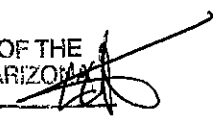


FILED

MAY 24 2012

DISCIPLINARY CLERK OF THE
SUPREME COURT OF ARIZONA
BY 

ARIZONA SUPREME COURT
BOARD OF LEGAL DOCUMENT PREPARERS

IN THE MATTER OF CERTIFIED LEGAL
DOCUMENT PREPARER:

AAM, LLC,
Certificate Number 80511.

No. LDP-NFC-09-L094
LDP-NFC-10-L026

LEGAL DOCUMENT PREPARER
BOARD FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

On May 21, 2012 the Board of Legal Document Preparers considered the Hearing Officer's Report and Recommendation filed by the Honorable Jonathan Schwartz [Exhibit A]. Pursuant to ACJA § 7-201(H)(22), the Board may adopt or modify the hearing officer's recommendation in whole or in part. The Board adopts and modifies the hearing officer's recommendation report as indicated in these Findings of Fact, Conclusions of Law and Order.

PROCEDURAL HISTORY

The Board adopts the Procedural History in its entirety i.e. pages 1, 2 and 3.

COMPLAINT NUMBER 09-L094

The Board adopts the language pertaining to Allegation 1 and Allegation 2. The Board also adopts the Findings of Fact on pages 4-5.

The Board does not adopt the Hearing Officer's Conclusions of Law and modifies them as follows: Delete paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.

1 The Board further modifies the Conclusions of Law as follows: Insert new Paragraphs
2 3, 4, 5 and 6 to read:

3 3) AAM exceeded the scope and authority of the certified legal document preparer and
4 violated Rule 31, ACJA section 7-201(F)(1) and ACJA section 7-208(F)(2) and
5 (J)(5)(b) by directing certified legal document preparer and AAM employee Martin
6 to sign a Notice of Claim of Lien as the Authorized Representative of AAM
7 customer Anthem Council. Under Rule 31(a)(2)(A)(1) a notice of lien is a
8 document intended to affect or secure legal rights for a specific person or entity.
9

10 4) AAM does not fall within the limited exception to Rule 31(d)(20) which states:
11 “nothing in these rules shall prohibit the preparation of documents incidental to a
12 regular course of business when documents are for the use of the business and not
13 made available to third parties.” In order to fall within the exception provided, all
14 criteria must be met i.e. preparation of the documents are incidental to a regular
15 course of business, the documents are for the use of the business and they are not
16 made available to third parties. Liens that are recorded are, by definition, “made
17 available to third parties.” By definition the lien related legal documents AAM is
18 preparing are made available to third parties; specifically to their Homeowner’s
19 Association customers.
20

21 5) AAM does not have authority pursuant to Rule 31(a)(2)(A)(3) or ACJA §7-208
22 (J)(5)(b) to represent a person or corporate entity in a judicial, quasi-judicial, or
23 administrative proceeding, or other formal dispute resolution proceeding including
24 arbitration and mediation. Such representation includes signing and submitting
25 documents on behalf of another person or entity.

1 6) The regulated act of offering to or preparing a legal document is not dependent on
2 whether or where the legal document is filed or recorded.

3 The Board adopts the language pertaining to Allegation 3. The Board also adopts the
4 Findings of Fact on pages 9-10 i.e. paragraphs 13 and 14 and the Conclusions of Law on pages
5 10-13 i.e. paragraphs 15, 16, 17 and 18.

6 The Board adopts the language pertaining to Allegation 4. The Board also adopts the
7 Findings of Fact on pages 13-14, i.e. Paragraphs 19 and 20. The Board adopts in part and
8 modifies in part the Conclusions of Law. The Board adopts the Conclusions of Law set forth
9 in paragraphs 22, 23, 24, 25, 26, 27, 28 and 32.
10

11 The Board modifies the Conclusions of Law in Paragraph 29 by striking the last
12 sentence. Paragraph 29 will now read:

13 29) The exemption in subsection (d)(2) is also in this case. It sates, "Nothing in these
14 rules shall prohibit the preparation of documents incidental to a regular course of
15 business when the documents are for the use of the business and **not made**
16 **available to third parties.**" (Emphasis added.) This subsection would seem to
17 authorize non-lawyers and non-legal document preparers to prepare documents in
18 the regular course of business. But the documents that are being prepared in this
19 case by AAM to collect fees are in the regular course of business of the
20 homeowners association. And AAM is basically making the documents
21 (complaints and motions for entry of default judgment) available to third parties, the
22 associations.
23

24 The Board modifies Paragraphs 30 and 31 by striking them in their entirety and
25 substitutes the following:

1 30) A.R.S. § 22-512(B) provides six specific circumstances in which another person
2 could represent someone else in small claims court. AAM does not meet the
3 statutory criteria to appear in small claims court on behalf of its HOA customers
4 pursuant to A.R.S. §22-512(B), nor does it qualify under any of the six specific
5 circumstances. A.R.S. § 22-512(B) specifically provides: Notwithstanding § 32-
6 261, in a small claims action:

- 7 1. An individual shall represent himself.
- 8 2. Either spouse or both may represent a marital community
- 9 3. An active general partner or an authorized full-time employee shall
10 represent a partnership.
- 11 4. A full-time officer or authorized employee shall represent a corporation.
- 12 5. An active member or an authorized full-time employee shall represent an
13 association.
- 14 6. Any other organization or entity shall be represented by one of its active
15 members or authorized full-time employees.
- 16

17 31) A.R.S. § 22-512(B)(1) does not include language that an individual may grant a
18 power of attorney to another individual who will then stand in the place of the first
19 individual in small claims court. Moreover, AAM has asserted that it is authorized
20 by contract with its customers the associations to file complaints and motions for
21 entry of default judgments in small claims court. The six specific subsections in the
22 statute do not allow for an individual or an entity by contract to authorize another
23 person or entity to represent him in a small claims action.

24
25 The Board adopts the language pertaining to Allegation 5. The Board also adopts the
Findings of Fact on page 20 i.e. Paragraphs 33 and 34. The Board adopts the Conclusions of

1 Law set forth in paragraphs 35, 36, 37, 38, 39, and 41. The Board adopts and modifies
2 paragraph 40 to include:

3 “The Board has previously and formally expressed concern regarding the protection of
4 the public and the potential for harm specific to the self-representing HOAs and the individual
5 homeowners.”

6 The Board adopts the language pertaining to Allegation 6. The Board adopts the
7 Findings of Fact and Conclusions of Law as set forth in paragraphs 42 and 43, with the
8 modifications made by this order. Insofar as the section titled “The testimony of witnesses for
9 AAM on the Allegations” (pages 24-26, paragraphs 44-48) is part of the Findings of Fact, it is
10 adopted. The Board does not adopt and deletes the legal opinion and conclusions in
11 paragraphs 49, 50, 51 and 52 (pages 26-28) regarding Rule 31 and the UPL opinion as offered
12 by retired Justice Thomas Zlaket.

14 The Board adopts the language pertaining to Allegation 7. The Board also adopts the
15 Findings of Fact and Conclusions of Law as stated in Paragraph 53.

16 The Board adopts the language pertaining to Allegation 8. The Board also adopts the
17 Findings of Fact as stated in Paragraph 54. The Board adopts the Conclusions of Law as stated
18 in Paragraphs 55 and 56, with the modifications made by this order.

19 The Board adopts the language pertaining to Allegation 9. The Board adopts the
20 Findings of Fact as stated in Paragraph 57, with the modifications made by this order. The
21 Board adopts the Conclusions of Law as stated in Paragraphs 58 and 60. The Board adopts the
22 Conclusions of Law as set forth in Paragraph 59, but deletes the last sentence.

24 The Board adopts the language pertaining to Allegation 10. The Board adopts the
25 Findings of Fact as stated in Paragraph 61, with the modifications made by this order. The

1 Board adopts the Conclusions of Law as stated in Paragraphs 62, 63 and 64, with the
2 modifications made by this order.

3 The Board adopts the language pertaining to Allegation 11. The Board adopts the
4 Findings of Fact as stated in Paragraph 65, with the modifications made by this order. The
5 Board adopts the Conclusions of Law as stated in Paragraphs 66, 67, and 68, with the
6 modifications made by this order.

7 **MITIGATING AND AGGRAVATING FACTORS**

8
9 The Board adopts the Hearing Officer's Report and Recommendation as follows:
10 Page 37 to 40 up to and including the portion of the report entitled "Conclusions". The Board
11 adopts and modifies the middle paragraph on page 41 to include:

12 "The Board would add AAM also should have known better than to let its certified
13 legal document preparer employees perform in a representation function in violation of Rule 31
14 and ACJA 7-208(J)."

15 Page 41, the Board deletes the last paragraph through to and including the first full paragraph
16 on page 42 up to the paragraph that begins with "This does not justify..."

17 **FINAL DECISION and ORDER**

18 Having considered the mitigating and aggravating factors identified by Judge Schwartz,
19 the Board orders the following disciplinary sanctions in complaint numbers 09-L094 and 10-
20 L026 pursuant to ACJA § 7-201(H)(24)(a)(6):

- 21 a. Issue a Censure to AAM, pursuant to ACJA § 7-201(H)(24)(a)(6)(b);
- 22 b. Order AAM to immediately and hence forth cease and desist from offering or
23 providing any legal services that exceed the authorities of a certified legal document
24 preparer or otherwise constitute the unauthorized practice of law; including any and
25

1 all contractual service agreements and the removal of publically published
2 advertising and solicitation materials, pursuant to ACJA § 7-201(H)(24)(a)(6)(g).

3 c. Place AAM on probation for a six months, commencing the date of the Board's
4 entry of the Final Order, pursuant to ACJA § 7-201(H)(24)(a)(6)(e) with the
5 following specified provisions:

6 i. No later than sixty (60) days following the entry of the Board's Final Order,
7 AAM shall develop and implement policies and procedures necessary to
8 ensure no member of the AAM staff, its officers, or any others acting on
9 behalf of the business entity are not engaging in the unauthorized practice of
10 law. A copy of the written policies and procedures shall be submitted to the
11 Certification and Licensing Division ("Division").
12

13 ii. AAM and its named designated principal shall submit to the Division an
14 updated and comprehensive list of any and all individuals providing legal
15 document preparation services on behalf of the business entity within fifteen
16 (15) days following entry of the Board's Final Order. The list shall identify
17 the certification status of each individual and identify, if applicable, whether
18 each individual is an ACJA § 7-208(F)(5) trainee along with the date the
19 trainee meets the minimum eligibility requirement to apply for individual
20 certification.
21

22 iii. AAM is assessed costs associated with the investigation and related
23 disciplinary proceedings in the amount of \$8,737.18, to be remitted no later
24 than sixty (60) days following entry of the Board's Final Order, pursuant to
25 ACJA § 7-201(H)(24)(a)(6)(j). The assessed costs shall be made payable to

1 "Arizona Supreme Court" and submitted to the Certification and Licensing
2 Division, 1501 West Washington, Suite 104, Phoenix, Arizona 85007.

3 DATED this 24th day of May, 2012.

4 
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6 Les Krambeal, Chair
7 Board of Legal Document Preparers
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1 An original copy of the foregoing hand delivered and/or mailed this 24th day of May, 2012,
2 to:

3 **Christine Gant**

4 **Designated Principal for AAM, LLC**

5 1600 West Broadway Road, Suite 200
6 Tempe, Arizona 85282


7 Ronda Fisk
8 Scott Rhodes
9 Attorneys for AAM, LLC
10 Osborn Maledon. P.A.
11 2929 North Central Avenue, Suite 2100
12 Phoenix, Arizona 85012

13 Charles Grubbe
14 Administrative Law Section
15 Office of the Attorney General
16 15 South 15th Avenue, 4th Floor
17 Phoenix, Arizona 85007

18 Nina Preston, Assistant Counsel
19 Administrative Office of the Court
20 1501 West Washington
21 Phoenix, Arizona 85007

22 Certification and Licensing Division
23 Arizona Supreme Court
24 1501 West Washington, Suite 104
25 Phoenix, Arizona 85007

By:


Debbie MacDougall, Programs Specialist
Certification and Licensing Division

Y:\COMPLAINT INVESTIGATIONS\OPEN COMPLAINTS\LDP AAM LLC 09-L094\FINAL ORDER AAM 09-L094 10-L026.DOC

Cost Statement

AAM, LLC - Complaint Numbers 09-L094 and 10-L026


STAFF COSTS		\$3,200.27
Complaint Number 09-L094	1,540.53	
Complaint Number 10-L026	1,659.74	
CERTIFIED MAIL		\$27.92
Complaint Number 09-L094	9.72	
Complaint Number 10-L026	18.20	
PROCESS SERVER		\$74.80
HEARING OFFICER		\$3,311.69
COURT REPORTER		\$2,122.50
Hearing - November 14, 2011	1,240.00	
Hearing - November 15, 2011	882.50	
TOTAL		<u>\$8,737.18</u>

*Costs as of May 18, 2012

Exhibit A

FILED

FEB 02 2012

DISCIPLINARY CLERK OF THE
SUPREME COURT OF ARIZONA
BY 

**BEFORE THE SUPREME COURT OF ARIZONA
LEGAL DOCUMENT PREPARER BOARD**

IN THE MATTER OF CERTIFIED LEGAL
DOCUMENT PREPARER

AAM, LLC,
Certificate Number 80511.

No. LDP-NFC-09-L094
LDP-NFC-10-L026

**HEARING OFFICER'S REPORT
AND RECOMMENDATION**

PROCEDURAL HISTORY

On April 27, 2009 the Programs and Investigations Unit of the Certification and Licensing Division of the Administrative Office of the Courts (hereinafter "Program") informed Alenda Martin that the Unit had received a complaint regarding Ms. Martin's legal document preparer certification. (Exhibit 5) Alenda Martin was a legal document preparer working for AAM LLC (hereinafter "AAM"). Counsel for Ms. Martin responded to the complaint on May 19, 2009. (Exhibit 6) On June 8, 2009, the Program submitted an Investigation Summary alleging that Ms. Martin engaged in the unauthorized practice of law by listing herself as the authorized representative of the Anthem Council on a Notice of Claim of Lien that Ms. Martin signed. Ms. Martin's counsel had informed the Program that Ms. Martin worked for AAM which held a business entity certification in the legal document preparer program. AAM is a consulting service agency for homeowners associations. Her attorney asserted that AAM was the designated agent of the Anthem Council. Therefore, the attorney argued that signing a lien was not

practicing law because it was not different than the Anthem Council signing their own lien. (Exhibit 9)

On June 10, 2009 the Division Director of the Certification and Licensing Division found probable cause for the allegation against Ms. Martin. On June 16, 2009 the Probable Cause Evaluator, Mike Baumstark found probable cause as to this allegation. On December 21, 2009 the Board of Legal Document Preparers (hereinafter "Board") adopted the recommendations of the Division Director that Ms. Martin be disciplined for engaging in the unauthorized practice of law by acting in a representative capacity on behalf of the consumer. (Exhibit 9)

On February 3, 2010, the Program notified Tiffany Lehr (another AAM employee who was also certified as a legal document preparer and who was the designated principal for AAM) that a complaint had been received against her legal document preparer certificate. (Exhibit 10) The allegations involved AAM engaging in the unauthorized practice of law by contracting with third parties to act in a representative capacity on behalf of those third parties (homeowners associations) in lien-related legal matters. On March 5, 2010 counsel for AAM responded to these allegations with similar arguments that were made on behalf of Ms. Martin. (Exhibit 11) On April 22, 2010 the Program informed counsel for AAM that additional allegations were being added to the complaint concerning Ms. Lehr and AAM. These allegations were that AAM engaged in the unauthorized practice of law by: 1) acting in a representative capacity with homeowners associations (hereinafter "HOAs") by placing AAM's business name and address on the legal documents as a Plaintiff on small claims documents filed in Justice Court; 2) representing HOAs in Justice Courts for small claims services; and, 3) offering recommendations on possible legal remedies, options and strategies through newsletters posted on AAM's website for HOAs. A fourth allegation was that Ms. Lehr (who was the designated principal on AAM's

business entity legal document preparer certification) failed to fulfill her responsibilities to ensure that AAM staff were acting in compliance with the Arizona Code of Judicial Administration (hereinafter "ACJA") section 7-208. (Exhibit 14)

On October 19, 2010 Linda Grau filed an analysis of allegations against AAM that included the following six matters, five of which alleged that AAM exceeded the authority of a certified legal document preparer and engaged in the unauthorized practice of law by: 1) offering to and filing small claims actions on behalf of its HOA customers regarding delinquent homeowners' fees; 2) offering to negotiate settlement between AAM's HOA customers and homeowner defendants; 3) seeking and obtaining consent from the Avalon Homeowners Association ("Avalon") Board of Directors to represent Avalon in small claims actions; 4) authorizing AAM employee Carmen Burnett ("Burnett") to sign the small claims Complaint filed in Highland Justice Court case number CC 2009620481SC on behalf of AAM HOA customer Cooley Station North Community Association ("Cooley Station"); and, 5) establishing itself as a co-plaintiff in numerous small claims action AAM sought against homeowner defendants on behalf of its HOA customers. Allegation #6 charged that AAM failed to place its name, title and certification number on the Small Claims Complaint filed in Highland Justice Court case number CC 2009620481SC and on numerous legal documents filed in the Estrella Mountain Justice Court. (Exhibit 31)

On January 5, 2011 the probable cause evaluator found probable cause on the six allegations set forth above. On January 24, 2011 the Board approved the recommendations of the Division Director that AAM should be found in violation of the ACJA.

AAM requested a hearing in this matter. The hearing was conducted before the Honorable Jonathan H. Schwartz (retired) Hearing Officer on November 14 and 15, 2011.

COMPLAINT # 09-L094

ALLEGATION #1 - AAM exceeded the scope and authority of a certified legal document preparer and violated Rule 31, ACJA section 7-201 (F)(1) and ACJA section 7-208 (F)(2) and (J)(5)(b) and engaged in the unauthorized practice of law by contracting with third-party consumers to establish authority to act in a representative capacity on behalf of the third-party customers in lien-related matters. (Paragraph 49 of the Notice of Formal Charges)

ALLEGATION #2 - AAM exceeded the scope and authority of the certified legal document preparer and violated Rule 31, ACJA section 7-201 (F)(1) and ACJA section 7-208 (F)(2) and (J)(5)(b) by directing certified legal document preparer and AAM employee Martin to sign a Notice of Claim of Lien as the Authorized Representative of AAM customer Anthem Council. (Paragraph 50)

FINDINGS OF FACT

1) Counsel for AAM informed the Program that Alenda Martin was an employee of AAM. Anthem Country Club Community Association and the Anthem Community Council were clients of AAM. These clients had management agreements with AAM that appointed AAM as the agent of the clients to manage their operations. (Exhibit 1 is a sample of one of these agreements) Counsel wrote, "One of AAM's express contractual obligations is to prepare and file liens on behalf of Anthem Council and Anthem Country Club. In the course of carrying out its duties for Anthem Council and Anthem Country Club, AAM prepared and filed a notice of claim of lien dated December 29, 2008, on a lot located in Anthem Country Club and owned by Daniel Wylie and Karen J. Cawley. Alenda Martin, in her capacity as an AAM employee, signed the

lien as an 'Authorized Representative' of the Anthem Community Counsel, Inc." (Exhibit 6, page 2)

2) Salina Faaborg, Alenda Martin and Tiffany Lehr (all certified legal document preparers at one time and all employees of AAM) signed a total of 13 Notices of Liens on behalf of AAM homeowners association customers. (Exhibit 51)

CONCLUSIONS OF LAW

3) The facts are not in dispute on these allegations. The question of law is whether signing a lien is an unauthorized act for a legal document preparer and is the unauthorized practice of law. The Program argues that ACJA section 7-208(F)(1) lists services that are authorized for legal document preparers to perform. Since the list of services does not include signing liens, the Program asserts that the document preparer may not perform this service. AAM argues that the list of authorized services cannot be all inclusive. Therefore, the fact that specifically signing liens is not on the list, does not mean that the signing of a lien is a violation of any section of the ACJA.

4) AAM argues that the ACJA authorizes legal document preparers to prepare or provide legal documents and to file and arrange for service of legal forms and documents. (ACJA section 7-201(F)(1)(a) and (c)). AAM asserts that signing the legal document is not that significant in this context. Rule 31(a)(2)(A)(1) of the Rules of the Supreme Court of Arizona defines the "Practice of law" as providing legal advice or services to or for another by "preparing any document in any medium intended to affect or secure legal rights for a specific person or entity." A lien is a document filed in the County Recorder's office that is intended to affect and secure legal rights. But the ACJA specifically permits legal document preparers to "Prepare or provide legal documents, without the supervision of an attorney, for an entity or a member of the

public in any legal matter when that entity or person is not represented by an attorney.” ACJA section 7-208(F)(1)(a). And Rule 31 was specifically amended when the Legal Document Preparer program was initiated to allow for an exception to the definition of the “practice of law” so that document preparers would not be engaged in the unauthorized practice of law by preparing and filing legal documents. Subsection 24 of Rule 31(d) states in part, “Nothing in these rules shall prohibit a certified legal document preparer from performing services in compliance with Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208.”

5) Although Rule 31 does not specifically address signing the document and instead focuses on preparing the document, the Program asserts that Ms. Martin’s act of signing the lien in a “representative capacity” was in the nature of attorney work, representing a client.

6) If a lawyer prepares a document for a client’s signature, then the lawyer acquires that signature, e.g. the verification of a complaint or answers to written discovery. However, in this instance the legal document preparer is both preparing the document and signing it on behalf of the client. In many attorney-client situations, the attorney is authorized to sign court documents on behalf of the client. For instance, an attorney files motions on behalf of the client, but traditionally does not have to have the client sign the motions. The act of signing and filing the motions is considered authorized practice for the attorney. Her skill and training are relied upon by both the client and the court system. The Program is apparently concerned about the legal document stepping out of the role of drafter and filer of documents and into a role a bit broader. The act of signing the lien apparently indicates to the Program that the legal document preparer is representing the client in a legal matter.

7) In fact, another provision of the code ACJA section 7-208(J)(5)(b) specifically provides that a legal document preparer shall not provide legal advice or services to another by

expressing opinions, "or by representing another in a judicial, quasi-judicial or administrative proceeding." The Hearing Officer concludes that signing a lien that is filed in the County Recorder's Office is not the same as representing a person in a judicial, quasi-judicial or administrative proceeding. The Recorder's Office is an official place where documents are filed and where there is a legal consequence to the filing. The Recorder does not judge anything as would a judicial officer in court or a hearing officer or administrative law judge in an administrative proceeding. Documents are merely accepted for filing and date stamped.

8) Therefore, the Hearing Officer finds that AAM has not violated ACJA section 7-208 (J)(5)(b) by having its employees sign liens.

9) The Hearing Officer also finds that AAM has not violated ACJA section 7-208(F)(1) by having its employees sign liens. The purpose of this subsection of the ACJA is to protect the public by clearly telling legal document preparers that they cannot advise clients on matters of law. Subsection (b) draws the distinction between what a legal document preparer can and cannot do as follows: "Provide general legal information, but may not provide any kind of specific advice, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, or strategies."

10) The "Authorized Services" delineated in this section limits the role of the legal document preparer to providing documents to the client and preparing the document. In addition, the legal document preparer is permitted to file and to arrange for service of the document. The role carved out for the legal document preparer appears to be to assist the consumer in the preparation of documents that are simple enough such that the legal document preparer should not be required to be giving legal advice. Preparing the document without advising the consumer as to what course to take in a legal matter, filing the document, and arranging for the service of

the document are all "services" that a legal document preparer may provide. The Hearing Officer concludes that signing the prepared document (the lien) is an act that in and of itself does not involve the giving of legal advice to a consumer. Even though the specific act of signing the lien is not set forth in ACJA section 7-208 (F)(1), this act does not offend the basic principle pursued by this section.

11) Therefore, the Hearing Officer concludes that the Program has not met its burden of proof by a preponderance of the evidence that AAM violated ACJA section 7-208(J)(5)(b) or section 7-208(F)(1) when AAM authorized its employees to sign the liens for its customer.

12) The Program has also alleged that AAM violated the ACJA by contracting with third parties to establish authority to act in a representative capacity on behalf of third-party customers in lien related matters. If this allegation is referring to contracting for authority only to sign liens in a representative capacity, the Hearing Officer concludes that contracting for this service is not a violation of the ACJA provisions cited. Later in this report, the Hearing Officer will deal with allegations that AAM authorized its employees to represent customers in court proceedings that could in a broad sense be called "lien related legal matters" because they stem from homeowners not paying their dues and AAM instituting legal action against them.

ALLEGATION #3 - AAM violated rule 31, ACJA section 7-201 (F)(1) and ACJA section 7-208 (F)(1)(b), (F)(2), (J)(5)(b) and (J)(5)(c) and engaged in the unauthorized practice of law by offering recommendations on possible legal remedies, options and strategies through newsletters published on AAM's website for HOA consumers (Paragraph 51)

FINDINGS OF FACT

13) AAM published a newsletter to its homeowners Association customers that was entitled "Neighborhood Insider." (Exhibit 52) In the newsletter AAM stated, "AAM is officially offering Small Claims Court service as an additional option for our communities that must pursue past due amounts owed by their homeowners. It is a low-cost alternative for obtaining a judgment through each applicable jurisdiction's Justice Court. The process is fairly simple. After a homeowner's account has gone through the delinquent assessment cycle for your Association (i.e. late fee notice, demand letter, recordation of lien) based on your approved collection policy, our paralegal team will prepare the necessary paperwork to file a claim on behalf of the Association with the applicable Justice Court. A small claims action requires no attorney. We can file complaints against the homeowner for unpaid assessments that do not exceed \$2500 and obtain personal judgments for the unpaid assessments. In addition to our team's preparation of the court documents, our flat-rate fee includes the following: the court filing fee, process server fee and coordinating payment plans if the homeowner contacts us after being served with the complaint, along with filing dismissal or satisfaction documents with the court once the homeowner has paid their assessments in full. The flat fee will also be included in the judgment with the expectation that it will be reimbursed to the Association along with the past-due assessments. The benefits of this type of collection service are that it is a cost-effective method for a flat fee, your past-due accounts stay under the Board's control with AAM's continued oversight and the turnaround time for obtaining a judgment against the homeowner for unpaid assessments can be shorter than having an attorney file a lawsuit against the homeowner in Justice Court. If you are interested in having AAM provide this service for your community, contact your Community Manager and we will provide a revised collection policy (to note that

the Board may be utilizing Small Claims Court action to pursue delinquent accounts after a lien is recorded) and Board resolution for the Board's review and approval. If you have additional questions about the process, please contact either Kevin DeBolske, AAM CFO, at kdebolskie@AAMAZ.com or Tiffany Lehr, AAM Paralegal Department Manager, at tlehr@AAMAZ.com. We are excited about providing this low-cost collection service to our communities! Amanda Shaw, President.” (Exhibit 52)

14) In the November 2009 issue of Neighborhood Insider AAM wrote, "Since its inception in May, the AAM Small Claims Department has been busy helping HOA Boards collect past-due assessments by helping them navigate the court system quickly and economically. The department features two small claims paralegals and one small claims coordinator, who file summonses and complaints, and complete applications for defaults and notices of dismissals in Small Claims Court. Staffers also work with homeowners to set up payment plans and attend small claims hearings. Because a small claims action does not require an attorney, AAM may file the complaint against the homeowner for unpaid assessments totaling \$2500 or less and obtain personal judgments for the unpaid funds.” (Exhibit 54) This newsletter also stated that if the Association was interested in contracting with AAM to provide this service, “AAM will provide a revised collection policy (to note that the Board may be utilizing Small Claims Court action to pursue delinquent accounts after a lien is recorded) and Board resolution for the Board's review and approval. The charge for this service is a flat rate of \$350.”

CONCLUSIONS OF LAW

15) The issue is whether ACJA section 7-208(F)(1)(b) has been violated by the statements in the above-referenced newsletters. Pursuant to this subsection of the ACJA legal document preparers may, “Provide general legal information, but may not provide any kind of

specific advice, opinion or recommendation to a consumer about possible legal rights, remedies, defenses, options or strategies.” The question is how much of the information in the newsletters is general legal information and how much information is a recommendation to a consumer about possible legal rights, remedies, options or strategies? Another question is whether Rule 31, defining the “practice of law,” has been violated by AAM offering to negotiate with the homeowners (“coordinating payment plans if the homeowner contacts us after being served with the complaint”) about a pending court case on behalf of the Association.

16) It is important to distinguish between AAM and its customers the homeowners associations. The Hearing Officer concludes that to tell the associations that small Claims Court is a less expensive procedure for obtaining judgments against homeowners who have not paid their fees is not a violation of ACJA section 7-208 (F)(1)(b). This is general legal information. But when AAM states that their flat-rate fee includes “coordinating payment plans if the homeowner contacts us after being served with the complaint,” AAM is offering to negotiate on behalf of its client (the Association) while a case is pending in court with the homeowner. The Hearing Officer finds that this is a violation of Rule 31(A)(5) and is the unauthorized practice of law. This subsection clearly states that the “practice of law” is providing services to another by “negotiating legal rights or responsibilities for a specific person or entity.” The AAM newsletter is specifically offering to negotiate with the homeowner on behalf of the entity (the Association) after service of the complaint.

17) The Hearing Officer interprets the ACJA statement that a legal document preparer is not to provide any kind of specific advice, opinion or recommendation to a consumer about possible legal rights, remedies, defenses or strategies to mean advising a consumer how to potentially proceed on a specific legal matter. Yet, the ACJA authorizes a document preparer to

"provide general factual information pertaining to legal rights, procedures, or options available to a person in a legal matter when that person is not represented by an attorney." (ACJA section 7-208(F)(1)(d)) Therefore, all of the information in the newsletters (except references to coordinating payment plans, being able to obtain personal judgments, and that paralegals can file summonses and complaints) is in the opinion of the Hearing Officer general legal information and general factual information that does not violate ACJA section 7-208 (F)(1). [The Hearing Officer will address the newsletters' comments about AAM being able to obtain legal judgments and that paralegals can file summonses and complaints in another section of this report dealing with the allegations of paragraph 52 of the Notice of Formal Charges]

18) The Hearing Officer finds that the reference in the newsletter that AAM will prepare for the Board a revised collection policy is not a violation of the ACJA requirement that a legal document preparer not provide specific advice or recommendations about strategies. AAM specifically offers to provide the Board a collection policy the purpose of which is, in the words of the newsletter, "(to note that the Board may be utilizing Small Claims Court action to pursue delinquent accounts after a lien is recorded)"(Exhibit 52) If AAM had clarified that it was providing a specific recommendation to the Association on a strategy in collecting fees from the homeowners a violation would have been found. The strategy would have been to inform the homeowners that the Association Board may be taking the homeowner to court over the homeowner's delinquent account. But the record is not clear that the "revised collection policy" was at the suggestion of AAM to be used by the Association to warn the homeowner. Instead, this section of the newsletter may reasonably be read to mean that AAM will be preparing only for the Association a revised collection policy that will indicate to both AAM and the

Association that the Association intends to use AAM's services in pursuing small claims court actions.

ALLEGATION #4 - AAM violated Rule 31, ACJA section 7-201 (F)(1) and ACJA section 7-208 (F)(2) and (J)(5)(b) by having its non-certified, non-attorney staff file Justice Court civil actions in an attempt to collect assessments and fees on behalf of AAM's customers. (Paragraph 52)

FINDINGS OF FACT

19) Carmen Burnett a non-certified, non-attorney employee of AAM signed a complaint in the line marked "Plaintiff" in the Highland Justice Court on behalf of AAM customer, Cooley Station North Community Association (hereinafter "Cooley Station"), on October 14, 2009. (Exhibit 56) In the caption of the form complaint, Ms. Burnett identified the Plaintiff as Cooley Station North Community Association, c/o AAM LLC, 7740 N. 16th St., Suite 300, Phoenix, AZ 85020, (602) 674-4373. In the newsletters described above (Exhibits 52 and 54) AAM advertised to its homeowners' association customers that AAM was offering small claims court services. AAM stated that a small claims action required no attorney and that "We can file complaints against the homeowner for unpaid assessments that did not exceed \$2500 and obtain personal judgments for the unpaid assessments." (Exhibit 52)

20) Patrice Stevens signed an Application for Entry of Default on the line marked "Plaintiff" on October 26, 2009 in the Estrella Mountain Justice Court in CC 2009-489381. The document indicated that the Plaintiff was Palm Valley Phase II and III Community Association. The Defendant was Johnny S. Garcia. (Exhibit 50) In addition to this signature where the form Motion/Affidavit for Judgment by Default stated, "I am the plaintiff in this action," Ms. Stevens signed on the line marked "Plaintiff."

21) During her investigation of complaints against AAM, Karla Clanton of the Program learned that Patrice Stevens had never been granted an individual legal document preparer certification. Carmen Burnett had been granted certification as a legal document preparer effective October 27, 2007, but had requested that her certification be changed to inactive status. Her inactive status was confirmed as of September 15, 2008. She requested no further action on her certificate and the certificate period ended on June 30, 2009. Therefore, on October 14, 2009 when Ms. Burnett signed the complaint in Exhibit 52 she was not a certified legal document preparer. (Exhibit 28, CLDP-000022)

CONCLUSIONS OF LAW

22) AAM argues that attorneys are not permitted to represent clients in small claims court. Therefore, AAM concludes that employees of AAM who are not attorneys and who are not certified legal document preparers may prepare and file documents in small claims court and also appear in court. These issues must be carefully separated. First, is the question of whether an AAM employee who is not a certified legal document preparer is permitted to draft and file complaints in small claims court? Clearly the ACJA section 7-208(F)(1) and Rule 31(d)(24) authorize a certified legal document preparer to prepare and file documents for a client in any court. But at the time the above documents were signed and filed Ms. Burnett and Ms. Stevens were not certified legal document preparers. Therefore, AAM knowingly permitted employees who were not certified legal document preparers to prepare and file documents in small claims court. This was a violation of ACJA sections 7-208(F)(1) because individuals who are not certified as legal document preparers may not prepare and file documents in court.

23) AAM next argues that non-lawyers and non-certified legal document prepares cannot be in violation of any ACJA provision and cannot be found to be engaged in the unauthorized

practice of law, because the statutes of Arizona provide that any individual may appear and represent themselves in small claims court and lawyers are specifically barred from representing people in the court. A careful reading of the pertinent statute demonstrates that only specific individuals may appear in small claims court. ARS section 22-512(B) provides that in the following six specific situations individuals may represent themselves or others in small claims court: 1) An individual shall represent himself; 2) Either spouse or both may represent a marital community; 3) An active general partner or an authorized full-time employee shall represent a partnership; 4) A full-time officer or authorized employee shall represent a corporation; 5) An active member or an authorized full-time employee shall represent an association; and 6) Any other organization or entity shall be represented by one of its active members or authorized full-time employees.

24) Ms. Stevens and Ms. Burnett were not representing themselves in the small claims action and they were not representing a spouse. They were not general partners, employees, officers or members of the homeowners association. The Hearing Officer concludes that they were in effect representing a client in a judicial proceeding in violation of ACJA section 7-208 (J)(5)(b). If any other statute or rule had authorized them to represent a third party in small claims court, then perhaps this would not be a violation. Even though an attorney cannot appear in a small claims action, an attorney is not precluded from preparing a document such as the complaint or a motion for entry of default that would be presented in small claims court by the client. Legal document preparers may also prepare and file a complaint or a motion for entry of default. The litigant himself may always prepare and file his own documents. The individuals listed in the ARS section 22-512(B) may represent themselves in small claims court. But these employees of AAM should not be taking on the role of providing services such as signing and

filing complaints and motions for entry of default in a representative capacity in a judicial, quasi-judicial or administrative proceeding unless they are specifically authorized to do so by law. The statutes of Arizona and the rules of the Supreme Court and the ACJA carefully inform the public of the professionals who are authorized to conduct legal matters. The Supreme Court is responsible to the public for ensuring that lawyers and legal document preparers are appropriately trained so that the legal rights of the public are not sacrificed.

25) The counter argument is that if a non-lawyer and non-legal document preparer may prepare and file important documents in small claims court, then how can non-lawyer and non-legal document preparer employees be found in violation of any statute or rule for doing the same thing? The difference is that a person who decides to represent himself in a court matter assumes a known risk of his own legal limitations. However, in this fact situation AAM through its newsletters was offering to take on the responsibility of collection legal proceedings for a client, the homeowners association.

26) Rule 31 states that any provision of "legal advice or services to or for another by preparing any document in any medium intended to affect or secure legal rights for a specific person or entity" is the "practice of law". (See Rule 31(a)(2)(A)(1)). Rule 31(d) lists at least 29 exemptions to the mandate that only attorneys may do the things set forth in Rule 31(a)(2)(A)(1-5) that define the practice of law. The Rule does not include an exemption for property management companies like AAM to appear for their customers. One exemption that may come close to authorizing the situation that AAM seeks is subsection (d)(3) which states in part: "An officer of a corporation or a managing member of a limited liability company who is not an active member of the state bar may represent such entity before a justice court or police court provided that: the entity has specially authorized such officer or managing member to represent it

before such courts; such representation is not the officer's or managing member's primary duty to the entity, but secondary or incidental to other duties relating to the management or operation of the entity; and the entity was an original party to or a first assignee of a conditional sales contract, conveyance, transaction or occurrence that gave rise to the cause of action in such court, **and the assignment was not made for a collection purpose.**" (Emphasis added)

27) When employees of AAM signed the complaints and motions for entry of default as "plaintiff" they left the impression that they were a party to the action. Even if the homeowners association had in effect assigned to AAM the Association's right to appear in court to sue a homeowner, the exemption in subsection (d)(3) would have barred AAM from representing the Association because the assignment would have been made for a collection purpose. The lawsuits filed by AAM in the small claims courts were to collect fees that the homeowners had failed to pay.

28) Another exemption that is in the same subject matter is (d)(7) which states, "A person who is not an active member of the state bar may represent a corporation in small claims procedures, so long as such person is a full-time officer or authorized full-time employee of the corporation who is not charging a fee for the representation." The AAM employees are not employees or officers of the homeowners association and AAM is charging a fee for the representation.

29) The exemption in subsection (d)(20) is also instructive in this case. It states, "Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and **not made available to third parties.**" (Emphasis added) This subsection would seem to authorize non-lawyers and non-legal document preparers to prepare documents in the regular course of business. But the documents

that are being prepared in this case by AAM to collect fees are in the regular course of business of the homeowners association. And AAM is basically making the documents (complaints and motions for entry of default judgment) available to third parties, the associations. The Hearing Officer notes that a State Bar of Arizona UPL Advisory Opinion (UPL 04-02, October 2004) disagrees with this analysis. (Exhibit 6) For a description of the Opinion's contrary analysis see Paragraphs 49 and 50 below.

30) One could argue that the signing of the complaints in small claims court actions and the signing of motions for entry of default judgment are the same as if an individual gave another individual a power of attorney. The argument would be that if the entity, the homeowners association, could appear in small claims court, then it could authorize AAM through a power of attorney to appear in the place of the Association. There are several problems with this argument. First, the argument seems to allow for the possibility that a power of attorney could provide authorization to a person or entity to represent another in small claims court that the statute ARS section 22-512(B) does not permit. The statute has barred lawyers from representing clients in small claims court. But the statute has not gone as far as to allow for the creation of a class of non-lawyers to represent litigants in small claims court. Instead the legislature provided only six limited circumstances in which another person could represent someone else in small claims court. In each of the six authorized situations, there is a closer connection between the individual representing the person or entity and the entity being represented than is present between the homeowners associations and AAM.

31) In the first authorized situation the litigant is representing himself. Second, a spouse may represent a marital community. Third, an active general partner or full-time employee may represent a partnership. Fourth, a full-time officer or employee may represent a Corporation.

Fifth and sixth, an active member or authorized full-time employee may represent an association and any other organization or entity may be represented by one of its active members or full-time employees. As stated before, AAM does not qualify under any of these six specific authorizations. The first situation does not include language that an individual may grant a power of attorney to another individual who will then stand in the place of the first individual in small claims court. Moreover, AAM has asserted that it is authorized by contract with its customers the associations to file complaints and motions for entry of default judgments in small claims court. The six specific subsections in the statute do not allow for an individual or an entity by contract to authorize another person or entity to represent him in a small claims action.

32) In fact, the statute specifically prohibits an assignee or other person to commence such an action. ARS section 22-512(A) states, "Any natural person, corporation, partnership, association, marital community or other organization may commence or defend a small claims action, but no assignee or other person not a real party to the original transaction giving rise to the action may commence such an action except as a personal representative duly appointed pursuant to a proceeding as provided in title 14. (Emphasis added) A title 14 proceeding may involve a finding that a person is not competent and needs either a Guardian or a conservator. These proceedings also can lead to the appointment of an executor to bring an action on behalf of an estate. Once again, the Legislature is clearly setting a limit on who may institute small claims court actions.

ALLEGATION #5 - AAM violated Rule 31, ACJA section 7-201(F)(1) and ACJA section 7-208 (F)(2) and (J)(5)(b) by having its non-certified, non-attorney staff appear in court on behalf of AAM's HOA customers. (Paragraph 53)

FINDINGS OF FACT

33) On March 31, 2010 Tiffany Lehr the former designated principal of AAM responded to Investigator Karla Clanton's e-mail as follows: "**Question:** When you were the Designated Principal of AAM, LLC, did you supervise, review or sign any of the small claims documents prepared and filed in Justice Court by AAM staff for the HOA's [sic] that contracted with AAM for this service? **Lehr Response:** Yes I did supervise AAM staff. Yes I did review small claim documents by AAM staff. No I did not sign any of the small claims documents. **Question:** Did you supervise any of the staff involved in the small claims services by AAM to HOA's [sic], if your answer is no please explain why not and who did supervise the staff offering these services? **Lehr Response:** Yes. **Question:** Please explain if AAM staff represented the HOA's [sic] in Justice Courts regarding the documents filed by AAM in small claims courts? If so, please provide their names and positions in AAM? **Lehr Response:** Yes, AAM staff along with AAM's CFO represented HOA's [sic] in justice court regarding the documents that were filed. Carmen Burnett, Paralegal, Patrice Stevens, Paralegal, Kevin Debloskie, Chief Financial Officer." (Exhibit 28, CLDP 000021)

34) In the November 2009 newsletter AAM advertised the participation of their employees in small claims court as follows: "Staffers also work with homeowners to set up payment plans and attend small claims hearings." (Exhibit 54)

CONCLUSIONS OF LAW

35) ACJA section 7-208(J)(5)(b) states that a legal document preparer shall not represent that he or she is authorized to practice law nor shall the document preparer provide legal advice to another person by expressing written or verbal opinions, "or by representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process,

except as authorized in Rule 31(d), Rules of the Supreme Court. **A legal document preparer shall not attend court with a consumer for the purpose of assisting the consumer in the court proceeding, unless otherwise ordered by the court.**" (Emphasis added)

36) If an employee of AAM was appearing in small claims court to testify about the amount of money owed to the homeowners association by the homeowner, that appearance would not be "representing" the Association in court. However, the response of Ms. Lehr cited above is that AAM employees represented the associations in justice court. The Hearing Officer concludes that the Program has established by a preponderance of the evidence that by permitting employees to represent homeowners associations in small claims court, AAM violated ACJA section 7-208(J)(5)(b).

37) AAM newsletters told homeowners associations to contact Kevin Debolske or Tiffany Lehr if the Association had additional questions about the collection process. In the May 2009 newsletter Tiffany Lehr was described as the "AAM Paralegal Department Manager". (Exhibit 52) In the November 2009 newsletter half a page was dedicated to the Small Claims Department of AAM. The newsletter contains a photograph of four people who were part of this Department and who were identified as Carmen Burnett, Patrice Stevens, Tiffany Lehr and Arielle Reyes. (Exhibit 54) During the investigation by the Program Ms. Lehr identified Carmen Burnett and Patrice Stevens as paralegals. The newsletter stated that the Small Claims Department "features two small claims paralegals".

38) Rule 31(a)(2)(C) defines "Legal assistant/paralegal" as "a person qualified by education and training who performs substantive legal work requiring a sufficient knowledge of and expertise in legal concepts and procedures, **who is supervised by an active member of the State Bar of Arizona, and for whom an active member of the state bar is responsible, unless**

otherwise authorized by supreme court rule.” (Emphasis added) The record before the Hearing Officer indicates that an attorney was not supervising these paralegals on small claims court collection proceedings. To advertise these employees as paralegals to the homeowners associations is problematic. In the newsletters, AAM is extolling the capabilities of its staff to handle legal matters in small claims court.

39) In the standard contracts that AAM uses there are several references to legal matters and attorneys. In section 2.4 entitled *Assessment Billing*, AAM’s contract with the homeowners association identifies AAM’s obligation as follows: “To notify all unit owners of the Association of their respective assessments and common charges, as scheduled, imposed by the Association; to take all reasonable steps, **other than legal**, to collect and deliver to the Association all assessments and common charges including the delivery of delinquency notices provided, however, Agent [AAM] shall not have the final responsibility for the collection of any delinquent assessment, common charge or other charges.” (Exhibit 1, CLDP-000268) (Emphasis added)

40) In section 2.13, entitled *Interaction with Legal Counsel*, the contract states “Agent [AAM] is not authorized to practice law. If Agent deems legal assistance necessary for any reason, including but not limited to collections, Agent shall obtain such assistance from counsel approved by Association, and approval of the selection of counsel shall not be unreasonably withheld. **Any legal action undertaken shall be in Association’s name only.** All legal fees, costs and expenses shall be the responsibility of Association and paid from Association’s funds.” (Exhibit 1, CLDP-000269) (Emphasis added)

41) The Hearing Officer has included these sections of the contract to demonstrate the concern that although the term “paralegal” is used to describe important employees of the AAM

Small Claims Department, apparently the person supervising these two paralegals when they were working on small claims matters was the Designated Principal, a certified legal document preparer, Tiffany Lehr.

COMPLAINT NUMBER 10-L026

ALLEGATION #6 - AAM exceeded the authority of a certified legal document preparer, violated ARS section 22-512, Rule 31, ACJA section 7-201 (F)(1) and ACJA section 7-208 (F)(1), (F)(2), (J)(1)(d), (J)(2)(b) and (J)(5)(b), and engaged in the unauthorized practice of law by offering to and filing small claims actions on behalf of its HOA customers regarding delinquent HOA fees. (Paragraph 54)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

42) The findings of fact and conclusions of law in Allegations #3 and #4 are incorporated herein by reference. The Hearing Officer has set forth above the reasons for finding that AAM violated all of the provisions listed in Allegation #6. ARS section 22-512 does not authorize a business such as AAM to have its employees appear in small claims court matters. Rule 31 does not contain an exemption from the "practice of law" definition to permit AAM employees to represent customers in small claims court. ACJA section 7-201(F)(1) and ACJA section 7-208 (F) require that the holder of a legal document preparer certification comply with the code of conduct in subsection J. ACJA section 7-208(J)(5)(b) prohibits AAM from representing the homeowners associations in a judicial proceeding. A small claims court case is a judicial proceeding. The record is clear that AAM knew that its employees were representing the associations in small claims court.

43) ACJA section 7-208(J)(1)(d) provides that a legal document preparer shall not knowingly make any misleading representation while assisting a consumer in the preparation of

legal documents. AAM employees should not have been signing court documents such as complaints and motions for entry of default on the line marked "Plaintiff." Although AAM thought it was authorized to sign these documents, AAM knew that it's employees were not employees of the associations. The Hearing Officer finds that the signing by AAM employees of complaints and motions for entry of default judgment as "Plaintiff" was an untrue statement that was more confusing than misleading. The Estrella Mountain Justice Court in the case of Palm Valley Phases II and III Community Association v. Healy CC2009-727816 listed both the Association and AAM LLC as Plaintiffs in the court's case information system. This was probably because AAM put the Association's name in the caption as Plaintiff, but added c/o AAM LLC 7740 N. 16th Street Suite 300, Phoenix, AZ 85020 (602) 674-4373. (Exhibits 56 and 57)

The testimony of witnesses for AAM on the Allegations

44) Amanda Shaw, president of AAM, testified that AAM was established in 1990. The company has 289 employees, two of whom are certified legal document preparers. AAM has 352 customers. Its reputation among property management companies is stellar. (Transcript of the Hearing [hereinafter "TR"] 11/14/11, page 220, line 20 through page 222, line 17, [hereinafter "220:20 through 222:17"]) Homeowners associations delegate by contract (a management agreement) the association's functions to a property management company (hereinafter "PMC"). (TR 11/14/11, 224:16-20 and 229:10-21) The association is responsible for taking care of common areas, notifying homeowners of when their fees are due and is responsible for fines when a homeowner is in violation of the CC&Rs. Ms. Shaw stated that of the 352 communities (HOAs) that are managed by AAM only 5 to 7 have their own employees. AAM and its employees as managing agent for the HOA carry out the functions of the HOA. (TR 11/14/11

225:8 through 227:5) Most of these HOAs use AAM's office address. The HOAs don't have an office address and the HOAs list AAM's business address in the HOA Articles of Incorporation. (TR 11/14/11, 227:6 through 228:23) The HOA uses the phone number of AAM for management related matters. (TR 11/14/11, 228:24 through 229:9)

45) Ms. Shaw further testified that AAM prepares, signs and files liens to facilitate the process of collecting assessments for AAM customers. AAM considers that the management agreement it has with the HOA authorizes AAM to sign the liens. AAM recognizes that its charges for lien preparation and filing are lower than attorney's fees. (TR 11/14/11, 244:1 through 245:13) She explained that the members of the Boards of the HOAs are volunteers. Many of them have full time jobs. (TR 11/15/11, 19:2-11) It is inconvenient for them to sign liens. (TR 11/14/11, 246:7 through 247:7)

46) Ms. Shaw also explained that AAM receives approximately 6000 pieces of mail in its offices per week. Approximately 10,000 pieces of mail go out of the AAM office per week. AAM may receive 5 to 20 liens per week on average. Board members may be out of town when liens need to be signed. Board members change each year and even before the change some members resign. (TR 11/15/11, 4:22 through 9:5)

47) Ms. Shaw testified that AAM no longer has a small claims department, but that the company has prepared small claims documents for its customers. Ms. Shaw was not familiar with the specifics about how the small claims department worked in 2009. She did not know if in 2009 any of the AAM employees were legal document preparer trainees. She also did not know whether AAM employees appeared in court with customers. (TR 11/15/11, 23:12 through 30:7)

48) Thomas Zlaket, former Chief Justice of the Arizona Supreme Court and former President of the State Bar of Arizona, was called to testify as an expert witness by AAM. He

stated that before the legal document preparer program was adopted there was an explosion of document preparation shops in Arizona. The Supreme Court needed an enforcement mechanism on document preparation. The Arizona Legislature allowed the statute that made the unauthorized practice of law a misdemeanor to expire. (TR 11/15/11, 60:21 through 63:5) Although Thomas Zlaket left the Supreme Court in 2002, he was aware that the court brought document preparer's underneath its supervisory umbrella in 2003. He cited the purpose of the certified legal document preparer rules as protection of the public from charlatans who didn't know what they were doing, from document prepares who were harming customers by preparing the wrong documents. He stated that the purpose of the rules was not to punish and was not to provide turf-protection for attorneys. (TR 11/15/11, 63:14 through 66:17)

49) Former Justice Zlaket stated that, in his opinion, signing a lien was not a violation of Rule 31 or any provision of the ACJA. (TR 68:19) He cited a State Bar of Arizona UPL Advisory Opinion, UPL 04-02 (October 2004) for the proposition that Property Management Companies may prepare documents such as late payment notices, demand letters seeking payment of rent or association fees, and eviction notices relating to the property being managed. (TR 11/15/11, 68:23 through 72:9) The UPL Opinion stated that if the preparation of such documents was incidental to the regular course of the property management company's business or if the documents were prepared by a certified document preparer, then there would be no violation of Rule 31. (Exhibit 6) The UPL Opinion interpreted the exemption that is now incorporated in Rule31(d)(20), but was in 2004 subsection (c)(19). This subsection currently reads, "Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and not made available to third parties."

50) The UPL Opinion recognized that the literal reading of this subsection would mean that the exemption only applied to documents prepared in the regular course of the business of the owner of the property, not the property management company. The Opinion stated, "In situations in which the management company has broad responsibilities to act on behalf of the owner or the association, it would seem inappropriate to assert that Rule 31(c)(19) [currently Rule 31(d)(20)] did not apply, because the management company was preparing the documents for use by a 'third party' -- the owner of the property -- **even though the Rule could technically be read to reach such a result.** The more appropriate reading of Rule 31, from a public policy perspective, would appear to be that the document is being prepared by the management company and used by the management company in a manner that is incidental to the regular course of its business." (Emphasis added) (Exhibit 6, UPL Opinion, page 5)

51) Mr. Zlaket expressed his agreement with the UPL Opinion that to file and record liens was not the unauthorized practice of law if the filing and recording was done in the regular course of business of the property management company or was done by a certified legal document preparer. Mr. Zlaket disagreed with a portion of the UPL Opinion that seemed to indicate that filing a lien in the County Recorder's Office was the unauthorized practice of law because Rule 31 in 2004 defined the "practice of law" as "Preparing any document through any medium for filing in any court, administrative agency or tribunal for any specific person or entity." (Exhibit 6, UPL Opinion, page 6) (TR 11/15/11, 72:11 through 73:5) The Hearing Officer has previously concluded (see Paragraphs 3 through 12 in Allegations #1 and #2) that filing the liens in the Recorder's Office is not filing the document in a judicial, administrative or quasi-judicial proceeding. The Hearing Officer also determines that the Recorder's Office is not a "tribunal." Instead, the Recorder is a repository of important information that may have

consequences for legal proceedings. A tribunal implies an entity that can make decisions about legal matters.

52) Former Justice Zlaket also testified that a standard Power of Attorney (see the last page of Exhibit 36) appoints a person as an Attorney-in-Fact to sign documents of legal significance for another. If the holder of a Power of Attorney signs documents on behalf of his principal, the holder is not practicing law. (TR 11/15/11, 112:25 through 115:4) Mr. Zlaket also stated that in his opinion the AAM newsletters (Exhibits 52 and 54) contain general legal information and not specific legal advice. (TR 11/15/11, 116:24 through 119:7) He had due process concerns about the Board of Legal Document Preparers assessment of fines. His concerns were that there was no structure in place to determine what factors would be used in assessing the amount of the fines. He said that a system of fines needs to be established along with a method of achieving proportionality. (TR 120:10 through 122:5)

ALLEGATION #7 - AAM exceeded the authority of a certified legal document preparer, violated Rule 31, ACJA section 7-201(F)(1) and ACJA section 7-208(F)(1), (F)(2), (J)(1)(d), (J)(2)(b) and (J)(5)(b) and engaged in the unauthorized practice of law by offering to negotiate settlements between AAM's HOA customers and homeowner defendants. (Paragraph 55)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

53) The Hearing Officer incorporates herein by reference the findings of fact and conclusions of law under Allegation #3 set forth in paragraphs 13 through 17 above. Specifically, the Hearing Officer concluded in paragraph 16 that AAM engaged in the practice of law by offering in its newsletters to negotiate settlements on behalf of the homeowners' associations of lawsuits against homeowners that were already filed in small claims court. In offering to handle

the associations' collections of assessments through small claims court, AAM stated in its newsletter that it would coordinate "payment plans if the homeowner contacts us after being served with the complaint." (Exhibit 52) This is a violation of Rule 31(a)(2)(A)(5) which defines the "practice of law" as "negotiating legal rights or responsibilities for a specific person or entity." It is also a violation of ACJA section 7-208(F)(1) because a certified legal document preparer is not authorized to negotiate settlements of pending court cases on behalf of a third party and Rule 31 specifically describes this conduct as the "practice of law."

ALLEGATION #8 - AAM exceeded the authority of a certified legal document preparer, violated Rule 31, ACJA section 7-201(F)(1) and ACJA section 7-208(F)(1), (F)(2), (J)(2)(b) and (J)(5)(b), and engaged in the unauthorized practice of law by seeking and obtaining written consent from the Avalon HOA Board of Directors to represent Avalon in small claims actions. (Paragraph 56)

FINDINGS OF FACT

54) On July 29, 2009 the Board of Directors of Avalon Homeowners Association resolved in writing the following, "that the Board of Directors hereby empowers either Kevin T. DeBolske, Chief Financial Officer of AAM, LLC or Patrice Stevens and Carmen Burnett, Small Claims Coordinators of AAM, LLC to represent the Avalon Homeowners Association in Small Claims Court on behalf of the corporation." (Exhibit 55)

CONCLUSIONS OF LAW

55) The Hearing Officer incorporates herein by reference the findings of fact and conclusions of law set forth above under Allegations #4, in paragraphs 19 through 32. In paragraphs 22 through 32, the Hearing Officer has concluded that it was a violation of ACJA section 7-208(F)(1) and ACJA section 7-208 (J)(5)(b) for the above referenced employees of

AAM to represent an HOA in small claims court. If the Arizona Code of Judicial Administration specifically prohibits a certified legal document preparer from representing a customer in a judicial proceeding, a private contract cannot override that prohibition.

56) As stated earlier in this report the Hearing Officer rejects the AAM argument that any person can represent anyone else in a small claims action. ARS section 22-512(B) provides for only a limited group of people in six categories who may appear and represent either themselves or others in small claims court. This statute does not authorize the expansion of that group of people by private contractor arrangements. Rule 31 in its exemptions allows for representation of people and corporate entities by non-attorneys in limited situations. Only one of these exemptions permits the representation of a corporation in small claims court. Rule 31(d)(7) allows a non-lawyer to represent a corporation "in small claims procedures, so long as such person is a full-time officer authorized or full-time employee of the corporation who is not charging a fee for the representation." The employees of AAM listed above were not full-time officers of the Avalon HOA and were not employees of the Avalon HOA and AAM was charging a fee for their service. The May 2009 AAM newsletter stated, "The benefits of this type of collection service are that it is a cost-effective method for a flat fee." (Exhibit 52) Therefore the Hearing Officer concludes that AAM by authorizing its employees to represent its customers the homeowners associations in small claims court and by contracting with the Avalon HOA Board of Directors for that representation committed the unauthorized practice of law in violation of Rule 31 and violated ACJA section 7-208(F)(1) and ACJA section 7-208(J)(5)(b).

ALLEGATION #9 - AAM exceeded the authority of a certified document preparer, violated Rule 31, ACJA section 7-201(F)(1) and ACJA section 7-208(F)(1), (F)(2), and (J)(5)(b), and engaged in the unauthorized practice of law when AAM employee Burnett

signed the small claims Complaint filed in Highland Justice Court case number CC 2009620481SC on behalf of AAM HOA customer Cooley Station. (Paragraph 57)

FINDINGS OF FACT

57) The Hearing Officer incorporates herein by reference the portions of this report that deal with Allegation #4 in paragraphs 19 through 32.

CONCLUSIONS OF LAW

58) The question of law is whether the signing of a complaint as the "Plaintiff" in a small claims court action is "representing" a person or entity in that action. If so, another question is whether Ms. Burnett was engaging in the unauthorized practice of law by signing the Complaint. First, in the context of the all the evidence in this case, the Hearing Officer concludes that Ms. Burnett was, in effect, representing Cooley Station in the small claims action by signing the Complaint. The AAM newsletters identify Ms. Burnett as a member of the Small Claims Department and state that AAM "staffers ... attend small claims hearings." (Exhibit 54) Tiffany Lehr, the certified legal document preparer and Designated Principal of AAM, was supervising employees of the Small Claims Department. Ms. Lehr informed Karla Clanton, the investigator for the Program, that AAM staff including Carmen Burnett (as well as Kevin Debolskie and Patrice Stevens) represented HOAs in justice court. (See Paragraph 33 above) Carmen Burnett was again listed with Kevin Debolskie and Patrice Stevens by the Avalon HOA as the three employees of AAM authorized to represent Avalon in small claims court. (Exhibit 55)

59) Ms. Burnett was engaged in the unauthorized practice of law when she signed the Complaint for Cooley Station. She was not a certified legal document preparer authorized to prepare and file such a document. She was not a paralegal working under the supervision of an attorney. She was not authorized to sign the complaint and thereby represent Cooley Station by

ARS Section 22-512(B). Signing a complaint is normally something that is done by the party himself and by counsel. In the context of the facts of this case, it was a form of representation because the customers (the HOAs) were relying on Ms. Burnett to “represent” them in small claims matters. An exemption in Rule 31(d)(20) permits the preparation of documents by a non-attorney incidental to a regular course of business, as long as the document is not made available to third parties. The Hearing Officer disagrees with the UPL Opinion conclusion that a property management company’s non-attorney and non-legal document preparer employees can use this exemption to prepare a lien for a property owner. Instead, the Hearing Officer concludes that the regular course of a property management company’s business does not include filing complaints in court proceedings. This is the business of AAM’s customer, the HOA. The HOA is the Plaintiff, not AAM. In addition the UPL Opinion did not specifically deal with the situation that a complaint was being filed in a judicial proceeding (even though the UPL Opinion seemed to treat the filing of a lien in the Recorder’s Office as a filing before a “tribunal”).

60) AAM was in violation of ACJA section 7-208(F)(1) and 7-208(J)(5)(b) because as a legal document preparer business entity AAM could not authorize Ms. Burnett to represent a party in a judicial proceeding and could not authorize her to prepare and file the document. Ms. Burnett was not a certified legal document preparer. Ms. Burnett did not stand in the place of the HOA as “Plaintiff.” As stated in Paragraphs 23, 30 and 32 of this report, ARS section 22-512 (B) does not authorize Ms. Burnett to appear for the HOA in small claims court and does not authorize an entity to name another person (not a member, employee or officer of that entity) to appear for that entity. ARS section 22-512(A) states, “Any natural person, corporation, partnership, association, marital community or other organization may commence or defend a small claims action, but no assignee or other person not a real party to the original

transaction giving rise to the action may commence such an action except as a personal representative duly appointed pursuant to a proceeding as provided in title 14. (Emphasis added)

ALLEGATION #10 – AAM exceeded the authority of a certified legal document preparer, violated ARS section 22-512, ACJA section 7-201 (F)(1) and ACJA section 7-208 (F)(1), (F)(2), and (J)(5)(b), and engaged in the unauthorized practice of law by establishing itself as a co-plaintiff in numerous small claims actions AAM sought against defendants on behalf of its HOA customers. (Paragraph 58)

FINDINGS OF FACT

61) The Hearing Officer incorporates herein by reference the matters in Allegations #3, #4, #6 and #9 above and paragraphs 13-32, 42-52 and 57-60. The record indicates that in at least 10 small claims court cases, employees of AAM signed Complaints and/or Applications for Entry of Default and Motions/Affidavits for Judgment by Default as "Plaintiff", when in fact the plaintiff was an HOA client of AAM. (Exhibits 41-50 and 56, homeowner defendants Heins, Usher, Ortiz, Nguyen, Rodriguez, Erwin, Jimenez, Rivera, Garcia and Mulvaney) In each of these Complaints the AAM employee placed the name of the HOA in the caption for the Plaintiff, but listed the address and phone number of the HOA as, "C/O AAM, LLC, 7740 N. 16th St. Suite 300, Phoenix, AZ 85020 (602) 674-4347."

CONCLUSIONS OF LAW

62) The Hearing Officer incorporates herein by reference the matters in Allegations #3, #4, #6 and #9 above and paragraphs 13-32, 42-52 and 57-60. The Hearing Officer has in a previous section of this report found that when an AAM employee signed the Complaints as "Plaintiff", AAM was engaged in the unauthorized practice of law. (See Paragraph 59) The

allegation that AAM named itself as a co-plaintiff adds something to the Hearing Officer's previous conclusion that the signing of the complaint was: 1) the unauthorized practice of law; 2) an act that exceeded the authority of AAM as a certified legal document preparer entity; and, 3) in effect constituted representation of a client in a judicial proceeding. AAM identified the correct HOA plaintiff in the caption of each complaint, but basically instructed the court to communicate with the HOA through AAM. But AAM employees improperly represented themselves as part of the HOA plaintiff by signing the Complaints and the Motions as "Plaintiff" or signing under the printed statement, "I am the plaintiff in this action."

63) AAM would argue that there is nothing wrong with an HOA asking the court to communicate with it through its property management company, AAM. The HOA may not have its own office address. Although members of the Boards of the HOA may have personal residence addresses, these members may change frequently and they would prefer to have the mail for the HOA go to the company that the HOA pays to manage its business, AAM. Courts however must make sure that they have an address for the plaintiff that is reliable. If the court sends a document to an address of an agent for the plaintiff, the plaintiff may thereafter be able to claim that he did not receive actual notice. For this reason courts normally request that the plaintiff provide the court with its own address. However, if an entity like the HOA provided the court with the address of its management company, AAM, it would seem unlikely that the HOA could later argue that it did not receive actual notice of a court mailing because the court incorrectly sent the mailing to the address listed by the plaintiff.

64) The Hearing Officer does not think that AAM was establishing itself as a co-plaintiff by having its employees sign the documents as "plaintiff" and by listing the AAM address in the caption. Instead, AAM was representing itself as part of the plaintiff and was attempting to

follow the wishes of its client the HOA by providing the AAM mailing address. Therefore, the Hearing Officer does not find that the Program has proven this specific allegation by a preponderance of the evidence. This does not in any way take away from the Hearing Officer's conclusions that the signing and filing of the complaints constituted the violations set forth above. (See Allegations #3, #4, #6 and #9 above and paragraphs 13-32, 42-52 and 57-60)

ALLEGATION #11 - AAM violated ACJA section 7-208 (F)(3) by failing to place its name, title and certificate number on the small claims Complaint filed in Highland Justice Court case number CC 2009620481 SC and numerous documents prepared for in filed in the Estrella Mountain Justice Court. (Paragraph 59)

FINDINGS OF FACT

65) The Hearing Officer incorporates herein by reference to matters set forth in Allegation #4 above and paragraphs 19-32. On October 19, 2009 AAM employee Carmen Burnett signed the Complaint in Highland Justice Court case number CC 2009620481SC as "Plaintiff", but Ms. Burnett did not place the title and legal document preparer entity certificate number of AAM on the Complaint. (Exhibit 56)

CONCLUSIONS OF LAW

66) ACJA section 7-208(F)(3) provides that a certified legal document preparer must place on all documents that she prepares the name, title and certificate number of the document preparer. If the document preparer is providing services on behalf of a certified business entity the document preparer shall also place the business entity name and certificate number on the document. Carmen Burnett was not a certified legal document preparer on October 19, 2009. (See Paragraph 21 above) Ms. Burnett or whoever filled out the Complaint in the Highland Justice Court for the Cooley Station North Community Association only included a reference to

AAM in the caption of the case. The reference was not that AAM LLC prepared the document or that AAM employee signed it. Instead, the reference was to a mailing address for Cooley Station, "C/O AAM, LLC".

67) Therefore, although the complaint was prepared under the auspices of AAM's business entity certification, the Hearing Officer concludes that AAM violated section 7-208 (F)(3) by failing to indicate that the document was prepared by a legal document business entity. ACJA section 7-208(F)(1)(a) and (e) authorized AAM to prepare and file the complaint if the Complaint had been signed by the real plaintiff, the client Cooley Station. But the purpose of the rules is to alert the court and all parties that the document had been prepared by a legal document preparer or a legal document business entity. AAM compounded this violation by first permitting Carmen Burnett who was not then a certified legal document preparer to prepare the document. If Ms. Burnett did not prepare the document, and another certified document preparer working for AAM prepared it, then that document preparer should have included her own certificate number and the business entity name and certificate number pursuant to section 7-208(F)(3)

68) However the certified legal document preparer who was supervising Ms. Burnett and other employees in the AAM small claims department, Tiffany Lehr, told investigator Karla Clanton that she reviewed small claims documents prepared by AAM staff. Ms. Lehr stated that she did not sign any of the small claims documents. (See Paragraph 33 above) The Hearing Officer concludes that the Complaint in this allegation was reviewed by Ms. Lehr and was prepared under her direction and supervision. Therefore, at a minimum, the certificate number of AAM (#80511) and the title "certified business entity" should have been placed on this complaint.

MITIGATING AND AGGRAVATING FACTORS

Mitigating Factors

The Hearing Officer has reviewed the mitigating factors set forth in ACJA 7-201 (H)(22)(b)(1) and has found the mitigating factor of the absence of a prior disciplinary record for AAM.

Aggravating Factors

The Hearing Officer has reviewed the aggravating factors set forth in ACJA 7-201 (H)(22)(b)(2) and has found no aggravating factors.

PROPORTIONALITY ANALYSIS

The Program introduced Exhibit 38 at the hearing which was a compilation of numerous cases involving mostly violations by certified legal document preparers for the unauthorized practice of law. In the Nielsen case under "Proportionality Analysis," the Program noted that, "In prior matters where it has been determined a certificate holder has committed unauthorized practice of law violations, the Board has revoked and suspended certificates, issued cease and desist orders, established conditions for reinstatement, issued Censures and Letters of Concern, mandated additional continuing education, assessed costs, and imposed civil penalties." (Exhibit 38, Nielsen Order of the Board, page 3) The report also indicated that where legal document preparers attempt to negotiate settlements or act in a representative capacity on behalf of a customer, the Board "has revoked and suspended individual and business entity certificates, issued Censures and Letters of Concerns, placed the certificate holders on probation, and mandated business practice changes and continuing education intended to ensure future compliance as conditions of reinstatement or disciplinary probation." (Exhibit 38, Nielsen Order of the Board, page 3)

The Program also described the concern of the Board when the violation is the unauthorized practice of law as a "threat to the protection of the public with recognition of the potential harm to the public, judicial system, and document preparer profession." (Exhibit 38, Nielsen Order of the Board, page 3)

In the case of Morales, the Board was for the first time considering an allegation regarding whether a legal document preparer had standing to provide immigration related services. The mitigating factors included absence of prior discipline and full and free disclosure to division staff during the investigation. No aggravating factors were found. The Program recommended that the Board issue a Letter of Concern, issue a cease and desist order and assess costs of the investigation and related disciplinary proceedings.

In the case of Wyrostek, which involved the unauthorized practice of law, the mitigating factors were the same as in Morales and the aggravating factor was a refusal to acknowledge the wrongful nature of the conduct. The Board issued a Censure, composed of a one-year probation, reimbursement to a customer, five additional hours of continuing education, a civil penalty of \$100 per violation and assessment of the costs of the investigation and related proceedings.

In the case of Lief, which also involved the unauthorized practice of law, the mitigating factors of absence of prior discipline and delay in the proceedings were found. The aggravating factors of refusal to acknowledge wrongful nature of the conduct and substantial experience in the profession were found. The Program recommended a Censure, five hours of continuing education, assessment of costs and civil penalty of \$100 per violation.

In the case of Stump, which involved the unauthorized practice of law, the Board found mitigating factors to be the absence of prior discipline, a partial refund to the consumer complainants, delay in the disciplinary proceedings, the fact that Stump allowed his individual

and business entity certification to expire and he was no longer practicing as a legal document preparer. No aggravating factors were found. The Board issued a censure, assessed costs and imposed civil penalties of \$250 per violation.

In the case of Weathersby, also involving the unauthorized practice of law, the Board found as mitigating factors the absence of prior disciplinary record, free disclosure and cooperative attitude during the investigation, delay in the proceeding and imposition of other penalties (the Arizona Sec. of State revoked Weathersby's notary commission). No aggravating factors were found. The Program recommended a Censure, five hours of continuing education and civil penalties of \$250 per violation.

RECOMMENDATION

The Hearing Officer recommends that the Board issue a Censure to AAM, LLC and place AAM, LLC on probation for a period of six months, with the conditions that AAM, LLC cease and desist from offering or providing any legal services that exceed the authorities of a certified legal document preparer, that AAM LLC not engage in the unauthorized practice of law and that AAM LLC remove from publishing materials references to: 1) seeking and obtaining judgments in small claims court (unless the reference is limited to a certified legal document preparer preparing, filing and arranging for the service of court documents); and, 2) negotiating (or coordinating) payment plans with homeowners after complaints have been filed in court for past due assessments. Another condition of the probation is that within 60 days of the Board's Final Order, AAM, LLC will develop and implement policies and procedures to ensure that no member of the AAM staff is engaging in the unauthorized practice of law. AAM, LLC will submit a copy of the written policies and procedures to the Certification and Licensing Division ("Division) within 60 days of the Board's Final Order.

Another condition of probation should be that AAM, LLC and its Designated Principal shall submit to the Division an updated list of any individuals providing legal document preparation services on behalf of the business entity within 15 days following the entry of the Board's Final Order. The list shall identify the certification status of each individual and state whether the individual is an ACJA section 7-208(F)(5) trainee. The list shall also state the date the trainee will meet the minimum eligibility requirement to apply for individual certification.

The Hearing Officer further recommends that the Board assess AAM, LLC costs associated with the investigation and any related disciplinary proceedings and that AAM, LLC be required to pay these costs no later than 60 days after the entry of the Board's Final Order.

CONCLUSIONS

AAM has not seriously endangered customers by its course of conduct in this case. This business has been established for more than 20 years. It has more than 350 homeowners associations as its customers. It knows how to process liens. The Hearing Officer has determined that signing the liens that are then filed in the Recorder's Office is not representing a party in a judicial or quasi-judicial proceeding. This record does not support a conclusion that the customers of AAM were harmed by the lien preparation, filing and signing procedures used by AAM.

The Hearing Officer is concerned that AAM is stepping over the line when representing HOAs in small claims court. AAM was not the plaintiff in these court cases. Yet employees of AAM signed court documents as the plaintiff and according to Tiffany Lehr (the supervisor of the small claims department of AAM) represented the HOAs in court. The business of the HOA is to collect assessments and fees from homeowners and provide services to the homeowners in

exchange. If legal action has to be taken because a homeowner has not paid the fees, it is the business of the HOA to institute that action. The HOA under current law may proceed in several ways to lessen the cost of this legal action. The HOA can ask a legal document preparer to prepare and file the complaint in small claims court (if the amount sought is less than \$2500). The HOA will need to sign the complaint. If an appearance is required, the HOA will need to send an "active member" (a Board Member) to small claims court. (See ARS sec. 22-512(B)(6)) Although this may be an inconvenience to the HOA if there is a high volume of delinquent fee cases, the procedures in small claims court are designed to provide a speedy resolution. Perhaps in most cases the homeowner will default.

The Hearing Officer is also concerned that AAM offered to negotiate payment plans with homeowners who contacted AAM after the complaint was filed in court. Filing complaints in court and negotiating the resolution of court cases is traditionally attorney work. In Arizona, since 2003, legal document preparers can perform the former function. But legal document preparers cannot represent customers in court, even in small claims court. And AAM should have known better than to let non-legal document preparer employees perform a representation function.

The problem with this case that causes the Hearing Officer not to recommend a civil penalty per violation is that lawyers cannot represent HOAs or any person or entity in small claims court, unless both parties stipulate by written agreement. It is not likely that a homeowner who cannot afford to pay his monthly HOA fee would be able to afford an attorney for a small claims matter; so a stipulation in this type of case may be very rare. Therefore, AAM could have convinced itself that, if pursuant to ARS section 22-512, the HOA (a non-lawyer, non-certified legal document preparer) could prepare and file a complaint for an amount under \$2500, what

harm would be caused if AAM employees (who may have studied small claims court procedures) prepared the complaint (on a form provided by the court) and for a fee provided the HOA the convenience of following through with the entire court procedure until a judgment was obtained?

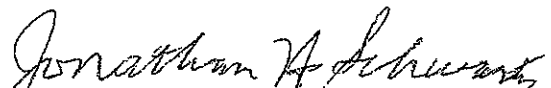
AAM was aware of the 2004 UPL Advisory Opinion that concluded that Rule 31 (d)(20) provided some justification for property management companies ("PMC") to prepare and file liens and not be engaged in the unauthorized practice of law. The Opinion stated that a more practical reading of this exemption was that the preparation of liens was in the regular course of the PMC's business. An analysis of how the PMC works with the HOA reveals that the PMC notifies homeowners of when their fees must be paid, keeps track of whether fees have been paid on time, and sends delinquent notices to the homeowners. Who would be in a better position to know when a complaint in small claims court would need to be filed and when a lien should be filed, than the PMC? This is why the HOA hires the PMC - to keep track of this information.

This does not justify the PMC morphing into the role of the HOA as plaintiff or authorizing non-legal document preparer employees to prepare and file complaints and sign them as the plaintiff. And it should be recognized that the UPL Advisory Opinion did not discuss the signing of a lien or the filing of lawsuits or the representation of HOAs by employees of the PMC in small claims court. But the Opinion did recognize some realities of the way HOAs function and why they contract with PMCs. To levy civil penalties against AAM in addition to a Censure and probation and assessment of the costs of the proceedings would be unwarranted.

The Hearing Officer chose Censure instead of a Letter of Concern because AAM should have known that ARS section 22-512 and Rule 31 did not permit AAM to receive an authorization from an HOA for any AAM employee to represent the HOA in small claims court.

AAM should have made sure that only its certified legal document preparers were preparing and filing the complaints. AAM should have had an HOA Board member sign the complaints and motions for entry of default on behalf of the HOA plaintiff. AAM knew better than to have AAM employees sign as plaintiffs. AAM should not have been permitting its employees to represent HOAs in small claims court. Instead, AAM should have clarified to the HOAs that, if necessary, an AAM staff member would appear in court with an HOA Board member only to give testimony to the court about the amount of the delinquent fee. The Hearing Officer can appreciate that AAM was attempting to help its HOA customers. But a company that maintains a business entity certification and employs one or two certified legal document preparers should have been more careful before advertising a "Small Claims Department" and then proceeding to provide representation for its customers in small claims court.

Dated this 2nd day of February, 2012


Honorable Jonathan H. Schwartz, Retired
Hearing Officer

Original filed with the Disciplinary Clerk
this 2nd day of February, 2012.

COPY of the foregoing hand delivered to
this 2nd day of February, 2012, to:

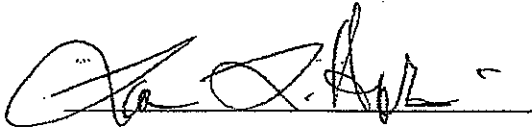
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A handwritten signature in black ink, appearing to read "S. Rodgers", is written over a horizontal line.