

APR 29 1994

STATE OF ARIZONA

DEPARTMENT OF INSURANCE DEPARTMENT OF INSURANCE
By llc

In the Matter of)	Docket No. 8416
)	
PHOENIX MOVING & STORAGE, INC.;)	
DAVID BAILEY; CHRISTOPHER HAWS,)	ORDER OF
)	CEASE AND DESIST
)	
Respondents.)	
_____)	

The Arizona Department of Insurance (the "Department") has received evidence that Respondents have transacted the business of insurance in the State of Arizona. Accordingly, the Director of Insurance (the "Director") makes the following Findings of Fact and Conclusions of Law and enters the following Order pursuant to A.R.S. §20-401.02.

FINDINGS OF FACT

1. The Director is charged with the enforcement of Title 20, Arizona Revised Statutes, relating to insurance.
2. Respondent PHOENIX MOVING & STORAGE, INC. (hereinafter "PHOENIX MOVING") is a corporation organized and existing under the laws of the State of Arizona, with its principal place of business located at 710 West Broadway, Suite 508, Mesa, Arizona 85210.
3. The general nature of the business of Respondent PHOENIX MOVING is the moving and storing of household and office furnishings.
4. Respondent DAVID BAILEY (hereinafter "BAILEY") is and was at all material times president and treasurer of Respondent PHOENIX MOVING and responsible for the operation of Respondent PHOENIX MOVING'S business affairs.

1 5. Respondent CHRISTOPHER HAWS (hereinafter "HAWS")
2 is and was at all material times vice president and secretary of
3 Respondent PHOENIX MOVING and responsible for the operation of
4 Respondent PHOENIX MOVING'S business affairs.

5 6. Respondents do not and did not at any material
6 time hold a certificate of authority to transact the business of
7 insurance in the State of Arizona.

8 7. From and after approximately October 29, 1993
9 Respondents marketed and/or issued property and casualty
10 insurance coverage in the State of Arizona.

11 8. Respondent PHOENIX MOVING advertises that it will
12 provide "Replacement Value Insurance" in the U.S. West Direct
13 Yellow Pages, March 1993/94 edition, p. 1339.

14 9. On or about October 29, 1993, Respondent HAWS
15 signed a total binding quote to move the contents of then
16 Arizona resident Steven Powers' (hereinafter "Powers") home from
17 Mesa, Arizona to Utah. This quote included a fee of \$325.00 for
18 replacement value insurance.

19 10. On or about November 6, the day of the move,
20 employees and/or agents of Respondent PHOENIX MOVING requested
21 Powers' signature on an acknowledgement of the cost of the move
22 totalling \$2,875.00, including \$325.00 for insurance.

23 11. On or about November 6, 1993, Powers paid to
24 Respondent PHOENIX MOVING, its employees and/or agents \$2,875.00
25 by cashier's check to cover the entire cost of the move,
26 including replacement value insurance.

27 12. During the move, items of POWERS' property were
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1 damaged. Powers attempted to file a claim under the insurance
2 policy Respondent PHOENIX MOVING sold to him.

3 13. At no time had Respondents PHOENIX MOVING, BAILEY
4 or HAWS purchased replacement value insurance on behalf of
5 Powers to cover Powers' personal property during the move.

6 14. After Powers submitted his property damage claim,
7 Respondent BAILEY asserted that Respondents retained the \$325.00
8 for their own use and are self-insured for damage to the
9 contents of their trucks.

10 CONCLUSIONS OF LAW

11 1. The Director has jurisdiction over this matter.

12 2. The conduct of Respondents as described in the
13 Findings of Fact above constitutes the transaction of insurance
14 within the meaning of A.R.S. § 20-106.

15 3. The conduct of Respondents as described above
16 constitutes the unauthorized transaction of insurance within the
17 meaning of A.R.S. §§ 20-106, 20-107 and 20-401.01.

18 4. The conduct of Respondents as described above
19 constitutes misrepresentation and false advertising of policies
20 within the meaning of A.R.S. § 20-443(1).

21 5. The conduct of Respondents as described above
22 constitutes false and deceptive advertising of insurance or
23 status as insurer within the meaning of A.R.S. § 20-444.

24 ORDER

25 IT IS HEREBY ORDERED:

26 1. That Respondents shall immediately cease and
27 desist from the transaction of the business of insurance in the
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1 State of Arizona for which they do not hold a certificate of
2 authority issued by this State.

3 2. That Respondents shall immediately cease and
4 desist from soliciting any insurance application, making or
5 proposing to make any insurance contract, taking or receiving
6 any application for insurance, taking or collecting any premium,
7 commission, or any other consideration for any insurance
8 contract, issuing or delivering contracts of insurance to
9 residents of this State, or otherwise transacting insurance
10 business from offices or by personnel or facilities located in
11 the State of Arizona for which they do not hold a certificate of
12 authority issued by this State.

13 3. The unauthorized transaction of insurance by
14 Respondents does not impair the validity of any act or contract
15 of the Respondents as provided for in A.R.S. § 20-402(A).

16 4. Respondents are prohibited from maintaining any
17 action in any court of this state to enforce any right, claim,
18 or demand arising out of the transaction of the business of
19 insurance until and unless Respondents obtain a certificate of
20 authority as set forth in A.R.S. § 20-402(A).

21 5. Respondents, jointly or severally, shall pay all
22 valid claims arising out of acts covered by any and all
23 insurance policies issued by Respondents to Arizona residents
24 for so long as such claims may legally be brought by or against
25 any insured.

26 6. If Respondents fail to pay any claim or loss
27 within the provisions of the insurance contract issued by it,
28 any person who acted directly or indirectly as an agent for or

1 otherwise represented or aided Respondents in a solicitation,
2 negotiation, procurement or effectuation of the insurance
3 contract or renewal of the contract is liable to the insured for
4 the full amount of the claim or loss in the manner provided by
5 the provisions of the insurance contract as set forth in A.R.S.
6 § 20-402(B).

7 7. Respondents shall, within thirty (30) days of the
8 date of this Order, remit to the Department of Insurance of the
9 State of Arizona any and all premium taxes applicable to the
10 unauthorized insurance transacted in the State of Arizona and
11 shall provide at the time of such submission an accounting
12 acceptable to the Director of Insurance of the State of Arizona.

13 8. This Order shall become effective immediately and
14 shall remain in full force and effect until otherwise stayed,
15 modified, vacated or set aside.

16 NOTICE OF OPPORTUNITY FOR HEARING

17 Pursuant to Titles 20 and 41 of the Arizona Revised
18 Statutes, Respondents, and each of them, are hereby notified
19 that they may request a hearing pursuant to A.R.S. § 20-161 to
20 contest the order to cease and desist. Such a request must be
21 in writing and received at the following address within thirty
22 (30) days from the date hereof:

23 Arizona Department of Insurance
24 Hearing Division
25 2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

26 Upon receipt of a timely written request for hearing, the

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Director will issue a notice setting the time and place of the hearing.

DATED AND EFFECTIVE this 29th day of April, 1994.


CHRIS HERSTAM
Director of Insurance

COPIES of the foregoing mailed/delivered this 29th day of April, 1994, to:

Gerrie Switzer, Assistant Attorney General
Consumer Protection and Antitrust Section
1275 W. Washington
Phoenix, Arizona 85007
Attorney for the Department of Insurance

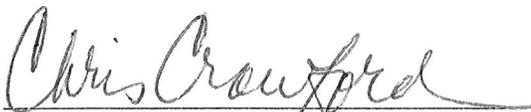
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