

MAY 11 2007

DEPT. OF INSURANCE
BY 

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

APRIL LEANNE HENDERSON

Petitioner.

No. 07A-042-INS

ORDER

On April 26, 2007, the Office of Administrative Hearings, through Administrative Law Judge ("ALJ") Lewis D. Kowal, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on May 2, 2007, 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 application for a resident property and casualty insurance producer's license is denied.

NOTIFICATION OF RIGHTS

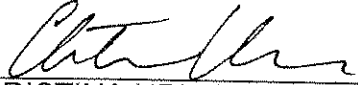
Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Petitioner may request a rehearing with respect to this order by filling a written motion with the Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis for relief under A.A.C. R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to Superior Court.

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

...

1 must notify the Office of Administrative Hearings of the appeal within ten days after filing
2 the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

3 DATED this 9th day of May, 2007.

4
5 
6 CHRISTINA URIAS, Director
7 Arizona Department of Insurance

8 COPY of the foregoing mailed this
9 11th day of May, 2007 to:

10 Mary Kosinski, Executive Assistant for Regulatory Affairs
11 Catherine O'Neil, Consumer Legal Affairs Officer
12 Steve Fromholtz, Licensing Director
13 Arizona Department of Insurance
14 2910 North 44th Street, Suite 210
15 Phoenix, Arizona 85018

16 Jennifer Boucek
17 Assistant Attorney General
18 1275 West Washington Street
19 Phoenix, Arizona 85007-2926

20 April LeAnne Henderson
21 4819 Castilla Dr.
22 Fort Mohave, AZ 86426
23 Petitioner

24 Office of Administrative Hearings
25 1400 West Washington, Suite 101
26 Phoenix, Arizona 85007


Curvey Burton

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

APRIL LEANNE HENDERSON,

Petitioner.

No. 07A-042-INS

**ADMINISTRATIVE
LAW JUDGE DECISION**

HEARING: April 11, 2007

APPEARANCES: April Leanne Henderson on her own behalf; Assistant Attorney General Jennifer Boucek on behalf of the Arizona Department of Insurance

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

FINDINGS OF FACT

1. On January 11, 2007, April Leanne Henderson ("Ms. Henderson") filed an application for a resident individual property and casualty producer's license ("Application") with the Arizona Department of Insurance ("Department").
2. Ms. Henderson answered "Yes" to Question A, Section VII of the Application ("Question A"), which asked: "Have you ever been convicted of a felony?" Ms. Henderson included with the Application a letter of explanation regarding the felony conviction.
3. Ms. Henderson answered "No" to Question D, Section VII of the Application ("Question D"), 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: ... (5) Using fraudulent, coercive or dishonest practices in the conduct of business? (6) Demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business?"
4. On February 8, 2007, the Department denied the Application, which Ms. Henderson appealed, resulting in the instant matter being brought before the Office of Administrative Hearings.

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

1 5. On June 16, 2005, Ms. Henderson was indicted on Count 1: Theft, a Class 3
2 felony and Counts 2-6: Theft, Class 6 felonies in *State of Arizona v. April Leanne*
3 *Henderson, aka April Dunn*, Superior Court of the State of Arizona, Mohave County,
4 Docket No. CR-2005-0735 ("Docket No. CR-2005-0735").

5 6. The Indictment alleged that Ms. Henderson committed theft at various times of
6 various amounts of monies belonging to the Bullhead City Chapter of the American
7 Postal Workers Union.

8 7. On October 13, 2005, in Docket No. CR-2005-0735, Ms. Henderson pled guilty
9 to a charge of Theft, a Class 4 non-dangerous felony regarding Count 1, and Counts 2-
10 6 of the Indictment were dismissed.

11 8. On November 14, 2005, a Judgment and Sentencing Order was issued in
12 Docket No. CR-2005-0735 that placed Ms. Henderson on three years probation. As a
13 term of probation, Ms. Henderson was ordered to be incarcerated in the Mohave
14 County Jail for forty-five days commencing no later than December 9, 2005, with
15 eligibility for work release, electronic monitoring and community work program. Ms.
16 Henderson was also ordered to pay: a) a \$50.00 monthly probation fee; b) fees of
17 \$25.00; and c) restitution in the amount of \$6,825.00. All monies but the probation fees
18 were to be paid at the rate of \$150.00 per month.

19 9. Ms. Henderson testified:

20 a. She made a mistake and would like an opportunity to move on with her
21 life.

22 b. In 1997 she was diagnosed with bi-polar disorder.

23 c. From 1997 through 2003, she was on medication for her bi-polar disorder.

24 d. From 2003 through 2005, she was off her bi-polar medication and self-
25 medicating with alcohol.

26 e. In July and August 2005, she was under psychiatric care in a hospital.
27 Since that time, she has been on medication for her bi-polar disorder and under
28 psychiatric medication management.

29 f. She attributes the actions that gave rise to the above-mentioned
30 Indictment to because she was not taking her bi-polar medications and self-

1 medicating with alcohol but maintained that she has been sober for the past two
2 years.

3 g. She has been informed by her probation officer that on May 15, 2007, she
4 will be eligible for early release from probation and that her probation officer will
5 be filing documents for such release. By that time, Ms. Henderson expects to
6 have completed the Court ordered restitution in Docket No. CR-2005-0735.

7 10. Charles Wickersham ("Mr. Wickersham"), the owner of Wickersham Insurance
8 Agency ("Wickersham Agency") where Ms. Henderson is employed, testified:

9 a. Ms. Henderson has worked at Wickersham Agency for one year as a
10 customer service representative and handles funds for the agency.

11 b. During her employment with Wickersham Agency, Ms. Henderson has
12 handled over a million dollars and there have been no issues regarding funds.

13 c. Ms. Henderson obtained employment at Wickersham Agency by
14 answering an advertisement placed in the Mohave Daily News and was one of
15 sixty applicants for one available position.

16 d. He interviewed thirty applicants and determined that Ms. Henderson was
17 the applicant best suited for the position being filled.

18 e. During the interview process, Ms. Henderson informed him of her criminal
19 conviction and that she was on probation.

20 f. He was impressed by Ms. Henderson's display of honesty and confidence
21 during the two interviews he conducted with Ms. Henderson.

22 g. Ms. Henderson is a good employee and he believes her to be an honest
23 and trustworthy person. He encouraged Ms. Henderson to apply for insurance
24 producer's license.

25 h. He was made aware of Ms. Henderson's psychiatric condition, which did
26 not affect his opinion of Ms. Henderson.

27 i. Although he did not ask for references from Ms. Henderson, he knew
28 someone who worked at the Bullhead City Post Office who knew of Ms.
29 Henderson and her criminal activity. Despite her criminal history, that person
30 spoke highly of Ms. Henderson.

- 1
2 11. Stephen Fromholtz, the Licensing Administrator for the Department testified:
3 a. As the Licensing Administrator, he reviews insurance producer's license
4 applications in which affirmative responses have been made with respect to
5 questions involving criminal convictions or administrative proceedings.
6 b. He reviewed the Application and noted that Ms. Henderson answered
7 "Yes" to Question A of the Application but answered "No" to Questions D(5) and
8 D(6).
9 c. Based on the documentation that Ms. Henderson submitted with the
10 Application, which included Court documents pertaining to her felony criminal
11 conviction, he believes that Ms. Henderson should have answered "Yes" to
12 Questions (D)(5) and (D)(6) on the Application.

13 12. Ms. Henderson acknowledged that the correct answers that she should have
14 provided in the Application with respect to Questions (D)(5) and (D)(6) were "Yes" and
15 explained that she believed those questions only referred to insurance matters and her
16 criminal conviction was not related to such matters.

17 13. In providing an explanation for the denial of the Application, the Department
18 placed emphasis that Ms. Henderson's activities that gave rise to the criminal conviction
19 occurred in the work environment in which she was placed with a fiduciary position and
20 asserted that an insurance producer is placed in a similar fiduciary position.

21 **CONCLUSIONS OF LAW**

- 22 1. Ms. Henderson bears the burden of proof and the standard of proof on all issues
23 is by a preponderance of the evidence. A.A.C. R2-19-119.
24 2. A preponderance of the evidence is "evidence of greater weight or more
25 convincing than the evidence which is offered in opposition to it; that is, evidence which
26 as a whole shows that the fact sought to be proved is more probable than not." BLACK'S
27 LAW DICTIONARY 1182 (6th ed. 1990).
28 3. A.R.S. § 20-295(A)(6) provides the Director of the Department with the discretion
29 to deny an insurance producer's license on the basis that the applicant has a felony
30 conviction.

1 4. The weight of the evidence of record established that in Docket No. CR-2005-
2 0735 Ms. Henderson has been convicted of a felony within the meaning of A.R.S. § 20-
3 295(A)(6).

4 5. Ms. Henderson's conduct, as set forth above in the Findings of Fact, established
5 by a preponderance of the evidence that she provided incorrect and materially untrue
6 information in the Application, within the meaning of A.R.S. § 20-295(A)(1).

7 6. Ms. Henderson's conduct that gave rise to the above-mentioned felony
8 conviction constitutes dishonest practices, untrustworthiness and financial
9 irresponsibility in the conduct of business within the meaning of A.R.S. § 20-295(A)(8).

10 7. Ms. Henderson claims to be a different person from the past; she has the burden
11 of establishing that fact. Ms. Henderson argued that through her testimony and the
12 testimony of her character witness she established herself to be a person of good
13 character who has the requisite qualifications to hold an insurance producer's license.

14 8. The activities underlying the 2005 conviction occurred fairly recently. It is difficult
15 to determine how much time has to pass in order to conclude that a person with a
16 criminal history is rehabilitated

17 9. The testimony of Mr. Wickersham was considered and given weight. In the
18 instant matter, the weight of the evidence established that Ms. Henderson has
19 embarked on a course of conduct of rehabilitation as evidenced by her work history.
20 However, she is still on probation, she has not completed the court ordered restitution
21 and she has only been working in a position of trust with Mr. Wickersham for one year.

22 10. The Administrative Law Judge commends Ms. Henderson for her efforts to put
23 the past behind her and become a productive member of the community in which she
24 lives and works. Ms. Henderson asserted that the criminal activities were performed
25 while she was self-medicating with alcohol and had an alcohol problem. However, she
26 did not explain why she took the money, how the money was spent and, thus did not
27 explain why such action would be unlikely to occur in the future aside from the fact that
28 she is now on medication and has remained sober for the past two years.

29 11. Ms. Henderson has been acting in the capacity of a customer service
30 representative for Mr. Wickersham and been handling funds about one year without
incident which constitutes some evidence that she has changed her ways.

1 12. The serious nature of the conduct that gave rise to the above-mentioned felony
2 conviction, the fact that the activities occurred over a period of time, that the activities
3 occurred while Ms. Henderson was in a position of trust and occurred at her work
4 environment, and that Ms. Henderson is still on probation are factors that weigh heavily
5 against Ms. Henderson. Under the circumstances, at this point in time, Ms. Henderson
6 has not sufficiently demonstrated that she is fully rehabilitated but has demonstrated a
7 concerted effort toward that goal.

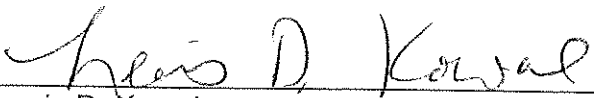
8 13. The weight of the evidence of record established that the Department had
9 sufficient grounds to deny the Application pursuant to A.R.S. §§ 20-295(A)(1), (A)(6),
10 and (A)(8) and exercised that discretion in a reasonable manner.

11 14. Ms. Henderson has failed to prove by a preponderance of the evidence that the
12 Department's denial of the Application should be reversed.

13 **ORDER**

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

16 Done this day, April 26, 2007.

17
18 
19 _____
20 Lewis D. Kowal
21 Administrative Law Judge

22 Original transmitted by mail this
23 1 day of May, 2007, to:

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

29 By 
30 _____