

NOV 7 2006

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY *Das*

In the Matter of:

RYNE MATTHEW McCARTHY

Respondent.

No. 06A-129-INS

ORDER

On October 31, 2006, the Office of Administrative Hearings, through Administrative Law Judge Thomas Shedden, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on November 3, 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. Respondent's producer's license shall be revoked on the effective date of the Order entered in this matter.

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

1 the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

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DATED this 6th day of November, 2006.


CHRISTINA URIAS, Director
Arizona Department of Insurance


COPY of the foregoing mailed this 7th day of November, 2006 to:

Thomas Shedden, Administrative Law Judge
Office of Administrative Hearing
1400 West Washington, Suite 101
Phoenix, Arizona 85007

Mary Kosinski, Executive Assistant for Regulatory Affairs
Steve Fromholtz, Licensing Supervisor
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

Alyse Meislik
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

Ryne Matthew McCarthy
1889 West Queen Creek, No. 1045
Chandler, Arizona 85249


Curvey Burton

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF ARIZONA
RECEIVED

NOV - 3 2006

In the Matter of:

No. 06A-129-INS

RYNE MATTHEW McCARTHY

ADMINISTRATIVE LAW JUDGE
DECISION
DIRECTOR'S OFFICE
INSURANCE DEPT.

Respondent.

HEARING: October 19, 2006.

APPEARANCES: No one appeared for Mr. McCarthy; Assistant Attorney General Alyce C. Meislik appeared on behalf of the Arizona Department of Insurance.

ADMINISTRATIVE LAW JUDGE: Thomas Shedden

FINDINGS OF FACT

1. On August 18, 2005, the Arizona Department of Insurance ("Department") issued Ryne Matthew McCarty ("Respondent") a credit producer license that expires on December 31, 2008. See Exhibit 2 (license number 207291).
2. On October 6, 2005, the Department mailed to Respondent at his address of record a letter informing him that his fingerprint card was processed and returned to the Department by the Federal Bureau of Investigations, but the fingerprints were "illegible" and the background check could not be completed. See Exhibit 3. In the October 6th letter Department requested that Respondent submit a replacement set of fingerprints and enclosed a blank replacement fingerprint form. The Department provided a deadline of November 10, 2005 for the return of the completed replacement fingerprint form. See Exhibit 3.
3. On November 10, 2005 the October 6th letter was returned to the Department marked "Unclaimed." See Exhibit 3.
4. The Department sent a second request to Respondent requesting that he

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

1. submit a new set of fingerprints. On April 18, 2006 the second letter was returned to the
2 Department marked: "Moved left no address – unable to forward." See Exhibit 4.

3 5. On August 25, 2006 the Department issued a Notice of Hearing setting the
4 matter for October 19, 2006 at 10:00 a.m. The Notice of Hearing was mailed to
5 Respondent's address of record.

6 6. The Notice of Hearing alleged that Respondent's failure to submit a legible set
7 of fingerprints was a violation of A.R.S. § 20-285(F)(2) and § 20-295(A)(1), and that
8 Respondent's failure to inform the Department that his address had changed within 30
9 days of that change was a violation of A.R.S. § 20-286(C)(1). Based on these
10 violations the Department alleged that grounds exist to suspend, revoke or refuse to
11 renew Respondent's license.

12 7. The start of the scheduled hearing was delayed for approximately 15 minutes
13 while awaiting the arrival of any representative on Respondent's behalf. When no
14 representative for Respondent arrived the Administrative Law Judge convened the
15 hearing in Respondent's absence.

16 8. Steven Fromholtz, Producer Licensing Administrator for the Department,
17 testified that the Department has not received a replacement set of fingerprints from
18 Respondent.

19 9. Mr. Fromholtz testified that it is standard procedure to issue an applicant a
20 license prior to the fingerprint-background check because such a check can take 1 to 2
21 months. The Department reviews a fingerprint card only to verify that it is complete and
22 the card is forwarded to the Department of Public Safety and the FBI for processing.

23 10. Mr. Fromholtz testified that a licensee must report any change of address to the
24 Department within 30 days. See *also* Exhibit 2.

25
26 **CONCLUSIONS OF LAW**

27 1. This matter is a disciplinary proceeding in which the Department bears the
28 burden of persuasion. See A.R.S. § 41-1092.07(G)(2). The standard of proof on all
29 issues is that of a preponderance of the evidence. See A.AC. R2-19-119.

1 2. By mailing the Notice of Hearing to Respondent's address of record the
2 Department met the service requirements set forth in A.R.S. § 41-1092.04.

3 3. The Director of the Department required Respondent to submit a full set of
4 fingerprints and Respondent's submission of illegible fingerprints did not satisfy that
5 requirement. See A.R.S. § 20-285(F)(2). Respondent's failure to submit legible
6 fingerprints constitutes a violation of A.R.S. § 20-295(A)(1) by his having failed to
7 provide complete information in the license application.

8 4. The weight of evidence shows that Respondent did not inform the Department
9 that his address had changed within 30 days of that change. See A.R.S. § 20-
10 286(C)(1).


11 5. Respondent's conduct, constitutes violations of any provision of A.R.S., Title 20,
12 within the meaning of A.R.S. § 20-295(A)(2).

13 6. Grounds exist for the Director of the Department to suspend, revoke, or refuse
14 to renew Respondent's license pursuant to A.R.S. §§ 20-295(A)(1) and (A)(2).

15 **ORDER**

16 Based upon the above, Respondent's credit producer license no. 207291 shall
17 be revoked on the effective date of the Order entered in this matter.

18 Done this day, October 31, 2006.

19 
20 _____
21 Thomas Shedden
22 Administrative Law Judge

23 Original transmitted by mail this

24 2 day of November, 2006, to:

25
26 Christina Urias, Director
27 Department of Insurance
28 2910 North 44th Street, Ste. 210
29 Phoenix, AZ 85018

30 By Chris Fickler