

JUL 21 2006

STATE OF ARIZONA
DEPARTMENT OF INSURANCE
DEPT OF INSURANCE
BY

In the Matter of:

KEVIN DEMOND HAMLETT

Petitioner.

No. 06A-075-INS

ORDER

On July 18, 2006, the Office of Administrative Hearings, through Administrative Law Judge ("ALJ") Lewis Kowal, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on July 19, 2006, a copy of which is attached and incorporated by this reference. The Director of the 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. Petitioner's credit insurance producer license application is denied.

NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Respondent may request a rehearing with respect to this order by filling a written motion with the Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis for relief under A.A.C. 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 Superior Court.

Respondent may appeal the final decision of the Director 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).

1 DATED this 20th day of July, 2006.

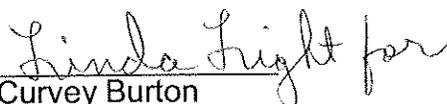
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4 CHRISTINA URIAS, Director
Arizona Department of Insurance

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6 COPY of the foregoing mailed this
21st day of July, 2006 to:

7 Mary Kosinski, Executive Assistant for Regulatory Affairs
8 Catherine O'Neil, Consumer Legal Affairs Officer
9 Steve Fromholtz, Licensing Director
Arizona Department of Insurance
10 2910 North 44th Street, Suite 210
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11 Moira McCarthy
Assistant Attorney General
12 1275 West Washington Street
Phoenix, Arizona 85007-2926

13 Kevin Demond Hamlett
c/o Don Mackey Olds-Cadillac, Inc.
14 815 W. Automall Drive
Tucson, AZ 85705
15 Respondent

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17 
18 Curvey Burton

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2 5. On May 3, 2006, Mr. Hamlett filed a timely appeal of the denial of the Application,
3 resulting in the instant matter being held before the Office of Administrative Hearings.

4 6. On March 14, 2002, Mr. Hamlett entered a plea of guilty to one count of Money
5 Laundering, a Class C felony, in violation of 18 U.S.C. § 1956(a)(1)(B)(i), in *United*
6 *States of America v. Kevin Demon Hamlett*, Docket No. CR-1-02-012-1 ("Docket No.
7 CR-1-02-012-1).

8 7. On January 30, 2003, the Court entered Judgment convicting Mr. Hamlett of one
9 count of Money Laundering in Docket No. CR-1-02-012-1. The Court sentenced Mr.
10 Hamlett to serve a term of 21 months incarceration in a federal facility, and upon
11 release, to serve a three year period of supervised release. The Court also ordered Mr.
12 Hamlett to perform 100 hours of community service and pay a \$4,000.00 fine.

13 8. It was undisputed that Mr. Hamlett is currently on supervised release as a result
14 of his conviction in Docket No. CR-1-02-012-1.

15 9. During the hearing, Mr. Hamlett accepted responsibility for the activities leading
16 up to the above-mentioned conviction.

17 10. Mr. Hamlett testified:

18 a. He was co-owner of Nupe Productions, Inc. ("Nupe"), a
19 company that operated nightclubs and engaged in concert
20 promotions

21 b. Nupe engaged in money laundering that involved 500
22 pounds of marijuana and wire transfers totaling \$451,000.00 that
23 occurred from October 1996 to February 1998.

24 c. He engaged in money laundering to obtain a quick fix for a
25 cash flow problem that Nupe had and acknowledged it was poor
26 judgment to engage in such activities. He performed the money
27 laundering activities because he was young and ambitious and was
28 looking for a "quick fix" for the money crunch.

29 d. He stopped engaging in money laundering and ceased
30 association with such activity in February 1998, before any charges
were made against him.

1 e. After he ceased the money laundering activity, he obtained
2 employment with the finance department at Budget Car and Truck
3 (: "Budget").

4 f. He was employed at Budget when he was convicted of
5 money laundering and Budget was aware of his conviction and
6 sentence. He served 18 months in prison. Upon release from
7 prison, Budget re-hired him.

8 g. His direct supervisor and the general manager of Budget
9 wrote to the Judge on his behalf to aid in his efforts to obtain a
10 favorable sentence in Docket No. CR-1-02-012-1.

11 h. Since his release from prison, he is trying to raise two
12 children, better his life and become part of the community in which
13 he lives.

14 i. He was sentenced to supervision for three years, which will
15 expire in October 2007.

16 j. He has paid about \$1,200.00 of the \$4,000.00 fine and has
17 performed about 40 of the 100 hours community service. He plans
18 to continue making payments on the fine and to complete the
19 community service.

20 k. He is currently employed at Don Mackey Cadillac, Inc. ("Don
21 Mackey, Inc.") in the finance department.

22 l. If he is successful in obtaining his credit insurance
23 producer's license, he will eligible to qualify for a promotion as
24 Director of Financing, a new position.

25 11. In addition to his own testimony, Mr. Hamlett presented two witnesses to
26 establish his good character, Franks Sapone ("Mr. Sapone") and Reverend Elwood
27 McDowell ("Reverend McDowell").

28 12. Mr. Sapone testified:

29 a. He is the general manager of Don Mackey, Inc. and Mr.
30 Hamlett's direct supervisor.

1 b. Mr. Hamlett has been employed with Don Mackey, Inc. for
2 about one year.

3 c. During the hiring process, Mr. Hamlet informed him of his
4 felony conviction.

5 d. Don Mackey ("Mr. Mackey"), the owner of Don Mackey, Inc.
6 knew Mr. Hamlett for about one year prior to Don Mackey, Inc.
7 hiring Mr. Hamlett and had suggested Mr. Hamlet as a candidate
8 for employment in the finance department.

9 e. He was informed by Mr. Mackey of Mr. Hamlett's criminal
10 history.

11 f. He conducted three interviews with Mr. Hamlett and
12 reviewed Mr. Hamlett's work record to see if there would be any
13 problems in hiring Mr. Hamlett in light of the Patriot Act and the
14 internal policies Don Mackey, Inc.

15 g. In his capacity as finance manager, Mr. Hamlett has been
16 entrusted with personal information of customers, handles cash
17 and cash disbursements with no issue, maintains records and is an
18 excellent employee.

19 h. Although he was aware of the nature of the criminal
20 conviction, he does not know the circumstances that gave rise to
21 the conviction

22 i. Don Mackey, Inc. requires at least one finance manager to
23 be licensed.

24 j. Currently, there are two finance managers, one being Mr.
25 Hamlett. The other finance manager has a credit insurance
26 producer's license.

27 13. Reverend Elwood testified:

28 a. He has known Mr. Hamlett for about fifteen years.

29 b. He was introduced to Mr. Hamlet through a former student
30 of his, John Jackson, a co-owner of Nupe.

1 c. He is a pastor at the Trinity Church, where Mr. Hamlet has
2 been a member for about a year. He is pursuing a PHD in clinical
3 psychology and needs ten more graduate hours to complete the
4 required course work.

5 d. Currently, he provides pastoral counseling to Mr. Hamlett
6 one to two times a week, with each session lasting one hour. The
7 sessions began in January 2006 at the request of Mr. Hamlett.
8 Prior to that, since October or November 2005, Mr. Hamlett was
9 involved in a men's support group at the Church that met once a
10 week.

11 e. Over the fifteen years, he has had intermittent contact with
12 Mr. Hamlett.

13 He became aware of the criminal charges about five to six months
14 prior to Mr. Hamlett's criminal conviction.

15 f. When he became aware of the charges, he counseled Mr.
16 Hamlett to move forward with his life and believes he had already
17 done so by changing his employment and by not engaging in the
18 activities that led to the criminal charges.

19 g. Although he knows the general facts surrounding the money
20 laundering conviction, he is unaware of the specific facts, did not
21 know Nupe was involved in money laundering and did not know of
22 the wire transfers.

23 h. He does not believe Mr. Hamlett has any serious
24 psychological issues and believes that Mr. Hamlett is quite mature
25 and "making great progress".

26 14. Mr. Hamlett submitted a character letter authored by Mr. Mackey in support of
27 his appeal of the Department's denial of the Application.

28 15. In the above-mentioned letter, Mr. Mackey states that he approached Mr.
29 Hamlett about a position within his company and was informed at that time about Mr.
30 Hamlett's criminal conviction. He also states that he has observed Mr. Hamlett at work,

1 that Mr. Hamlett works well with people and trusts Mr. Hamlett. He believes all people
2 are entitled to one mistake and that Mr. Hamlett should be given a second chance.

3 CONCLUSIONS OF LAW

4 1. Mr. Hamlett bears the burden of proof and the standard of proof on all issues is
5 by a preponderance of the evidence. A.A.C. R2-19-119.

6 2. A preponderance of the evidence is "evidence of greater weight or more
7 convincing than the evidence which is offered in opposition to it; that is, evidence which
8 as a whole shows that the fact sought to be proved is more probable than not." BLACK'S
9 LAW DICTIONARY 1182 (6th ed. 1990).

10 3. A.R.S. § 20-295(A)(6) provides the Director of the Department with the discretion
11 to deny an insurance producer's license on the basis that the applicant has a felony
12 conviction. The conviction in Docket No. CR-1-02-012-1 established that Mr. Hamlett
13 has been convicted of a felony, within the meaning of A.R.S. § 20-295(A)(6).

14 4. Mr. Hamlett claims to be a different person from the past, he has the burden of
15 establishing that fact. Mr. Hamlett argued that through his testimony and the testimony
16 of character witnesses and letter of character he established himself to be a person of
17 good character who has the requisite qualifications to hold an insurance producer's
18 license.

19 5. The activities underlying the 2003 conviction occurred approximately seven
20 years ago. It is difficult to determine how much time has to pass in order to conclude
21 that a person with a criminal history is rehabilitated

22 6. The letter of character of Mr. Mackey is given little weight because he was not
23 present to be questioned by the Department's counsel or by the Administrative Law
24 Judge and could not be observed by the Judge. Further, due to the content of the
25 letter, the extent of information known by Mr. Mackey, and certain relevant details
26 concerning Mr. Hamlet could not be discerned from the letter.

27 7. The testimony of Mr. Sapone, Reverend McDowell and of Mr. Hamlett were
28 considered and given weight. In the instant matter, the weight of the evidence
29 established that Mr. Hamlett has embarked on a course of conduct of rehabilitation as
30 evidenced by his work history. However, he is still on probation, he has not completed
the court ordered community service nor has he paid the court ordered fine .

1 8. The Administrative Law Judge commends Mr. Hamlet for changing his lifestyle
2 and walking away from the money laundering activities prior to charges having been
3 brought against him. However, he undertook those activities because his company was
4 in need of money and he decided to cease that activity after having benefited from the
5 illegal activity. Mr. Hamlet has been acting in the capacity of finance manager for Don
6 Mackey, Inc. for about one year without incident and has previously worked at Budget
7 in the finance department without incident, which constitutes some evidence that he
8 has changed his ways.

9 9. The serious nature of the conduct that gave rise to the conviction, the fact that
10 the activities occurred over a period of time, that the activities were structured involving
11 a corporation co-owned by Mr. Hamlett, that the activities occurred through
12 approximately ninety wire transfers of involving the total sum of \$450,000.00, that Mr.
13 Hamlett is still on supervised probation are factors that weigh heavily against Mr.
14 Hamlett. Under the circumstances, at this point in time, Mr. Hamlett has not sufficiently
15 demonstrated that he is fully rehabilitated but has demonstrated a concerted effort
16 toward that goal.

17 10. The weight of the evidence of record established that the Department had
18 sufficient grounds to deny the Application pursuant to A.R.S. § 20-295(A)(6) and has
19 exercised that discretion in a reasonable manner.

20 11. Mr. Hamlett has failed to prove by a preponderance of the evidence that the
21 Department's denial of the Application should be reversed.

22 **ORDER**

23 Based on the above, the determination made by the Department to deny the
24 Application is affirmed.

25 Done this day, July 18, 2006.

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28 Lewis D. Kowal
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Original transmitted by mail this
18 day of July, 2006, to:

Department of Insurance
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2910 North 44th Street, Ste. 210
Phoenix, AZ 85018

By Chris Fishback