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**BEFORE THE ARIZONA STATE
BOARD OF TECHNICAL REGISTRATION
IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of:) OAH Docket No. 20A-AL19-015-BTR
) Case No.(s): AL19-015

5 **Amanda Hensley,**)
6 Controlling Person Cert. # 67706)
7 (Delinquent),)

8 Alarm Agent Cert. # 63230)
9 (Pending),)

10 and)

11 **EnGarde, LLC,**)
12 Firm Registration # 19953)
13 (Pending),)

14 Respondents.)

DECISION AND ORDER

15 On March 24, 2020, this matter came before the Arizona State Board of Technical
16 Registration (Board) for consideration of the Administrative Law Judge (ALJ) Antara
17 Nath Rivera's proposed Findings of Fact, Conclusions of Law and Recommended Order
18 (ALJ's Decision).¹ Neither Amanda Hensley nor representatives of EnGarde, LLC or an
19 attorney on their behalf appeared. Assistant Attorney General Deanie Reh appeared on
20 behalf of the State. The Board received independent legal advice from Assistant
21 Attorney General Marc Harris.

22 The Board, having considered the ALJ's Decision, the State's arguments and the
23 entire record in this matter, hereby issues the following Findings of Fact, Conclusions of
24 Law and Order (Decision and Order).

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27

¹ A true and correct copy of the ALJ's Decision is attached and is incorporated herein as set forth below.

1 **FINDINGS OF FACT**

2 1. The Board adopts Findings of Fact paragraphs 1 through 22 and 24 through
3 33 as set forth in the ALJ’s Decision. The Board adopts paragraph 23 with the following
4 modifications: 1) insert the words “delinquent status” between the words “that and
5 meant” on page 4 line 6; and 2) delete the words “expired and also” at the end of line 7.²

6 **CONCLUSIONS OF LAW**

7 2. The Board adopts Conclusions of Law paragraphs 1 through 9 as set forth
8 in the ALJ’s Decision.

9 **ORDER**

10 Based on the foregoing the Board Orders that Respondent Amanda Hensley and
11 Respondent EnGarde, LLC shall pay an administrative penalty in the amount of ten-
12 thousand dollars (\$10,000) by certified check or money order made payable to the Board.
13 Respondents are jointly and severally responsible for the administrative penalty which
14 shall be paid within 90 days of the effective date of the Decision and Order.³

15 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

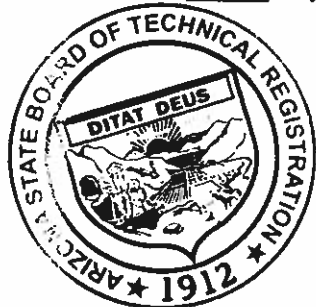
16 Respondents are hereby notified that they have the right to file a motion for
17 rehearing or review. Pursuant to A.R.S. § 41-1092.09(B) and A.A.C. R4-30-126(A) the
18 motion for rehearing or review must be filed with the Board’s Executive Director within
19 30 days after service of this Order. Service of this Order is defined as five calendar days
20 after mailing.

21 _____
22 ² As modified, the sentences read, 1) Mr. Stam stated that delinquent status meant the
23 Certificates were suspended; and 2) Certificates #63232 and #67706 were delinquent and
24 awaiting renewal payment by a Controlling Party. The Board made these modifications
25 so that the findings contained in this paragraph conform to Mr. Stam’s testimony as
26 reflected in the administrative record.

27 ³ In adopting its Order, the Board clarified that the amount of the administrative penalty
(\$10,000) is based on the number of violations cited in Conclusion of Law paragraph 9.
The Board also made both Respondents jointly and severally liable for the administrative
penalty and added a 90 day time period to pay it.

1 The motion for rehearing or review must set forth legally sufficient reasons for
2 granting a rehearing or review. A.A.C. R4-30-126(C). If a motion for rehearing or
3 review is not filed, the Board's Order becomes effective 35 days after it is mailed to
4 Respondents. Respondents are further advised that the filing of a motion for rehearing or
5 review is required to preserve any rights of appeal to Superior Court.

6
7 DATED this 25th day of March, 2020.



Arizona State Board of
Technical Registration

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Jason E. Foose
Jason Foose, Chairman

13 ORIGINAL of the foregoing filed
14 27 day of March, 2020, with:

15 Arizona State Board of Technical Registration
16 1110 W. Washington, Ste. 240
17 Phoenix, AZ 85007

18 COPIES sent via email, First Class mail and
19 Certified Mail No. 92148901943446000682 82 + 99
20 27 day of March, 2020, to:

21 Amanda Hensley, Controlling Person
22 EnGarde, LLC
23 1166 E. Warner, Rd., Ste. 101
24 Gilbert, AZ 85296

25 Amanda Hensley
26 21335 E. Excelsior Ave.
27 Queen Creek, AZ 85142-5566
amanda.hensley@myengarde.net
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1 **COPIES** of the foregoing emailed this

2 27 day of March, 2020, to:

3 Deanie Reh, AAG

4 Deanie.Reh@azag.gov

5 Attorney for the State

6 Marc Harris AAG

7 Marc.Harris@azag.gov

8 Independent Attorney Advisor

9 **COPY** of the foregoing hand delivered

10 27 day of March, 2020, to:

11 Antara Nath Rivera

12 Office of Administrative Hearing

13 1740 West Adams Street, Lower Level

14 Phoenix AZ, 85007

15 oah@azoah.com

16 By: Kurt Winter

17 DOC # 8618431

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of:

No. 20A-AL19-015-BTR

4 Amanda Hensley,
5 Controlling Person Cert. # 67706
6 (Delinquent),

**ADMINISTRATIVE LAW JUDGE
DECISION**

7 Alarm Agent Cert. # 63230
8 (Pending),
9 and
10 EnGarde, LLC,
11 Firm Registration # 19953
(Pending),
12 Respondents.

13 **HEARING:** February 21, 2020.

14 **APPEARANCES:** Deanne Reh, Assistant Attorney General, appeared on behalf
15 of the Arizona State Board of Technical Registration. Amanda Hensley and EnGarde,
16 LLC, Respondents, did not appear.

17 **ADMINISTRATIVE LAW JUDGE:** Antara Nath Rivera.

18 **FINDINGS OF FACT**

19 1. On or about August 31, 2016, Respondents submitted an initial firm registration
20 application (Application).

21 2. On November 23, 2016, Respondents applied for a Controlling Person
22 Certificate (Certificate). Respondents were granted Certificate #63232.

23 3. On or about August 30, 2018, Certificate #63232 expired as a matter of course
24 and Respondents were requested to reapply for another Certificate.

25 4. On or about October 5, 2018, Respondents reapplied for another Certificate.

26 5. On or about October 17, 2018, Respondents were granted Certificate #67706.
27 Respondents failed to pay the fees on Certificate #67706.

28 6. On or about November 16, 2018, Certificate #67706 became delinquent.

29 7. Respondents' Business Registration Certificate #19953 was in pending status
30 because of the lack of affiliation with a validly certified controlling person. Respondent's

1 Business Registration remained in the pending status unless affiliated with a certified
2 controlling person and would ultimately expire on August 31, 2021, unless renewed and
3 reinstated. Pending status was equivalent to a suspension of a certification, in which the
4 certification is held inactive status until the situation that caused the suspension was
5 resolved. Pursuant to Arizona Revised Statutes (A.R.S.) §§ 32-122.05(A) and 32-
6 122.06(A), certification or registration is valid for a three year period.

7 8. Amanda Hensley created EnGarde and registered it as an alarm business and
8 an alarm agent. Shea Hensley, Mrs. Hensley's husband, worked for Respondents as an
9 alarm agent. Mr. Hensley was not certified or registered as an alarm agent as required by
10 A.R.S. §§ 32-121, 32-122.06, and 32-145.

11 9. On or about February 1, 2018, Mr. Hensley sold an alarm system to Earl
12 Wallace at 208 South 72nd Place, Mesa, Arizona, on behalf of Respondents.

13 10. On or about March 1, 2018, Mr. Hensley sold an alarm system to Vicky Learn
14 at 123 South 75th Circle, Mesa, Arizona, on behalf of Respondents.

15 11. On or about March 1, 2018, Mr. Hensley sold an alarm system to Betty Learn
16 at 318 South 74th Street, Mesa, Arizona, on behalf of Respondents.

17 12. On or about April 1, 2018, Mr. Hensley sold an alarm system to Heidi Ellefson
18 at 302 South 72nd Circle, Mesa, Arizona, on behalf of Respondents.

19 13. On or about May 8, 2018, Mr. Hensley sold an alarm system to Gerald and
20 Rosalie Rother at 312 South 74th Street, Mesa, Arizona, on behalf of Respondents.

21 14. On or about October 28, 2019, the Arizona State Board of Technical
22 Registration (the Board) filed a Complaint against Respondents. A hearing was set,
23 before the Board, on December 10, 2019. Respondents were given until December 2,
24 2019, to file an answer to the Complaint. Respondent failed to file a timely answer.

25 15. On or about December 4, 2019, Respondents filed an answer. In its Answer,
26 Respondents denied that Mr. Hensley sold alarm systems and that Mr. Hensley
27 represented himself as an alarm agent. Respondents stated that Mr. Hensley only
28 represented himself as a television salesperson who addressed television needs and
29 questions.
30

1 16. The State of Arizona Attorney General's Office (Attorney General) filed a
2 Motion to Deem Allegations Admitted (Motion to Deem).

3 17. On or about December 10, 2019, the Board waived the late filing of
4 Respondents' answer and denied the Motion to Deem. The Board referred the case to
5 the Office of Administrative Hearings (OAH), an independent state agency, for an
6 evidentiary hearing.

7 18. On or about January 8, 2020, the Board issued a Second Amended
8 Complaint and Notice of Hearing (Second Complaint) setting the matter for hearing on
9 February 21, 2020. In the Second Complaint, the Board alleged that Respondents aided
10 and abetted the unlicensed activity of Mr. Hensley, who sold alarm services to the public,
11 on five separate occasions, without the Board's certification. Respondents may be
12 disciplined pursuant to A.R.S. § 32-128(C)(3).

13 19. The Notice of Hearing informed the parties that "[i]f you fail to appear for the
14 hearing, the hearing may proceed in your absence."

15 20. Respondents did not request to appear telephonically and did not request that
16 the hearing be continued. Although the start of the hearing was delayed 20 minutes,
17 Respondents did not appear through an authorized member, employee, or attorney.
18 Consequently, Respondents did not present any evidence.

19 21. A hearing was held before the OAH on February 21, 2020. The Board
20 submitted seven exhibits and presented the testimonies of Rene Segura, Robert Stam,
21 Investigator Douglas Kraemer, Rosalie Rother, and Vicky Learn.

22 **HEARING EVIDENCE**

23 22. Mr. Segura testified that he was an alarm technician. He worked for various
24 subcontractors and installed alarm systems. Mr. Segura worked for Respondents when
25 Respondents owned Cingo and EnGarde. Mr. Segura's job was to install alarm systems
26 for Respondents. Mr. Segura never sold alarm systems. Mr. Segura installed alarm
27 systems for Ms. Learn and Mr. Wallace when he worked for Respondents.

28 23. Mr. Stam testified that he was the Licensing and Operations Manager for the
29 Board. Mr. Stam processed applications for the alarm industry. Mr. Stam investigated
30 Respondents and authored a timeline for Respondents' certifications. Certificates #19953

1 (the Firm), #63230 (the Alarm agent), #63232 (the Controlling Person), and #67706 (the
2 Controlling Person) were active from November 23, 2016 to August 30, 2018. All
3 Certificates expired on August 31, 2018. They were expired until October 16, 2018. On
4 or about October 17, 2018, all Certificates became active until November 16, 2018. From
5 November 17, 2018, until present, Certificates #19953 and #63230 were pending awaiting
6 renewal payment from a Controlling Person. Mr. Stam stated that meant the Certificates
7 were suspended. Certificates #63232 and #67706 were delinquent and expired and also
8 awaiting renewal payment by a Controlling Party. Mr. Stam opined that an alarm agent
9 cannot be active unless he/she worked for an active firm.

10 24. Mr. Stam stated that Mr. Hensley did not have a certificate or license to be
11 an alarm agent.

12 25. Investigator Kraemer testified that he was an investigator with the Board and
13 investigated Respondents' case. His investigation revealed that in 2016, Mr. Hensley sold
14 alarm systems to senior citizens who could not afford the alarm systems. Mr. Hensley
15 sold them bundled packages which included alarm systems and television services. After
16 they signed up, they were double billed for their services and any existing services they
17 had.

18 26. Investigator Kraemer investigated Mrs. Hensley after he received Mr.
19 Wallace's complaint that his television did not work after it was installed by Respondents.¹
20 On or about February 1, 2018, Mr. Wallace entered into a sales contract with Safe Streets,
21 a subcontractor. Mr. Wallace came in to contact with Mr. Hensley after Mr. Hensley
22 canvassed Mr. Wallace's neighborhood, Mesa Mobile Home Park. Mr. Hensley was
23 described as a "walk and talk knocker." That was a term for people who went door to door
24 to sell products. Mr. Hensley offered Mr. Wallace an alarm system and television bundle
25 to save Mr. Wallace money. Mr. Wallace purchased the alarm system and television
26 bundle from Mr. Hensley. Mr. Wallace stated that neither the television nor the alarm
27 system worked. Additionally, he received a large bill for nonpayment for his previous
28 service. Mr. Wallace never dealt with a female.

29 ¹ It should be noted that, at the time of the hearing, Mr. Wallace resided in New York and was in poor
30 health. He was unable to attend the hearing due to his health.

1 27. Investigator Kraemer interviewed Ms. Ellefson. Ms. Ellefson also purchased
2 an alarm system and television bundle from Mr. Hensley. Ms. Ellefson provided
3 Investigator Kraemer with Mr. Hensley's business card. Mr. Hensley sold Ms. Ellefson
4 products under the guise of operations manager for EnGarde. While Ms. Ellefson was
5 unable to remember whether she bought an alarm system and television bundle or just
6 the alarm system, she remembered it was through ADT.

7 28. Investigator Kraemer interviewed Mr. and Mrs. Rother and Ms. Learn. Mr.
8 Hensley sold an alarm system and television bundle to Mr. and Mrs. Rother and Ms.
9 Learn. All of them faced the same issues that the television and/or alarm system did not
10 work. Additionally, Mr. and Mrs. Rother were doubled billed.

11 29. Investigator Kraemer attempted to locate Mr. and Mrs. Hensley. He was
12 unable to contact them by phone or email and their mail was returned as undeliverable.

13 30. At the hearing, Mrs. Rother testified that Mr. Hensley sold her and her
14 husband an alarm system and free television. Mr. Segura installed the system in the
15 Rother's home in Arizona. Mrs. Rother wanted the same system in her home in
16 Minnesota. Mr. Henley sold the Rothers the same system for their home in Minnesota.
17 When Mrs. Rother informed ADT of the new system, ADT stated that it could not remove
18 the system due to the current contract. Mr. Hensley spoke directly with an agent at ADT
19 and explained that he was in the process of buying the contract. Based on that
20 conversation, ADT removed the system and Mr. Hensley hired someone install
21 Respondents' system through Guardian. Mrs. Rother was double billed by ADT and
22 Guardian. Mrs. Rother tried to stop the billing but was unsuccessful. Mrs. Rother called
23 Respondents and spoke to a woman who instructed Mrs. Rother not to pay the bills.
24 Ultimately, the Rother's television was shut off by Respondents in Minnesota.

25 31. Ms. Learn testified that a neighbor referred her to Mr. Hensley because of
26 the alarm system and television bundle he sold them. Ms. Learn, along with her mother,
27 Betty Learn, contacted Mr. Hensley. Mr. Hensley sold Betty Learn an alarm system and
28 television bundle. Her alarm system were installed by Mr. Segura.

29 32. Mr. Hensley sold the same alarm system and television bundle, he sold Betty
30 Learn, to Ms. Learn. Mr. Segura also installed Ms. Learn's alarm system. After the

1 installation, Mr. Hensley informed Ms. Learn that there was a problem with Guardian and
2 that he switched to ADT. Soon thereafter, the television did not work. Mr. Hensley
3 promised to write checks to Ms. Learn and Betty Learn for payments and bills owed by
4 Ms. Learn and her mother as a result of the contract and television issues. Ms. Learn tried
5 to contact Mr. Hensley but he stopped answering his phone.

6 33. Furthermore, Ms. Learn testified that while Mr. Hensley sold her the bundle,
7 the name on the contract was "Amanda Hensley." When Ms. Learn asked Mr. Hensley
8 who "Amanda Hensley" was, Mr. Hensley replied that she was his wife. Ms. Learn never
9 dealt with Mrs. Hensley.

10 **CONCLUSIONS OF LAW**

11 1. The Board is the duly constituted authority for the regulation and control of the
12 alarm industry, and the firms under which registrants practice pursuant to A.R.S. § 32-
13 101. The Board is authorized by A.R.S. § 32-128(C)(4) to take disciplinary action against
14 the holder of a certificate or registration who is charged with a violation of the Board's
15 rules or statutes.

16 2. Pursuant to A.R.S. § 32-128(E), the Board issued a Second Complaint.
17 Respondents was the holder of three certificates: one as an alarm agent under Certificate
18 #63230; one as the controlling agent of Respondents' business under Certificate #67706,
19 firm registration under Certificate #19953. Thus, the Board possesses jurisdiction over
20 this subject matter.

21 3. Respondents bear the burden of proof to establish that it met statutory and
22 regulatory qualifications for an alarm agent and a controlling person certification by a
23 preponderance of the evidence.² Respondent did not present evidence to establish such
24 compliance.

25 4. "A preponderance of the evidence is such proof as convinces the trier of fact that
26 the contention is more probably true than not."³ A preponderance of the evidence is "[t]he
27 greater weight of the evidence, not necessarily established by the greater number of

28 ² See A.R.S. § 41-1092.07(G)(1); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372,
29 249 P.2d 837 (1952).

30 ³ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 witnesses testifying to a fact but by evidence that has the most convincing force; superior
2 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
3 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
4 the other.”⁴

5 5. The evidence presented at hearing established that Amanda Hensley, holder
6 of a Controlling Person Certificate and Alarm Agent Certificate, and EnGarde, holder of
7 Alarm Firm Registration practiced without registration with the Board in violation of A.R.S.
8 § 32-128(E). Mr. Hensley, an unlicensed and unregistered agent of Respondents, sold
9 alarm systems as an alarm agent, on five occasions, under the guise of Respondents’
10 name. The evidence showed that Mrs. Hensley aided and abetted Mr. Hensley when her
11 name appeared on the alarm system contract that was sold by Mr. Hensley. The evidence
12 also showed that Mr. Hensley’s actions as an alarm agent and his modus operandi were
13 similar, over the years, when he worked for Respondents.

14 6. Since May 1, 2013, alarm agents and alarm businesses cannot operate in
15 Arizona unless they have received certificates from the Board. See A.R.S. § 32-122.05(A).
16 A.R.S. § 32-122.07(A) allows the Board to “deny an application for certification as an
17 alarm business or alarm agent if a controlling person of an alarm business or an alarm
18 agent lacks good moral character” A.A.C. R4-30-101(12)(e) provides that “[g]ood
19 moral character and repute’ means that the registration or certification applicant/registrant
20 . . . [h]as not engaged in fraud or misrepresentation in connection with the application for
21 registration, certification, or related examination.”

22 7. The evidence presented at hearing established by a preponderance of the
23 evidence that Respondents and Respondents’ Firm failed to comply with the Board’s rules
24 and statutes in violation of A.R.S. § 32-121 when it allowed an unregistered agent to
25 represent himself as an alarm agent to sell alarm systems.

26 8. Respondents’ actions, as set forth above, constitute grounds for discipline
27 against Respondent pursuant to A.R.S. § 32-106.02, which authorizes the Board to
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29 _____
30 ⁴ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 impose discipline against persons who practice or offer to practice a Board regulated
2 profession without first securing proper registration.

3 9. The Board is authorized to impose a civil penalty of no more than \$2,000.00
4 per violation. There were five violations in this matter. Given the nature of Respondent's
5 and Respondent Firm's conduct, the Administrative Law Judge finds that a civil penalty
6 of \$10,000.00 is appropriate.

7 **ORDER**

8 **IT IS ORDERED** that Respondents violated A.R.S. § 32-128(C)(3);

9 **IT IS FURTHER ORDERED** that the Board impose disciplinary action against
10 Respondents for three statutory violations and require Respondents to pay the sum of
11 \$10,000.00 (\$2,000.00 for each violation) as a civil penalty pursuant to A.R.S. § 32-
12 106.02(B).

13 *In the event of certification of the Administrative Law Judge Decision by the*
14 *Director of the Office of Administrative Hearings, the effective date of the Order is five*
15 *days after the date of that certification.*

16 Done this day, March 12, 2020.

17
18 /s/ Antara Nath Rivera
19 Administrative Law Judge

20 Transmitted electronically to:

21 Melissa Cornelius, Executive Director
22 Board of Technical Registration
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