STATE OF ARIZONA

OCT 2 9 1998

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## STATE OF ARIZONA

## DEPARTMENT OF INSURANCE

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	In the Matter of:	)
4		) No. 98A-051-INS
	ZACHARY FORBES JONES	
5		) FINDINGS OF FACT, CONCLUSIONS
	Respondent.	) OF LAW AND ORDER
6		)
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7	On September 22, 1998, the Arizona Department of Insurance ("Department") issued	

On September 22, 1998, the Arizona Department of Insurance ("Department") issued a Notice of Hearing ("Notice") in the above-captioned matter, a copy of which is attached and incorporated by this reference. The Notice required Zachary Forbes Jones ("Respondent") to provide a written answer to the allegations set forth in the Notice within twenty days of the issuance of the Notice. As of this date, Respondent has failed to file an answer. On October 26, 1998, counsel for the Department filed a Request for Default, and Proposed Findings of Fact, Conclusions of Law and Order. As of this date, Respondent has not responded to the Department's request. Pursuant to A.A.C. R20-6-106(C), a party that fails to file an answer within the time provided shall be deemed to be in default and one or more of the allegations in the notice of hearing may be deemed to be admitted.

# **FINDINGS OF FACT**

- 1. Notice was proper.
- 2. Respondent is in default.
- 3. The allegations in the Notice of Hearing are deemed admitted.

## **CONCLUSIONS OF LAW**

- 1. The conduct alleged in the Notice constitutes grounds for the Director to suspend, revoke or refuse to renew Respondent's licenses to transact insurance in Arizona, pursuant to A.R.S. §20-316(A).
- 2. The conduct alleged in the Notice constitutes grounds for the Director to impose a civil penalty and/or order restitution, pursuant to A.R.S. §20-316(C).

### 1 **ORDER** 2 Based on the above, IT IS ORDERED THAT: 3 All insurance licenses held by Respondent are revoked effective upon the issuance of this Order. 4 2. 5 Respondent shall make restitution to the following insured and insurer and in the 6 amounts listed: (a) Fred A. Martin in the amount of \$855; and (b) Clarendon National 7 Insurance Company in the amount of \$824. Respondent shall pay a civil penalty in the amount of \$ 1500.00 to the 8 3. Director payable upon entry of this Order for remission to the State Treasurer for deposit in the 9 State General Fund. 10 The hearing set for November 3 and 4, 1998, shall be vacated. 11 DATED this 28th day of October, 1998. 12 13 14 CHARLES R. COHEN Acting Director of Insurance 15 COPY of the foregoing mailed this 16 29th day of October , 1998, to: 17 Casev Newcomb Administrative Law Judge 18 Office of Administrative Hearings 1700 West Washington, Suite 602 19 Phoenix, AZ 85007 20 Michael J. De La Cruz Assistant Attorney General 21 1275 West Washington Phoenix, AZ 85007 22 Gerrie L. Marks, Executive Assistant for Regulatory Affairs 23 John Gagne, Assistant Director Brenda Paugh, Investigator Maureen Catalioto, Supervisor Department of Insurance 25 2910 N. 44th Street, Suite 210 Phoenix, AZ 85018 26

1	Randy W. Niles
2	Office of Administrative Hearings 1700 West Washington, Suite 602
3	Phoenix, Arizona 85007
4	Zachary Forbes Jones 3030 North 38th Drive
5	Phoenix, Arizona 85019 Respondent
6	Arrowhead General Insurance Agency Attn: Todd Drake
7	6255 Lusk Boulevard San Diego, CA 92121
8	Clarandan National Ingunance Communication
9	Clarendon National Insurance Company 1177 Avenue of the Stars New York, N.Y. 10036
10	
11	Century National Insurance Company P. O. Box 3999
12	North Hollywood, California 91609-9990
13	Insurance Netwok Corp. 5900 North Granite Reef, No. 150A Scottsdale, AZ 85250
14	Scottsdate, 112 63230
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# DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE BY\_\_\_\_\_

In the Matter of:

Docket No. 98A-051-INS

ZACHARY FORBES JONES,

NOTICE OF HEARING

Respondent.

PLEASE TAKE NOTICE, that pursuant to the provisions of Arizona Revised Statutes ("A.R.S.") §§ 20-165 and 41-1061 through and including 41-1066 and 41-1092.01, the above-captioned matter will be heard before the Director of Insurance of the State of Arizona ("Director"), or his duly designated representative, on the 3rd and 4th days of November, 1998, at 9:00 a.m., at the Office of Administrative Hearings, 1700 West Washington, Capital Tower, West Wing, Suite 602, Phoenix, Arizona (the "Hearing").

Motions to continue this matter shall be made in writing to the Administrative Law Judge not less than five (5) business days prior to the date set for the Hearing. A copy of any motion to continue shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of Administrative Hearings.

A.R.S. § 20-164 entitles any party affected by this Hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence, to examine witnesses, to present supporting evidence, and to have subpoenas issued by the Administrative Law Judge to compel attendance of witnesses and production of evidence.

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If Respondent is represented by counsel, the attorney shall be licensed to practice law in the State of Arizona or, if Respondent is an insurer, it may be represented by a corporate officer pursuant to A.R.S. § 20-161(B).

Pursuant to A.R.S. § 41-1092.07(D), a clear and accurate record of the proceedings will be made by a court reporter or electronic means. Any party that requests a transcript of the proceeding shall pay the cost of the transcript to the court reporter or other transcriber.

Questions concerning issues raised in this Notice of Hearing should be directed to Assistant Attorney General Michael J. De La Cruz, (602) 542-7722, 1275 West Washington, Phoenix, Arizona 85007.

#### NOTICE OF APPLICABLE RULES

On January 23, 1992, the Arizona Department of Insurance adopted A.A.C. R 20-6-101 through R 20-6-115, setting forth the rules of practice and procedure applicable in contested cases before the Director. The hearing will be conducted pursuant to these rules.

PURSUANT TO A.A.C. R 20-6-106, RESPONDENT SHALL FILE A WRITTEN ANSWER WITHIN 20 DAYS AFTER ISSUANCE OF THIS NOTICE OF HEARING AND SHALL MAIL OR DELIVER A COPY OF THE ANSWER TO THE ASSISTANT ATTORNEY GENERAL DESIGNATED ABOVE. THE ANSWER SHALL STATE RESPONDENT'S POSITION OR DEFENSE AND SHALL SPECIFICALLY ADMIT OR DENY EACH ASSERTION IN THE NOTICE OF HEARING. ANY ASSERTION NOT DENIED SHALL BE DEEMED TO BE ADMITTED. ANY DEFENSE NOT RAISED IN THE ANSWER SHALL BE DEEMED WAIVED. IF AN ANSWER IS NOT TIMELY FILED, RESPONDENT SHALL BE DEEMED IN DEFAULT AND THE DIRECT

TOR MAY DEEM THE ALLEGATIONS ARE TRUE, AND TAKE WHATEVER ACTION IS APPROPRIATE, INCLUDING SUSPENSION, REVOCATION, OR DENIAL OF A LICENSE, OR RENEWAL OF A LICENSE, IMPOSITION OF A CIVIL PENALTY AND/OR ORDER RESTITUTION TO ANY PARTY INJURED.

PERSONS WITH DISABILITIES MAY REQUEST REASONABLE ACCOMMODATIONS SUCH AS INTERPRETERS, ALTERNATIVE FORMATS, OR ASSISTANCE
WITH PHYSICAL ACCESSIBILITY. REQUESTS FOR ACCOMMODATIONS SHOULD
BE MADE AS EARLY AS POSSIBLE TO ALLOW TIME TO ARRANGE FOR THE
ACCOMMODATIONS. IF YOU REQUIRE ACCOMMODATIONS, PLEASE CONTACT
THE OFFICE OF ADMINISTRATIVE HEARINGS AT 542-9826.

The Department alleges:

1. Respondent is, and was at all material times, licensed in Arizona to transact property and casualty insurance business as an agent and broker, license number 543391.

# COUNT I - BALDWIN

- 2. On or about December 6, 1996, Katherine O. Baldwin ("Baldwin") completed an application for automobile insurance to be procured by Respondent. Baldwin gave Respondent two checks in the amount of \$158.00 each, check numbers 514 and 515, made payable to Zachary Jones.
- 3. Respondent completed an Arrowhead General Insurance Agency ("Arrowhead") Premium Payment Receipt evidencing receipt of payment from Baldwin for automobile insurance through Clarendon National Insurance Company ("Clarendon"). Respondent also gave Baldwin three temporary Arizona automobile insurance identification cards for each of the three vehicles to be covered. The identification cards show Clarendon as the insurer with an effective date of 12/06/96 and expiration date of 12/06/97.

Arrowhead does not offer an annual policy through Clarendon in Arizona.

- 4. Baldwin discovered Respondent cashed her checks, yet never forwarded the premium or the application to Arrowhead. When Baldwin sent Paul Shelby, her boyfriend, to confront Respondent, he assured Shelby that the matter would be resolved and Baldwin would receive two free months of insurance. Respondent also told Shelby that a new application was sent to Arrowhead.
- 5. Arrowhead verified that it did not receive an application or down payment of premium from Respondent for Baldwin. The first information Arrowhead had regarding Baldwin was the Department's June 1997 inquiry. Based on the information provided to Arrowhead, a Clarendon automobile insurance policy was issued to Baldwin effective 12/6/96.

## COUNT II - MARTIN

- 6. On or about September 9, 1996, Fred A. Martin ("Martin") went to Respondent's office to obtain liability coverage for a fencing construction project. Martin gave Respondent a check in the amount of \$855.00 payable to Insurance Network Corp. ("I.N.C."). Respondent bound the coverage, but never forwarded the application or premium, therefore Martin never had coverage for the fencing project.
- 7. On or about September 30, 1996, Martin returned to Respondent's office to obtain liability coverage on his ranch. Respondent asked Martin to write another check for \$855.00 payable directly to Respondent. At this time, Respondent admitted never forwarding Martin's first check for the fencing construction project to the insurer.

8. On or about October 1, 1996, Respondent notified I.N.C. that it should bind coverage for Martin's ranch and Respondent faxed I.N.C. a completed application dated September 30, 1996. On or about October 5, 1996, I.N.C. received a premium check from Respondent for Martin's ranch liability policy in the amount of \$625.00. I.N.C. twice attempted to cash Respondent's check and both times it was returned NSF. I.N.C. never received any premium for Martin's policies. On or about November 18, 1996, I.N.C. notified Martin that the ranch liability policy was canceled for non-payment of premium.

### COUNT III - VILLA

- 9. On or about October 2, 1996, Luis Villa purchased automobile insurance from Respondent. Villa wrote a check in the amount of \$600.00 payable to Respondent. Respondent was to obtain coverage for Villa through Arrowhead General Insurance Agency ("Arrowhead"). Respondent gave Villa Arizona Automobile Insurance Cards listing Clarendon as the carrier with effective coverage dates of October 2, 1996 to October 2, 1997.
- 10. On December 2, 1996, Arrowhead received from Respondent an application for Villa's policy and a premium down payment of \$92.00. Respondent completed the application and signed Villa's name without Villa's knowledge or consent. The \$92.00 down payment paid for coverage from October 7, 1996 through November 4, 1996. Arrowhead never received the remainder of the \$600.00 Respondent collected from Villa.
- 11. On or about March 18, 1997, Villa was involved in an automobile accident. Villa filed a claim with Clarendon and they advised him that his policy has been canceled.

12. Based on the information provided by the Department, Clarendon agreed to reinstate Villa's policy through October 3, 1997.

### COUNT IV

- 13. Respondent failed to notify the Department of his change of address from Mammoth, Arizona to Phoenix.
- 14. Respondent's conduct constitutes a willful violation of or noncompliance with any provision of Title 20, within the meaning of A.R.S.  $\S$  20-316(A)(2).
- 15. Respondent's conduct constitutes misappropriation or conversion to his own use or illegal withholding of monies belonging to insurers and others and received in or during the conduct of business under the license or through its use within the meaning of A.R.S. § 20-316(A)(4).
- 16. Respondent's conduct constitutes a conduct of affairs under the license showing the licensee to be incompetent or a source of injury and loss to, or repeated complaint by, the public or any insurer within the meaning of A.R.S. § 20-316(A)(7).
- 17. Respondent's conduct constitutes the misrepresentation of the terms of any policy issued or to be issued within the meaning of A.R.S. § 20-443(1).
- 18. Respondent's conduct constitutes fraud within the meaning of A.R.S. § 20-463(A)(1)(a) and 20-463(A)(4)(a).
- 19. Respondent's failure to notify the Department of his change of address constitutes a violation of A.R.S. § 20-302(A).
- 20. Grounds exist for the Director to suspend, revoke, or refuse to renew Respondent's insurance licenses, impose a civil

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penalty upon Respondent and/or order restitution pursuant to A.R.S. §§ 20-316(A) and 20-316(C).

WHEREFORE, if after hearing, the Director makes a finding of one or more of the above-described allegations, the Director may suspend, revoke or refuse to renew Respondent's insurance licenses, impose a civil penalty and/or order restitution pursuant to A.R.S. §§ 20-316(A) and 20-316(C).

Pursuant to A.R.S. § 20-150, the Director of Insurance delegates the authority vested in the Director of Insurance, State of Arizona, whether implied or expressed, to the Director of the Office of Administrative Hearings or his designee to preside over the hearing of this matter as Administrative Law Judge, to make written recommendations to the Director of Insurance consisting of proposed findings of fact, proposed conclusions of law, and a proposed order. This delegation does not include a delegation of the authority of the Director of Insurance to make the order on hearing or other final decision in this matter.

Pursuant to A.R.S. § 41-1092.01, the Hearing will be conducted through the Office of Administrative Hearings, an independent agency. Please find enclosed a copy of the procedures to be followed.

DATED this 22 day of September, 1998.

CHARLES R. COHEN

Acting Director of Insurance

COPY of the foregoing mailed/delivered 1 this 22nd day of September, 1998, to: 2 Zachary Forbes Jones 3030 North 38th Drive 3 Phoenix, Arizona 85019 4 Zachary Forbes Jones Larry Miller Toyota 5 8425 West Bell Road Peoria, Arizona 85382 6

> Gerrie L. Marks, Executive Assistant for Regulatory Affairs John D. Gagne, Assistant Director Maureen Catalicto, Licensing Supervisor Arizona Department of Insurance 2910 North 44th Street, Suite 210 Phoenix, Arizona 85018

Brenda Paugh Arizona Department of Insurance 400 West Congress, Suite 152 Tucson, Arizona 85701

Michael J. DeLaCruz Assistant Attorney General Attorney General's Office 1275 West Washington Phoenix, Arizona 85007

Office of Administrative Hearings Capitol Tower, West Wing 1700 West Washington, Suite 602 Phoenix, Arizona 85007

A courtesy copy of this Notice of Hearing has been mailed/-delivered to the persons listed below. If you are listed below, you will receive no further notice or documents concerning this matter other than the Director's Final Order. Information about the status of this matter, including whether the hearing date has been changed, may be obtained by contacting the Department of Insurance at (602) 912-8454 or the Assistant Attorney General identified above at (602) 542-7722.

Arrowhead General Insurance Agency Attn: Todd Drake 6255 Lusk Boulevard San Diego, California 92121

Clarendon National Insurance Company 1177 Avenue of the Stars New York, New York 10036

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Century National Insurance Company Post Office Box 3999 North Hollywood, California 91609-9990

Insurance Network Corp. 5900 North Granite Reef, No. 150A Scottsdale, Arizona 85250

Curvey Borton