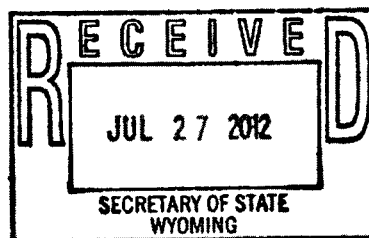


BEFORE THE SECRETARY OF STATE  
STATE CAPITOL  
CHEYENNE, WYOMING 82002-0020



IN THE MATTER OF )  
THE NOTICE OF VIOLATION )  
ISSUED TO: )  
)  
)  
American Capital Group )  
210 Nichols Avenue )  
Casper, WY 82601 )

Docket No. 2011-08

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

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THIS MATTER came before the Wyoming Secretary of State (SOS) on May 7, 2012, for a contested case hearing. Presiding at the hearing for the SOS was independent hearing officer, John S. Burbridge. Petitioner, the Secretary of State's Office, Compliance Division (Division), appeared by and through counsel, Michael M. Robinson, Senior Assistant Attorney General. Respondent, American Capital Group and its representative, David DeLoach, (ACG), appeared by and through counsel, Daniel B. Frank. The Division's Exhibits State 1, State 2 and State 3 were admitted into evidence. ACG did not present or request admission of any exhibits and therefore, no exhibits were admitted into evidence. Based upon the evidence reviewed, testimony and argument presented, the SOS hereby makes the following FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER:

**I. ISSUES**

The issue in this matter is whether the Division has proved that ACG failed to maintain records required by the Registered Offices and Agents Act (Act), specifically, Wyo. Stat. § 17-28-107(a)(v)(A) and (B), in violation of Wyo. Stat. § 17-28-109(a)(ii), thereby justifying civil penalties and other adverse action as allowed by Wyo. Stat. § 17-28-109(a).

## II. FINDINGS OF FACT

1. ACG is the registered agent for Corp 95. ACG is a Commercial Registered Agent (CRA) under Wyoming law because it acts as the registered agent for another CRA, Corp 95. Corp 95 is the only entity served by ACG. Wyo. Stat. § 17-28-105(b); Rules, General Provisions, Chapter 1, Section 4(e). State Exhibit 1, Tabs A and B.

2. The officers and directors of ACG are Ms. D'arcy DeLoach and Mr. David DeLoach. State Exhibit 1, Tabs C and D; Tr. at 13, 26.

3. On October 20, 2011, three representatives from the Division, including Mr. Ryan Anderson, a compliance auditor with the Division, conducted a compliance audit of Corp 95 at the registered office located at 210 Nichols Avenue in Casper. Tr. at 12-14, 29-30.

4. The audit was triggered by the various conduct of Corp 95, including multiple relocations of its registered office and the use of "virtual offices" and answering service locations from 2006 to 2011. This behavior raised "red flags" with the Division. Mr. Anderson testified that "red flags" were indicative of unusual and suspicious behavior by a registered agent. Tr. at 15, 25-26.

5. Ms. Michele Hoover was present at Corp 95's registered office, which is the same as ACG's registered office, when the Division arrived to conduct the audit. Ms. Hoover was a representative of Casper Answering Service and produced separate Registered Agent Agreements she held with Corp 95 and ACG. State Exhibit 1, Tabs N and O; Tr. at 12-13.

6. Following the Division's audit of Corp 95, the Division requested from Ms. Hoover the ACG records required to be maintained in the registered office pursuant to Wyo. Stat. § 17-28-107(a)(v)(A) and (B). However, Ms. Hoover was unable to produce any of the required records. State Exhibit 1, Tab P; Tr. at 13.

7. The Division's audit determined that ACG failed to maintain and produce on demand any of the records required by Wyo. Stat. Ann. § 17-28-107(a)(v)(A) and (B) for the sole entity it served as CRA, Corp 95. State Exhibit 1, pp. 4-5.

8. On or about December 2, 2011, the Division issued Findings of Fact and Order advising ACG of its audit results, including alleged violations of the Act, and proposed civil penalties in a total amount of \$500.00 and revocation of ACG's Commercial Registered Agent Registration. State Exhibit 1, p. 6.

9. At no time following the issuance of the Division's Order on December 2, 2011, did ACG attempt to correct the records on the sole entity it represented. State Exhibit 2; Tr. at 32.

10. Ms. Wheeler testified that the Act became law effective January 1, 2009; that Wyoming was criticized for its conductivity to hiding and protecting the identity of these business entities; that prior to the Act there were over 7,000 companies that listed their registered office and registered agent at drop-box locations (i.e. places like Mailboxes, Etc., UPS stores, and other places that rented out post office boxes); that there was prospective federal legislation that would impose a nationwide regulatory framework on the states; and in response to the issues surrounding corporate and limited liability company anonymity, the SOS sought legislation with the intent of providing a local solution better suited to Wyoming than a "one-size fits all" federal law. Tr. at 19-21, 32-33.

11. Ms. Wheeler testified that an important purpose of the Act was to provide law enforcement with the necessary tools for enforcement and investigations while still providing protection to smaller, mainly family, ranching-type, entities from over-regulation. The Act

accomplished this by requiring specific records be maintained at an actual physical location within Wyoming. Tr. at 21, 32-33, 35.

12. Ms. Wheeler testified that another essential part of the Act was to make the registered agent for a business entity the “face” of that entity by requiring a real person be present at the registered office that is able to accept service of process. Tr. at 19-21.

13. As part of their registration under the Act, CRAs agree under penalty of perjury that they will “comply with the provisions of the [sic] W.S. 17-28-101 — 17-28-111.” Since January 1, 2009, when the Act went into effect, ACG made such representations when filing its Commercial Registered Agent Registration on February 28, 2011. ACG also submitted Statement of Change of Registered Agent forms on February 22, 2010 and August 10, 2010 in which they, again, certified they were in compliance with the Act. State Exhibit 1, Tabs H, J, and L; Tr. at 10.

14. ACG provided no direct witness testimony. Tr. at 37.

### III. CONCLUSIONS OF LAW

15. The SOS has jurisdiction over matters involving the registration and conduct of CRAs and enforcement of the Act's provisions. Wyo. Stat. §§ 17-28-101, *et seq.*

16. Wyoming Statute §17-28-107 states:

(a) The registered agent shall:

....

(v) Maintain at the registered office, the following information for each domestic entity represented which shall be current within sixty (60) days of any change until the entity's first annual report is accepted for filing with the secretary of state and thereafter when the annual report is due for filing and shall be maintained in a format that can be reasonably produced on demand:

(A) Names and addresses of each entity's directors, officers, limited liability company managers, managing partners, trustees or persons serving in a similar capacity;

(B) The name, address and business telephone number of a natural person who is an officer, director, employee or designated agent of each entity represented who is authorized to receive communications from the registered agent;

....

17. Chapter 7, Section 4 of the SOS Registered Offices and Agents Rules sets forth the requirements for production of records stating:

(a) A record shall:

(i) Contain all information required by law and these Rules;

(ii) Be written or, if electronic, be able to be immediately printed;

....

(b) All records that are required to be kept by the Registered Agent must be:

(i) Maintained in paper format at the physical office; or

(ii) Maintained in electronic format if they can be either printed or downloaded onto a recordable device, such as a CD or DVD, upon request.

(iii) Available via remote access if the Registered Agent can produce the records in a time frame and format consistent with the time frames associated with (i) and (ii) above.

18. Pursuant to Wyo. Stat. § 17-28-108(a) “[a]ll records maintained pursuant to W.S. 17-28-107 are subject to periodic, special or other examination by the secretary of state or his representatives as deemed necessary or appropriate in investigations.” The SOS may compel production of required records as specified in Wyo. Stat. § 17-28-107 pursuant to Wyo. Stat. § 17-28-108(b). “Failure to produce . . . records maintained pursuant to W.S. 17-28-107 to the

secretary of state on demand . . . shall be punishable as provided in W.S. 17-28-109.” Wyo. Stat.

§ 17-28-108(d).

19. Wyoming Statute §17-28-109 states:

(a) The secretary of state may impose a civil penalty not to exceed five hundred dollars (\$500.00) for each violation, with respect to each entity represented, of this chapter for which no other specific penalty is provided, and may deny or revoke any registration, require enhanced recordkeeping and refuse to accept filings for business entities served by a registered agent if the registered agent, or in the case of [sic] registered agent that is a corporation or other business entity, its officers, directors, members, partners or persons serving in a similar capacity:

....

(ii) Has failed to maintain records as required by W.S. 17-28-107;

....

(b) A registered agent has complied with W.S. 17-28-107 if he has timely requested from the entity, either by certified letter or through an engagement letter or other similar document, that the required information be provided and be kept current within sixty (60) days of any change until the entity's first annual report is accepted for filing with the secretary of state. It shall be a defense to an action under paragraph (a)(ii) of this section if the registered agent notifies the secretary of state of the entity's failure to provide the required information or of the registered agent's belief that the information is inaccurate, and the registered agent resigns within sixty (60) days after the date the certified letter requesting information has been sent. No fee shall be assessed a registered agent resigning pursuant to this subsection.

....

(e) It shall be a defense to any violation under this section if the agent, in the exercise of reasonable diligence could not have known that:

(i) The information maintained by the agent is inaccurate;

(ii) The information provided by the entity represented is inaccurate; or

(iii) An entity used the registered agent's identity or address without the registered agent's knowledge or consent.

20. ACG is a CRA under Wyoming law because it acts as the registered agent for another CRA, Corp 95. Wyo. Stat. §§ 17-28-105(b).

21. ACG acted as CRA for one (1) entity, Corp 95.

22. Since January 1, 2009, when the Act went into effect, ACG filed one (1) CRA registration and two (2) "Statement of Change" forms in which ACG affirmed that it would comply, and otherwise was in compliance with, the Act.

23. Upon demand by the Division, ACG failed to provide the information at its registered office required by Wyoming law. Specifically, ACG provided no information required by Wyo. Stat. § 17-28-107(v)(A) and (B) on its sole Wyoming business entity, Corp 95.

24. ACG had an obligation under the Act to ensure that the information required by Wyo. Stat. § 17-28-107(a)(v)(A) and (B) was present at its registered office and available for inspection reasonably on demand.

25. By not exercising the requisite due diligence imposed by the Act and ACG's own representations in its CRA registrations and consent to appointments, ACG failed to comply with the duties of a registered agent under the Act.

26. The evidence shows that the Division did not receive complaints from the public, or law enforcement officials regarding ACG's operations as a commercial registered agent in Wyoming prior to its audit.

27. ACG did not provide any evidence constituting a statutory defense under Wyo. Stat. § 17-28-109.

28. ACG did not dispute that information required by Wyo. Stat. § 17-28-107(a)(v)(A) and (B) was missing and therefore, ACG was in violation of the Act at the time of the Division's audit.

29. As a result of ACG's violations of the Act, it is appropriate to assess ACG civil penalties pursuant to Wyo. Stat. § 17-28-109(a)(ii). At the time of the Division's audit, ACG


failed to maintain information as required by Wyo. Stat. § 17-28-107(a)(v) for the sole business entity of which it represented. Consequently, ACG shall be assessed a \$100.00 civil penalty for its failure to maintain information required by Wyo. Stat. § 17-28-107(a)(v)(A) as related to one business entity. ACG shall also be assessed a \$100.00 civil penalty for its failure to maintain information required by Wyo. Stat. § 17-28-107(a)(v)(B) as related to one business entity. The total civil penalty assessed to ACG for its failure to maintain any information required by Wyo. Stat. § 17-28-107(a)(v)(A) and (B) shall be \$200.00.

#### IV. ORDER

IT IS THEREFORE ORDERED that American Capital Group shall pay a total civil penalty in the amount of \$200.00 as allowed by Wyo. Stat. § 17-28-109(a), due within thirty (30) days of the effective date of this Order.

IT IS FURTHER ORDERED that in the event ACG is unable to pay the total civil penalty ordered herein that ACG's Commercial Registered Agent Registration is immediately revoked.

DONE this 27<sup>th</sup> day of July, 2012.

  
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Max Maxfield  
SECRETARY OF STATE  
State of Wyoming  
State Capitol Building  
Cheyenne, Wyoming 82002-0020  
(307) 777-7378



**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER were served on the 27<sup>th</sup> day of July, 2012, by placing a true and correct copy in the United States Mail, certified return receipt requested, postage prepaid, addressed to the following:

Daniel B. Frank  
Frank Law Office  
519 East 18<sup>th</sup> Street  
Cheyenne, WY 82001

Michael M. Robinson  
Senior Assistant Attorney General  
Office of the Attorney General  
123 Capitol Building  
Cheyenne, WY 82002



Secretary of State's Office