

OCT 14 1999

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY B.B.

In the Matter of:)	Docket No. 99A-165-INS
)	
MARK JAMES COLBY,)	ORDER
)	
Petitioner.)	
)	
_____)	

On October 6, 1999, the Office of Administrative Hearings, through Administrative Law Judge Casey J. Newcomb submitted a Recommended Decision of the Administrative Law Judge ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The recommended findings of fact and conclusions of law are adopted.
2. The Department's denial of the Petitioner's Application is upheld.

NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Office of Administrative Hearing within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

The final decision of the Director may be appealed 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

.....

1 Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal,
2 pursuant to A.R.S. §41-1092.10.

3 DATED this 14th day of October, 1999.

4 

5 _____
6 Charles R. Cohen
7 Director of Insurance

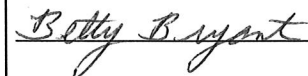
8 COPY of the foregoing mailed
9 this 14th day of October, 1999 to:

10 Lewis D. Kowal, Administrative Law Judge
11 Office of Administrative Hearings
12 1400 West Washington, Suite 101
13 Phoenix, Arizona 85007

14 Sara M. Begley, Deputy Director
15 Gerrie L. Marks, Executive Assistant for Regulatory Affairs
16 Catherine O'Neil, Consumer Legal Affairs Officer
17 John Gagne, Assistant Director
18 Maureen Catalioto, Supervisor
19 Department of Insurance
20 2910 North 44th Street, Suite 210
21 Phoenix, Arizona 85018

22 Shelby L. Cuevas
23 Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926
Attorney for the Department

Mark James Colby
610 East Mohave Road, Apartment #109
Tucson, Arizona 85705
Petitioner



1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2 In the Matter of:

Docket No. 99A-165-INS

3 **MARK JAMES COLBY,**

**RECOMMENDED DECISION
OF THE ADMINISTRATIVE
LAW JUDGE**

4
5 Petitioner.

6
7
8 On September 29, 1999, a hearing was held on the Petitioner's appeal of the
9 Department's denial of the Petitioner's application for a property and casualty insurance
10 agent's license. Assistant Attorney General Shelby Cuevas represented the Arizona
11 Department of Insurance (the "Department"). Mark James Colby (the "Petitioner")
12 appeared on his own behalf. Evidence and testimony were presented. Based upon a
13 review of the entire record, the following Findings of Fact, Conclusions of Law and
14 Recommended Decision are made.
15

16 **FINDINGS OF FACT**

- 17 1. On or about June 21, 1999, the Petitioner filed an application for a property and
18 casualty insurance agent's license (the "Application") with the Department. See
19 Department's Exhibit 1. The Petitioner disclosed several felony convictions on his
20 Application. See Department's Exhibit 1a.
21
- 22 2. On or about November 25, 1974, the Pima County Grand Jury issued an indictment
23 in State of Arizona v. Mark James Colby, Case No. A26818, accusing the Petitioner of
24 the Unlawful Sale of Narcotics, to wit: Heroin. See Department's Exhibit 2a. The
25 Petitioner subsequently pled guilty to a felony charge of possession of narcotics and
26 received five years of probation. The Petitioner violated his probation twice by using
27 drugs. On or about July 11, 1977, the Court entered a Minute Entry, in Case No.
28 A26818, revoking the Petitioner's probation and sentencing him to serve a term of not
29 less than two years nor more than three years in the Arizona State Prison. See
30

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Phoenix, Arizona 85007
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1 Department's Exhibit 2c. The Petitioner served two years and was released on June 5,
2 1979.

3 3. On or about September 5, 1980, the Pima County Grand Jury issued an indictment
4 in State of Arizona v. Mark James Colby, Case No. CR-04196, accusing the Petitioner
5 (and others) of the Unlawful Sale of a Dangerous Drug, to wit: LSD. See Department's
6 Exhibit 2d. On or about December 9, 1981, the Petitioner was convicted of Possession
7 of Marijuana, a misdemeanor; and the Facilitation of the Sale of a Dangerous Drug,
8 LSD, an undesignated felony. See Department's Exhibit 2e. The Court placed the
9 Petitioner on probation for a concurrent period of 3 years, ordered him to pay attorney
10 costs, pay restitution in the amount of \$600.00 and pay for probationary services. Id.
11 The Court further ordered the Petitioner to participate in a urine screening program. Id.
12 The Petitioner ultimately violated the terms of his probation and was sentenced to 1.9
13 years in the Arizona State Prison. This sentence began on or about April 18, 1983.
14 Furthermore, the above referenced undesignated felony was designated a felony.
15

16 4. In the early part of 1981, the Petitioner broke into a home in Stark County, Canton,
17 Ohio. See Department's Exhibit 1a. The Petitioner was convicted of felony burglary
18 and received a sentence of three years probation. Id. The Petitioner also served two
19 months in the Mansfield Reformatory and was subsequently extradited back to Tucson,
20 Arizona. Id. The Pima County Court found reasonable cause to believe that on or
21 about March 1, 1983, the Petitioner had violated his probation by committing the
22 offenses of Theft over \$1,000.00, Possession of Burglary Tools and Possession of
23 Stolen Property. See Department's Exhibit 2f.
24

25 5. On or about March 11, 1983, the Pima County Grand Jury issued an Indictment in
26 State of Arizona v. James Jonathon Ramirez and Mark James Colby, Cause No. CR-
27 10309, accusing the Petitioner of 2 counts of Burglary in the Third Degree, a Class 5
28 Felony and 1 count of Theft, a Class 3 Felony. See Department's Exhibit 2g. The
29 Petitioner was under the influence of drugs and alcohol when he was caught in the act.
30

1 See Department's Exhibit 1a. On or about October 18, 1983, the Court sentenced the
2 Petitioner to serve a period of 5 years for each of the two counts of Burglary in the Third
3 Degree and 11.25 years for the one count of Theft of over \$1,000.00. See
4 Department's Exhibit 2h. The sentences were to run concurrently with credit for the 232
5 days that the Petitioner had already served. Id. The Petitioner ultimately served 7.5
6 years in prison for these offenses. See Department's Exhibit 1a.

7
8 6. In September of 1991, the Petitioner was arrested for forging his mother's checks to
9 buy drugs. See Department's Exhibit 1a. A Complaint, Indictment or Information was
10 filed in State of Arizona v. Mark James Colby, Cause No. CR-35663, charging the
11 Petitioner with 5 counts of Forgery, a Class 4 Felony. See Department's Exhibit 2i. On
12 or about February 25, 1992, the Court found the Petitioner guilty of 5 counts of Forgery,
13 a Class 4 Felony, and placed him on probation for a period of 4 years. See
14 Department's Exhibit 2j. On or about September 14, 1992, the Court modified its Order
15 to require the Petitioner to complete a Salvation Army Residential Treatment Program.
16 See Department's Exhibit 2j.

17
18 7. On or about August 17, 1994, the Pima County Grand Jury issued an Indictment in
19 State of Arizona v. Mark James Colby, Cause No. CR-46569, accusing the Petitioner of
20 one count of Burglary in the Second Degree, a Class 3 Felony and one count of Theft
21 by Control and/or by Controlling Stolen Property, a Class 5 Felony. See Department's
22 Exhibit 2k. On or about June 21, 1995, a Disposition Report was filed. See State's
23 Exhibit 2m. The Disposition Report shows that the Petitioner was charged with
24 Burglary, a felony, and Theft, a misdemeanor. Id. The Petitioner was convicted on the
25 misdemeanor theft and was sentenced to serve a jail term of 6 months. Id.

26
27 8. In August of 1993, the Petitioner forged the checks belonging to Ms. Geraldine
28 Davidson. See Department's Exhibit 1a. The Petitioner testified that Ms. Davidson
29 allowed him to stay at her home when he was homeless. On or about July 18, 1995,
30 the Pima County Grand Jury issued a Direct Indictment in State of Arizona v. Mark

1 James Colby, Cause No. CR-50105, charging the Petitioner with 3 counts of Forgery, a
2 Class 4 Felony. See Department's Exhibit 2h. The Petitioner pled guilty to one felony
3 count of attempted forgery. See Department's Exhibit 1a. The Petitioner was
4 sentenced to serve a prison term of 2.5 years, pay to the Victim Fund the amount of
5 \$100.00 and make restitution in the amount of \$700.00. See Department's Exhibit 2q.
6 The Petitioner was ultimately released on July 31, 1997.

7
8 9. On or about July 7, 1999, the Department denied the Petitioner's Application. On or
9 about August 5, 1999, the Petitioner appealed the Department's denial and requested a
10 hearing in this matter.

11 10. At the hearing in this matter, the Petitioner testified that he has had a long history
12 of drug abuse. The Petitioner admitted that he has hurt numerous friends and family
13 members. However, the Petitioner testified that he decided to turn his life around in
14 July of 1997. The Petitioner testified that he applied for assistance with the Department
15 of Economic Security's Vocational Rehabilitation Services Program (the "Program") in
16 September of 1997. The Petitioner testified that the Program required that he
17 participate in group counseling, attend 12 step meetings and remain drug free.
18

19 11. The Petitioner testified that he entered into a training and development program at
20 Pima Community College. The Petitioner successfully earned an Office Specialist
21 degree and an Office Assistant II degree in January of 1999. The Petitioner testified
22 that he desires one more opportunity to change his life around for the better. The
23 Petitioner testified that obtaining an insurance license would allow him to be a more
24 productive member of society.
25

26 12. The Petitioner admitted that he had a drug relapse in March of 1998. The
27 Petitioner testified that he relapsed because he had difficulty accepting his success at
28 the Program. The Petitioner testified that he now has a counselor and support system
29
30

1 to deal with successes and failures. The Petitioner testified that he is still required to
2 take random urinalysis tests.

3 13. Mike Brown is a licensed insurance agent with AllState. Mr. Brown testified that he
4 entered into an agreement with the Arizona Department of Economic Security,
5 Rehabilitation Services Administration to provide training for the Petitioner as an
6 insurance agent. Mr. Brown testified that he initially was apprehensive about hiring the
7 Petitioner because of the Petitioner's extensive criminal history. However, Mr. Brown
8 testified that he met with the Petitioner and realized that the Petitioner was sincere
9 about rehabilitating his life. Mr. Brown testified that he can usually determine if a
10 person is sincere about recovering from a drug problem because he is a sponsor in
11 several recovery or rehabilitation programs.
12

13 14. Mike Brown testified that he hired the Petitioner in February of 1999. Mr. Brown
14 testified that the Petitioner had some difficulties in the beginning but he rose to the
15 challenge. Mr. Brown testified that the Petitioner is a very good employee. Mr. Brown
16 testified that the Petitioner is reliable, dependable, competent and knowledgeable about
17 the insurance industry. Mr. Brown further testified that the Petitioner interacts well with
18 the public and can be trusted with large sums of money. Mr. Brown testified that he
19 would hire the Petitioner for a licensed insurance agent position.
20

21 CONCLUSIONS OF LAW

22
23 1. The Petitioner has the burden of proof, and the standard of proof on all issues is by a
24 preponderance of the evidence. Culpepper v. State, 187 Ariz. 431, 930 P.2d 508 (App.
25 1996). A "preponderance of the evidence is such proof as convinces the trier of fact that
26 the contention is more probably true than not." Morris K. Udall, *Arizona Law of Evidence*,
27 §5 (1960). It "is evidence which is of greater weight or more convincing than the
28 evidence which is offered in opposition to it; that is, evidence which as a whole shows that
29
30

1 the fact sought to be proved is more probable than not." *Black's Law Dictionary*, 1182
2 (6th ed. 1990).

3 2. The Petitioner has a criminal history that includes six felony convictions for forgery,
4 burglary, theft, possession of drugs, and the facilitation of the sale of a dangerous drug.
5 The undersigned Administrative Law Judge concludes that the Petitioner's extensive
6 criminal history is a "record of conviction by final judgment of a felony involving moral
7 turpitude" within the meaning of A.R.S. §§ 20-290(B)(6) & 20-316(A)(6).
8

9 3. The Petitioner has made a remarkable turnaround in the past two years (except for
10 one drug relapse). He has attended college, earned two degrees, and has flourished at
11 his current employment. More importantly, the Petitioner has retained the services of a
12 counselor and has created a therapeutic support system to deal with his drug problem.
13 However, the undersigned Administrative Law Judge cannot ignore that the Petitioner is
14 only a few years removed from a lifetime of criminal behavior and illegal drug use that has
15 emotionally and financially damaged numerous members of the public. Furthermore, the
16 Petitioner's last relapse occurred only 1.5 years ago. Accordingly, the undersigned
17 Administrative Law Judge concludes that valid grounds do exist for the Department to
18 deny the Petitioner's Application.
19

20 **RECOMMENDED DECISION**

21 Based upon the foregoing, it is recommended that the Department's denial of the
22 Petitioner's Application be upheld.

23 Done this day, October 6, 1999.

24 

25 _____
26 Casey J. Newcomb
27 Administrative Law Judge
28
29
30

1 Original transmitted by mail this
2 7 day of October, 1999, to:

3
4 Mr. Charles R. Cohen
5 Department of Insurance
6 ATTN: Curvey Burton
7 2910 North 44th Street, Ste. 210
8 Phoenix, AZ 85018

9
10 By Chris Crawford Thomas
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