

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**BEFORE THE COMMISSIONER
OF INSURANCE**

**IN THE MATTER OF
THE LICENSURE OF
ALIREZA SHAHRAK (NPN 935969) and
MIRACLE INSURANCE AND FINANCIAL
GROUP, INC. (NPN 8925211)**

**FINAL AGENCY DECISION
AND ORDER**

Docket Number 1625

This matter was heard on Thursday, May 17, 2012, by the undersigned Hearing Officer, as designated by the Commissioner of Insurance under N.C. General Statute § 58-2-55. The administrative hearing was held in Room #3099 of the Dobbs Building, located at 430 North Salisbury Street, Raleigh, Wake County, North Carolina. Assistant Attorney General LaShawn S. Piquant represented the North Carolina Department of Insurance, Agent Services Division (“Agent Services”). Licensed agent Alireza Shahrak (“Respondent”) was present but not represented by counsel. Miracle Insurance and Financial Services, Inc. (“Miracle”) was not represented by counsel.

Any finding of fact contained in this final agency decision and order that also constitutes a conclusion of law is hereby adopted as a conclusion of law. Likewise, any conclusion of law contained in this final agency decision and order that also constitutes a finding of fact is hereby adopted as a finding of fact .

Agent Services has the burden of proof in demonstrating that sufficient evidence exists to support the probation, suspension, revocation or refusal to renew the insurance licenses of Respondent and Miracle’s insurance licenses. Agent Services presented twenty-two exhibits and called two witnesses. Respondent and Miracle did not call any witnesses or provide any exhibits. Specifically, the evidence presented by Agent Services was:

Exhibits:

1. Notice of Hearing

2. Affidavit of service
3. Certified Licensure History for Miracle Insurance and Financial Group, Inc.
4. Certified Licensure History for Ali Shahrak
5. Certified Corporate Document for Miracle Insurance and Financial Group, Inc.
6. Certified Corporate Document for Azin Petroleum, Inc.
7. Complaint E-mail to NCDOJ from Murat Heper of Denizati dated 10/20/11
8. Insurance Policy Issued by Miracle (version 1)
9. Insurance Policy Issued by Miracle (version 2)
10. Web site Information of Miracle
11. Web site Information of Azin Petroleum
12. Contractual Agreement between Azin Petroleum and Shahrak (Seller) and Denizati (Buyer)
13. E-mail from Shahrak to Tatiana Diacova of Denizati dated June 21, 2011
14. Invoice from Shahrak to Denizati
15. E-mail from Shahrak to Tatiana Diacova of Denizati dated June 22, 2011
16. Letter to Chris Anglin, Esq. from Agent Services dated 2/9/11
17. Certified Consent Order of Miracle and Ali Shahrak
18. Letter to Shahrak from Unlicensed Plan Investigations dated 12/21/11
19. Letter to Heisterberg from Unlicensed Plan Investigations dated 12/21/11
20. Shahrak Response to Unlicensed Plan Investigations dated 1/25/11
21. Chris Anglin, Esq. Response to Unlicensed Plan Investigations dated 1/24/11
22. Joint Affidavit of Ali Akmil, Tatiana Diacova, and Murat Heper of Denizati (with Supporting Exhibits)

Witnesses:

- 1) Gerald Roventini--Complaint Analyst, Agent Services Division, NCDOJ
- 2) Robert Harvell--Chief Examiner, Unlicensed Plan Investigations, NCDOJ

After careful consideration of the evidence and the arguments presented, and based on the record as a whole, the undersigned Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent and Miracle received the Notice of Administrative Hearing, which was served pursuant to Rule 4 of the North Carolina Rules of Civil Procedure.
2. Agent Services issued a resident life and health insurance agent license to Respondent on 3 July 2000. Agent Services later issued resident Medicare supplement insurance and

long-term care insurance agent licenses to Respondent on 1 February 2006.

3. Respondent is the owner and operator of Miracle, which is located at 5710 Six Forks Road, Raleigh, North Carolina.
4. Miracle is an incorporated entity and has been registered and authorized to operate in North Carolina since May 2006 by the North Carolina Secretary of State. In Miracle's filings with the Secretary of State, Respondent is listed as the president of Miracle.
5. Agent Services issued a business entity license to Miracle on or about 21 September 2006. In Agent Services' records, Respondent is listed as the Designated Responsible Licensed Producer for Miracle.
6. As its Designated Responsible Licensed Producer, Respondent is responsible for ensuring that Miracle complies with North Carolina insurance laws and administrative rules.
7. Azin Petroleum Group, Inc. ("Azin") was incorporated and authorized to conduct business in North Carolina in January 2011. In Azin's filings with the Secretary of State, Respondent is identified as the "Registered Agent."
8. Azin's Web site states that Azin is "engaged in the business of energy trading and has global market coverage through its network of affiliates." The uniform resource locator for Azin's Web site is www.azinpetroleumgroup.com.
9. On Azin's Web site, Respondent is listed as the company's "Administrator and Mandate." In documents disseminated by Respondent on Azin's letterhead, Respondent identified himself as "Director." Respondent provided his contact e-mail address on Azin's Web site as ali@miracleinsurance.com.
10. Azin's Web site states that "based on the agreement with Miracle Insurance and Financial Group, Azin Petroleum Group is capable of assisting with the financing of any project

worldwide.”

11. Like Miracle, Azin is located at 5710 Six Forks Road, Raleigh, North Carolina.
12. On or about 20 October 2011, Mr. Murat Heper of Sea Horse Petrochemical of Turkey contacted the North Carolina Department of Insurance (“Department”) about an insurance policy that was issued to his company by Respondent and Miracle. His company was seeking guidance on filing a claim under the policy.
13. Sea Horse Petrochemicals (“Sea Horse”) is the trade name of Turkey-based oil importer Denizati Petrokimya Urunleri Yapi Insaat Sanayi Ve Ticaret A.S. (“Denizati”). Denizati manufactures lubricants, such as oil and grease, and car care products. Interestingly, the word, “denizati” is Turkish for the marine creature known in English as a sea horse.
14. On or about 16 June 2011 Azin and Denizati signed a “Contractual Agreement” (“agreement”) for the purchase of oil. The agreement provided that Azin would sell 120,000 metric tons of base oil (SN150) to Denizati. The agreement stated that Azin was represented by “Director General Ali Shahrak”.
15. The agreement was executed by representatives of Azin and Denizati. Respondent executed the agreement as “Seller,” with the title of “General Director.”
16. The agreement provided for a twenty-five percent (25%) advance payment by Denizati of the total cargo volume. Under the terms of the agreement, Denizati wired \$712,500 in U.S. dollars to Azin on 22 June 2011.
17. In an e-mail dated 10 June 2011 Respondent advised Denizati that Miracle would provide insurance coverage for “all the activity that Azin Petroleum is engaged in.”
18. The 10 June 2011 e-mail was sent from Respondent’s Miracle e-mail address with the e-mail signature, “Ali Shahrak, Ph.D. President and CEO, Miracle Insurance and Financial

Group.”

19. On or about 23 June 2011 Respondent provided Sea Horse with a document entitled, “Insurance Policy Certificate,” (“certificate”) which was issued by Miracle Insurance and Financial Group, Inc. The document designates the certificate number as MISN1506008935 and the policy number as PNMSN15098770315. Sea Horse is listed as the “Beneficiary,” “Policy Holder,” and “Policy Owner.”
20. On or about 29 July 2011 Respondent provided Denizati with a revised document entitled, “Insurance Policy Certificate,” which was issued by Miracle Insurance and Financial Group, Inc. The document designates the certificate number as MISN1506008935 and the policy number as PNMSN15098770315. Denizati is listed as the “Beneficiary,” “Policy Holder,” and “Policy Owner.” This certificate was issued at the request of Denizati because Turkish law required the Turkish corporate name to appear in the certificate. Otherwise, second certificate is identical to the first certificate.
21. The certificate states in pertinent part, “Miracle Insurance and Financial Group, Inc., hereby issues this Insurance Policy Certificate to cover the subject amount in the case of financial default by the seller and to insure the interests of the buyer of the product....”
22. The certificate provides that the coverage amount is “25% of the total sale price or 110% of the funds transferred to Azin Petroleum Group, Inc. by Denizati Petrokimya whichever amount is greater.”
23. The certificate further states that the Buyer should “submit any possible claim against the seller of the product directly to Miracle Insurance and Financial Group, Inc.”
24. Respondent issued the certificate as an attachment to e-mails to Sea Horse on 23 June 2011 and to Denizati on 29 July 2011 from Respondent’s e-mail account, which is ali@miracleinsurance.com. The e-mails stated, “In addition, attached is the insurance policy certificate that is issued by Miracle Insurance and Financial Group, to protect your

company's wire transfer for the 25% as well as the 75% stipulated in the contract.”

25. Both e-mails sent by Respondent contained the following e-mail signature: Ali Shahrak, Ph.D., President & CEO, Miracle Financial Group, 5710 Six Forks Road, Raleigh, NC 27609.
26. Azin Petroleum and Respondent defaulted and did not perform as set out in the terms of the agreement.
27. Denizati attempted to file a claim in the amount of \$783,750 (110% of the deposit paid) under the terms of the certificate issued by Miracle. To date, neither Respondent nor Miracle has made any payment in response to the claim under the certificate.
28. Miracle is not licensed to write insurance in this State or any other state.
29. On 6 November 2007 Respondent and Miracle entered into a Consent Order with the Department for misrepresentation in its marketing and advertising “zero premium” life insurance product and in its recruitment of licensed insurance agents in this State to sell the product. In its marketing and advertising to recruit agents, Respondent and Miracle stated that the product was approved by the Department for sale to consumers. The product was never approved for sale. Respondent was ordered to pay a civil penalty in the amount of twenty thousand dollars (\$20,000).

LEGAL ANALYSES

Insurance and Suretyship

The traditional definition of insurance is “[a] contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils. The party agreeing to make the compensation is usually called the ‘insurer’ or ‘underwriter;’ the other, the ‘insured’ or ‘assured;’ the agreed consideration, the ‘premium;’ the written contract, a

‘policy,’ the events insured against, ‘risks’ or ‘perils,’ and the subject, right, or interest to be protected, the ‘insurable interest.’” Black’s Law Dictionary 802 (rev. 6th ed. 1990).

North Carolina defines a contract of insurance as:

an agreement by which the insurer is bound to pay money or its equivalent or to do some act of value to the insured upon, and as an indemnity or reimbursement for the destruction, loss, or injury of something in which the other party has an interest.” N.C. General Statute § 58-1-10.

Unlike a contract of insurance, which involves the insured and the insurer, a surety bond involves three parties: the principal; the surety; and the bond obligee. *Southeastern Steel Erectors v. Inco, Inc.*, 108 N.C. App. 429, 424 S.E.2d 433 (1993).

A contract of suretyship is “[a] lending of credit to aid a principal having insufficient credit of his own; the one expected to pay, having the primary obligation, being the ‘principal,’ and the one bound to pay, if the principal does not, being the ‘surety.’” Black’s Law Dictionary 1442 (rev. 6th ed. 1990).

Surety bonds are contracts guaranteeing that specific obligations will be fulfilled. The obligation may involve meeting a contractual commitment, paying a debt, or performing certain duties. Under the terms of a surety bond, one party becomes answerable to a third party for the acts or non-performance of a second party.

Under North Carolina’s unauthorized insurance laws, one of the elements of transacting insurance business is:

The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety. N.C. General Statute § 58-28-12(4)b.

In this matter, the insurance policy certificate supposedly covered any default of Azin. Denizati was designated as the insured and policyholder. This was not a surety bond, in which there are three parties: the principal, surety, and obligee. Miracle, the purported insurer, was licensed only as a producer entity.

Scope of Article 28 of Chapter 58 of the North Carolina General Statutes

Respondent argues that because Miracle's issuance of an insurance policy did not affect any North Carolina residents, the issuance did not violate North Carolina's unauthorized insurance laws. Respondent's argument is misguided.

N.C. General Statute § 58-28-1 states in pertinent part:

It is the purpose of this Article to abate and prevent the practices of unauthorized insurers within the State of North Carolina, and to provide methods for effectively enforcing the laws of this State against such practices. The General Assembly finds that there is within this State a substantial amount of insurance business being transacted by insurers who have not complied with the laws of this State and have not been authorized by the Commissioner to do business.

That statute further describes instances in which out-of-state entities unlawfully transacting insurance business within North Carolina. Surely this law is not ineffective because a person or entity located in North Carolina circumvents the insurance laws by transacting business that adversely affects only persons or entities outside of North Carolina. The North Carolina General Assembly could not have intended such a result.

As a rule of construction, it is fundamental that the intent of the legislature controls in determining the meaning of a statute. *Nationwide Mutual Ins. Co. v. Mabe*, 342 N.C. 482, 467 S.E.2d 34 (1996). Legislative intent may be determined from the language of the statute, the purpose of the statute, "and the consequences which would follow [from] its construction one way or the other." *Id.* at 494, 467 S.E.2d at 41 (quoting *Sutton v. Aetna Cas. & Sur. Co.*, 325 N.C. 259, 265, 382 S.E.2d 759, 763 (1989)).

To interpret N.C. General Statute § 58-28-1 in accordance with Respondent's reading of that law would lead to an absurd result. Our courts, "will, whenever possible, interpret a statute so as to avoid absurd consequences." *Insurance Co. v. Chantos*, 293 N.C. 431, 440, 238 S.E.2d 597, 603 (1977).

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner of Insurance. The Commissioner has jurisdiction over the parties and the subject matter under N.C. General Statute §§ 58-2-50, 58-28-35, and 58-33-46; 11 NCAC 1. 0401 *et seq.*; and other applicable statutes and administrative rules.
2. Respondent and Miracle were properly served with the Notice of Administrative Hearing.
3. The Certificates issued by Respondent and Miracle to Sea Horse and Denizati are contracts of insurance as defined by N.C. General Statute § 58-1-10.
4. Miracle transacted insurance business in this State, as set out in N.C. General Statute § 58-28-12(4)(I), because it issued contracts of insurance, offered insurance products and contracts, and maintained an agency or office of insurance where acts in furtherance of insurance business were transacted.
5. Miracle is not an admitted insurer in the State of North Carolina according to N.C. General Statute § 58-28-12(1), which defines an "admitted insurer" as an "insurer that is licensed to write insurance in this State."
6. Miracle is a nonadmitted insurer according to N.C. General Statute § 58-28-12(3), which defines a nonadmitted insurer as "an insurer that is not licensed to write insurance in this State."

7. Respondent and Miracle violated N.C. General Statute § 58-28-5(a), which provides:

Except as otherwise provided in this section, it is unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State as set forth in G.S. 58-28-13 without a license issued by the Commissioner.

8. Respondent and Miracle violated N.C. General Statute § 58-28-13(a), which states:

An insurer shall not transact insurance business in this State unless it is an admitted insurer, is exempted by this Article, or is otherwise exempted by this Chapter.

9. Respondent and Miracle violated N.C. General Statute § 58-28-13(b), which provides:

A person shall not transact insurance business or in this State directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, a nonadmitted insurer in the solicitation, negotiation, procurement, or effectuation of insurance, or renewals of insurance; forwarding of applications; delivery of policies or contracts; inspection of risks; fixing of rates; investigation or adjustment of claims or losses; collection or forwarding of premiums; or in any other manner represent or assist the insurer in transacting insurance business.

10. Respondent violated N.C. General Statute § 58-28-45(a), which provides:

No person shall in the State act as an agent for any insurer not authorized to transmit business in this State, or negotiate for or place or aid in placing insurance coverage in this State for another with any such insurer.

11. Respondent and Miracle violated the insurance laws of this State, which violations provide substantial grounds for the revocation of their licenses under N.C. General Statute § 58-33-46(a)(2).

12. Respondent and Miracle intentionally misrepresented the terms of an actual insurance contract, which provides substantial grounds for revocation of their insurance licenses under N.C. General Statute § 58-33-46(a)(5).
13. Respondent and Miracle engaged in fraudulent and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business, which provides substantial grounds for the revocation of their insurance licenses under N.C. General Statute § 58-33-46(a)(8).
14. Respondent solicited, negotiated, and sold insurance for an unauthorized insurer, which provides substantial grounds for the revocation of Respondent's insurance licenses under N.C. General Statute § 58-33-46 (a)(12a).
15. The acts of Respondent and Miracle provide substantial grounds for the issuance of a cease and desist order under N.C. General Statute § 58-28-20(a), which provides:

Whenever the Commissioner has reasonable grounds to believe that any person is violating or is about to violate G.S. 58-28-5, 58-28-45, or 58-33-95, the Commissioner may, after notice and opportunity for hearing, make written findings and issue and caused to be served upon the person an order to cease and desist violating G.S. 58-28-5, 58-28-45, or 58-33-95.
16. The evidence presented at the hearing in the form of testimony and introduced exhibits is sufficient to support the revocation the insurance licenses of Respondent and Miracle.
17. The insurance agent licenses of Respondent should be revoked because Respondent violated N.C. General Statute §§ 58-28-45(a), 58-33-46(a)(2), 58-33-46(a)(5), 58-33-46(a)(8), and 58-33-46(a)(12a).

18. The business entity license of Miracle should be revoked because Miracle violated N.C. General Statute §§ 58-28-5(a), 58-28-13(a), 58-28-13(b), 58-33-46(a)(2), 58-33-46(a)(5), 58-33-46(a)(8), and 58-33-46(a)(12a).

Based on the foregoing Finding of Facts and Conclusions of Law, the Hearing Officer enters the following:

ORDER

1. Respondent and Miracle are ordered to cease and desist from issuing contracts of insurance and engaging in unauthorized insurance under N.C. General Statute §§ 58-28-5, 58-28-45, and 58-33-95.
2. The insurance licenses issued to Respondent are hereby revoked.
3. The business entity license issued to Miracle is hereby revoked.

This 20th day of July 2012.



William K. Hale
Hearing Officer and Special Counsel
N.C. Department of Insurance

APPEAL RIGHTS: This Order may be appealed to the Superior Court of Wake County within 30 days after receipt, as set forth in the General Statutes of North Carolina.


CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Order and Final Agency Decision by US mail, first class postage affixed and addressed as follows:

Alireza Shahrak
5710 Six Forks Road
2nd Floor
Raleigh NC 27609

Miracle Insurance and Financial Group
5710 Six Forks Road
Raleigh NC 27609

This the 23rd day of July, 2012.



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