ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

In the Matter of the Appraiser License of: **ROBERT B. NIXON** **Certified Residential Appraiser** **License No. 21101** Petitioner.	**No. 16F-3790-BOA** **ORDER AMENDING SUPERINTENDENT'S FINAL DECISION AND ORDER**

The Superintendent of Financial Institutions (the "Superintendent") having reviewed the record in this matter, including the Administrative Law Judge Decision attached and incorporated herein by this reference, adopts the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Decision:

ORDER

IT IS ORDERED terminating the Department's July 8, 2015 denial of Petitioner's Application for License. It is also ordered that the Department continue processing Petitioner's Application to determine whether it meets the other requirements set forth in A.R.S. §32-3614.

NOTICE

The parties are advised that, pursuant to A.R.S. § 41-1092.09, this Order shall be final unless the Petitioner submits a written motion for rehearing no later than thirty (30) days after service of this decision. The motion for rehearing or review must specify the particular grounds upon which it is based, as set forth in A.A.C. R20-4-1219. A copy shall be served upon all other parties to the hearing, including the Attorney General, if the Attorney General is not the party filing the claim of error. In the alternative, the parties may seek judicial review of this decision pursuant to A.R.S. § 41-1092.08(H).

DATED this 7th day of October, 2015.

Lauren W. Kingry
Superintendent of Financial Institutions

ORIGINAL filed this 7th day of October, 2015 in the office of:

Lauren W. Kingry, Superintendent of Financial Institutions
Arizona Department of Financial Institutions
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Copy of the foregoing e-filed this
7th day of October, 2015, in the office of:

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Copy of the foregoing mailed/ emailed same date to:

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By: _____
Kelly Luteijn

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Collection Agency License Application of: EXLSERVICE PHILIPPINES, INC. c/o Rohit Kapoor, President 280 Park Avenue, 38th Floor New York, NY 10017 Petitioner.	**No. 15F-BD001-BNK** **ADMINISTRATIVE LAW JUDGE DECISION**

THE RECORD: Because the parties' attorneys did not dispute any of the facts underlying their dispute, only the proper application of the law, in lieu of an evidentiary hearing, they agreed that the Administrative Law Judge should render a decision in this matter based on the documentary record. On October 24, 2014, the parties each submitted five exhibits. On November 10, 2014, the parties submitted simultaneous legal memoranda and the record closed.

APPEARANCES: Petitioner EXLService Philippines, Inc. ("EXL") was represented by Heidi McNeil Staudenmaier, Esq., Snell & Wilmer, LLP; the Arizona Department of Financial Institutions ("the Department") was represented by Craig A. Raby, Esq., Assistant Attorney General.

ADMINISTRATIVE LAW JUDGE: Diane Mihalsky

FINDINGS OF UNDISPUTED FACT

1. On September 25, 2007, EXL was incorporated by the Security and Exchange Commission of the Republic of the Philippines.[1]

2. On or about October 3, 2008, EXL applied to the Arizona Corporation Commission for authority to transact business in Arizona.[2] According to EXL's

[1] *See* the Department's Exhibit 2.
[2] *See* the Department's Exhibit 3 at 1-6.

application, EXL's principal office is in the Philippines. On October 22, 2013, the Arizona Corporation Commission issued a Certificate of Good Standing to EXL.[3]

3. EXL specializes in business process outsourcing and operations management services, among other lines of business, for global clients in a variety of highly regulated business sectors, including the insurance, health care, energy, and financial services industries.[4] EXL has been licensed as a collection agency by 21 different jurisdictions in the United States, including 19 states.[5]

4. On January 9, 2014, EXL submitted a Collection Agency License Application ("Application") to the Department.[6] The Application stated that EXL's president, CEO, and Active Manager is Rohit Kapoor.

5. Mr. Kapoor is a United States citizen.

6. The Application further stated that Mr. Kapoor's address was in New York City, New York, and that he was previously the Active Manager for EXLService.com (India) Private Limited, whom the Department had licensed from March 26, 2012, through July 25, 2013.

7. The Department's Collection Agency Supplement License Application Instructions explains that to be qualified for licensure, "[t]he individual applicant or, if the applicant is other than an individual, the individual who will be the Active Manager of the applicant shall: a) Be a citizen of the United States . . . ."[7]

8. On June 20, 2014, the Department issued a letter denying EXL's Application under A.R.S. § 32-1023(A)(1) because EXL "is not a US citizen."[8] EXL filed a timely appeal.[9]

9. The Department's August 1, 2012 Substantive Policy Statement # GE-1 sets forth various factors that the Department must consider when it evaluates applications

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[3] *See* the Department's Exhibit 3 at 7.
[4] *See* EXL's Exhibit 4.
[5] *See* EXL's Exhibit 5.
[6] *See* the Department's Exhibit 1.
[7] EXL's Exhibit 1.
[8] The Department's Exhibit 4 at 1.
[9] *See* the Department's Exhibit 5.

for a license.[10] The factors mentioned do not include a company's place of incorporation or the Active Manager's citizenship. The Department has not alleged that EXL or Mr. Kapoor does not meet any other requirements for licensure, only that EXL does not meet the requirement in A.R.S. § 32-1023(A)(1) because it is a foreign corporation.

10. The Department currently licenses as collection agencies two Canadian companies and one Indian company.[11] These collection agencies will remain licensed at least until the end of 2014.

CONCLUSIONS OF LAW

1. This matter lies within the Department's jurisdiction.[12]

2. EXL bears the burden of proof to establish that it meets statutory qualifications to be licensed as a collection agency.[13] The parties agree that the issue in this case is purely legal. The proponent of a legal position bears the burden to establish the merits of that position.[14]

3. A.R.S. § 32-1023 includes among the qualifications required for licensure as a collection agency the following:

> A. An applicant for a license issued under this chapter shall:
>
> 1. *Be a citizen of the United States* and be of good moral character.
>
> 2. Not have been convicted of a crime involving moral turpitude.
>
> 3. Not have defaulted on payment of money collected or received for another.
>
> 4. Not have been a former licensee under the provisions of this chapter whose license was suspended or revoked and not subsequently reinstated.

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[10] *See* EXL's Exhibit 3.
[11] *See* EXL's Exhibit 2.
[12] *See* A.R.S. § 6-122(A0.
[13] *See* A.R.S. § 41-1092.07(G)(1); A.A.C. R2-19-119(A) and (B)(1); *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).
[14] *See* A.A.C. R2-19-119(B)(3).

> B. *If the applicant for a license is a firm, partnership, association or corporation, the qualifications required by subsection A of this section shall be required of the individual in active management of the firm, partnership, association or corporation.*
>
> C. When a licensed agency ceases to be under the active management of a qualified person, as defined in rules, notice of this fact shall be given to the superintendent within ten days. The licensee shall have ninety days after the termination of the services of the acting manager to replace the qualified person and notify the superintendent of the qualified replacement. . . .

(Emphasis added.)

4. An agency "is not bound to deal with all cases at all times in the same manner as it had dealt with some past cases that might seem comparable."[15] Although the Department implies that past alien corporations to whom it granted collection agency licensure "[had] a United States residence," unlike EXL,[16] the Department cites no authority to support any distinction between alien non-resident corporations and alien resident corporations in the context of licensing decisions made under Arizona Revised Statutes, Title 32, Chapter 9.[17]

5. If the Department made a mistake in licensing the two Canadian companies, the Indian company, and EXLService.com (India) Private Limited as collection agencies, despite the requirements of A.R.S. § 32-1023(A)(1), its previous mistakes do not estop it from denying EXL's license application.[18]

6. In Arizona, because administrative agencies' interpretations of the statutes that they are charged with implementing are entitled to deference,[19] ambiguities in

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[15] *See Bishop v. Law Enforcement Merit Sys. Council,* 119 Ariz. 417, 422, 518 P.2d 262, 267 (App. 1978).

[16] *See* the Department's Legal Brief in Lieu of Administrative Hearing at page 3 note 3 and page 5 line 3.

[17] The Department cites several statutes contained in Arizona Revised Statutes, Title 10, relating to corporations and associations. None of these statutes relate to an agency's licensing decisions under Arizona Revised Statutes, Title 32.

[18] *See Thomas and King, Inc. v. City of Phoenix,* 208 Ariz. 203, 210, 92 P.3d 429, 436 (App. 2004).

[19] *See, e.g., Bridgestone Retail Tire Operations v. Industrial Commission*, 227 Ariz. 453, 456 ¶ 12, 258 P.3d 271, 274 (2011).

statutes must be resolved according to the implementing agency's interpretation.[20] Notably, the Department does not argue that A.R.S. § 32-1023 is ambiguous; instead, the Department argues that A.R.S. § 32-1023(A)(1) requires that both individual and corporate license applicants must be United States citizens and that A.R.S. § 32-1023(B) requires that the active manager of a corporate licensee must also be a United States citizen.

7. An agency may not disregard clear statutory directives or legislative intent.[21] "A cardinal rule of statutory interpretation is to give full effect to each statutory word or phrase so that no part is rendered void, superfluous, contradictory or insignificant."[22] The plain language of A.R.S. § 32-1023(A)(1) requires that an applicant for collections agency licensure must be a citizen of the United States and be of "good moral character." Because an artificial business entity such as a corporation can have no moral character, the Department's construction renders superfluous the requirement of a "good moral character" for a corporate applicant.

8. Fundamental to statutory construction is the presumption that "what the Legislature means, it will say."[23] A.R.S. § 32-1023(B) begins with the conditional phrase, "[i]f the applicant . . . is a firm, partnership, association or corporation," then the requirements of A.R.S. § 32-1023(A) must be satisfied by the active manager. The Department's construction of A.R.S. § 32-1023(B) inserts the additional condition that if the applicant is an alien corporation, then the applicant must be a citizen, but the active manager must be both a citizen and satisfy the remaining qualifications required in A.R.S. § 32-1023(A). But that is not what the legislature said.[24]

9. "[A] statute should be explained in conjunction with other statutes to the end that they may be harmonious and consistent; . . . if statutes relate to the same subject

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[20] *See, e.g., Eaton v. Arizona Health Care Cost Containment System*, 206 Ariz. 430, 434 ¶ 16, 79 P.3d 1044, 1048 (2003).
[21] *See, e.g., Cochise County v. Arizona Health Care Cost Containment System,* 170 Ariz. 443, 445, 825 P.2d 968, 970 (App. 1991).
[22] *Westburne Supply, Inc. v. Diversified Design and Construction, Inc.*, 170 Ariz. 598, 600, 826 P.2d 1224, 1226 (App. 1992).
[23] *Canon School Dist. No. 50 v. W.E.S. Constr. Co.,* 177 Ariz. 526, 529, 869 P.2d 500, 503 (1994).

and are thus *in pari materia*, they should be construed together with other related statutes as though they constituted one law."[25] The Department cites A.R.S. § 32-1024 as supporting its construction of A.R.S. § 32-1023(A) and (B).[26] A.R.S. § 32-1024 concerns Licensing Out-of-State Collection Agents and provides as follows:

> The superintendent shall issue a license to operate a collection agency to a person who holds and presents with the person's application a valid and subsisting license to operate a collection agency issued by another state or an agency of another state if:
>
> 1. Requirements for securing the license were, at the time of issuance, substantially the same or equal to requirements imposed by this chapter.
>
> 2. The state concerned extends reciprocity under similar circumstances to licensed collection agents of this state.
>
> 3. The application is accompanied by the fees and financial and bonding requirements set forth in this chapter.

Although EXL is licensed in 19 other states, it did not submit its application for licensure under A.R.S. § 32-1024. The Legislature's decision to create a more streamlined application procedure in A.R.S. § 32-1024 for out-of-state applicants who are licensed in other states does not change the plain language of A.R.S. § 32-1023(A) and (B) or support the Department's construction of A.R.S. § 32-1023.

RECOMMENDED ORDER

Based on the foregoing, it is recommended that the Department rescind its June 20, 2014 denial of EXL's Collection Agency License Application and continue processing EXL's Application to determine whether EXL meets the other requirements set forth in A.R.S. § 32-1153.

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[24] *See Stuart v. Winslow Elementary School District No. 1,* 100 Ariz. 375, 383, 414 P.2d 976, 984 (1966) (All parts of a statute relating to the same subject shall be construed together, including a condition precedent for an action or requirement).

[25] *Pima County by City of Tucson v. Maya Const. Co.,* 158 Ariz. 151, 155, 761 P.2d 1055, 1059 (1988).

[26] *See* the Department's Legal Brief in Lieu of Administrative Hearing at page 4 line 12 to page 5 line 12.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order will be five days from the date of that certification.

Done this day, November 24, 2014.

/s/ Diane Mihalsky
Administrative Law Judge

Transmitted electronically to:

Lauren Kingry, Superintendent
Arizona Department of Financial Institutions