

**BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS**

ARKANSAS INSURANCE DEPARTMENT

vs.

**DAVID RYAN DONLEY,
DONLEY & ASSOCIATES INSURANCE,
LLC**

A.I.D. NO. 2011- 095

**ORDER
NON-RENEWAL OF LICENSES**

On this day, the matter of David Ryan Donley (Respondent Donley) and Donley & Associates Insurance, LLC (Respondent Donley & Associates) came before Jay Bradford, Arkansas Insurance Commissioner ("Commissioner"). A hearing was held at 9:00 a.m. on September 14, 2011 in the First Floor Hearing Room at the Arkansas Insurance Department ("Department") pursuant to a Notice of Hearing dated August 22, 2011. The hearing was held before Deputy Commissioner and Director of Life and Health Division, Daniel W. Honey, pursuant to his appointment by the Commissioner in accordance with Arkansas Code Annotated § 23-61-103. The Department was represented by Booth Rand, Managing Attorney.

FINDINGS OF FACT

1. The Commissioner has jurisdiction over the parties and the subject matter pursuant to Ark. Code Ann. §23-61-103 and specific jurisdiction to issue an Order non-renewing a license issued by the Department under Ark. Code Ann. §23-64-512. Ark Code Ann. §23-64-512(a) provides that "the Commissioner may place on probation, suspend, revoke or refuse to

issue or renew an insurance producer's license for any of the causes delineated in Ark. Code Ann. §23-64-512(a). “

2. Respondent Donley holds an Arkansas resident producer license #227806, as well as owns and operates an insurance firm or agency in this State, Donley & Associates LLC, license #335542. Respondent Donley operates his firm or agency in Cabot, Arkansas.

3. On or about August 22, 2011, the Department issued to Respondents a Notice of Public Hearing (“NOPH”), notifying Respondents that the Department intended to non-renew the licenses of both Respondents in light of the concerns alleged in the Department's NOPH related to business reputation and financial responsibility concerns. The matter was set for an administrative hearing for September 14, 2011 which was scheduled to occur before the license renewal dates for both Respondent licenses on October 24th and 25th, so that Respondents could address the Department concerns in a hearing before the actual renewal dates occurred. Between the date of the NOPH and the hearing date, Respondent Donley was however able to electronically renew the firm license through the Department's online LEO system.

4. An administrative hearing was held on September 14, 2011 at 9:00 A.M. (“Hearing”) to determine whether the license of Respondent Donley should be renewed and whether the license of Respondent Donley & Associates should be refused or cancelled. Respondent Donley and Respondent Donley & Associates appeared without counsel and testified at the Hearing.

5. During the Hearing, the following items of documentary evidence were admitted into the administrative record without objection:

- (1) Designation of Hearing Officer;
- (2) A copy of Arkansas Insurance Department Notice of Hearing by certified return receipt and regular U.S. mail addressed to David Ryan Donley, and certified return receipt signed by David Ryan Donley on August 31, 2011;

(3) A copy of Arkansas Insurance Department Notice of Hearing by certified return receipt and regular U.S. mail Addressed to Donley & Associates Insurance, LLC and certified return receipt addressed to Donley & Associates Insurance, LLC, signed by David Ryan Donley on 8/31/2011;

(4) A copy of a Judgment Upon Jury Verdict in the Circuit Court of Pulaski County, Arkansas, Third Division, APS Insurance LLC, Plaintiff vs. David Ryan Donley; Pearl Jenkins and Donley & Associates Insurance, LLC CV-3-2011-1039, filed 06/03/11;

(5) A copy of a Notice of Appeal filed in the Circuit Court of Pulaski County, Arkansas, Third Division, APS Insurance, LLC vs. David Ryan Donley and Pearl Jenkins;

(6) A copy of a Notice of Bankruptcy case filing in the United States Bankruptcy Court, by David R. Donley and Julie A. Donley, Case No. 4:10-bk-16213;

(7) A copy of Bankruptcy filing in the United States Bankruptcy Court by David R. Donley and Julie A. Donley, Case No. 4:10-bk-16213;

(8) A copy of Arkansas Insurance Department Consent Order A.I.D. No. 2009-048 In The Matter of David Ryan Donley, License No. 227806;

(9) A copy of a Bankruptcy Plan by Respondent Donley.

6. The Hearing Officer received into the administrative record oral testimony from two (2) witnesses called by the Department, from Mr. Fred Stiffler, Licensing Director of the Department (“Licensing Director”) and from Respondent Donley. The Hearing Officer finds that the Respondents received adequate notice advising the Respondents as to the subject matter of the hearing.

7. The Licensing Director testified that on initial applications and renewals of licenses the Department may review the financial circumstances of licensees to determine if the licensee has sufficient business and financial stability to justify the issuance or renewal of a insurance producer’s license. The Licensing Director testified that although the filing of a bankruptcy itself was not a sole basis justifying a refusal to license or renew a license, the overall business and financial circumstances of a licensee may be reviewed including reviewing a credit report and the existence of judgments against the producer, or a civil judgment, and collection

actions against the producer for debts which may affect the business reputation and stability of the licensee to act as a producer.

8. The Hearing Officer received into the administrative record oral testimony from Respondent Donley. Respondent Donley testified that he is currently employed as a security guard for the TSA at the Little Rock Airport and explained that he operates his insurance business agency and provides insurance services for approximately three hundred (300) customers from his home. Respondent Donley testified that he services his insurance clients after working for the TSA. Respondent Donley testified that his agency, Donley & Associates LLC sustained a civil judgment of approximately \$100,000.00 punitive damages and \$50,000 compensatory damages in a suit brought against his agency and himself personally by APS Insurance, referred to in Joint Exhibit #4. Respondent Donley testified that the APS lawsuit and judgment was stayed or excepted as to him due his filing of a personal bankruptcy. Respondent Donley testified that as a result of the judgment, all earned commissions due Respondent Donley & Associates were now being garnished by the judgment creditor in that action. Respondent Donley testified that except for a few earned commissions due him personally by insurers, virtually all earned commissions were being garnished by the judgment creditor, which had sent writs of garnishment to all insurers which had appointments with Respondent Donley & Associates. Respondent Donley testified that although he was unable to obtain earned commissions or renewal commissions through his agency because of the credit collection action on the judgment, he was financially able and stable to service his clients from income he received from his full-time job as an airport security guard. Respondent Donley testified that he incurred over \$140,000.00 in personal credit card debt and that this was due, or partly due to his

use of credit cards to pay for a mortgage. Respondent Donley testified that he is appealing the APS Insurance judgment and that he has a plan proposed to pay his creditors in his bankruptcy.

9. The Hearing Officer reviewed the amount and nature of the APS judgment of \$150,000.00 against Respondent Donley & Associates. This judgment is partly based on an underlying jury finding of punitive damages against the agency. The basis of the APS Insurance suit generally concerned the actions of Donley in allegedly transferring to himself customer information of APS Insurance, which Donley used to market customers from APS Insurance to his own agency, Although the Department previously deferred to the parties and to the Court the issue of Donley's use of alleged APS customer information, in AID Order #2008-048, the Hearing Officer is nonetheless very concerned not only with the amount of the judgment but also with the with the willful, punitive finding ultimately decided in that matter.

10. The Hearing Officer reviewed AID Order #2008-048. Although Respondent Donley complied with all the requirements in the Consent Order as to fines and remediation, the Hearing Officer is nonetheless aware of Respondent Donley's previous Consent Order related to Respondent's actions of super imposing customer signatures.

CONCLUSIONS OF LAW

From the Findings of Fact contained herein, the Hearing Officer concludes as follows:

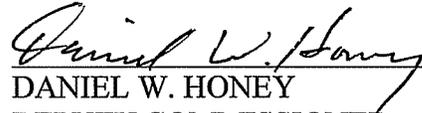
11. Both Respondent Donley and Respondent Donley & Associates do not have the requisite financial stability at this time to be entitled to renew a license. Ark. Code Ann. §23-64-512(a)(8) which provides that the Commissioner may non-renew a license if the producer lacks good personal or business reputation, or financial responsibility. The Hearing Officer is guided by the facts that the Respondent is operating an agency with over three-hundred (300) customers, and the Respondent Agency is not able to receive earned commission compensation due to

collection actions from garnishments, The Respondent's agency recently sustained a judgment of over \$150,000.00, \$100,000.00 of which is comprised of punitive damages. Punitive damages are assessed to deter willful or intentional misconduct. In addition, the nature and amount of the personal credit card debt (approximately \$140,000.00) disclosed in the bankruptcy schedules is a concern to the Department in terms of whether Respondent Donley's individual use of credit might arise again in the future. Given these factors, taken cumulatively, the Hearing Officer finds that neither Respondent, at this time, is financially stable or trustworthy to be licensed as a producer.

RECOMMENDATIONS OF THE HEARING OFFICER

WHEREFORE, based upon the foregoing Findings of Fact, Conclusions of Law, and other matters before him, the Hearing Officer recommends:

12. The licenses of both Respondents be non-renewed or cancelled pursuant to Ark. Code Ann. §23-64-512(a)(8)



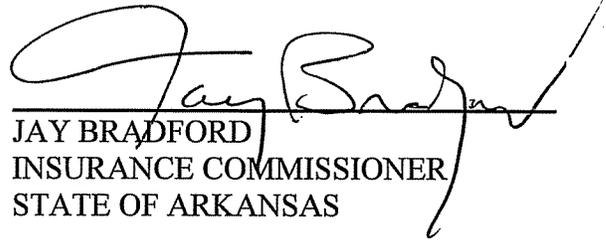
DANIEL W. HONEY
DEPUTY COMMISSIONER
HEARING OFFICER

CERTIFICATION

I, Jay Bradford, Insurance Commissioner for the State of Arkansas, do hereby certify that the above Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer were made by and under my authority and supervision by Daniel W. Honey, Deputy Commissioner and Hearing Officer in this proceeding. I hereby adopt the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendations in full and enter this Order.

THEREFORE, it is hereby ORDERED that both Respondent resident producer licenses be non-renewed or cancelled.

IT IS SO ORDERED THIS 22nd DAY OF August, 2011.



JAY BRADFORD
INSURANCE COMMISSIONER
STATE OF ARKANSAS