

**STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE**

IN RE:

Docket No. INS 05 - 209

JOHN FLAGG JOHNSTON

and

CONSENT AGREEMENT

**GAB ROBINS
NORTH AMERICA, INC.**

INTRODUCTION

- 1) This matter is before the Superintendent of Insurance as a Consent Agreement in connection with the application of John Flagg Johnston for Maine resident insurance adjuster licensing.
- 2) The Maine Insurance Code regulates persons who offer or sell insurance products and services in the State of Maine, including adjusters. The Superintendent of Insurance has jurisdiction over this matter pursuant to the Insurance Code generally, Title 24-A Maine Revised Statutes Annotated, and in particular, 24-A M.R.S.A. §§12-A, 211, 220, 1411, 1413, 1417, 1420-K, 1422, 1425 and 1472. This matter is also entered into as a consent agreement under the authority of 10 M.R.S.A. §8003 (5), to resolve, in lieu of an adjudicatory proceeding, the matters referenced below. The parties to this Consent Agreement and Order are John Flagg Johnston; GAB Robins North America, Inc.; the Maine Superintendent of Insurance; and the Maine Office of the Attorney General.

FINDINGS OF FACT

- 3) John Flagg Johnston is an applicant for licensing in Maine as a resident insurance Adjuster. He is employed by GAB Robins North America, Inc., a foreign corporation licensed in Maine as an Adjuster firm under License # AFR 323.
- 4) Mr. Johnston's business address of record, as reflected in Bureau records, is:

GAB Robins
PO Box 8008
Bangor, ME 04402-8008

- 5) The primary Maine business address of GAB Robins North America, Inc. (hereafter referred to as "GAB Robins"), as reflected in Bureau records, is:

89 Mussey Rd.
Scarborough, ME 04074

6) The Bureau of Insurance received Mr. Johnston's application for Adjuster licensing on April 18, 2002.

7) Item "K" on the application form for Adjuster license which Mr. Johnston filed with the Superintendent required an answer to the following question: "Have you ever been convicted of, or pled nolo contendere (no contest) to any misdemeanor or felony, or do you currently have pending against you any misdemeanor or felony charges?"

8) Mr. Johnston answered "Yes" to Item K on his application for Adjuster license.

9) The application included Mr. Johnston's signature, dated "4-18-02," under the following text:

"I hereby authorize and request, every person, firm, organization, corporation, governmental agency, court or any other entity having control of any documents, records, or other information pertaining to myself, to furnish copies, or reports of same to the Superintendent of Insurance or State Police of the State of Maine, or to the designee of either of them....

"I hereby state the above answers are complete and true."

10) Documentation in connection with this application, including correspondence which Mr. Johnston delivered to the Bureau on October 2, 2002, established that in the year 2000, Mr. Johnston had been convicted of five Class D (misdemeanor) counts under 36 M.R.S.A. §184 of "Failure to truthfully account for and pay over collected sales tax." This matter had developed as a result of a convenience store which Mr. Johnston had previously owned.

11) Under 24-A M.R.S.A. §1417 and §1420-K(1)(F), the superintendent may, after notice and opportunity for hearing, deny an application for an adjuster's license based upon a conviction in court of any offense under Title 5 M.R.S.A. §5301, which includes among the convictions for which such actions are authorized: "Convictions for which incarceration for less than one year may be imposed and which involve dishonesty or false statement"

12) Mr. Johnston's Class D convictions in 2000 for failure to truthfully account for and pay over collected sales tax, referenced above, constitute a conviction for which incarceration for less than one year may be imposed, and, relative to the time of application, occurred within the time limits established under 5 M.R.S.A. §5303.

13) Under the Insurance Code, including 24-A M.R.S.A. §§1425 and 1426, the Superintendent and Bureau could not issue the license until investigating and determining that the applicant was qualified for the license; therefore it was necessary to review whether Mr. Johnston's convictions involved "dishonesty or false statement," which would constitute statutory grounds for denying his adjuster license under 24-A M.R.S.A. §1417 and §1420-K(1)(F), and 5 M.R.S.A. §5301.

14) On a subsequent visit to the Bureau, Mr. Johnston asked whether his license application had been reviewed, and was advised that it had not as of that time.

15) Bureau staff investigated the legal and factual questions regarding the convictions referenced above, leading to the conclusion that it was likely that the convictions constituted grounds for denying the application during the time limits set forth in 5 M.R.S.A. §5303.

16) The Superintendent and Bureau did not issue the license pursuant to Mr. Johnston's application, nor deny the license, which left the application in pending status.

17) Having received an independent indication that Mr. Johnston remained employed at GAB Robins and was potentially acting in the capacity of an adjuster, an attorney on the staff of the Bureau requested confirmation of such information, by letter to Mr. Johnston dated January 24, 2005.

18) Bureau staff and Mr. Johnston communicated further by telephone and letter, and Bureau staff met personally with Mr. Johnston and management representatives of GAB Robins on March 24, 2005.

19) Mr. Johnston had presumed that he was licensed when he did not hear otherwise from the Bureau, and the compliance procedures used by GAB Robins failed to identify the lack of a license, thereby allowing Mr. Johnston to function in a capacity requiring licensing, without in fact such license being issued.

CONCLUSIONS OF LAW

20) Under 24-A M.R.S.A. §1411(2), a person may not act as or purport to be an adjuster unless licensed as an adjuster.

21) Mr. Johnston has acted as and purported to be an adjuster without first being issued a license.

22) Under 24-A M.R.S.A. §1413(3), a business entity has no authority to act on its own without an individual licensee, and a license authority held by an individual licensee employed by a business entity does not transfer to other employees within that business entity.

23) GAB Robins acted beyond the scope of its business entity license when Mr. Johnston acted in its name as an adjuster without first being issued a license.

24) Under 24-A M.R.S.A. §1413(3), every business entity licensed in Maine as an adjuster firm, through a designated responsible individual, shall ensure that every individual acting in the name of the entity does not act beyond the scope of that individual's license.

25) GAB Robins's procedures allowed Mr. Johnston to operate as an adjuster without ensuring that he was properly licensed in that capacity.

26) Under 24-A M.R.S.A. §§12-A and 1420-K(1)(A), the above facts constitute grounds for denial of the pending individual license application, suspension or revocation of the business

entity license, or other appropriate action in either case, including the imposition of a civil penalty.

COVENANTS

27) John Flagg Johnston, GAB Robins North America, Inc., the Maine Bureau of Insurance, and the Maine Department of the Attorney General agree to the following.

28) This Consent Agreement is entered into in accordance with 10 M.R.S.A. § 8003(5)(B) and is not subject to review or appeal. This Consent Agreement is enforceable by an action in the Superior Court.

29) At the time of executing this Consent Agreement, Mr. Johnston and GAB Robins North America, Inc. will remit to the Maine Bureau of Insurance a joint and several civil penalty in the amount of \$3,000.00, payable to the Treasurer of the State of Maine.

30) Mr. Johnston will promptly update all information provided in his initial application to the Maine Bureau of Insurance, and will answer all questions contained in the application form which is currently used, a blank copy of which is attached.

31) In consideration of the applicant's execution of this Consent Agreement, and upon review of the updated application information required by Paragraph 31 above, the State of Maine Bureau of Insurance shall issue the Resident Adjuster license for which he has applied, provided the updated information required by Paragraph 31 does not indicate any other grounds for denying such application. Under the time limits set forth at 5 M.R.S.A. §5303, the misdemeanor convictions disclosed in Mr. Johnston's application no longer constitute independent grounds for license denial.

32) GAB Robins will review and revise its licensing and compliance procedures to ensure that individual licenses are properly tracked and accounted for, and will file a written report with the Superintendent no later than six months from the effective date of this Consent Agreement. Such report will outline in detail the specific procedures reviewed and steps taken to update the procedures, and may be followed, in the Superintendent's discretion, by a meeting to further discuss and evaluate these procedures.

33) Mr. Johnston and GAB Robins understand and acknowledge that this Agreement will constitute a public record within the meaning of 1 MRSA § 402, and will be available for public inspection and copying as provided for by 1 MRSA § 408, and will be reported to the NAIC "RIRS" database.

34) In consideration of the individual applicant's and business entity licensee's execution of and compliance with the terms of this Consent Agreement, the Superintendent of Insurance, Bureau of Insurance, and Department of the Attorney General agree to forgo pursuing further disciplinary measures or other civil or administrative sanction for the actions described in this Consent Agreement, other than those agreed to herein. However, should Mr. Johnston or GAB Robins violate this Consent Agreement, either of them may be subject to any available legal

remedy for the violation, including without limitation the suspension or revocation of all licenses issued to the applicant under the Maine Insurance Code.

35) Nothing in this Agreement shall affect the rights or interests of any person who is not a party to this Agreement.

Execution page follows:

John Flagg Johnston

Dated: _____, 2005

John Flagg Johnston

State of Maine, _____, ss

Subscribed and sworn to before me
this _____ day of _____, 2005.

Notary Public

(printed name)

GAB Robins North America, Inc.

Dated: _____, 2005

By: _____

(printed name)

Its: _____

State of _____, _____, ss

Subscribed and Sworn to before me
this _____ day of _____, 2005

Notary Public

(printed name)

THE MAINE SUPERINTENDENT OF INSURANCE

Dated: _____, 2005

Alessandro A. Iuppa, Superintendent

FOR THE DEPARTMENT OF THE ATTORNEY GENERAL

Dated: _____, 2005

Assistant Attorney General

(printed name)