

OCT 6 2006

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY *[Signature]*

In the Matter of:

LARRY GONZALES

Petitioner.

No. 06A-153-INS

ORDER

On June 21, 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 June 22, 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. Based on the above, the determination made by the Department to deny the Application is affirmed.

NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Petitioner may request a rehearing with respect to this order by filing 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.

Petitioner 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).

2 DATED this 5th day of October, 2006.

3
4 
5 CHRISTINA URIAS, Director
Arizona Department of Insurance

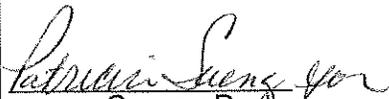
6 COPY of the foregoing mailed this
7 10th day of October, 2006 to:

8 Lewis Kowal, Administrative Law Judge
9 Office of Administrative Hearing
10 1400 West Washington, Suite 101
Phoenix, Arizona 85007

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

14 Alyse C. Meislik
15 Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

16 Larry Gonzales
17 21708 N. 88th Lane
Peoria, Arizona 85382
Petitioner

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20 Curvey Burton

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF ARIZONA
RECEIVED

OCT 9 2006

DIRECTOR'S OFFICE
INSURANCE DEPT.

In the Matter of:

No. 06A-153-INS

LARRY GONZALES,

ADMINISTRATIVE
LAW JUDGE DECISION

Petitioner.

HEARING: September 14, 2006

APPEARANCES: Larry Gonzalez on his own behalf; Assistant Attorney General
Alyse C. Meislik on behalf of the Arizona Department of Insurance

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

-
1. On May 15, 2006, Larry Gonzalez, also known as Lawrence Gonzalez ("Mr. Gonzalez") filed an Application for an insurance adjuster's license ("Application") with the Arizona Department of Insurance ("Department").
 2. Mr. Gonzalez answered "No" to Question B of Section VII on the Application, which asked "Have you EVER had any professional, vocational, business license or certification refused, denied, suspended, revoked or restricted, or a fine imposed by any public authority?"
 3. Mr. Gonzalez answered "No" to Question D of Section VII on the Application, which asked: "Have you EVER had any judgment, order or other determination made against you in any civil, administrative, judicial or quasi-judicial proceeding of any kind in any jurisdiction, including any criminal conviction based on any of the following: ... (2) improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business?... (5) Using fraudulent, coercive or dishonest practices in the conduct of business?; (6) Demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business?; and (7) Forging another's name to any document related to an insurance transaction?"
 4. Section VII on the Application under the heading "Additional Information" located

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

1 at the top of the page, states "Carefully read and respond to each of the following
2 questions. You should provide a "YES" answer even if you believe an incident has
3 been cleared from your record. Willful misrepresentation of any fact required to be
4 disclosed in any application or accompanying statement is a violation of law and a
5 ground to deny your application."

6 5. On July 6, 2006, the Department denied the Application.

7 6. On July 19, 2006, Mr. Gonzalez filed an appeal of the denial determination,
8 which brought this matter before the Office of Administrative Hearings.

9 7. On May 10, 1993, the Department issued a Summary Suspension Order *In the*
10 *Matter of Darrell Sturgill, Jeffery R. Parker, John A. Verdugo, Jr., and Lawrence*
11 *Gonzalez*, Docket No. 8103 ("No. 8103").

12 8. In Docket No. 8103, the Department alleged that Mr. Gonzalez was employed as
13 an agent and sales manager for American National Insurance Company and had
14 prepared and forged signatures on policy surrender forms, forged policyholders'
15 signatures on refund checks and misappropriated or converted funds for his own use.

16 9. During the time referenced in the allegations in Docket No. 8103, Mr. Gonzalez
17 was licensed as a property and casualty and life and disability insurance agent.

18 10. Mr. Gonzalez did not appeal the Suspension Order in Docket No. 8103 and on
19 August 2, 1993, the Department entered an Order finding the allegations set forth
20 therein to be true and revoked Mr. Gonzalez's insurance licenses.

21 11. On September 13, 1993, an indictment was issued by the Grand Jury for the
22 Maricopa County Superior Court in *State of Arizona v. Larry Gonzalez, Jeffrey P. Parker*
23 *and John A. Verdugo, Jr.*, Case No. CR93-07425 ("Case No. 07425").

24 12. The Indictment in Case No. 07425 charged Mr. Gonzalez with one count of
25 Fraudulent Schemes and Artifices, a Class 2 Felony.

26 13. On October 18, 1993, Mr. Gonzalez's plea of guilty in Case No. 07425 to one
27 count of Theft, a class 6 undesignated offense, in violation of A.R.S. §§ 13-1801, 13-
28 1802, 13-701, 13-702, 13-801, 13-802, and 13-812, was filed.

29 14. On November 18, 1993, the Court suspended imposition of sentence and placed
30 Mr. Gonzalez on three years of probation in Case No. 07425. The Court ordered Mr.

1 Gonzalez to pay \$10,009.90 in restitution to American National Insurance Company, to
2 perform 100 hours of community service, and to pay court and probation fees.

3 15. On November 15, 1999, the Court entered an Order of Discharge from Probation
4 in Case No. 07425. The Class 6 undesignated offense was designated by the Court as
5 a misdemeanor and a Criminal Restitution Order was entered for the remaining balance
6 of the restitution, \$4,346.90 that was owed. The Criminal Restitution Order provided
7 that it could be recorded, enforced and renewed as a civil judgment.

8 16. An Order of Satisfaction was entered on August 8, 2000, in Case No. 07425 that
9 showed Mr. Gonzalez had fully paid the restitution that was owed.

10 17. On August 13, 2002, the Court in Case No. 07425 entered an Order Vacating
11 Judgment of Guilt and Dismissing Charges, Restoring Civil Rights and Restoring Right
12 to Possess Firearms ("Order Vacating Judgment").

13 18. The Department contended that Mr. Gonzalez incorrectly answered the above-
14 mentioned questions in the Application and failed to disclose the prior revocation of his
15 insurance licenses and misdemeanor conviction.

16 19. Mr. Gonzalez testified that based on the Order Vacating Judgment entered in
17 Case No. 07425, he believed that his criminal record "was cleared" and was starting
18 over.

19 20. Mr. Gonzalez did not dispute the documentary evidence presented by the
20 Department. He represented that he currently works as a claims adjuster at Chubb
21 Insurance and sought advice from co-workers concerning whether disclosure of his
22 revocation or criminal background was required on the Application in light of the Order
23 Vacating Judgment.

24 21. Mr. Gonzalez testified that when he sought advice from his co-workers, he did
25 not show them the Application nor did he inform them of the directions set forth on the
26 top of the page of Section VII on the Application.

27 22. Mr. Gonzalez testified that, based on the advice of his co-workers and his own
28 understanding as to what happened regarding his criminal background, he believed that
29 he did not have to disclose such history on the Application.
30

1 23. Mr. Gonzalez represented that he was not trying to mislead or deceive the
2 Department by failing to disclose because he knew that the Department had his license
3 revocation history on file and that the Department was aware of the criminal matter.

4 **CONCLUSIONS OF LAW**

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

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

11 3. A.R.S. § 20-295(A) provides:

12 The director may deny, suspend for not more than twelve
13 months, revoke or refuse to renew an insurance producer's
14 license or may impose a civil penalty in accordance with
15 subsection F of this section or any combination of actions for
16 any one or more of the following causes:

17 1. Providing incorrect, misleading, incomplete or
18 materially untrue information in the license
19 application.

20 2. Violating any provision of this title or any rule,
21 subpoena or order of the director.

22 3. Obtaining or attempting to obtain a license
23 through misrepresentation or fraud.

24 4. Improperly withholding, misappropriating or
25 converting any monies or properties received in the
26 course of doing insurance business.

27 * * *

28 8. Using fraudulent, coercive or dishonest practices,
29 or demonstrating incompetence, untrustworthiness
30 or financial irresponsibility in the conduct of business
in this state or elsewhere.

* * *

10. Forging another's name to any document
related to an insurance transaction.

27 4. The weight of the evidence of record established that the Department had
28 sufficient grounds to deny the Application pursuant to A.R.S. § 20-295(A) (1), (2), (3),
29 (4), (8) and (10) and has exercised that discretion in a reasonable manner.
30

1 5. Mr. Gonzalez explained why he thought that he did not have to disclose his prior
2 license revocation and criminal history to the Department based on his understanding
3 of the Order Vacating Judgment in Case No. 07425 and reliance on information he
4 received from co-workers involved in the insurance industry. However, Mr. Gonzalez
5 failed to explain why he did not follow the directions set forth on the Application and
6 pursuant to the information contained at the top of Section VII of the Application why he
7 did not realize what he was required to disclose in the Application.

8 6. The fact that the Department may have access to the criminal background of an
9 applicant and has on file the license history of an applicant does not vitiate the
10 requirement that an applicant answer questions on the insurance license application
11 form honestly and disclose all information that is requested by the Department.

12 7. Mr. Gonzalez has failed to prove by a preponderance of the evidence that the
13 Department's denial of the Application should be reversed.

14 **ORDER**

15 Based on the above, the determination made by the Department to deny the
16 Application is affirmed.

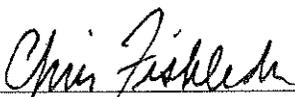
17 Done this day, September 29, 2006.

18 

19 _____
20 Lewis D. Kowal
21 Administrative Law Judge

22 Original transmitted by mail this
23 3 day of October, 2006, to:

24
25 Department of Insurance
26 Christina Urias, Director
27 2910 North 44th Street, Ste. 210
28 Phoenix, AZ 85018

29 By  _____
30