

STATE OF ARIZONA
Department of Insurance and Financial Institutions
FILED May 7, 2024 by AS

STATE OF ARIZONA

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

In the Matter of:

MICHAEL A. ROMAN

(National Producer License No. 20865820)

Respondent

No. 23A-095-INS

ORDER

On April 11, 2024, the Office of Administrative Hearings, through Administrative Law Judge Jenna Clark, issued an Administrative Law Judge Decision (“Recommended Decision”). The Arizona Department of Insurance and Financial Institutions’ (“Department”) Executive Deputy Director (“EDD”) received the Recommended Decision on the same date, a copy of which is attached and incorporated by reference. Respondent failed to accept the Recommended Decision within ten days of receipt. Therefore, the EDD has reviewed the Recommended Decision and enters the following:

1. The Department ADOPTS the Findings of Fact;
2. The Department ADOPTS the Conclusions of Law;
3. The Department ADOPTS the Recommended Order; and
4. The Department ORDERS that:
 - Michael A. Roman shall immediately pay to the Department a civil money penalty in the amount of one hundred dollars (\$100.00).
 - It is further ordered that if Michael A. Roman fails to pay the civil money penalty within thirty (30) days following the effective date of this Order, his Arizona insurance producer license, National Producer Number 20865820, shall be suspended effective the following day after the deadline to pay the civil money penalty. Michael A. Roman’s Arizona insurance producer

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license shall remain suspended until the Department receives a civil money penalty payment from Michael A. Roman.

NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes (“A.R.S.”) § 41-1092.09, Respondent may request a rehearing or review with respect to this Order by filing a written motion with the Department within 30 days after the date of this Order, setting forth the basis for relief under Arizona Administrative Code R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to the Superior Court.

Respondent may appeal the final decision of the Department to the Superior Court of Maricopa County for judicial review, pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office of Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

DATED and EFFECTIVE this 7th day of May, 2024.

Barbara D. Richardson

Barbara D. Richardson
Cabinet Executive Officer
Executive Deputy Director
Arizona Department of Insurance and Financial Institutions

1 ORIGINAL of the foregoing filed electronically
this 8th day of April, 2024, to:

2 Jenna Clark, Administrative Law Judge
3 <https://portal.azoah.com/submission>
4 Office of Administrative Hearings

5 COPY of the foregoing delivered the same date, to:

6 Deian Ousounov, Chief Financial Deputy Director
7 Alena Caravetta, Regulatory Legal Affairs Officer
8 Ana Starcevic, Unit Project Specialist
9 Steven Fromholtz, Licensing Division Manager
10 Linda Lutz, Legal Assistant
11 Aqueelah Currie, Licensing Supervisor
12 Arizona Department of Insurance and Financial Institutions
13 100 North 15th Avenue, Suite 261
14 Phoenix, Arizona 85007

15 COPY mailed the same date by U.S First Class and
16 Certified Mail, Return Receipt Requested, to:

17 Michael A. Roman
18 4747 E. Elliott Rd., 29-452
19 Phoenix, AZ 85044
20 Respondent 9489 0090 0027 6556 3623 53

21 COPY sent via electronic mail the same date, to:

22 Michael A. Roman
23 FRmike11@yahoo.com
24 Respondent

25 Zachary Howard, Assistant Attorney General
26 Zachary.Howard@azag.gov
AdminLaw@azag.gov
Attorney for the Department

Ana Starcevic

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 23A-095-INS

Michael A. Roman
(National Producer License No. 20865820)
Respondent.

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARING: April 10, 2024 at 9:00 AM.

APPEARANCES: Assistant Attorney General Zachary Howard, Esq. appeared on behalf of the Arizona Department of Insurance and Financial Institutions (“Department”) with Aqueelah Currie as a witness. Michael Roman (“Respondent”) appeared on his own behalf. Susan Hack observed.

ADMINISTRATIVE LAW JUDGE: Jenna Clark.

EXHIBITS ADMITTED INTO EVIDENCE: The NOTICE OF HEARING, Department Exhibits 1-8, and Respondent Exhibit A were admitted into the evidentiary record.

After review of the hearing record in this matter, the undersigned Administrative Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this RECOMMENDED ORDER to the Director of the Department.

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. On November 20, 1991, the Superior Court of California, Santa Barbara County, convicted Respondent of Petty Theft, a misdemeanor.¹

2. On September 27, 2023, Respondent submitted an application for a Resident Insurance Producer license through the National Insurance Producer Registry to the Department.²

a. Respondent answered “No” to Questions #1A and #1B of the Background Questions section of the application³, which ask:

1A) Have you ever been convicted of a misdemeanor, had a judgement withheld or deferred, or are you currently charged with committing a misdemeanor?

¹ See Department Exhibit 2.

² See Department Exhibit 1.

³ *Id.*

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1B) Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?

b. Respondent also swore to the following Attestation at the end of the application, in pertinent part:

I hereby certify under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is ground for license revocation or denial of the license and may subject me to civil or criminal penalties.

3. On or about October 21, 2023, the Department mailed Respondent a notification that he possible failed to disclose his criminal history in his application.⁴ The Department asked Respondent to submit a written statement and copies of all documents related to his criminal proceeding(s) within fourteen (14) days.⁵

4. On October 23, 2023, Respondent provided the Department with the following written explanation,⁶ in pertinent part:

In 2010 was going through some tough financial times. A loan modification was unsuccessful due to not enough income/decrease in income. I was unable to make the payments and eventually lost the home. Criminal disclosure: I totally forgot about this action taken until you brought it up to my attention. I was convicted in Dec 1991 for petty theft(misdemeanor) I was in possession of a stolen wallet that I had found and was emptied by whoever had took it. At the time I decided not to fight the offense because it was out of town and it was easier to pay the fine. I was young and immature at the time and have grown up since.
(All errors in original.)

5. On or about October 30, 2023, the Department notified Respondent that he was free to withdraw his application and resubmit a new application, or proceed with his pending application.⁷

6. On October 30, 2023, Respondent asked the Department to proceed with the processing of his pending application.⁸

⁴ See Department Exhibit 3.

⁵ *Id.*

⁶ See Respondent Exhibit A.

⁷ See Department Exhibit 4.

⁸ See Department Exhibit 5.

1 7. On or about December 01, 2023, the Department mailed Respondent notice
2 that his application for licensure had been denied pursuant to Arizona Revised Statutes
3 ("ARIZ. REV. STAT.") §§ 20-295(A)(1) and (A)(3).⁹

4 8. On December 11, 2023, the Department received an appeal from
5 Respondent regarding the denial of his licensure application.¹⁰

6 9. On February 12, 2024, the Department referred the matter to the Office of
7 Administrative Hearings ("OAH"), an independent state agency, for an evidentiary hearing
8 to determine whether grounds exist for the Department to assess a civil money penalty
9 of two hundred and fifty dollars (\$250.00) against Respondent based on the alleged
10 statutory violation(s).

11 10. On February 22, 2024, the Department issued a NOTICE OF HEARING, setting
12 a hearing on April 10, 2024, at 9:00 a.m.¹¹

13 **HEARING EVIDENCE**

14 11. At the hearing, the Department called Aqueelah Currie, its Licensing
15 Supervisor, as a witness. Respondent testified on his own behalf. The substantive
16 evidence of record is as follows:

- 17 a. Providing protection to consumers and businesses in the statewide
18 insurance marketplace is paramount to the Department.
- 19 b. Part of the processing for Respondent's application for a Resident
20 Insurance Producer license included forwarding this fingerprints to the
21 Arizona Department of Public Safety ("DPS") for a background check, which
22 was returned back to the Department in October 2023.
- 23 c. On December 22, 2023, the Department issued National Producer No.
24 20865820 to Respondent.¹² The license has been renewed through August
25 31, 2027.

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28 ⁹ See Department Exhibit 6.

29 ¹⁰ See Department Exhibit 7.

¹¹ See NOTICE OF HEARING.

30 ¹² See <https://sbs.naic.org/solar-external-lookup/lookup?jurisdiction=AZ&searchType=Licensee&entityType=IND&lastName=Roman&firstName=Michael&licenseNumber=20865820>.

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d. Respondent testified that he had failed to disclose his 1991 conviction for petty theft because he had “forgotten” about it, as it had occurred “over 30 years ago” when he was 18 years of age.

ADDITIONAL EVIDENCE

e. On June 24, 2009, Respondent submitted a Loan Originator Application to the Department through the National Mortgage Licensing System and Registry (“NMLS”).¹³

f. Respondent answered “No” to Question (F) of the Criminal Disclosure section of the application¹⁴, which asked:

(1) Have you ever been convicted of or plead guilty or nolo contendere (“no contest”) in a domestic, foreign, or military court to a misdemeanor involving: financial services-related business; any fraud, false statements, or omissions; any theft or wrongful taking of property; bribery; perjury; forgery; counterfeiting; extortion; or a conspiracy to commit any of these offenses?

Respondent also swore to the following Oath at the end of the application, in pertinent part:

I ... make oath and say that I executed this application on my own behalf, and agree to and represent (1) that the information and statements continued herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part of this application, are current, true, accurate and complete and are made under the penalty of perjury, or un-sworn falsification authorities, or similar provisions as provided by law.

g. On April 19, 2010, the Department issued Loan Originator License No. 0912071 to Respondent.¹⁵ The license has been renewed through an unknown date in 2024.¹⁶

h. Respondent testified that he had been confused by Criminal Disclosure question (F) in the Loan Originator application, as he had understood the inquiry to be singular and pertaining solely to “financial services-related business.”

¹³ See Department Exhibit 8.

¹⁴ *Id.*

¹⁵ See <https://www.nmlsconsumeraccess.org/EntityDetails.aspx/INDIVIDUAL/182425>.

¹⁶ *Id.*

- 1 i. On or about September 20, 2012, believing that he may have misinterpreted
2 question (F), Respondent contacted the Superior Court of California, Santa
3 Barbara County, to request a copy of his criminal record(s) in Case No.
4 411913, which were provided on or about September 28, 2012.¹⁷
5 Respondent admitted, however, that he nonetheless continued to answer
6 "no" to substantially similar inquiries on new applications, renewals, and
7 related recertifications.
- 8 j. Per Respondent, he had not withdrawn the underlying application because
9 he would have had to retake a requisite examination and pay for related
10 expenses, which he could not afford. Respondent has four (4) additional
11 other jobs, and obtained his National Producer License in the hopes of
12 increasing his income.

13 CLOSING ARGUMENTS

14 12. In closing, Respondent argued that he had be ensnared into a money civil
15 penalty due to his misunderstanding of a complex question and forgetting a conviction
16 that was several decades old. Although Respondent admitted to having been convicted,
17 and further having failed to disclose said conviction, he essentially argued that his
18 omission was *di minimis* and did not warrant discipline. Respondent opined that because
19 he had not acted intentionally, that the Tribunal hold no violation of ARIZ. REV. STAT. §§
20 20-295(A)(1) or 20-295(A)(3) had been committed, and thusly the Department was
21 prohibited from assessing a civil penalty of any kind in this matter.

22 13. In closing, the Department argued that it had sustained its burden of proof.
23 Specifically, the Department argued that the record reflected Respondent had a criminal
24 conviction that he failed to disclose, and in doing so had been issued licensure. While the
25 Department conceded that Respondent's omission(s) were likely unintentional, the
26 Department argued that intent was not a requisite part of the applicable statute(s), and
27 that grounds to take disciplinary action against National Producer License No. 20865820.

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¹⁷ See Department Exhibit 2.

CONCLUSIONS OF LAW

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2 1. This matter lies with the Department’s jurisdiction and was properly brought
3 before OAH for adjudication.¹⁸

4 2. The Department bears the burden of proof to establish cause to discipline
5 Respondent’s National Producer License.¹⁹ Respondent bears the burden of persuasion
6 on all mitigating evidence by the same evidentiary standard. The standard of proof on all
7 issues in this matter is that of a preponderance of the evidence.²⁰

8 3. A preponderance of the evidence is:

9 The greater weight of the evidence, not necessarily established
10 by the greater number of witnesses testifying to a fact but by
11 evidence that has the most convincing force; superior
12 evidentiary weight that, though not sufficient to free the mind
wholly from all reasonable doubt, is still sufficient to incline a fair
and impartial mind to one side of the issue rather than the other.

13 BLACK’S LAW DICTIONARY 1373 (10th ed. 2014).

14 4. ARIZ. REV. STAT. § 20-295(A)(1) provides, in pertinent part, that the director
15 may impose a civil penalty in accordance with subsection F for “[p]roviding incorrect,
16 misleading, incomplete or materially untrue information in the license application.”

17 5. ARIZ. REV. STAT. § 20-295(A)(3) provides, in pertinent part, that the director
18 may impose a civil penalty in accordance with subsection F for “[o]btaining or attempting
19 to obtain a license through misrepresentation or fraud.”

20 6. ARIZ. REV. STAT. § 20-295(F) provides that the director may “Impose a civil
21 penalty of not more than two hundred fifty dollars for each unintentional failure or
22 violation.”

23 7. In the case at bar, Respondent admitted to unintentionally omitting his
24 misdemeanor conviction from 1991 on his 2023 Resident Insurance Producer license
25 application. Thus, the Department has sustained its burden of proof as to whether
26 grounds exist to assess a civil money penalty against Respondent.
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29 ¹⁸ See ARIZ. REV. STAT. §§ 20-282 and 41-1092 et seq.

30 ¹⁹ See ARIZ. REV. STAT. § 41-1092.07(G)(1).

²⁰ See ARIZ. ADMIN. CODE R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

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