

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Removal and Prohibition
3 of:

No. 11F-BD002-BNK

CONSENT ORDER

4 **BERGAU, CHERYL ANN**
7844 W. Palmaire
5 Glendale, Arizona 85303

6 Respondent.

7 On July 19, 2010, the Arizona Department of Financial Institutions (“Department”) issued a
8 Notice of Hearing, alleging that Respondent had violated Arizona law. Wishing to resolve this
9 matter in lieu of an administrative hearing, Respondent does not contest the following Findings of
10 Fact and Conclusions of Law, and consents to the entry of the following Order.

11 **FINDINGS OF FACT**

12 1. Respondent Cheryl Ann Bergau (“Ms. Bergau”) was employed as an escrow officer
13 by American Title Services Agency, L.L.C. (“ATS”), Mesa Branch #46, located at 2266 S. Dobson
14 Road, Suite 105, Mesa, Arizona 85202, Branch License No. #0113849, at all times material to this
15 proceeding.

16 2. ATS is licensed by the Department as an escrow agent, license number EA-0906335.

17 3. On or around January 2009, ATS conducted an audit of the files handled by Ms.
18 Bergau. The audit revealed that Ms. Bergau had misappropriated ATS funds for personal use. As a
19 result of the audit, ATS immediately terminated Ms. Bergau’s employment.

20 4. ATS next contacted the Phoenix Police Department to notify them of the defalcation,
21 and prepared and provided to the Phoenix Police Department a detailed report regarding this matter.

22 5. On or about August 25, 2009, a Grand Jury Indictment was filed in *State of Arizona v.*
23 *Cheryl Ann Bergau*, Maricopa County Superior Court No. CR2009-141742-001 DT (“*State v.*
24 *Bergau*”), charging Ms. Bergau with one count of Fraudulent Schemes and Artifices, a Class 2
25 Felony, one count of Theft, a Class 2 Felony, and two counts of Forgery, a Class 4 Felony.

26 6. On or about November 19, 2009, a Plea Agreement was filed in *State v. Bergau*, in

1 which Ms. Bergau agreed to plead guilty to Count 2 (as amended), Theft, a Class 6 Felony, and
2 Count 3, Forgery, a Class 4 Felony.

3 7. On or about November 19, 2009, in *State v. Bergau*, Ms. Bergau entered her plea of
4 Guilty before the Court, to Count 2 (as amended), Theft, a Class 6 Felony, and Count 3, Forgery, a
5 Class 4 Felony. The Court ordered that the acceptance of plea and sentencing be set for January 7,
6 2010.

7 8. On January 7, 2010, in *State v. Bergau*, the Court entered Judgment, finding Ms.
8 Bergau guilty of Count 2, Theft, a Class 6 Felony, in violation of A.R.S. §§ 13-1802, 13-1801, 13-
9 701, 13-702, and 13-801, committed between November 16, 2007 and January 31, 2009; and
10 Count 3, Forgery, a Class 4 Felony, in violation of A.R.S. §§ 13-2001, 13-2002, 13-701, 13-702, 13-
11 702.01, 13-702.01, and 13-801, committed on or about April 24, 2008. The Court sentenced Ms.
12 Bergau to a nine (9) month term of imprisonment to begin on January 7, 2010, as to Count 2, and, as
13 to Count 3, sentenced her to a suspended sentence, placing Ms. Bergau on probation for a term of
14 three (3) years, upon absolute discharge from prison. In addition, as to Count 3, the Court ordered
15 Ms. Bergau to pay restitution to American Title Service Agency in the amount of twenty seven
16 thousand nine hundred eighty one dollars and fifty two cents (\$27,981.52), and a fine in the amount
17 of two thousand five hundred dollars (\$2,500.00).

18 CONCLUSIONS OF LAW

19 1. Pursuant to Title 6, Chapter 7, of the Arizona Revised Statutes, the Superintendent
20 has the authority and duty to regulate all persons engaged in the escrow agent business and with the
21 enforcement of statutes, rules, and regulations relating to escrow agents.

22 2. By the conduct set forth above in the Complaint, Ms. Bergau has violated statutes
23 governing escrow agents as follows:

- 24 a. A.R.S. § 6-834(A) by failing to deposit and maintain all monies deposited in
25 escrow to be delivered on the close of the escrow or on any other contingency in a
26 bank, savings bank or savings and loan association doing business in this state and

1 by failing to keep all escrow monies separate, distinct and apart from monies
2 belonging to the escrow agent; and

3 b. A.R.S. § 6-841.01(A) by breaching, as an employee of an escrow agent, a
4 fiduciary duty as a trustee to the owner of all monies received or collected and
5 held in escrow and by knowingly and negligently commingling trust monies with
6 the escrow agent's own monies or with monies held in any other capacity.

7 3. The conduct of Ms. Bergau, as set forth above, constitutes acts, omissions, and
8 practices which demonstrate personal dishonesty and unfitness to continue in office or to participate
9 in the conduct of the affairs of any financial institution or enterprise and is grounds for removal and
10 the prohibition of Ms. Bergau from participating in any manner in the conduct of the affairs of any
11 financial institution or enterprise within the meaning of A.R.S. § 6-161(A)(1).

12 4. Ms. Bergau's January 7, 2010 conviction of one (1) count of Theft, a Class 6 Felony,
13 constitutes grounds for the removal and the prohibition of Ms. Bergau from participating in any
14 manner in the conduct of the affairs of any financial institution or enterprise, pursuant to A.R.S. § 6-
15 161(A)(4).

16 5. Ms. Bergau's January 12, 2010 conviction of one (1) count of Forgery, a Class 4
17 Felony, constitutes grounds for the removal and prohibition of Ms. Bergau from participating in any
18 manner in the conduct of the affairs of any financial institution or enterprise, pursuant to A.R.S. § 6-
19 161(A)(4).

20 6. Ms. Bergau's violations of A.R.S. §§ 6-834(A) and 6-841.01(A) constitute grounds
21 for the removal and the prohibition of Ms. Bergau from participating in any manner in the conduct of
22 the affairs of any financial institution or enterprise, pursuant to A.R.S. § 6-161(A)(6).

23 7. The violations, set forth above, constitute grounds for the Superintendent to order the
24 removal and the prohibition of Ms. Bergau from further participation in any manner as a director,
25 officer, employee, agent, or other person in the conduct of the affair of any financial institution or
26 enterprise pursuant to A.R.S. § 6-161.

1 **ORDER**

2 1. Ms. Bergau shall be shall be prohibited from further participation in any manner in the
3 conduct of the affairs of any financial institution or enterprise, pursuant to A.R.S. § 6-161.

4 2. This Order shall become effective upon service, and shall remain effective and
5 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated,
6 or set aside.

7 SO ORDERED this 22 day of SEPTEMBER, 2010.

8
9 
10 By: _____
11 Lauren W. Kingry
12 Superintendent of Financial Institutions

11 **CONSENT TO ENTRY OF ORDER**

12 1. Respondent acknowledges that she has been served with a copy of the foregoing Findings
13 of Fact, Conclusions of Law and Order in the above-referenced matter, has read the same, is aware
14 of her right to an administrative hearing in this matter, and has waived the same.

15 2. Respondent admits the jurisdiction of the Superintendent and consents to the entry of the
16 Foregoing Findings of Fact, Conclusions of Law and Order.

17 3. Respondent states that no promise of any kind or nature has been made to induce her to
18 consent to the entry of this Order, and that she has done so voluntarily.

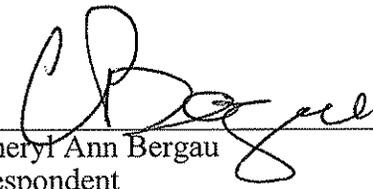
19 4. Respondent agrees to refrain from seeking any future employment with any financial
20 institution or enterprise.

21 5. Respondent acknowledges that the acceptance of this Agreement by the Superintendent is
22 solely to settle this matter and does not preclude the Department, any other agency or officer of this
23 state or subdivision thereof from instituting other proceedings as may be appropriate now or in the
24 future.

25 6. Respondent waives all rights to seek judicial review or otherwise to challenge or contest
26 the validity of this Consent Order.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 21 day of Sept., 2010.

By 
Cheryl Ann Bergau
Respondent

ORIGINAL of the foregoing filed this 22nd
day of September, 2010, in the office of:

Lauren W. Kingry
Superintendent of Financial Institutions
Arizona Department of Financial Institutions
ATTN: Susan L. Longo
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

COPY mailed same date to:

Lewis D. Kowal, Administrative Law Judge
Office of the Administrative Hearings
1400 West Washington, Suite 101
Phoenix, AZ 85007

Craig A. Raby, Assistant Attorney General
Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007

Robert D. Charlton, Assistant Superintendent
Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

Cheryl A. Bergau
7844 W. Paltaire
Glendale, AZ 85303
Respondent


998973