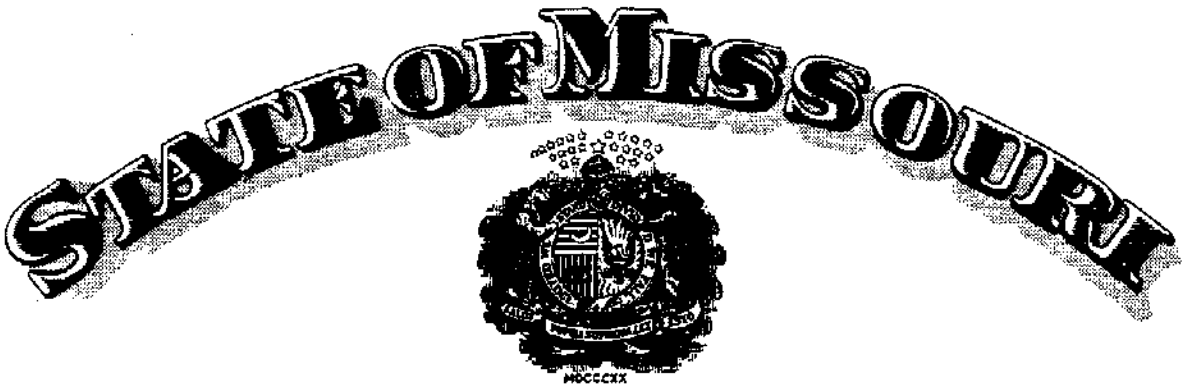

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

P.O. Box 690, Jefferson City, Mo. 65102-0690

In the Matter of:	)	
	)	**AHC Case No. 09-1522 DI**
	)	**DIFP Case No. 060726272C**
JAMES A. THURMAN,	)	
PHOENIX TITLE COMPANY, and	)	
PHOENIX TITLE, INC.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF DISCIPLINE

JOHN M. HUFF, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, hereby issues the following Findings of Fact, Conclusions of Law, and Order.

Findings of Fact

1. John M. Huff is the duly appointed Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director" of the "Department") whose duties, pursuant to Chapters 374 and 375, RSMo, include the supervision, regulation and discipline of insurance producers and business entity producers.

2. The Department issued an insurance producer license to James A. Thurman on April

9, 1992 (License No. 219079). The license was renewed and remained active until April 9, 2006, at which time the license expired.

3. The Department issued Phoenix Title, Inc. a business entity producer license (No. 11211) on April 10, 1996. Such license was renewed and remained active until April 10, 2006, when such license expired.

4. Phoenix Title, Inc. was a Missouri corporation created on April 5, 1996. The Missouri Secretary of State administratively dissolved Phoenix Title, Inc. on August 29, 2006, for failure to file an annual report.

5. Thurman was the president and secretary of Phoenix Title, Inc. and was also on its board of directors.

6. The Department issued Phoenix Title Company a business entity producer license (No. 8013621) on November 30, 2001. Such license was renewed and remained active until November 30, 2005, when such license was not renewed and expired.

7. "Phoenix Title Company" and "Phoenix Title" are registered fictitious names of Phoenix Title, Inc., both registered with the Missouri Secretary of State on August 2, 1996.

8. Thurman was the sole officer, owner, and operator of Phoenix Title, Inc. and Phoenix Title Company.

9. On December 13, 2001, Thurman formed James Andrews Properties, which went by the registered fictitious name of James Andrew GMAC Real Estate ("JAGMAC"). Thurman was the president of JAGMAC and a member of its board of directors.

10. Between March 1, 2002 and December 2, 2004, Thurman transferred approximately

$3,590,000 of customers' escrow deposits from Phoenix Title[1] to JAGMAC and $15,000 from customers' escrow deposits to his personal account.

11. During October 2003, Thurman reimbursed $150,000 to the customer escrow account with money he borrowed from a friend.

12. At the time of these transfers, Thurman was aware that he should not use customers' escrow deposits for purposes other than funding their transactions.

13. In June 2004, Thurman moved $215,536.91 of escrow money from Phoenix Title to the real estate company by disguising a check to JAGMAC as a loan payoff check.

14. On June 30, 2004, Phoenix Title issued a routine check in the amount of $215,536.91 to pay off a refinancing customer's first mortgage. The check was made payable to the customer's first lender and contains the notation, "Payoff First Mortgage 060911517."

15. On January 11, 2005, Thurman caused Phoenix Title to issue another check in the amount of $215,536.91 with the same notation, "Payoff First Mortgage 060911517," but made the check payable to JAGMAC, and deposited the check in the real estate company's account.

16. During January 2005, when Phoenix began to face the possibility of not being able to fund its customers' loan payoffs or home purchases, Thurman directed Phoenix Title employees to delay the delivery of customers' escrow funds for ten days. The ten-day delay created an artificial "float" in the escrow accounts, allowing Phoenix Title to continue to meet its obligations, but also caused increased and otherwise unnecessary interest expenses for Phoenix Title.

[1]The Administrative Hearing Commission inferred that Phoenix Title, Inc. and Phoenix Title Company did business as "Phoenix Title."

17. During February 2005, Thurman reimbursed $225,000 of the customers' escrow funds with money he borrowed from a friend.

18. Another title company involved in a loan closing with Phoenix Title received a check from Phoenix Title that was approximately ten days late because of the delay implemented by Thurman. During February 2005, this other title company notified Phoenix Title's underwriter at the time, Fidelity National Title Insurance Company ("Fidelity"), that Phoenix Title was "slow pay."

19. On February 28, 2005, Fidelity scheduled an audit of Phoenix Title to begin on March 25, 2005.

20. On March 17, 2005, Thurman repaid a total of $1,900,000, borrowed from his parents, to the customers' escrow accounts at Phoenix Title.

21. Based on his experience in the title industry, Thurman realized that Fidelity would likely withdraw as Phoenix Title's underwriter once it realized that Thurman had diverted customers' escrow deposits to his real estate company. In anticipation of Fidelity's withdrawal, Thurman sought out and engaged Guarantee Title Insurance as another underwriter for Phoenix Title. Thurman failed to disclose to Guarantee the problems with Phoenix Title's escrow deposits.

22. During March and April 2005, Thurman caused Phoenix Title to continue to accept escrow deposits from customers seeking to purchase or build a home, or to refinance their mortgages, while knowingly and willfully omitting the material fact that Phoenix Title had a large deficiency in its escrow funds.

23. Thurman acted on behalf of Phoenix Title, Inc. and Phoenix Title Company, and such entities, through their partners, officers or managers, knew or should have known of the violations by Thurman.

24. Phoenix Title, Inc. and Phoenix Title Company did not report Thurman's violations or take corrective action for the violations.

25. On August 26, 2005, in the United States District Court for the Eastern District of Missouri, Thurman pled guilty to wire fraud for the conduct described in Findings 9 through 22. On March 9, 2006, the court sentenced Thurman to 63 months in federal prison and ordered him to pay restitution in the amount of $2,032,019.43.

26. On November 3, 2009, the Director filed a complaint against Thurman, Phoenix Title, Inc., and Phoenix Title Company with the Administrative Hearing Commission ("Commission") seeking to discipline Thurman's insurance producer license pursuant to § 375.141.1(4), (6) and (8) RSMo (Supp. 2008), (alternatively pursuant to § 375.141.1(5) and (8) RSMo 2000), and the business entity producer licenses of Phoenix Title, Inc. and Phoenix Title pursuant to § 375.141.1(4) and (8) RSMo (Supp. 2008), § 375.141.3 RSMo (Supp. 2008), (alternatively pursuant to § 375.141.1(5) and (8) RSMo 2000).

27. On December 21, 2011, the Commission served Thurman with a copy of the Complaint, however, none of the Respondents filed an answer.

28. On April 12, 2010, the Commission held a hearing on the Complaint. Senior Enforcement Counsel Mary S. Erickson represented the Director. Though Thurman and the entities were notified of the date and time of the hearing, no one appeared on behalf of the respondents.

29. On September 20, 2010, the Commission issued its Decision finding that cause exists to discipline Thurman's insurance producer license pursuant to:

> § 375.141.1(5) RSMo 2000 and § 375.141.1(4) RSMo (Supp. 2008) for misappropriation and conversion of money in the course of doing title insurance business;
>
> § 375.141.1(6) for being convicted of a felony and crime of moral turpitude (federal wire

fraud);

§ 375.141.1(4) RSMo 2000 and 375.141.1(8) RSMo (Supp. 2008) for demonstrating untrustworthiness, incompetency, and financial irresponsibility and for using fraudulent and dishonest practices.

30. The Commission also found exists to discipline the business entity producer licenses of Phoenix Title, Inc. and Phoenix Title Company pursuant to:

§ 375.141.1(5) RSMo 2000 and § 375.141.1(4) RSMo (Supp. 2008) for misappropriation and conversion of money in the course of doing title insurance business;

§ 375.141.1(4) RSMo 2000 and 375.141.1(8) RSMo (Supp. 2008) for demonstrating untrustworthiness, incompetency, and financial irresponsibility and for using fraudulent and dishonest practices.

31. On October 21, 2010, the Commission certified the record of its proceeding to the Director pursuant to § 621.110.

32. The Director served Thurman, Phoenix Title, Inc. and Phoenix Title Company, by certified mail and priority mail, a notice of the disciplinary hearing to be held at 2:00 p.m. on February 16, 2011, in the offices of the Director, 301 West High Street, Room 530, Jefferson City, Missouri.

33. The U.S. Postal Service delivered the priority mail to Thurman's address on February 5, 2011.

34. Neither Thurman nor anyone on behalf of the entities appeared at the disciplinary hearing personally or through counsel. At the hearing, counsel for the Department presented the Decision and certified record of the Administrative Hearing Commission in Case No. 09-1522 DI and recommended that the Director revoke Thurman's insurance producer license and revoke the business entity producer licenses of Phoenix Title, Inc. and Phoenix Title Company.

35. The Director hereby adopts and incorporates the Administrative Hearing

Commission's Decision dated September 20, 2010, referenced herein, and does hereby find in accordance with the same. *Director of Dep't of Ins., Fin. Inst. & Prof. Reg'n v. Phoenix Title Company and James A. Thurman*, No. 09-1522 DI (Mo. Admin. Hrg. Comm'n Sept. 20, 2010).

Conclusions of Law

36. Pursuant to §§ 375.141 and 621.110, the Director has the discretion to discipline Thurman's insurance producer license and the business entity producer licenses of Phoenix Title, Inc. and Phoenix Title Company, including revocation of such licenses.

37. The Director has the authority to revoke any license where the licensee has failed to renew such license. § 375.141.4 RSMo (Supp. 2010).

38. Based on the nature and severity of the aforementioned conduct, sufficient grounds exist to revoke Thurman's insurance producer license pursuant to § 375.141.1(4), (6) and (8) RSMo (Supp. 2008), (alternatively pursuant to § 375.141.1(5) and (8) RSMo 2000), and the business entity producer licenses of Phoenix Title, Inc. and Phoenix Title pursuant to § 375.141.1(4) and (8) RSMo (Supp. 2008), (alternatively pursuant to § 375.141.1(5) and (8) RSMo 2000).

39. This order is in the public interest.

ORDER

Based on the evidence presented and the recommendation of the Department, the insurance producer license of James A. Thurman (License No. 219079) and the business entity producer licenses of Phoenix Title, Inc. (License No. 11211) and Phoenix Title Company (License No. 8013621) are hereby **REVOKED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 14TH DAY OF MARCH, 2011.

JOHN M. HUFF, Director
Missouri Department of Insurance,
Financial Institutions and
Professional Registration

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, via certified mail and priority mail through the United States Postal Service, on this 15th day of March, 2011 to:

James A. Thurman
Phoenix Title, Inc.
Phoenix Title Company

Certified mail # 7009-3410-0001-9349-6455
Priority mail # 0307-3330-0000-7083-1121

Kimberly Sanders