

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

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

No. 16F-BD003-BNK

4 **PACIFIC POINT SERVICES, LLC**
5 c/o Joshua Elias, President
6 1935 Camino Vida Roble, Suite 240
Carlsbad, CA 92008

**SUPERINTENDENT’S FINAL
DECISION AND ORDER**

Petitioners.

7 The Superintendent of Financial Institutions (the “Superintendent”) having reviewed the
8 record in this matter, including the Administrative Law Judge Decision attached and incorporated
9 herein by this reference, adopts the Administrative Law Judge’s Findings of Fact, Conclusions of
10 Law and Recommended Order as follows:

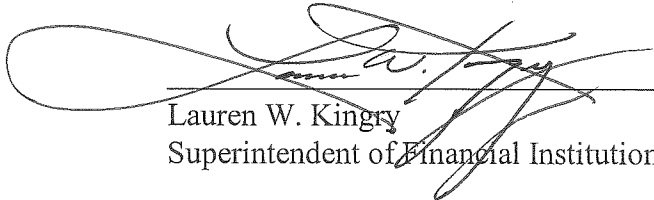
11 **ORDER**

12 **IT IS ORDERED** that the denial of Petitioner’s collection agency license application is
13 affirmed.

14 **NOTICE**

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

22 DATED this 28th day of October 2015.

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24 
25 Lauren W. Kingry
26 Superintendent of Financial Institutions
27
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1 ORIGINAL filed this 28th day of October, 2015 in the office of:

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

7 Copy of the foregoing e-filed this
8 28th day of October, 2015, in the office of:

9 M. Douglas, Administrative Law Judge
10 Office of the Administrative Hearings
11 1400 West Washington, Suite 101
12 Phoenix, AZ 85007

13 COPY of the foregoing mailed/emailed this
14 28th day of October, 2015, to:

15 Lynette Evans
16 Unit Chief Counsel
17 Office of the Attorney General
18 1275 West Washington
19 Phoenix, AZ 85007

20 Richard Fergus
21 Licensing Manager
22 ATTN: Annette Krenz
23 Arizona Department of Financial Institutions
24 2910 N. 44th Street, Suite 310
25 Phoenix, AZ 85018
26 Rfergus@azdfi.gov

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

28 Mr. Joshua Elias
29 President
30 Pacific Point Services, LLC
31 1935 Camino Vida Roble, Suite 240
32 Carlsbad, CA 92008

33 Mr. Tim Condon
34 CFO/Partner
35 Pacific Point Services, LLC
36 1935 Camino Vida Roble, Suite 240
37 Carlsbad, CA 92008

38 By: 

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

No. 16F-BD-003-BNK

In the Matter of the Collection Agency
License Application of:

**ADMINISTRATIVE
LAW JUDGE DECISION**

PACIFIC POINT SERVICES, LLC
c/o Joshua Elias, President
1935 Camino Vida Roble, Suite 240
Carlsbad, CA 92008

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HEARING: October 20, 2015, at 1:00 p.m.

APPEARANCES: Pacific Point Services, LLC (hereinafter "Applicant" or "Pacific Point") appeared through its authorized member and Chief Financial Officer, Tim Condon. The Arizona Department of Financial Institutions (hereinafter "Department") was represented by Assistant Attorney General Guy J. Thompson, Esq.

ADMINISTRATIVE LAW JUDGE: M. Douglas

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FINDINGS OF FACT

1. On April 22, 2015, Pacific Point submitted a Collection Agency License Application ("Application") to the Department.¹ The Application stated that Pacific Point is a Limited Liability Company ("LLC").

2. As part of Pacific Point's Application, it provided the Department with a Financial Statement.² The Financial Statement disclosed that the Pacific Point had total assets of \$157,471.00 and total liabilities of \$170,655.00.

3. On August 10, 2015, the Department issued a letter denying Pacific Point's Application under A.R.S. § 32-1053(A)(1) because Pacific Point "is insolvent within the meaning of the Federal Bankruptcy code (i.e., Balance Sheet Test)."³ Pacific Point filed a timely appeal.⁴

4. Pacific Point's representative, Tim Condon (hereinafter "Mr. Condon"), testified that Pacific Point was not insolvent. Mr. Condon said that Pacific Point has a one million

¹ See the Department's Exhibit 1.

² See the Department's Exhibit 3

³ See the Department's Exhibit 8 at 1.

1 dollar revolving credit line for two years guaranteed by all of the partners in Pacific Point.
2 Mr. Condon said that the credit line would be more than adequate to allow Pacific Point to
3 meet any potential obligation while Pacific Point reaches profitability. Mr. Condon said
4 that the Federal Bankruptcy Law allows the sum value of each general partner's non-
5 partnership assets over non-partnership liabilities should be considered. Mr. Condon
6 acknowledged that Pacific Point is an LLC rather than a partnership or a corporation and
7 that Pacific Point has a negative balance. Mr. Condon asserted that Pacific Point's
8 solvency meets the intent of the Federal Bankruptcy Law and that the Department should
9 issue Pacific Point a Collection Agency License.

10 5. The Department's Licensing Division Manager, Richard Fergus (hereinafter
11 "Mr. Fergus"), testified that pursuant to A.R.S. § 32-1053(A)(1), Pacific Point's application
12 for licensure was denied because Pacific Point was insolvent within the meaning of the
13 Federal Bankruptcy Code (i.e., the Balance Sheet Test). Mr. Fergus said that Pacific
14 Point is an LLC, not a corporation. Mr. Fergus said that pursuant to the provisions of
15 A.R.S. § 32-1053(A)(1), the Department denied Pacific Point's application for a Collection
16 Agency License because the Applicant was insolvent. Mr. Fergus said that Pacific Point
17 could possibly harm consumers.

18 CONCLUSIONS OF LAW

19 1. This matter lies within the Department's jurisdiction.⁵

20 2. Pacific Point bears the burden of proof to establish that it meets statutory
21 qualifications to be licensed as a collection agency.⁶ Although Pacific Point
22 acknowledged that it is an LLC, it asserts that it should be treated in the same manner as
23 a corporation. The proponent of a legal position bears the burden to establish the merits
24 of that position.⁷

25 3. A.R.S. § 32-1053(A)(1) provides as follows:

26 A. The superintendent may deny a license to a person or suspend
27 or revoke a license pursuant to title 41, chapter 6, article 10 if
the superintendent finds that an applicant or licensee:

28 ⁴ See the Department's Exhibit 9.

29 ⁵ See A.R.S. § 6-122(A).

30 ⁶ See A.R.S. § 41-1092.07(G)(1); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁷ See A.A.C. R2-19-119(B)(3).

1 1. Is insolvent as defined in section 47-1201.

2
3 4. A.R.S. § 47-1201 provides in relevant part as follows:

4 A. Unless the context otherwise requires, words or
5 phrases defined in this section, or in the additional
6 definitions contained in other chapters of this title that
7 apply to particular chapters or parts thereof, have the
8 meanings stated.

9

10 23. "Insolvent" means:

11 (a) Having generally ceased to pay debts in the ordinary
12 course of business other than as a result of bona fide
13 dispute;

14 (b) Being unable to pay debts as they become due; or

15 (c) Being insolvent within the meaning of federal
16 bankruptcy law.⁸

17 5. In Arizona, administrative agencies' interpretations of the statutes that they
18 are charged with implementing are entitled to deference.⁹ An agency may not
19 disregard clear statutory directives or legislative intent.¹⁰ "A cardinal rule of statutory
20 interpretation is to give full effect to each statutory word or phrase so that no part is
21 rendered void, superfluous, contradictory or insignificant."¹¹ Fundamental to statutory
22 construction is the presumption that "what the Legislature means, it will say."¹² The
23 plain language of A.R.S. § 32-1053(A)(1) provides that the Department may deny a
24 license to an applicant that is insolvent as defined in A.R.S. § 47-1201. Pacific Point is
25 insolvent as defined in A.R.S. § 47-1201. This Tribunal concludes that the
26 preponderance of the evidence is insufficient and fails to establish that Pacific Point

27 ⁸ See 11 U.S. Code § 101-32(A).

28 ⁹ See, e.g., *Bridgestone Retail Tire Operations v. Industrial Commission*, 227 Ariz. 453, 456 ¶ 12, 258
29 P.3d 271, 274 (2011).

30 ¹⁰ See, e.g., *Cochise County v. Arizona Health Care Cost Containment System*, 170 Ariz. 443, 445, 825
P.2d 968, 970 (App. 1991).

¹¹ *Westburne Supply, Inc. v. Diversified Design and Construction, Inc.*, 170 Ariz. 598, 600, 826 P.2d 1224,
1226 (App. 1992).

¹² *Canon School Dist. No. 50 v. W.E.S. Constr. Co.*, 177 Ariz. 526, 529, 869 P.2d 500, 503 (1994).

1 meets the statutory qualifications to be licensed as a collection agency. Consequently,
2 Pacific Point's application for licensure as a collection agency should be denied.

3 **RECOMMENDED ORDER**

4 Based on the foregoing, it is recommended that the denial of Pacific Point's
5 application for licensure as a collection agency shall be affirmed and that Applicant's
6 appeal shall be denied.

7 *In the event of certification of the Administrative Law Judge Decision by the*
8 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
9 *five days from the date of that certification.*

10 Done this day, October 26, 2015.

11 /s/ M. Douglas
12 Administrative Law Judge

13 Transmitted electronically to:

14 Lauren Kingry, Superintendent
15 Arizona Department of Financial Institutions
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