

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Revocation of the
3 Collection Agency License of:

No. 13F-BD010-BNK

4 **STUART ALLAN & ASSOCIATES, INC.;**
5 **STUART SPIVACK, PRESIDENT; AND**
6 **ALLAN PARCELUZZI, CO-OWNER**
7 5447 E. Fifth Street, Suite 110
8 Tucson, AZ 85711-2345

CONSENT ORDER

9 Respondents.

10 On March 8, 2013, the Arizona Department of Financial Institutions (“Department”)
11 issued a Notice of Hearing to Revoke and Complaint, alleging that Respondents had violated
12 Arizona law. Wishing to resolve this matter as an exercise of business judgment in lieu of an
13 administrative hearing, Respondents consent to the following Findings of Fact and
14 Conclusions of Law, and consent to the entry of the following Order.
15

16 FINDINGS OF FACT

17 1. Respondent Stuart Allan & Associates, Inc. (“SAA”) is an Arizona corporation
18 authorized to do business in Arizona as a collection agency, license number CA-0018573,
19 within the meaning of A.R.S. §§ 32-1001, *et seq.* The nature of SAA’s business is that of
20 soliciting claims for collection and collection of claims owed, due, or asserted to be owed or
21 due within the meaning of A.R.S. § 32-1001(2)(a).
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23 2. Respondent Stuart Spivack (“Mr. Spivack”) is the President of SAA. SAA and
24 Mr. Spivack (collectively “Respondents”) are not exempt from licensure as a collection agency
25 within the meaning of A.R.S. § 32-1004.

26 3. Respondent Allan Parcelluzzi is a Co-Owner of SAA.

27 4. Commencing on January 15, 2013, an examination of SAA was conducted by the
28 Department (“the Examination”), which revealed that Respondents:

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- a. Failed to provide to the Department, with their renewal applications for 2012 and 2013, true and accurate sworn financial statements that reflected the deficit condition of Respondents' fiduciary trust account ("Trust Account"); specifically, during the Examination, the Department's Examiners learned of an ongoing substantial Trust Account shortage between two million one hundred six thousand dollars (\$2,106,000) and two million eight hundred seventy thousand dollars (\$2,870,000);
- b. Defaulted on funds held in trust and failed to remit the funds timely, according to applicable regulations, as well as client agreements or contracts;
- c. Failed to meet the financial responsibility required by A.R.S. Title 32, Chapter 9 and failed to deal openly, fairly and honestly in the conduct of their collection agency business by retaining funds held in trust that were scheduled to be remitted to clients well beyond both statutory and administrative requirements and not in accordance with the terms and conditions set by agreement or contracts with clients; and by failing to timely remit collected funds according to applicable statutes and rules or contracts or agreement;
- d. Unlawfully conducted their collection agency business in Arizona, as a result of the Trust Account shortage;
- e. Failed to deposit all funds collected for clients in the Trust Account or to have client funds remain on deposit until the funds were paid to the client or otherwise paid; to maintain all unpaid client funds in the Trust Account until remitted to their clients; and to pay funds from the Trust Account only as expressly authorized in their contracts with clients, and as authorized in writing by the Superintendent;

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f. Failed to keep and maintain books, accounts, and records adequate to provide a clear and readily understandable record of all business conducted, including an original written contract between Respondents and their clients; failed to reconcile the Trust Account at least once a month as required; and failed to maintain their books, records and files so that the Superintendent can easily conduct an unannounced spot check, as well as the examinations and investigations required by A.R.S. §§ 6-122 and 6-124; failed to reconcile the Trust Account for the subject Examination Period beginning with month-end September 2012; and failed to maintain originals of their contracts or agreements with each client.

g. Failed to produce for examination the October, November and December 2012 Trust Account reconciliations; and

h. Failed to maintain complete, specific, easily understood, and unambiguous records of all client agreements and contracts as required.

5. Examiners reviewed approximately twenty three (23) consumer complaints that were reported to the Department, the Arizona Attorney General, and public and private complaint databases.

6. The complaint review revealed allegations from complainants that Respondents failed to deal openly, fairly and honestly in the conduct of the collection agency business; engaged in unfair or misleading practices; misrepresented the state of the law to a debtor; misrepresented the remedies available to Respondents; used unauthorized or oppressive tactics designed to harass any person to pay a debt; used written or oral communications that tend to ridicule, disgrace, or humiliate a person; failed to give copies of their evidence of the debt to the debtor or the debtor's attorney on request.

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- a. A.R.S. §§ 32-1021(B), 32-1022(A) and 32-1025(A) by failing to provide the Department with true and accurate sworn financial statements that reflected the deficit condition of Respondents' fiduciary trust account;
- b. A.R.S. § 32-1023(A)(3) by defaulting on payment of money collected or received for another;
- c. A.R.S. §§ 32-1051(1) and (3) by failing to meet the financial responsibility required by A.R.S. Title 32, Chapter 9 and failing to deal openly, fairly and honestly in the conduct of their collection agency business;
- d. A.R.S. §§ 32-1055(D)(1), (2) and (5) by unlawfully conducting their collection agency business in Arizona resulting from Respondents' Trust Account shortage;
- e. A.A.C. R20-4-1505(A), (C), (D), and (F) by failing to comply with the Rules of the Arizona Administrative Code with regard to collection agency trust accounts resulting from Respondents' Trust Account shortage;
- f. A.A.C. R20-4-1504(B)(3), (5) and (6) by failing to keep and maintain books, accounts, and records adequate to provide a clear and readily understandable record of all business conducted, including an original written contract between Respondents and their clients; failing to reconcile the Trust Account at least once a month as required; and failing to maintain their books, records and files so that the Superintendent can easily conduct an unannounced spot check, as well as the examinations and investigations required by A.R.S. §§ 6-122 and 6-124;
- g. A.A.C. R20-4-1504(D) by failing to maintain all records required by A.A.C. R20-4-1504 and failing to make them available for examination

1 within three working days after the Superintendent demands the records;
2 and

3 h. A.A.C. R20-4-1518(1), (2), (3) and (4) by failing to maintain complete,
4 specific, easily understood, and unambiguous records of all client
5 agreements and contracts as required.
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7 3. Neither SAA nor Mr. Spivack meet any of the exemptions to the licensing
8 requirements set forth in A.R.S. § 32-1004(A).

9 4. By the conduct set forth above, Respondents have failed to conduct their
10 collection agency business in accordance with the law, by violating provisions of the Arizona
11 Revised Statutes and the Arizona Administrative Code.

12 5. By the conduct set forth above, Respondents have made a material misstatement
13 or omission on the application for a license or any document required to be filed with the
14 Superintendent.

15 6. The violations set forth above constitute grounds for suspension or revocation of
16 Respondents' collection agency license pursuant to A.R.S. § 32-1053, or the pursuit of any
17 other remedy necessary or proper for the enforcement of statutes and rules regulating
18 collection agencies in Arizona pursuant to A.R.S. §§ 6-123 and 6-131.

19 7. Pursuant to A.R.S. § 6-132, Respondents' violations of the aforementioned
20 statutes are grounds for a civil penalty.

21 8. Pursuant to A.R.S. § 6-125(B)(4), Respondents shall be assessed an examination
22 fee in the amount of eleven thousand seven hundred thirty two dollars and fifty cents
23 (\$11,732.50), pursuant to A.R.S. § 6-122(B)(3), plus any applicable late fees pursuant to
24 A.R.S. § 6-125(D).
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26 **ORDER**

27 1. Respondents shall immediately cease the violations set forth in the Findings of
28 Fact and Conclusions of Law. Specifically, Respondents:

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- a. Shall maintain sufficient funds in the Trust Account to meet their responsibility to clients at all times;
- b. Shall only use Trust Account funds for their intended legal purpose;
- c. Shall not pay SAA operating expenses with Trust Account funds;
- d. Shall not commingle Trust Account funds with other funds;
- e. Shall ensure that SAA's client contracts comply with all applicable law;
- f. Shall ensure that SAA's internal accounts, books, and record comply with all applicable law;
- g. Shall ensure that the conduct of its collection agents complies with all applicable law, industry standards, and best practices; and
- h. Shall reconcile the Trust Account at least once a month

2. Respondents will sever all business ties with Mr. Allan Parcelluzzi. Specifically, Respondents shall ensure that Mr. Parcelluzzi:

- a. Gives up his ownership interest in SAA;
- b. Has no further involvement and/or control in/over the accounts, finances and operations of SAA;
- c. Receives no part of any profits and/or revenue of SAA;
- d. Receives no salary from SAA; and
- e. Vacates the premises of SAA.

3. Respondents shall replenish one million five hundred thousand dollars (\$1,500,000) of the Trust Account shortage on or before July 22, 2013.

4. Full and complete ownership and control of SAA shall be transferred to Mr. Jerome D. Lippman provided that Mr. Lippman completes all licensing requirements to the Department's satisfaction for the transfer of ownership and control. The \$2,230,146.71 Trust

1 Account shortage shall be paid even if change of ownership and control is not completed
2 and/or approved by August 2, 2013. Written confirmation demonstrating that the Trust
3 Account shortage has been cured shall be provided to the Department immediately upon said
4 cure.

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6 5. After assuming ownership and control of SAA, Mr. Lippman will assume
7 complete control and responsibility for the finances, accounts, and operations of SAA.

8 6. After assuming ownership and control of SAA, Mr. Lippman will assume
9 complete control and responsibility for the Trust Account.

10 7. After assuming ownership and control of SAA, Mr. Lippman will implement all
11 necessary internal controls to ensure that the Trust Account complies with all governing law.

12 8. After assuming ownership and control of SAA, Mr. Lippman will implement all
13 necessary internal controls to ensure that SAA's internal books, accounts, records, and client
14 contracts comply with any and all applicable standards, statutes and regulations.

15 9. After assuming ownership and control of SAA, Mr. Lippman will implement
16 internal controls designed to reduce the operating expenses of SAA. Mr. Lippman will hire
17 Katherine E. Wheatley to correct the accounting failures and to set up internal controls to
18 ensure that a trust shortage never happens again.

19 10. Mr. Lippman will immediately engage the firm of Keegan, Linscott & Kenon,
20 PC, subject to the Department's approval, to conduct a full forensic audit of SAA. Said
21 forensic audit shall be completed as soon as possible, but no later than by November 1, 2013. If
22 further Trust Account shortages are identified they shall be cured by December 15, 2013. The
23 scope of the forensic audit shall include the trust account and any deficiencies associated
24 therewith. The Department shall be provided a copy of the final audit.

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26 11. SAA and Mr. Lippman shall replace the Trust Account deficit by August 2,
27 2013. Copies of checks sent to SAA clients shall be provided to the Department when said
28 checks are delivered to the SAA clients. SAA clients shall be paid by August 9, 2013.

1 2. Respondents admit the jurisdiction of the Superintendent and consent to the entry
2 of this Order, and that they have done so voluntarily.

3 3. Respondents states that no promise of any kind or nature has been made to
4 induce them to consent to entry of this Order, and that they have done so voluntarily.

5 4. Respondents agree to immediately cease from engaging in the violative conduct
6 set forth in the Findings of Fact and Conclusions of Law.

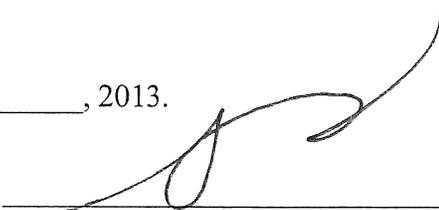
7 5. Respondents acknowledge that the acceptance of this Agreement by the
8 Superintendent is solely to settle this matter and does not preclude this Department, or any
9 other agency or officer of this state or subdivision thereof from instituting other proceedings as
10 may be appropriate now or in the future.

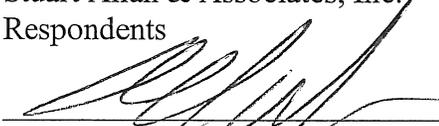
11 6. Stuart Spivack, on behalf of Stuart Allan & Associates, Inc. and himself,
12 represents that he is the current President of Stuart Allan & Associates, Inc., and has been
13 authorized to consent to the entry of this Order on its behalf.

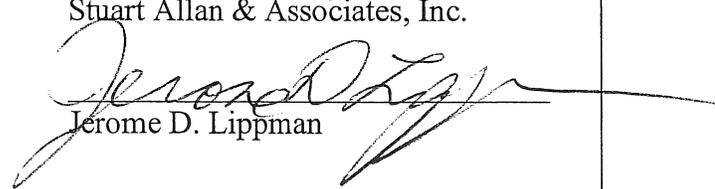
14 7. Allan Parcelluzzi, as a Co-Owner of Stuart Allan & Associates, Inc., is
15 authorized to consent to entry of this Order on behalf of Stuart Allan & Associates, Inc. and
16 himself.

17 8. Respondent waives all rights to seek judicial review or otherwise to challenge or
18 contest the validity of this Consent Order.

19 Dated this 10th day of July, 2013.

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22 _____
23 Stuart Spivack, President
24 Stuart Allan & Associates, Inc.
25 Respondents

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28 Allan Parcelluzzi, Co-Owner
Stuart Allan & Associates, Inc.



Jerome D. Lippman

1 **Original** of the foregoing filed
2 this 6th day of August, 2013, in the office of:

3 Lauren W. Kingry
4 Superintendent of Financial Institutions
5 Arizona Department of Financial Institutions
6 ATTN: Sabrina Zimmerman
7 2910 N. 44th Street, Suite 310
8 Phoenix, AZ 85018

9 **Copy** of the foregoing mailed
10 this 6th day of August, 2013, to:

11 Brian B. Tully, Administrative Law Judge
12 Office of the Administrative Hearings
13 1400 W. Washington Street, Suite 110
14 Phoenix, AZ 85007

15 Craig A. Raby, Assistant Attorney General
16 Office of the Attorney General
17 Consumer Protection & Advocacy Section
18 1275 W. Washington Street
19 Phoenix, AZ 85007

20 Robert D. Charlton, Assistant Superintendent
21 Mack Wynegar, Examiner-in-Charge
22 Jeremy Baraff, Senior Examiner
23 Arizona Department of Financial Institutions
24 2910 N. 44th Street, Suite 310
25 Phoenix, AZ 85018

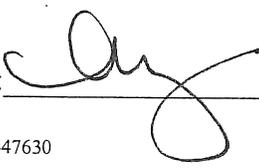
26 Stuart Spivack, President
27 Stuart Allan & Associates, Inc.
28 5447 E. Fifth Street, Suite 110
Tucson, AZ 85711-2345
Respondents

Allan Parcelluzzi, Co-Owner
Stuart Allan & Associates, Inc.
5447 E. Fifth Street, Suite 110
Tucson, AZ 85711-2345
Respondent

1 Jerome D. Lippman
2 2330 E. Placita De La Victoria
3 Tucson, AZ 85718-1212
4 Respondent

5 Louis M. Spivack, Statutory Agent for
6 Stuart Allan & Associates, Inc.
7 5447 E. Fifth Street, Suite 110
8 Tucson, AZ 85711-2345

9 Felecia A. Rotellini, Esq.
10 Andrew R. Breavington, Esq.
11 Zwillinger, Greek & Knecht, P.C.
12 2425 East Camelback Road, Suite 600
13 Phoenix, AZ 85016
14 Counsel for Respondents

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By: 
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