

FEB 10 2009

DEPT OF INSURANCE  
BY 

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

In the Matter of:

**RYAN JAMES HERNDON,**

Respondent.

**No. 08A-110-INS**

**ORDER**

On February 2, 2009, the Office of Administrative Hearings, through Administrative Law Judge ("ALJ") Thomas Shedden, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on February 9, 2009, 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 Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Director immediately revokes Respondent's resident life and accident/health producer license (#118557).

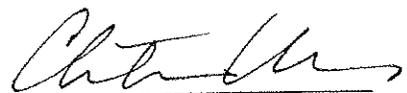
**NOTIFICATION OF RIGHTS**

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

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

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 9<sup>th</sup> day of February, 2009.

4  
5   
6 CHRISTINA URIAS, Director  
Arizona Department of Insurance

7 COPY of the foregoing mailed this  
8 10th day of February, 2009 to:

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

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

14 Ryan James Herndon  
15 ADC # 230789  
16 ASPC - Phoenix  
Post Office Box 52109  
Phoenix, Arizona 85072-2109  
Respondent

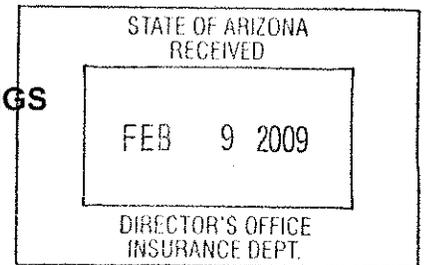
17  
18 Ryan James Herndon  
4132 East Cholla Canyon Drive  
19 Phoenix, Arizona 85044  
Respondent

20 Office of Administrative Hearings  
21 1400 West Washington, Suite 101  
Phoenix, Arizona 85007

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23 Curvey Barton

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS



In the Matter of:

RYAN JAMES HERNDON,

Respondent.

No. 08A-110-INS

ADMINISTRATIVE LAW JUDGE

DECISION

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**HEARING:** January 22, 2009

**APPEARANCES:** Ryan Herndon appeared on his own behalf (by telephone);  
Assistant Attorney General Alyce C. Meislik appeared on behalf of the Arizona  
Department of Insurance

**ADMINISTRATIVE LAW JUDGE:** Thomas Shedden

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**FINDINGS OF FACT**

1. On December 12, 2008, the Arizona Department of Insurance issued a Notice of Hearing setting this matter for hearing at 1:30 p.m. January 22, 2009.
2. Respondent Ryan J. Herndon appeared and testified on his own behalf; the Department presented the testimony of investigator Emily Penunuri and had 6 exhibits entered into evidence.
3. Mr. Herndon holds an accident/health producer and life producer license (No. 118557) that is due to expire on September 30, 2011.
4. On March 25, 2008 Mr. Herndon entered a Plea Agreement in which he pleaded guilty to two felonies: Theft involving property with a value of \$25,000 or more, and Theft involving more than \$4,000 but less than \$25,000. See Exhibit 5.
5. Mr. Herndon is currently incarcerated.
6. The conduct that led to Mr. Herndon's guilty plea involved the selling of unregistered stock and certificates. See Exhibits 3 and 4.

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

1  
2 7. On May 5, 2008 Mr. Herndon was sentenced to 3.5 years in prison to be followed  
3 by 7 years probation and ordered to pay \$2,763,000 in restitution. See Exhibit 6.

4 8. The Department requests that Mr. Herndon's license be revoked because  
5 licensees are in a position of trust and his convictions show that he failed to live up to  
6 similar responsibilities by selling his clients unregistered stocks.

7 9. Mr. Herndon accepts responsibility for his actions, but requests that the  
8 Department suspend rather than revoke his license, which would help him in paying the  
9 required restitution. Mr. Herndon testified that there was no fraud involved in the stock  
10 sales and that the Department's Exhibits show that he had been cooperative with  
11 authorities.

### 12 CONCLUSIONS OF LAW

13 1. The Department bears the burden of persuasion to show that that Mr. Herndon's  
14 accident/health producer and life producer license should be revoked. See A.R.S. § 41-  
15 1092.07(G)(2).

16 2. The standard of proof is that of the preponderance of the evidence. See A.A.C.  
17 R2-19-119.

18 3. A preponderance of the evidence is "[e]vidence which is of greater weight or more  
19 convincing than the evidence which is offered in opposition to it; that is, evidence which  
20 as a whole shows that the fact sought to be proved is more probable than not." BLACK'S  
21 LAW DICTIONARY 1182 (6<sup>th</sup> ed. 1990).

22 4. The Department has met the burden of persuasion. There is no dispute that Mr.  
23 Herndon has been convicted of two felonies involving theft and, based on the amount of  
24 restitution he has agreed pay, his illegal activities involved large sums of money.  
25 Consequently, grounds exist to revoke his license under A.R.S. § 20-295(A)(6) and (A)(8).

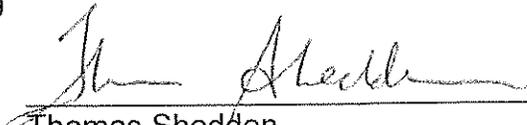
26 5. The convictions are recent and Mr. Herndon is still incarcerated. Mr. Herndon  
27 offered no character witnesses and, although the Exhibits do show that he was  
28 cooperative those Exhibits also show that Mr. Herndon received a reduced sentence for  
29 that cooperation. Revocation is appropriate.

30 6. Based on the proven violations of A.R.S. § 20-295(A), Mr. Herndon's license  
should be revoked.

**RECOMMENDED ORDER**

1 **IT IS ORDERED** that Mr. Herndon's license No. 118557 is revoked.  
2

3 Done this day, February 2, 2009  
4

5   
6 \_\_\_\_\_  
7 Thomas Shedden  
8 Administrative Law Judge

9 Original transmitted by mail this  
10 4 day of Feb., 2009, to:

11  
12 Christina Urias, Director  
13 Department of Insurance  
14 2910 North 44th Street, Ste. 210  
15 Phoenix, AZ 85018

16 By   
17 \_\_\_\_\_