amount of one hundred and fifty thousand dollars (\$150,000.00).

18 NOTICE

19 The parties are advised that, pursuant to A.R.S. § 41-1092.09, this Order shall be final unless
20 Petitioners submit a written motion for rehearing no later than thirty (30) days after service of this decision.
21 The motion for rehearing or review must specify the particular grounds upon which it is based as set forth
22 in A.A.C. R20-4-1219. A copy shall be served upon all other parties to the hearing, including the Attorney
23 General, if the Attorney General is not the party filing the claim of error. In the alternative, the parties may
24 seek judicial review of this decision pursuant to A.R.S. § 41-1092.08(H).

25 DATED this 17th day of October, 2012.

26 
27 Lauren W. King
Superintendent
28 Arizona Department of Financial Institutions

1 ORIGINAL filed this 17th day of October, 2012 in the office of:

2 Lauren W. Kingry, Superintendent
3 Arizona Department of Financial Institutions
4 ATTN: June Beckwith
5 2910 North 44th Street, Suite 310
6 Phoenix, Arizona 85018

7 COPY mailed same date to:

8 Lewis D. Kowal, Administrative Law Judge
9 Office of the Administrative Hearings
10 1400 West Washington, Suite 101
11 Phoenix, AZ 85007

12 Natalia Garrett, Assistant Attorney General
13 Office of the Attorney General
14 1275 West Washington
15 Phoenix, AZ 85007

16 Robert D. Charlton, Assistant Superintendent
17 Tammy Seto, Financial Institutions Examiner Sr.
18 Attn: Sabrina Zimmerman
19 Arizona Department of Financial Institutions
20 2910 N. 44th Street, Suite 310
21 Phoenix, AZ 85018

22 AND COPY MAILED SAME DATE by
23 Certified Mail, Return Receipt Requested, to:

24 Timothy H. Barnes, Esq.
25 428 E. Thunderbird Road, #150
26 Phoenix, AZ 85022
27 tim@thbpc.com
28 Attorneys for Petitioners

By: June Beckwith

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Unlicensed Activity of:

No. 12F-BD006-BNK

JHASS GROUP L.L.C. a/k/a J. HASS
GROUP, LLC,
JASON D. HASS, PRESIDENT AND
MEMBER,
JEREMY R. HASS; MANAGING MEMBER,
and
JEFFREY HASS, MANAGING MEMBER
16425 N. Pima Road, Suite 325
Scottsdale, AZ 85260

**ADMINISTRATIVE
LAW JUDGE DECISION**

Petitioners

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HEARING: April 17, 18 19, 2012, May 25, 2012, and May 29, 2012.

Record remained opened for post-hearing submissions and closed on September 21, 2012.

APPEARANCES: Assistant Attorney General Natalia A. Garrett on behalf of the Arizona Department of Financial Institutions; Timothy H. Barnes, Esq., on behalf of JHass Group L.L.C. also known as J. Hass Group, LLC, Jason D. Hass, Jeremy R. Hass, and Jeffery Hass

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

FINDINGS OF FACT

Business Activities of JHASS Entity

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1. At all times relevant to this matter, Petitioners JHASS Entity Group L.L.C., also known as J. Hass Group, LLC ("JHASS Entity"), Jason D. Hass, Jeremy R. Hass, and Jeffrey Hass, ("JHASS Individuals") offered debtors (also referred to as "consumers" or "JHASS clients") a program ("JHASS Program") to reduce their unsecured debt. Exhibit #9 at AG225.

1 2. According to the Arizona Corporation Commission's records,¹ JHASS Entity was
2 incorporated on February 28, 2008. Jason Hass, Jeremy Hass, and Jeffrey Hass were
3 the managing members of JHASS Entity. Jason Hass was a managing member of
4 JHASS Entity until March 23, 2011, and Jeremy and Jeffrey Hass were managing
5 members until May 4, 2012.

6 3. At all times relevant to this matter, JHASS Entity engaged in business activities
7 in the State of Arizona that it characterized as debt settlement. Exhibit #9 at AG225-
8 27; Exhibit #15 at AG528-29. JHASS Entity operated under a business model in which
9 it negotiated settlements with creditors of consumers, and then directed that settlement
10 funds be paid on behalf of consumers from a trust account held by a third party, which
11 in the instant case was NoteWorld Servicing Center("NoteWorld"), now known as
12 Meracord.²

13 4. The JHASS Program included client savings used to settle debts, monthly
14 charges of a maintenance fees for trust account administration, and professional fees
15 for ongoing customer service and customer account administration. Exhibit #9 at
16 AG225.

17 5. JHASS Entity directed the transfer of funds and payment of fees to be paid from
18 the trust account, and the transfers and payments were done through Automated
19 Clearing House ("ACH") transfers. There was no contractual relationship between
20 JHASS Entity and NoteWorld in setting up accounts in NoteWorld Reporter ("NWR"),
21 NoteWorld's user interface website.

22 6. JHASS Entity would enter consumer information, including ACH and bank
23 account information, for NoteWorld's use.

24 7. Although Jason Hass testified that some consumers maintained their own bank
25 accounts and that their accounts did not involve ACH transfer of funds to a third party,
26 there was no corroborating evidence presented to support such testimony.

27 8. Jason Hass testified:

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29 ¹ At hearing, Administrative Notice was taken of the Arizona Corporation Commission's records of
30 JHASS Entity.

² Another third party similar to NoteWorld used in the JHASS Program was Global Client Solutions
("Global").

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a. JHASS Entity obtained its clients through referrals that originated from sales or marketing companies (hereinafter collectively referred to as “sales companies”). The sales companies offered various products or services to consumers, including debt management, debt settlement, credit repair, or bankruptcy referral provided by various companies.

b. Representatives of the sales companies would typically address documentation online with the consumer to enroll in the JHASS Program. The process was done pursuant to direction provided by JHASS Entity. If a consumer did not have online access, the consumer relayed the necessary information to the representative, the documentation was completed by the representative, and the documentation was sent by fax or by a delivery service to the consumer to verify the information, and then to execute and to return the documentation.

c. JHASS Entity and the sales companies’ representatives used software known as “Settle Admin Software,” and each consumer was provided a username and password in order to login to the Settle Admin Software.

d. The Settle Admin Software would generate documents that comprised the Client Partnership Agreement and other documents relating to the JHASS Program that were to be electronically signed by the consumer. Each signature or initial “block” on the JHASS Entity enrollment documents required separate action by the consumer.

e. Upon completing and executing the documents contained in the consumer’s contract packet, the Settle Admin software would electronically send a PDF file of the documents to the consumer, the sales company, and JHASS Entity.

f. JHASS Entity would arrange for the information contained in the consumer’s contract packet to be entered in Debt Manager, JHASS Entity’s internal client relationship manager software.

9. Dori Ann Maycumber (“Ms. Maycumber”), Operations Manager with NoteWorld, testified that JHASS Entity would enter information into NWR such as the customer’s

1 contact information, the customer's bank account information that was contained in the
2 NoteWorld Sign-Up Agreement, debit plan, or particular debits.

3 10. Ms. Maycumber also testified that upon creation of a new account, NoteWorld's
4 computer system automatically generated a welcome letter that introduced the
5 consumer to NoteWorld ("NoteWorld Welcome Letter").

6 11. In the NoteWorld Welcome Letter, consumers were provided a personal
7 identification number and an account number so the consumer could log into NWR.
8 Exhibit P40. The "Terms and Conditions" document that was enclosed with the
9 NoteWorld Welcome Letter provided information regarding "Account Refund/Closure,"
10 "Trust Account Services Information," and "Suspension; Termination". Exhibit P40.

11 12. Ms. Maycumber testified that the information that a consumer could view on
12 NWR was the same information to which JHASS Entity had access, but did not have
13 the same detail that was available to JHASS Entity.

14 13. Jason Hass testified that after JHASS Entity and a consumer's creditor
15 negotiated a settlement offer, the creditor would send JHASS Entity a letter or other
16 document containing the offer. He further testified that JHASS Entity would then advise
17 the consumer of the settlement offer and that it was up to the consumer to accept or
18 reject the offer.

19 14. Jason Hass explained that if the JHASS Entity negotiator was unable to
20 communicate the settlement offer to the consumer, the offer would be rejected.

21 15. Ms. Maycumber testified that JHASS Entity brought over 5,000 individual
22 consumer accounts to NoteWorld.

23 16. Jason Hass testified that JHASS Entity provided services to between 10,000 and
24 15,000 consumer accounts, but could not state how many of them were in Arizona.

25 Procedural History

26 17. In early 2011, the Department started to receive complaints against JHASS
27 Entity alleging that JHASS Entity mishandled consumers' money and/or failed to settle
28 their debts. e.g., Exhibit #1 at AG036; AG110 and Exhibit #2 at AG117.

29 18. The Department, through Senior Investigator Tammy Seto ("Ms. Seto"), initiated
30 an investigation into possible unlicensed activity by JHASS Entity.

1 19. Ms. Seto testified that she reviewed JHASS Entity's website and learned that the
2 JHASS Program involved creating and maintaining settlement and trust accounts and
3 that JHASS Entity charged a fee to consumers for its services.

4 20. The Department contacted JHASS Entity to obtain information about its business
5 activities in Arizona. Although JHASS Entity responded to the Department, the
6 information provided was not sufficient to determine the full extent and true nature of
7 JHASS Entity's business.

8 21. In order to obtain clarification as to the business operations of JHASS Entity, Ms.
9 Seto contacted NoteWorld. Ms. Seto testified that NoteWorld was licensed by the
10 Department as an escrow agent. According to the information Ms. Seto received,
11 JHASS clients entered into contractual arrangements with NoteWorld to hold clients'
12 monies in a trust account maintained by NoteWorld from which the clients' creditors
13 and certain fees were to be disbursed.

14 22. Ms. Seto testified that in the course of her investigation, she learned that JHASS
15 Entity directed and/or had control over the disbursement of monies held by NoteWorld
16 on behalf of its clients, that JHASS Entity submitted consumers' banking information
17 directly to NoteWorld, and that JHASS Entity directed NoteWorld as to the amount of
18 fees to be paid to JHASS Entity and/or other entities, including NoteWorld. Ms. Seto
19 learned that NoteWorld would automatically deduct payments from a client's bank
20 account for payments that were structured by JHASS Entity.

21 23. Ms. Seto testified that through her investigation, she learned that the
22 arrangement JHASS Entity had with NoteWorld and consumers provided JHASS Entity
23 with the ability to set up an account, create a "Schedule of Debits," "stop a payment," or
24 "put a hold on a payment," and that JHASS Entity had access to view the consumer
25 accounts that were with NoteWorld.

26 24. Ms. Seto discussed the results of her investigation with her supervisor, Robert
27 Charlton ("Mr. Charlton"), Assistant Superintendent of the Department. Mr. Charlton
28 determined that JHASS Entity was acting as a debt management company by its
29 control over its clients' funds and/or management of its clients' funds, even though the
30 funds were held by NoteWorld.

1 25. On September 29, 2011, the Department issued an Order to Cease and Desist
2 against JHASS Entity, finding that JHASS Entity conducted business as a debt
3 management company without a license within the meaning of A.R.S. § 6-701(4), in
4 violation of A.R.S. §§ 6-703 and 6-715.

5 Debt Settlement Company versus Debt Management Company

6 26. Ms. Seto explained that a debt settlement company is not required to be
7 licensed by the Department, but that a debt management company is required to be so
8 licensed.

9 27. Ms. Seto testified that a debt settlement company would not have to be licensed
10 as a debt management company if it only arranged settlements that were presented to
11 creditors, and it did not receive funds or have access to monies.

12 28. A debt management company is defined as “a corporation, company, firm,
13 partnership, association or society, as well as a natural person, that for compensation
14 engages in the business of receiving money, or evidences thereof, in this state or from
15 a resident of this state as agent of a debtor for the purpose of distributing the same to
16 his creditors in payment or partial payment of his obligations.” A.R.S. § 6-701(4).

17 29. Mr. Charlton, on behalf of the Department, determined that JHASS Entity acted
18 as an unlicensed debt management company because: (i) JHASS Entity was in receipt
19 of debtors’ “money, or evidences thereof” as set forth in A.R.S. § 6-701(4) when JHASS
20 Entity received debtors’ banking information for purposes of opening a trust account
21 and retained access to direct disbursements from the accounts for payment of fees and
22 payments to creditors; (ii) debtors did not have complete access to their accounts; and
23 (iii) JHASS Entity acted as an agent for debtors and was compensated for it.

24 30. Jason Hass testified that a debt management company receives money directly
25 from consumers and sends monthly payments to consumers’ creditors under
26 prearranged deals with those creditors to pay the entire debt over a period of years,
27 and for that service receives a “fair share” payment from creditors.

28 31. Jeffrey Hass distinguished a debt settlement company and debt management
29 company. According to Jeffrey Hass, a debt settlement company involves having a
30 savings account for lump sum settlements and does not involve prearranged

1 arrangements with creditors, unlike a debt management company. Jeffrey Hass
2 acknowledged that, based on the testimony of consumers Paul Ressler ("consumer
3 Ressler") and Brenda Grijalva ("consumer Grijalva"), JHASS Entity engaged in
4 settlement offers that involved term payments to creditors. He distinguished the two
5 business models by stating that in the debt settlement model, settlement was paid off in
6 a very short time period as opposed to debt management where the payment
7 arrangements involve a much longer term.

8 32. Mr. Charlton testified that the fact that JHASS Entity did not physically receive
9 the debtor's money or that it held itself out to the public as being a debt settlement
10 company does not control, and that it is the business activity in relation to the statutory
11 definition of a debt management company that dictates whether a business has to be
12 licensed as a debt management company. Mr. Charlton opined that a debt
13 management company license is required, even if the company's clients' money does
14 not directly flow through a company's own bank account, as long as the company
15 facilitates the debiting of the consumer's account.

16 33. According to Mr. Charlton, the fact that JHASS Entity obtained authority from a
17 consumer to act in a certain capacity does not eliminate the requirement to be licensed.

18 34. JHASS Entity and JHASS Individuals presented into evidence a letter dated July
19 12, 2002, authored by Stanley D. Mabbitt, ("Mr. Mabbitt"), an attorney, who represented
20 an entity ("Company") that was engaged in certain business activity. Exhibit P62. The
21 July 12, 2002 letter referred to a letter authored by Mr. Charlton dated May 9, 2000,
22 which appears to have been in response to another letter previously sent by Mr.
23 Mabbitt.

24 35. Neither Mr. Charlton's letter of May 9, 2000, nor the prior letter from Mr. Mabbitt
25 were presented into evidence nor was there any credible evidence presented as to the
26 content of those letters. However, Mr. Charlton's letter dated July 31, 2002, sent in
27 response to Mr. Mabbitt's July 12, 2002 letter was presented into evidence. Exhibit
28 P61

29 36. According to JHASS Entity and JHASS Individuals, it appears that Mr. Charlton
30 in Exhibit P61 indicates that the Company would not be required to be licensed as a

1 debt management company. They argued that the JHASS Entity's business model is
2 similar to that of the Company and thus, does not have to be licensed. In contrast, the
3 Department argued that there were a number of differences between JHASS Entity's
4 business model and that of the Company as set forth in Exhibit P62. The Department
5 also argued that Exhibits P61 and P62 should be given no weight because, without the
6 prior Mabbitt letter or the May 9, 2000 response by Mr. Charlton, context is lacking and
7 there is no way of knowing the substance of what was initially presented to Mr.

8 Charlton, or his response.

9 37. Mr. Charlton testified that he did not recall the specifics of the letter from Mr.
10 Mabbitt that prompted his May 9, 2000 response, nor did he recall the specifics of his
11 May 9, 2000 response. The Administrative Law Judge gives very little weight to Exhibits
12 P61 and P62 because of the differences between the Company's business model and
13 that of JHASS Entity. Additionally, the facts and circumstances surrounding the
14 situation that generated those letters were not established and Exhibits P61 and P62
15 contain information that, at best, is vague and ambiguous.

16 Receipt of "Money or Evidences Thereof"

17 38. Under the law, a person must be licensed as a debt management company if
18 that person, (1) for compensation, (2) engages in the business of receiving money, or
19 evidences thereof, in this state or from a resident of this state (3) as agent of a debtor
20 for the purpose of distributing the same to his creditors in payment or partial payment of
21 his obligations. See A.R.S. § 6-701(4)

22 39. Ms. Maycumber testified that:

- 23 a. JHASS Entity set up consumer accounts with NoteWorld for its clients,
24 and NoteWorld held JHASS clients' funds in one trust account with US Bank.
- 25 b. JHASS Entity filled out and/or collected ACH agreements from its clients
26 containing consumer's banking information (ACH information), also referred to
27 as NoteWorld's Sign-Up Agreements.
- 28 c. NoteWorld did not verify the accuracy of information on the ACH
29 agreement and relied on the information provided by JHASS Entity.
- 30 d. Although an ACH agreement was required in order to debit an individual

1 consumer's personal bank account, JHASS did not always provide NoteWorld
2 with those agreements.

3 e. Prior to February 2012, JHASS Entity had the ability to process
4 transactions for individual consumers using NoteWorld's systems and since
5 February 2012, JHASS Entity's access has been limited.

6 f. Through NWR, JHASS Entity had access to setup certain pieces of
7 consumer accounts and provided instructions for the processing of certain
8 transactions for consumer accounts.

9 g. In setting up an account, JHASS Entity could submit or arrange for the
10 customer's contact information; bank account information; and debit plan or
11 particular debits and allocations or disbursements of those debits.

12 h. Once JHASS Entity entered information into NWR, JHASS Entity retained
13 authority to make corrections, edit customer's contact information, or edit the
14 debit schedule.

15 i. JHASS Entity "administered" consumer accounts in the sense of directing
16 consumer's money from point A to point B, and it did so both at the time of the
17 setting up of a consumer account and while the account remained active.

18 40. The declaration of consumer Elaine Christensen ("consumer Christensen")
19 states that she hired JHASS Entity sometime in May 2009 to pay off her creditors and,
20 in doing so, she authorized JHASS Entity to debit her checking account knowing that
21 JHASS Entity would set up an account with NoteWorld for the processing of her
22 monthly payments. Exhibit #20.

23 41. Consumer Ressler, entered into an arrangement with JHASS Entity, pursuant to
24 which JHASS Entity was supposed to help him reach settlement with three of his
25 creditors. Consumer Ressler testified that upon enrollment with JHASS Entity, he
26 began making monthly payments to JHASS Entity. Consumer Ressler explained that
27 subsequently he learned that JHASS Entity "directed" those payments to his creditors.

28 42. According to the documents that JHASS Entity provided to the Department
29 regarding training, policies, and procedures, JHASS Entity had various departments,
30 including a Data Entry Department, which entered the contract information into JHASS

1 Entity's Debt Manager software program. Exhibit #15 at AG519-639. According to the
2 documents, the Banking Department entered clients' payments, i.e. entered the
3 Schedule of Debits into NWR and scheduled all client payments into the client's
4 corresponding banking system.

5 43. Although Jason Hass testified that the title of JHASS Entity's Banking
6 Department was for title purposes, JHASS Entity's business records reflect that JHASS
7 Entity initiated drafts. Exhibit #15 at AG640 ("07/30/2009 11:43 alma: Rcvd new
8 banking info from Liberty. If today's draft comes back NSF [non-sufficient funds],
9 please reschedule from new bank account . . .").

10 44. JHASS Entity had access to input information into the NWR, and NWR then
11 interacted with other systems of NoteWorld for the management and processing of
12 disbursements of fees and monies.

13 45. NoteWorld's counsel submitted a statement to the Department indicating that
14 JHASS Entity had the ability through NoteWorld's database to edit a client's contact
15 information, apply a "hold" to a scheduled debit, or edit the schedule of debits (i.e.,
16 date, amount, fee allocation). Exhibit #6 at AG201.

17 46. According to JHASS Debt Manager Notes, JHASS Entity had the ability to adjust
18 how much money was drafted from a consumer bank account. Exhibit #15 at AG701
19 ("03/10/2010 11:02 joyy: Lowered 03/15/2010 drafts to 0815/2010 [sic] by \$310.00 to
20 amount of \$723.64 for term settlement as per Austin COP.").

21 47. Ms. Maycumber testified that JHASS Entity could initiate transactions in
22 NoteWorld's system, such as arrange for the disbursement of funds to creditors or
23 initiate a consumer's refund that would occur through NoteWorld's servicing system
24 automatically.

25 48. Mr. Charlton testified that the Department had concerns about the manner in
26 which JHASS Entity collected fees through NoteWorld.

27 49. According to NoteWorld's counsel's statement to the Department, JHASS Entity
28 "exercises exclusive control over the exact dollar amount of fees that it is owed by the
29 consumer." Exhibit #6 at AG177.

30 50. Ms. Maycumber testified that:

1 a. JHASS Entity had certain control groups within NoteWorld's computer
2 system with specific fee allocation codes that would be applied automatically by
3 NoteWorld when there was a disbursement from a customer's account.

4 b. JHASS Entity provided NoteWorld with specific instructions on how to set
5 up their control groups and JHASS Entity's fees were deducted from the
6 consumers' trust accounts serviced by NoteWorld. Exhibit #4 at AG134.

7 c. JHASS clients did not have the same access to or control over the
8 "control groups" as JHASS Entity. The consumers could not arrange the
9 allocation or fees, nor were they even aware of such fee allocations.

10 51. JHASS clients were required to establish "a trust or controlled account at a bank,
11 Escrow Company or other financial institution or service company reasonably
12 acceptable to [JHASS Entity]." Exhibit #1 at AG042.

13 52. Jason Hass testified that consumers' access to their trust account was designed
14 to be limited so they could have some place where money was saved outside of their
15 daily checking account, without their access, to ensure that there were funds for
16 settlement purposes.

17 53. Other than the testimony of Jason Hass, there was no evidence presented to
18 corroborate that JHASS clients were given an option to not use a third party trust
19 account and be a self-saver, which Jason Hass testified constituted a minority of
20 consumers.

21 54. JHASS clients signed an agreement pursuant to which the JHASS clients
22 authorized NoteWorld to debit their designated bank account according to a "schedule
23 of debits." Exhibit #9 at AG235.

24 55. Ms. Maycumber testified that:

25 a. Only JHASS Entity had the authority to set up a "Schedule of Debits"
26 within NoteWorld's system.³

27 b. While NoteWorld would refund whatever money was available to a
28 consumer in his/her "reserves, upon request," if a consumer requested a refund

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30 ³ There was no evidence presented that established that JHASS clients or NoteWorld was ever provided such a schedule from JHASS Entity.

1 of all payments/debits, NoteWorld would direct them to JHASS Entity.

2 c. Consumers could cancel any fee scheduled to be paid by contacting
3 NoteWorld directly and did not have to go through JHASS Entity to cancel
4 payment of a scheduled fee.

5 d. Consumers had the ability to cancel or skip an ACH debit or all ACH
6 debits⁴ from their bank account. Consumers could also challenge an ACH debit
7 from the consumer's bank account within 60 days of the debit, which would
8 result in the consumer's bank recouping the challenged debit amount from
9 NoteWorld, which, in turn, could recoup that amount back from the service
10 provider to whom the funds may have previously been paid.

11 e. If JHASS Entity's client called NoteWorld to cancel debits, NoteWorld
12 would typically cancel one debit and direct the consumer back to their service
13 provider if the consumer intended to cancel an entire debit schedule. When a
14 consumer wanted to cancel an account, and JHASS Entity did not agree,
15 NoteWorld would want to get confirmation from both parties before cancelling
16 the account.

17 f. JHASS Entity had the ability to request a refund from NoteWorld on
18 behalf of the consumer, and when honoring the request, NoteWorld would not
19 know whether the request actually came from the consumer or if the request was
20 initiated by JHASS Entity on its own. While the refund would be paid to a
21 consumer, JHASS Entity was in charge of instructing NoteWorld how the fees
22 should be deducted and transferred to JHASS Entity before the refund would be
23 issued to a consumer.

24 g. Prior to February 2012, NoteWorld accepted instructions from JHASS
25 Entity as to the payment of fees to JHASS Entity, debits, and other withdrawal of
26 funds from a consumer.

27 h. A consumer could not call NoteWorld and schedule disbursements to
28 creditors as such requests or instructions would be proved by JHASS Entity.

29 i. Upon instruction by JHASS Entity, NoteWorld would disburse funds from
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1 a consumer's trust account to that consumer's creditor, without verification that
2 the disbursement was being made in accordance with the consumer's authority.

3 56. While the documents provided consumers with the above-mentioned control
4 over fees and disbursements, in actuality, the manner in which the JHASS Program
5 was presented to consumers and their understanding of the program was that JHASS
6 Entity had control over the fees and disbursements, and their point of contact was with
7 JHASS Entity, not NoteWorld.

8 57. The fact that JHASS Entity was the main contact for consumers was illustrated in
9 the NoteWorld Welcome letter that informed JHASS clients that "[JHASS Entity] w[ould]
10 continue to answer any questions about your debt settlement account." Exhibit P40.

11 Consumers' Testimony

12 58. Consumer Christensen stated that she never contacted NoteWorld directly
13 because she believed that she had hired JHASS Entity to help settle her debt and that
14 NoteWorld was a subcontractor that would handle the financial transactions.

15 59. While enrolled with JHASS Entity, various money management issues came up
16 for consumer Christensen, i.e., receiving a refund or setting up a check by phone.

17 60. Consumer Christensen testified that at no time during her contacts with JHASS
18 Entity was she advised by JHASS Entity's employees that she needed to contact
19 NoteWorld for money management rather than JHASS Entity. Exhibit #10 at AG264-
20 66.

21 61. Consumer Ressler testified that when a favorable term settlement was obtained
22 by JHASS Entity, it did not inform him that it was his responsibility to finalize it by
23 making or directing the requisite monthly payments.

24 62. Consumer Ressler testified that he was never reminded that he had a separate
25 agreement with NoteWorld or Global, nor was he directed to address his money-
26 management issues with those companies. According to consumer Ressler, JHASS
27 Entity "administered" the payments.

28 63. Consumer Ressler explained that he did not know that he needed to speak
29 directly with either NoteWorld or Global to arrange for the transfer of settlement

30 ⁴ See Exhibit #15 at AG 632-33.

1 payments, and he only communicated with JHASS Entity until "things fell apart."

2 64. Consumer Kristin Miller ("consumer Miller") testified that:

3 a. After she and her husband enrolled into the JHASS Program, her only
4 interaction with NoteWorld occurred when she wanted to get the remaining
5 account balance back.

6 b. She signed up for the JHASS Program after the terms were explained to
7 her over the phone.

8 c. She later received an email with the Client Partnership Agreement
9 ("Agreement"), dated July 24, 2009, which had already been electronically
10 signed for her and her husband.⁵

11 d. She was aware that her checking account would be debited by NoteWorld
12 monthly, but it was her understanding that funds would be released from the
13 NoteWorld account upon her or her husband's approval. She believed that
14 JHASS Entity would be settling the debt and that JHASS Entity was in control of
15 the account where her money was held. She testified that she thought
16 NoteWorld may be owned by JHASS Entity or may be the same company.⁶

17 65. Consumer John Prusha ("Consumer Prusha") testified that:

18 a. When he enrolled in the JHASS Program he did not review any of the
19 documents he was asked to e-sign because he was told to go to various points
20 within documents and to click at those points. After enrollment, he was not
21 provided with the terms of JHASS Program and was unable to access the
22 website to view the documents.

23 b. Although he understood that some company would be debiting his bank
24 account on a monthly basis, he did not know that the company was NoteWorld.

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28 ⁵ How the documents were signed is not an issue as consumer Miller testified that both she and her
29 husband agreed to enroll in the JHASS Program and agreed to the Client Partnership Agreement.

30 ⁶ However, the JHASS Entity contract documents and NoteWorld Agreement provision read together
establish that consumer Miller's funds were to be held in a trust account maintained by NoteWorld and
disbursements from the account were directed by JHASS Entity.

1 c. Despite requests made to JHASS Entity, he never received any
2 paperwork from either NoteWorld or JHASS Entity during the entire time he was
3 enrolled in the JHASS Program.

4 d. At the direction of JHASS Entity, NoteWorld began debiting his bank
5 account without verifying that they had accurate information on file (e.g.,
6 Consumer Prusha's accurate address), and without obtaining an ACH
7 authorization form.⁷

8 e. Upon contacting JHASS Entity with respect to funds that had been
9 transferred to the trust account, he was informed that NoteWorld was the entity
10 handling the funds. Exhibit #13 at AG362.

11 f. The week before he canceled his participation in the JHASS Program, he
12 could view his NoteWorld account online, but he did not have the ability to
13 transfer funds out of the account. He saw that no money was going out of the
14 account to his creditors and that the only money being disbursed was going to
15 JHASS Entity and NoteWorld.

16 Other Consumer Complaints

17 66. JHASS Entity's responses to other consumer's complaints indicated that JHASS
18 Entity had control over consumers' funds.

19 67. For example, in response to a complaint made by consumer Vicki Bernardi,
20 JHASS Entity stated:

21 You further agreed that we would make a partial payment on th[e]
22 settlement from your NoteWorld account (\$1,286.88) and set up a check
23 by phone to pay remaining balance from your personal checking account.
24 We reduced your payment to [JHASS Entity] for the month of April to
assist you in making that payment which in turn finalized the settlement.

25 Exhibit #1 at AG004.

26 Similarly, when addressing another complaint involving consumer Frank Schubert
27 JHASS Entity stated, "[w]e returned [clients'] reserves balance upon the [clients']
28 cancellation and [clients'] account with NoteWorld was closed." Exhibit #1 at AG008.
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Assistant Superintendent Charlton's Testimony

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68. Mr. Charlton testified that the Department has interpreted the phrase "evidences thereof" in A.R.S. §6-701(4) to mean constructive receipt of funds, such as control over a consumer's funds, which does not have to be in the physical form and can be through the use of ACH information. According to Mr. Charlton, the Department is applying the same interpretation to the phrase in the context of debt management companies as it has historically done with mortgage reduction companies. In that scenario, the companies helped consumers pay off their loan early and accessed the consumers' bank account information to help facilitate the debiting of the consumers' accounts, and the money did not go to the companies, but to an escrow company.

Distribution of Funds to Creditors

69. JHASS Entity had authority to communicate instructions from its clients regarding disbursements refunds or the closing of a NoteWorld account to NoteWorld, and NoteWorld accepted and executed those instructions from JHASS Entity.

70. After JHASS Entity obtained settlements for its clients and received a settlement letter from JHASS Entity or the consumer's creditor, NoteWorld consumers had 24 hours after the notification of settlement to approve or decline any disbursement to a creditor. However, if the consumer did not notify NoteWorld to decline the disbursement, it would be automatically approved and NoteWorld would proceed to satisfy the terms of the settlement. Exhibit #19 at AG775.

71. Ms. Maycumber testified that although NoteWorld required a settlement letter for the disbursement of funds to creditors, it did not have an auditing process in place to verify that there was a settlement letter before such disbursement and it was possible for a disbursement to go out before NoteWorld received a settlement letter.

72. According to consumer Christensen, JHASS Entity acquired and kept consumer Christensen's personal banking information and, then, with her permission, provided that information to one of her creditors for funds to be withdrawn out of her personal

⁷ According to NoteWorld's CS Reports, on December 12, 2011, NoteWorld wrote to JHASS Entity stating that they needed the ACH agreement for consumer Prusha. Exhibit #13 at AG361.

1 checking account monthly for four months. Exhibit #20; Exhibit #15 at AG649
2 (12/08/2009 (second) entry).

3 73. Consumer Grijalva testified that JHASS Entity was supposed to arrange for an
4 installment settlement payment to her creditor to occur on a certain date. Consumer
5 Grijalva explained that JHASS Entity failed to arrange for such payment, which resulted
6 in her having to pay \$480.00 in interest.

7 74. A JHASS Entity employee told consumer Grijalva that JHASS Entity would use
8 funds in the trust account, and then JHASS Entity would draft the rest from consumer
9 Grijalva's personal bank account. Exhibit #9 at AG242.

10 75. Consumer Ressler testified that:

11 a. He made payments into the JHASS Program, which were supposed to be
12 distributed to his creditors. Consumer Ressler testified that JHASS Entity
13 managed distribution of settlement payments to his creditors that were to be paid
14 over time, and that JHASS Entity was to direct a \$1,400.00 payment to one of his
15 creditors, but that did not occur.

16 b. He was instructed by Megan, a JHASS Entity employee, that the \$700.00
17 May payment to Forster Garbus, counsel for one of his creditors, had to come
18 from consumer Ressler directly because the trust account was being switched
19 from NoteWorld to Global, but that starting in June, JHASS Entity would be able
20 to send payments through Global. Exhibit #12 at AG293.⁸

21 c. Because JHASS Entity did not arrange for the June payment, consumer
22 Ressler found himself in default; his creditor obtained a judgment for
23 \$22,373.94 plus costs of \$200.00. Exhibit #12 at AG275.

24 d. Subsequently, Forster Garbus levied his bank accounts.

25 Agency and Receipt of Compensation

26 76. JHASS Entity selected NoteWorld as the depository institution and
27 communicated with NoteWorld and creditors on behalf of debtors. Exhibit P40. In

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29 ⁸ In their response to the Attorney General's Office, JHASS Entity misstated the substance of the May
30 27, 2010 recording by stating that Megan, a JHASS Entity employee, told consumer Ressler that he
should make the June payment when the transcript of the conversation indicated that JHASS Entity
would handle the June payment. Exhibit #12 at AG278.

1 addition, JHASS Entity exercised control over clients' funds to effectuate the account-
2 payoff transactions.

3 77. On behalf of debtors, JHASS Entity collected a consumer's personal banking
4 information for purposes of opening an account with NoteWorld. Exhibit #19 at AG775-
5 76.

6 78. In the process of granting authority to NoteWorld to debit their bank accounts,
7 debtors authorized NoteWorld to accept instructions as to the schedule of debits, in
8 essence designating JHASS Entity to act as "an agent of debtors" and vesting in
9 JHASS Entity control over their funds. *Id.*

10 79. On behalf of debtors, JHASS Entity, in fact, managed debtors' NoteWorld's
11 accounts through a schedule of debits or instructions that it was authorized to deliver to
12 NoteWorld on behalf of debtors, thereby directing disbursement of funds.

13 JHASS Individuals

14 80. JHASS Individuals participated in the business of JHASS Entity and were aware
15 of its business model, which included the processing of payments for consumers.

16 81. Jason Hass testified that JHASS Entity is a family-operated business that started
17 off with 12 or 15 employees and grew to as many as 120 employees.

18 82. Although Jason Hass testified that he released his membership in JHASS Entity
19 in the end of 2008 or the beginning of 2009, as of February 22, 2011, he signed a letter
20 directed to the Department in the capacity of CEO of JHASS Entity. Exhibit #5 at
21 AG148.

22 83. Jason Hass is an Arizona attorney. For a period of time, Jason Hass' law firm
23 was engaged in debt settlement business, but that debt settlement practice ended
24 when JHASS Entity was created in February 2008.

25 84. Jason Hass, through his law firm, dealt with NoteWorld before JHASS Entity was
26 formed and subsequently transferred/assigned his law firm's clients to JHASS Entity.
27 Jason Hass continued in his capacity as a consultant and/or CEO of JHASS Entity.

28 85. According to Jason Hass, Jeremy Hass worked for Jason Hass's law firm and
29 engaged in negotiations with NoteWorld, including the beginning setup of various
30 control groups. Jason Hass testified that in terms of setting up JHASS Entity's policies

1 and procedures, he equally shared authority and responsibility with Jeffrey and Jeremy
2 Hass.

3 86. Jeremy Hass testified that when JHASS Entity was formed, he was an owner.
4 Jeremy Hass was the Director of Marketing for JHASS Entity and at one point, its Chief
5 Marketing Officer. Jeremy Hass engaged NoteWorld as a possible trust company and
6 helped the sales companies set up to receive their portion of the fees from NoteWorld.

7 87. Jeffrey Hass testified that at one point, he may have been a managing member
8 of JHASS Entity; that he was generally familiar with JHASS Entity's business model,
9 including the differences between debt consolidation companies and debt management
10 companies; that he assisted in assembling JHASS Entity's Sierra Vista training manual;
11 and that he assisted Jeremy Hass in setting up numerous offices around the country.
12 Exhibit #15 at AG528. Jeffrey Hass stated that JHASS Entity facilitated account payoff
13 services.

14 88. The Arizona Corporation Commission records and business records of JHASS
15 Entity and the testimony of JHASS individuals establish that JHASS Individuals were
16 actively involved and participated in the business of JHASS Entity and they
17 implemented and permitted JHASS Entity's business model to operate.

18 **CONCLUSIONS OF LAW**

19 1. Pursuant to A.R.S., Title 6, Chapter 6, the Superintendent of the Department is
20 authorized to regulate all persons engaged in the business of a debt management
21 company and has the duty to enforce the applicable statutes and rules.

22 2. The Department bears the burden of proving by a preponderance of the
23 evidence that the business activities performed by JHASS Entity in the State of Arizona
24 constitute the business of a debt management company and that the JHASS
25 Individuals owned and/or operated JHASS Entity while it was operating as a debt
26 management company. See A.A.C. R2-19-119.

27 3. A "preponderance of the evidence is such proof as convinces the trier of fact that
28 the contention is more probably true than not." MORRIS K. UDALL, ARIZONA LAW OF
29 EVIDENCE § 5 (1960). It is "evidence which is of greater weight or more convincing than
30 the evidence which is offered in opposition to it; that is, evidence which as a whole

1 shows that the fact sought to be proved is more probable than not.” BLACK’S LAW
2 DICTIONARY 1182 (6th ed. 1990).

3 4. A.R.S. § 6-701(4) defines the term “debt management company” as “a
4 corporation, company, firm, partnership, association or society, as well as a natural
5 person, that for compensation engages in the business of receiving money, or
6 evidences thereof, in this state or from a resident of this state as agent of a debtor for
7 the purpose of distributing the same to his creditors in payment or partial payment of
8 his obligations.”

9 5. A.R.S. § 6-703 provides: “No person shall engage in the business for
10 compensation of receiving money as agent of a debtor for the purpose of distributing
11 the same to his creditors in payment or partial payment of his obligations without first
12 obtaining a license from the superintendent. “

13 6. A.R.S. § 6-715 provides: “No person may engage in the business of a debt
14 management company without the licensee required by this [Chapter].”

15 7. Courts have concluded that the phrase “receipt of money” includes
16 “constructive” receipt or possession. See *Nationwide Asset Serv. v. DuFauchard*, 164
17 Cal. App. 4th 1121, 1126 (2008) (Debt settlement companies petitioned for a writ of
18 mandamus challenging the decision of the Commissioner of Corporations that they
19 needed to obtain a prorater license); *Estrella v. Freedom Fin. Network, LLC*, 778 F.
20 Supp. 2d 1041, 1045-46 (N.D. Cal. 2011) (The court addressed motions for summary
21 judgment and considered whether a network of debt collection companies was a
22 prorater).⁹

23 8. The term “constructive” means “[t]hat which is established by the mind of the law
24 in its act of *construing* facts, conduct, circumstances or instruments.” BLACK’S LAW
25 DICTIONARY 313 (6th ed. 1990).

26 9. An entity has been considered to be in “constructive receipt or possession” of
27 money when the person assumes sufficient control over the funds of another that were

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29 ⁹ A prorater was defined in Cal. Fin. Code § 12002.1 as “a person who . . . engages in . . . the business
30 of receiving money or evidences thereof for the purpose of distributing [it] among creditors in payment or
partial payment of the obligations of the debtor.”

1 disbursed on behalf of the client and for compensation of the entity. See *Nationwide*,
2 164 Cal. App. 4th at 1125-27.

3 10. The weight of the evidence of record established that JHASS Entity was in
4 constructive receipt or possession of its clients' funds by virtue of the authority and
5 control that it was able to exercise over those funds.

6 11. The definition of a "debt management company" in A.R.S. § 6-701(4)
7 encompasses not only persons receiving "money" but also encompasses persons
8 receiving "money or evidences thereof." The Department asserted that reference in
9 A.R.S. § 6-701(4) to "money or evidences thereof" is intended to include those
10 persons/entities who may not physically receive or hold a consumer's funds, but
11 receive a consumers' bank account information that gives them access and control over
12 the funds so as to effectuate their distribution to creditors and pay fees. Cf.
13 *Nationwide*, 164 Cal. App. 4th at 1124; *Estrella* 778 F. Supp. 2d. at 1041 (the activity of
14 "receiving money, or evidences thereof. . ." includes the activity of exercising sufficient
15 control over another person's funds, bank or trust account(s)).

16 12. The evidence of record establishes that JHASS clients did not have unlimited
17 access to their NoteWorld account and that JHASS clients transferred substantial
18 control over their account to JHASS Entity via NWR. Further, the evidence of record
19 established that in some instances, JHASS Entity had more control over or access to
20 consumer funds deposited in NoteWorld's trust account than the consumers.

21 13. The Administrative Law Judge concludes that the activities of JHASS Entity by
22 (a) receiving personal/banking information; (b) setting up a consumer trust account for
23 its clients with a third party (e.g., NoteWorld); (c) viewing and having access to
24 consumer's account information, including the ability to edit account information; (d) the
25 use and submission of consumers' ACH information to NoteWorld and creditors of
26 consumers; (e) submitting debit instructions or scheduling of debits, causing money to
27 be deposited into or transferred out of the account to creditors; and (f) having
28 managed, directed, administered, or oversaw payments to creditors, viewed
29 collectively, is tantamount to "receiving money, or evidences thereof" for purposes of
30 distributing the same to creditors within the meaning of A.R.S. § 6-701(4).

1 14. An agency's consistent, long-standing interpretation of the statutes it is charged
2 to enforce is given considerable weight in the absence of clear statutory guidance to
3 the contrary. *Phelps Dodge Corp. v. Ariz. Dep't of Water Resources*, 211 Ariz. 146, 118
4 P.3d 1110 (App. 2005); *Marlar v. Dep't Economic Security*, 136 Ariz. 404, 666 P.2d 504
5 (App. 1983).

6 15. The evidence of record established that the Department has historically
7 interpreted the phrase "money or evidence thereof" in a similar statutory scheme to
8 mean constructive receipt of money and has consistently considered the obtaining,
9 maintaining and use of a consumer's ACH information as "money or evidences thereof"
10 within the meaning of A.R.S. § 6-701(4).

11 16. A.R.S. § 6-137(A) states that when "any person has engaged . . . in any action . .
12 . which constitutes a violation of [Title 6]," the Superintendent is authorized to issue
13 "an order directing the person *and* directors, officers, employees and agents of the
14 person to cease and desist from engaging in the act, practice or transaction or doing
15 any act in furtherance of the act, practice or transaction and to take appropriate
16 affirmative action, within a reasonable period of time . . . to correct the conditions
17 resulting from the act, practice or transaction."

18 17. A.R.S. § 6-132 allows the Superintendent to impose a civil monetary penalty
19 against "a person, including any officer, director, employee, agent or other person who
20 participates in the conduct of the affairs of the person, for any knowing violation of any
21 provisions of [Title 6]."

22 18. The term "knowingly" has been defined as "import[ing] only a knowledge that the
23 facts exist that bring the act or omission within the provisions of the statute using such
24 word. It does not require any knowledge of the unlawfulness of the act or omission."
25 A.R.S. § 1-215(17).

26 19. The evidence of record established that at all times relevant to this matter,
27 JHASS Entity was owned and operated by JHASS Individuals. The evidence of record
28 also established that JHASS Individuals were the managing members of the JHASS
29 Entity and took part in the setting up of JHASS Entity's business model, including
30 JHASS Entity's relationship with NoteWorld and consumers.

1 20. An agency relationship “arises when one person (a ‘principal’) manifests assent
2 to another person (an ‘agent’) that the agent shall act on the principal’s behalf and
3 subject to the principal’s control, and the agent manifests assent or otherwise consents
4 to the act.” *Ruesga v. Kindred Nursing Centers*, 215 Ariz. 589, 597, 161 P.3d 1253,
5 ____, (App. 2007) (citation omitted). The relation of agency “may be held to exist . . .
6 whether or not the parties understood it to be an agency.” *Id.* at 598.

7 21. The greater weight of the evidence of record supports a finding that JHASS
8 clients authorized JHASS Entity (expressly or impliedly) to act on their behalf in various
9 capacities, including the management of their “trust account” funds. The Administrative
10 Law Judge concludes that JHASS Entity and JHASS Individuals acted as agents of
11 debtors within the meaning of A.R.S. § 6-701(4) by arranging to have and having
12 access to debtors’ funds through NoteWorld’s system and exercised control through
13 NoteWorld over the debtors’ funds for the purpose of effectuating money transfers to
14 debtors’ creditors for compensation.

15 22. The evidence of record shows that JHASS Entity engaged in the business of a
16 debt management company as an agent of consumers in the State of Arizona within the
17 meaning of A.R.S. § 6-701(4), in violation of A.R.S. §§ 6-703 and 6-715. No evidence
18 was presented that established that any exemptions of licensure apply to JHASS Entity
19 or JHASS Individuals.

20 23. The weight of the evidence of record established that grounds existed for
21 issuance of a Cease and Desist Order against JHASS Entity and JHASS Individuals
22 pursuant to A.R.S. § 6-137.

23 24. The Department may assess a civil penalty in an amount of up to \$5,000.00 per
24 violation of any provisions of Title 6, with each day of violation constituting a separate
25 offense. A.R.S. § 6-132.

26 25. It appears that the Department relied upon 1) the testimony of Ms. Maycumber
27 that JHASS Entity brought over approximately 5,000 accounts, and 2) the testimony of
28 Jason Hass that JHASS Entity had between 10,000 and 15,000 clients in support of its
29 request for a \$150,000.00 civil penalty to be assessed against both JHASS Entity and
30 JHASS Individuals jointly and severally. The evidence of record established that those

1 figures were not precise and did not specifically reflect those clients or accounts that
2 existed in Arizona. Consequently, the evidence of record is devoid of any credible
3 evidence of the actual number of JHASS clients or accounts that existed in Arizona.
4 However, the evidence of record showed that there were five consumers, the
5 Department's consumer witnesses, who were involved in the JHASS Program for
6 multiple months and charged fees by JHASS Entity, which established a basis for
7 imposing a civil penalty of \$150,000.00. Further, Exhibit 1 indicates that there were
8 other Arizona consumers involved in the JHASS Program who filed complaints against
9 JHASS Entity.

10 26. The Administrative Law Judge concludes that in consideration of the
11 appropriateness of a civil penalty to be imposed for JHASS Entity's unlicensed activity
12 for even a period of several months for the five consumer witnesses, and applying a
13 \$5,000.00 per day civil penalty as permitted under A.R.S. § 6-132, amounts to a total
14 civil penalty in excess of \$150,000.00.¹⁰ Under the circumstances, the Department's
15 request for the imposition of a \$150,000.00 civil penalty is reasonable, appropriate, and
16 supported by the weight of the evidence.

17 27. The Department seeks an order of restitution in the total amount of \$38,390.87
18 to be paid to five consumers as follows:

- 19 a. \$3,350.35 to consumer Grijalva;
- 20 b. \$10,512.76 to consumer Miller;
- 21 c. \$5,000.00 to consumer Prusha;
- 22 d. \$16,203.76 to consumer Ressler; and
- 23 e. \$3,324.00 to consumer Christensen.

24 28. In support of its request for restitution, as stated in its written closing argument,
25 the Department relied on the amounts stated in the complaints filed by the five
26 consumers and other documents indicating the fee structure, but none showing all of
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30 ¹⁰ Under the statute, a civil penalty of \$150,000.00 could be imposed for a 30 day period of violations involving only one consumer.

1 the actual disbursements¹¹. Aside from the fees actually paid to JHASS Entity, any
2 accounting of the funds paid into the NoteWorld account and disbursed lies within the
3 province of NoteWorld acting as escrow agent for the trust accounts,

4 29. The Department asserted that because neither NoteWorld nor consumers had
5 the ability to know the amount of fees JHASS Entity actually received and how much
6 JHASS Entity paid to other entities (i.e., sales companies), it was incumbent upon
7 JHASS Entity to come forward with that information. In support of that contention, the
8 Department cited *Healey v. Coury*, 162 Ariz. 349, 783 P.2d 795 (App.1989) (When one
9 party has sole or unique access to information, that party has the burden to come
10 forward with that information). According to the Department, because JHASS Entity did
11 not come forward with such information, the Administrative Law Judge can consider the
12 amounts stated in the complaints to be accurate for purposes of restitution. The
13 Department, by seeking restitution, has the burden of establishing that restitution is
14 appropriate and to present reliable evidence as to the amount of restitution to be
15 awarded. The Department did not present reliable evidence as to the actual amount of
16 fees that were paid by the five consumers to JHASS Entity for restitution to be awarded.
17 Consequently, the Administrative Law Judge cannot order restitution.

18 ORDER

19 Based on the above, the Cease and Desist Order is affirmed, and within 45 days
20 of the effective date of the Order entered in this matter, JHASS Entity and the JHASS
21 Individuals are jointly and severally liable to pay to the Department a civil penalty in the
22 amount of \$150,000.00.

23
24 *In the event of certification of the Administrative Law Judge Decision by the*
25 *Director of the Office of Administrative Hearings, the effective date of the Order will be 5*
26 *days from the date of that certification.*

27
28 Done this day, October 11, 2012.

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30 ¹¹ In the Department's closing argument, the Department referenced the amounts owed to the five consumers as "Estimated Amount Paid in fees [sic] to JHASS." Department's Closing Argument at 24.

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/s/ Lewis D. Kowal
Administrative Law Judge

Transmitted electronically to:
Lauren Kingry, Superintendent
Arizona Department of Financial Institutions