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## STATE OF ARIZONA

DEPARTMENT OF INSURANCE

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In the Matter of:

ZERGER, ADAM SHANE (National Producer Number 8701801)

and

WIT INSURANCE

(National Producer Number 18058489)

Respondents.

No. 19A- 132-INS

**CONSENT ORDER** 

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

### FINDINGS OF FACT

- Zerger was, at all material times, licensed as an Arizona resident life, accident 1. and health or sickness, casualty, and property insurance producer. The Department renewed Zerger's license, number 8701801, on December 1, 2017. The license is scheduled to expire on November 30, 2021.
- 2. Zerger's addresses of record are: 809 West Riordan Road, Suite 100-183, Flagstaff, Arizona 86001-0846 (business and mailing); adam@witins.com (business email).
- 3. WIT is, and was at all material times, and Arizona business entity licensed as a resident life, accident and health or sickness, casualty, personal lines and property insurance

producer. The Department issued WIT's license, number 18058489, on August 10, 2016. The license is scheduled to expire on August 31, 2020.

- 4. WIT's addresses of record are: 2201 North Gemini Drive #119, Flagstaff, Arizona 86001 (business and mailing).
- Zerger is the sole Member and Designated Responsible Licensed Producer of WIT.

## Folke Complaint

- 6. On or about July 6, 2018, Denise and Daniel Folke (the "Folkes") filed a complaint with the Department alleging that Zerger misappropriated and overcharged their homeowner premium, then intentionally delayed their refund of the overcharged amount.
- 7. On or about April 13, 2018, the Folkes purchased a new home. Their title company sent Zerger an annual premium check of \$795 which was the amount quoted by Zerger for the homeowners policy through Pekin Insurance ("Pekin"). Folkes learned later from Pekin that the annual premium was only \$717.
- 8. On or about May 29, 2018, the Folkes received a notice of policy cancellation for non-payment by Pekin. They made several attempts to contact Zerger, but their calls went unanswered and their messages were unreturned. Once they re-established communication with Zerger, he told them that he had sent the full premium amount to Pekin on the date of closing.
- 9. The Folkes contacted Pekin directly and learned that Zerger had made a partial payment of premium of \$119.50 on or about May 30, 2018 and their lender made another full payment of premium on or about June 1, 2018. They learned Zerger made another payment of \$612 on or about June 5, 2018.

- 10. On or about June 23, 2019, Pekin refunded \$717 to the Folkes due to double payment of the premium.
- 11. On or about June 28, 2019, Zerger returned the \$95 of overpayment and service fees to the Folkes.
- 12. On July 1, 2019 the Department conducted an Examination Under Oath ("EUO") with Zerger. Zerger confirmed that he had received \$795 from the title company and in turn forwarded this payment to Pekin. He advised this check must have been lost in the mail and is unaccounted for. He stated the Pekin homeowner policy was quoted was for \$717 and the addition of a multi-line policy discount for auto insurance brought the total to \$795.
- 13. Zerger stated the that the Folkes contacted him on or about May 29, 2018 about this issue and he made a partial payment of \$119.50 to Pekin on May 30, 2018 and the remaining \$612.50 on June 1, 2018.
- 14. Zerger stated the Folkes did not purchase the auto insurance and he sent them the refund of \$95 on or about June 28, 2019.

## **Capital Premium Finance Complaint**

- 15. On or about September 24, 2018 the Department received a Consumer Complaint from Capital Premium Finance Company ("Capital"). Capital alleges that Zerger is holding premium in the amount of \$7,201. They have been attempting to communicate with Zerger to return this premium to them in order pay off the insured's premium finance loan.
- 16. On or about November 2018, Capital advised the Department that they received the return of this \$7,201 from Zerger.

- 17. On or about December 2018, Capital advised the Department they had mailed a refund check of \$2300, for the insured, to Zerger's office. Capital advised this refund check had not been reconciled as of May 14, 2019.
- 18. On May 17, 2019, Capital advised the Department they sent the refund check directly to the insured and cancelled the previous check sent to Zerger.
- 19. During the July 1, 2019 EUO, Zerger confirmed he received a refund check from the insurance company and deposited it into his business account on or about March 14, 2018.
- 20. The Department reviewed Zerger's business banking account records and confirmed a March 14, 2018 deposit of \$6,232.50. Following this deposit, bank records reveal transfers to Zerger's personal bank account and purchases of non-business related items totaling approximately \$3500.
- 21. Zerger could or would not provide a plausible answer as to why it took eight months to return this refund money to Capital. He stated his medication and health condition may have interfered in both this and the Folkes transactions.

## **Wallace Complaint**

- 22. On or about April 17, 2019, The Department received a Consumer Complaint from Roberta Wallace ("Wallace") alleging misappropriation of premium and policy mishandling by Zerger.
- 23. Wallace stated that Zerger bound a pollution insurance policy on or about October 18, 2018 for which she paid \$3,378.67. On or about December 27, 2018, Wallace paid Zerger \$10,836 for the remainder of the insurance premium.

24. On or about January 11, 2019, Burns & Wilcox ("B&W") sent Wallace an insurance cancellation notice for non-payment of insurance premium.

- 25. Wallace stated that Zerger neglected to inform her that the policy had exorbitant deductibles and delayed in providing her a copy of the policy until April 2019.
- 26. During the July 1, 2019 EUO, Zerger confirmed he received the payments from Wallace on October 18, 2018 and December 27, 2018 and in turn mailed these payments to B&W.
- 27. Zerger would not provide a plausible reason to why the premium was not sent directly to B&W sooner than March 4, 2019.

## **CONCLUSIONS OF LAW**

- The Director has jurisdiction over this matter.
- 2. Zerger's conduct, as described above, constitutes improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business, in violation of A.R.S. § 20-295(A)(4).
- 3. Zerger's conduct, as described above, constitutes using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere, in violation of A.R.S. § 20-295(A)(8).
- 4. Grounds exist for the Director to deny, suspend for not more than twelve months, revoke or refuse to renew and insurance producer's license, within the meaning of A.R.S. § 20-295(A) and (B).

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#### ORDER

# IT IS HEREBY ORDERED THAT:

- 1. The insurance producer license of Adam Shane Zerger, National Producer Number 8701801, is revoked, effective September 30, 2019.
- 2. The insurance producer license for WIT Insurance, National Producer Number 18058489, is revoked, effective September 30, 2019.



DATED AND EFFECTIVE this 12th day of September

EITH A. SCHRAAD Director of Insurance

#### CONSENT TO ORDER

- 1. Respondents have reviewed the foregoing Findings of Fact, Conclusions of Law and Order.
- 2. 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.
- Respondents are aware of their right to notice and to a hearing, at which they 3. 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.
- Respondents state that no promise of any kind or nature whatsoever, except as 4. expressly contained in this Consent Order, were made to them to induce them to enter into this Consent Order and that they have entered into this Consent Order voluntarily.

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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, officer, or subdivision of this state including the Department from instituting civil or criminal proceedings as may be appropriate now or in the future.
 Respondents acknowledge that this Consent Order is an administrative action

6. Respondents acknowledge that this Consent Order is an administrative action that the Department will report to the National Association of Insurance Commissioners (NAIC) and that they may have to report this administrative action on any future licensing applications either to the Department or other states' Departments of Insurance.

7. Adam Shane Zerger represents that he is the sole owner and manager of WIT Insurance and, as such, is authorized to enter this Consent Order on its behalf.

Adam Shane Zerger (NPN License No. 8701801)

WIT Insurance (NPN License No. 18058489)

Adam Shane Zerger, Member

1 2	WIT Insurance 2201 N Gemini Drive #119
2	Flagstaff, AZ 86001 Respondent
3	WIT Insurance
4	c/o Adam Zerger 809 W Riordan Road, STE 100-183
5	Flagstaff, AZ 86001-0846 Statutory Agent for Respondent WIT Insurance
6	COPY of the foregoing delivered, same date, to:
7	Mary Kosinski, Regulatory Legal Affairs Officer Catherine M. O'Neil, Consumer Legal Affairs Officer
8	Steven Fromholtz, Assistant Director, Consumer Protection Division Sharyn Kerr, Administrative Assistant, Consumer Protection Division
9	Jeff Eavenson, Investigator Aqueelah Currie, Licensing Supervisor
10	Arizona Department of Insurance
11	100 North 15th Avenue, Ste.102 Phoenix, Arizona 85007-2624
12	COPY sent same date via electronic mail to:
12 13	Adam Shane Zerger
13	Adam Shane Zerger  adam@witins.com  zergg77@gmail.com
13 14	Adam Shane Zerger  adam@witins.com  zergg77@gmail.com  Respondent  Ancue Matures
13 14 15	Adam Shane Zerger  adam@witins.com  zergg77@gmail.com
13 14 15 16	Adam Shane Zerger  adam@witins.com  zergg77@gmail.com  Respondent  Ancue Matures
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