## STATE OF ARIZONA

STATE OF ARIZONA FILED

# DEPARTMENT OF INSURANCE

DEC 24 2013

In the Matter of:

DEPT OF JUSTINGE BY

ZUCCHINI INSURANCE AGENCY, INC. (Arizona License Number 135044) and ZUCCHINI, MARCY LYNNE (Arizona License Number 45488) (National Producer Number 531846)

CONSENT ORDER

No. 13A-160 -INS

Respondents.

The State of Arizona Department of Insurance ("Department") has received evidence that **Zucchini Insurance Agency, Inc. and Marcy Lynne Zucchini ("Respondents")** violated provisions of Title 20, Arizona Revised Statutes ("A.R.S."). Respondents wish to resolve this matter without the commencement of formal proceedings, and admit the following Findings of Fact are true and consent to entry of the following Conclusions of Law and Order.

## FINDINGS OF FACT

- 1. Zucchini Insurance Agency, Inc. ("Zucchini Insurance") is, and was at all material times licensed as an Arizona resident accident/health, life, casualty, and property insurance producer, Arizona license number 135044, which expires July 31, 2014.
- Zucchini Insurance's address of record is: 7595 N. Calle Ochenta Siete,
   Scottsdale, Arizona 85258 (business and mailing).
- 3. Marcy Lynne Zucchini ("Zucchini") is, and was at all material times, licensed as an Arizona resident accident/health, life, variable life/variable annuities, casualty, and property insurance producer, Arizona license number 45488, which expires October 31, 2014.

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- 4. Zucchini's address of record is: c/o Zucchini Insurance Agency, 7595 N. Calle Ochenta Siete, Scottsdale, Arizona 85258 (business, mailing and residence).
- Zucchini is the president and a Designated Responsible Licensed Producer for
   Zucchini Insurance.

# **Lindsey Complaint**

- 6. On or about April 17, 2013, Charlynn Lindsey ("Lindsey")<sup>1</sup> filed a Request for Assistance ("Complaint") with the Department. In the Complaint, Lindsey alleged that Zucchini improperly rated and/or issued fictitious Allstate policies. Lindsey alleges she learned of this after purchasing Zucchini Insurance's book of business from Zucchini on or about January 1, 2013.<sup>2</sup>
- 7. The Department alleges that between on or about April 1, 2011 and December 31, 2012, Zucchini Insurance issued the following:
  - a. 29 policies containing invalid fire resistive discounts,
  - b. 125 policies containing invalid multi-policy discounts,
  - c. 99 policies containing invalid garaging zip codes, and
  - d. 12 fictitious policies containing fictitious contact information for the applicants.
- 8. The Department alleges that between on or about November 4, 2012 and December 6, 2012, Zucchini submitted four (4) fictitious policy applications for life insurance in

<sup>&</sup>lt;sup>1</sup> Lindsey, a licensed producer, is the President of Happy Trails Insurance Solutions, Inc. ("Happy Trails") which is the purchaser of the Zucchini Insurance book of business.

<sup>&</sup>lt;sup>2</sup> Happy Trails Insurance Solutions, Inc. made said purchase pursuant to a written Asset Purchase and Sale Agreement, dated December 10, 2012, which Agreement was drafted by Happy Trails Insurance Solutions, Inc. That Agreement provides, amongst other things, that the purchase was made "... As Is, without warranty of any nature except as specifically provided otherwise in this Agreement. Buyer has conducted its own due diligence investigation of the Business and is not relying upon any representation of Seller respecting the Assets or the Business."

the names of Jonas Korecky and Evalyn Korecky who are the minor children of Alyssa Korecky ("Korecky"). In doing so, the Department alleges, Zucchini submitted two (2) fictitious social security numbers and forged the signature of Korecky to the applications.

9. The Department alleges that as a result of the above-alleged fraudulent applications and policies, Allstate Insurance Company ("Allstate") paid to Respondents \$82,834.76 in commissions and bonuses.

# Failure to notify of address changes

- 10. On or about October 17, 2013 during an examination under oath, Zucchini provided her residential and business addresses which were different from her addresses of record. Zucchini testified that she moved to her new address on or about December, 2012.
- 11. On or about October 17, 2013 during an examination under oath, Zucchini provided the business address for Zucchini Insurance which was different from the address of record. Zucchini testified Zucchini Insurance no longer occupied the business address after she sold her book of business to Happy Trails on January 1, 2013.

#### **ZUCCHINI NO-CONTEST**

- 12. On or about October 17, 2013 during an examination under oath, Zucchini indicated that she was retired from the insurance industry and that while she believed she has defenses to raise in opposition to the above-referenced complaints and allegations, that she would prefer instead not to contest them; instead, she would prefer to resolve this matter consensually with the Department, via this Consent Order.
- 13. Respondents have offered, and the Department accepts, that Respondents may surrender their existing licenses, in lieu of further pending or anticipated disciplinary action by the Department.

14. Respondents have further offered, and the Department accepts, that Respondents may not reapply for any license with the Department for the next 12 months and that if Respondents ever should apply for a new license, that the Department may consider this Consent Order in the review process of such applications.

#### CONCLUSIONS OF LAW

- 1. The Director has jurisdiction over this matter.
- 2. Respondents' conduct, as described above and if proven, would constitute a violation of Title 20, within the meaning of A.R.S. § 20-295(A)(2).
- 3. Respondents' conduct, as described above and if proven, would constitute failing to report to the Director, within thirty days, of any change to the licensee's residential or business address, within the meaning of A.R.S. § 20-286(C)(1).
- 4. Respondents' conduct, as described above and if proven, would constitute intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance within the meaning of A.R.S. § 20-295(A)(5).
- 5. Respondents' conduct, as described above and if proven, would constitute using fraudulent, dishonest practices, or untrustworthiness in the conduct of business in this state, within the meaning of A.R.S. § 20-295(A)(8)
- 6. Zucchini's conduct as described above and if proven would constitute forging another's name to any document related to an insurance transaction within the meaning of A.R.S. § 20-295(A)(10).
- 7. Respondents' conduct, as described above and if proven, would constitute presenting, causing to be presented or preparing with the knowledge or belief that it will be presented an oral or written statement, including computer generated documents, to or by an

insurer, reinsurer, purported insurer or reinsurer, insurance producer or agent of a reinsurer that contains untrue statements of material fact or that fails to state any material fact with respect to an application for the issuance or renewal of an insurance policy within the meaning of A.R.S. § 20-463(A)(1)(a).

- 8. Grounds exist for the Director to deny, suspend for not more than twelve months, revoke, or refuse to renew an insurance producer's license, impose a civil penalty and/or order restitution pursuant to A.R.S. §§20-295(A), (B), and (F).
- 9. On the written request of a person who is licensed, the Director may accept the voluntary surrender of the person's authority to transact one or more lines of insurance or of the person's entire license. A person who surrenders an authority or a license under this subsection shall not reapply for the same authority or license for at least one year after the date of the surrender. A.R.S. §20-289(F).

#### **ORDER**

#### IT IS HEREBY ORDERED THAT:

- The Department accepts Zucchini's voluntary surrender of her insurance producer license, Arizona License number 45488, effective immediately upon entry of this order.
- The Department accepts Zucchini Insurance's voluntary surrender of its insurance producer license, Arizona license number 135044, effective immediately upon entry of this order.
- 3. Respondents shall immediately make restitution to Allstate in the amount of \$82,834.76.

4. Respondents are jointly and severally responsible for payment of the restitution.

DATED AND EFFECTIVE this 2314 day of December, 2013.

GERMAINE L. MARKS
Director of Insurance

## **CONSENT TO ORDER**

- 1. Respondents have reviewed the foregoing Findings of Fact, Conclusions of Law and Order.
- Respondents admit the jurisdiction of the Director of Insurance, State of Arizona, and admit the foregoing Findings of Fact and consent to the entry of the foregoing
   Conclusions of Law and Order.
- 3. Respondents are aware of their right to notice and hearing at which they may be represented by counsel, present evidence and examine witnesses. Respondents irrevocably waive their right to such notice and hearing and to any court appeals relating to this Consent Order.
- 4. Respondents state that no promise of any kind or nature whatsoever, except as expressly contained in this Consent Order, was made to them to induce them to enter into this Consent Order and that they have entered into this Consent Order voluntarily.
- 5. Respondents acknowledge that the acceptance of this Consent Order by the Director is solely to settle this matter against them and does not preclude any other agency, including the Department, officer, or subdivision of this state or this agency from instituting civil or criminal proceedings as may be appropriate now or in the future.

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Respondents acknowledge that this Consent Order is an administrative action 6. that the Department will report to the National Association of Insurance Commissioners (NAIC). Respondents further acknowledge that they must report this administrative action to any and all states in which they hold an insurance license and must disclose this administrative action on any license application.

Marcy Lynne Zucchini represents that she is a Member and Designated 7. Responsible Licensed Producer for Zucchini Insurance Agency Inc., and as such is authorized to enter into this Consent Order on its behalf.

Zucchini Insurance Agency Inc., License # 135044

COPIES of the foregoing mailed/delivered this 24thday of December , 2013, to:

Marcy Lynne Zucchini 7595 N. Calle Ochenta Siete Scottsdale, Arizona 85258 Respondents

Zucchini Insurance Agency C/O Marcy Lynne Zucchini 7595 N. Calle Ochenta Siete Scottsdale, Arizona 85258 Respondents

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1	Allstate Insurance Company C/O Tracy Rodriguez
2	222 South Mill Avenue, Suite 601 Tempe, Arizona 85281
3	Complainant
4	Mary E. Kosinski, Executive Assistant for Regulatory Affairs Darren T. Ellingson, Deputy Director
5	Mary Butterfield, Assistant Director, Consumer Affairs Division Catherine M. O'Neil, Consumer Legal Affairs Officer
6	Steven Fromholtz, Licensing Supervisor Charles Gregory, Supervisor Investigations Division
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