

AUG 24 2011

DEPT OF INSURANCE
BY 

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

NELSON, ROSEMARY

Petitioner.

**No. 11A-039-INS
ORDER**

On August 18, 2011, 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 August 19, 2011, 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 of the Recommended Decision.
2. The Director affirms the Department's denial of Petitioner's application for a property and casualty insurance producer's license.

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 23rd day of August, 2011

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5 
6 CHRISTINA URIAS, Director
7 Arizona Department of Insurance

8 COPY of the foregoing mailed this
9 24th day of August, 2011 to:

10 Office of Administrative Hearings
11 1400 West Washington, Suite 101
12 Phoenix, Arizona 85007

13 Mary Butterfield, Assistant Director
14 Mary Kosinski, Exec. Asst. for Regulatory Affairs
15 Catherine O'Neil, Consumer Legal Affairs Officer
16 Steven Fromholtz, Licensing Administrator
17 Arizona Department of Insurance
18 2910 North 44th Street, Suite 210
19 Phoenix, Arizona 85018

20 Rosemary Nelson
21 5625 East Indian School Road, #103
22 Phoenix, Arizona 85018
23 Petitioner

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25 Curvey Burton
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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 11A-039-INS

NELSON, ROSEMARY,

**ADMINISTRATIVE
LAW JUDGE DECISION**

Petitioner.

HEARING: August 1, 2011

APPEARANCES: Rosemary Nelson on her own behalf; Assistant Attorney
General Alyse Meislik on behalf of the Arizona Department of Insurance

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

FINDINGS OF FACT

1. On February 2, 2011, Rosemary Nelson ("Ms. Nelson") filed an Application for a property and casualty insurance license ("Application") with the Arizona Department of Insurance ("Department").
2. Ms. Nelson answered "Yes" to Question A of Section V 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. On April 12, 2011, the Department denied the Application.
4. On May 2, 2011, Ms. Nelson filed an appeal of the denial determination, which brought this matter before the Office of Administrative Hearings, an independent State agency.
5. Steven Fromholtz ("Mr. Fromholtz"), the Department's Producer Licensing Administrator, testified that in 1982 the Department issued an insurance license to Ms. Nelson. The Department revoked the license in 1998 as a result of Ms. Nelson's default in a disciplinary action. Subsequently, the default was withdrawn and the revocation vacated.

1 6. According to Mr. Fromholtz, the activities that initiated the above-mentioned
2 revocation formed the underlying basis for a Consent Order to be issued by the
3 Director of the Department in Office of Administrative Hearings Docket No. 98A-027-
4 INS. At the time the Consent Order was entered into, Ms. Nelson's insurance license
5 had expired.

6 7. In the Consent Order, Ms. Nelson admitted to having received premium monies
7 from insureds and failing to forward those monies to insurance companies, and/or the
8 general agents. The Consent Order also contained an acknowledgment by Ms. Nelson
9 that she violated A.R.S. §§ 20-316(A)(2) and 20-316(A)(4). Mr. Fromholtz explained
10 that the violations underlying the Consent Order involved a breach of fiduciary duty and
11 resulted in members of the public being harmed.

12 8. Mr. Fromholtz testified that in the Department adopted the Model Producer Act
13 which changed the provisions of the insurance statutes. As a result, the provisions of
14 former A.R.S. § 20-316 can now be found in A.R.S. § 20-295. Ms. Nelson did not raise
15 any issue that the statutory provisions that were found to have been violated in the
16 Consent Order are presently contained in A.R.S. § 20-295.

17 9. At hearing, Mr. Fromholtz represented that the Department does not consider
18 that Ms. Nelson's license has been revoked and, therefore, prior revocation is not a
19 basis for the denial of the Application.¹

20 10. In the Consent Order Ms. Nelson agreed to (i) not reapply for any insurance
21 license for a period of one year from the effective date of the Consent Order; (ii) pay
22 restitution totaling approximately \$16,000.0, to specific individuals within 60 days of
23 filing of the Consent Order; and (iii) pay to the Department a civil penalty in the amount
24 of \$1,000.00 within 60 days of filing of the Consent Order.

25 11. Ms. Nelson testified as to the activities that led to the execution of the Consent
26 Order. Ms. Nelson explained that, due to the activities of an employee of hers,
27 insurance premiums were not forwarded to insurance companies. Ms. Nelson testified
28

29 ¹ Mr. Fromholtz acknowledged that the Department's website inaccurately shows that Ms. Nelson's
30 license was revoked, and the Department is in the process of correcting the website to accurately reflect
the status of the license.

1 that she filed a law suit against the employee and an insurance company, which
2 resulted in her being awarded a judgment. Ms. Nelson explained that the employee
3 entered into a payment arrangement with her. Ms. Nelson further testified that from the
4 initial payment she received from the employee, she made restitution payments within
5 60 days of the Consent Order and fully complied with the Consent Order. She also
6 testified that she paid to the Department the \$1,000.00 civil penalty within 60 days, as
7 required by the Consent Order. However, Ms. Nelson did not provide any
8 documentation or present the testimony of any other person to corroborate her
9 testimony.

10 12. The Department argued that the Consent Order does not contain any statement
11 that the activities underlying the violations acknowledged therein were performed by an
12 employee but states that they were the acts of Ms. Nelson. The terms of the Consent
13 Order supports the Department's asserted position.

14 13. Mr. Fromholtz testified that in a statement submitted with the Application, which
15 is required when a Question V of Section A on the Application is responded to in the
16 affirmative, Ms. Nelson asserted that she had not violated any insurance laws. Mr.
17 Fromholtz further testified that this was of concern to the Department because such
18 assertions are contrary to the terms of the Consent Order and showed that Ms. Nelson
19 currently does not assume any responsibility for the activities that violated the State's
20 insurance laws as determined in the Consent Order.

21 **CONCLUSIONS OF LAW**

22 1. Ms. Nelson bears the burden of proof, and the standard of proof on all issues is
23 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."

27 BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

28 3. The Director has the authority to revoke an insurance producer's license for the
29 improper withholding, misappropriation, or conversion of monies received in the course
30 of conducting insurance business; for fraudulent, coercive or dishonest practices; or for

1 acts that demonstrate incompetence, untrustworthiness, or financial irresponsibility in
2 the conduct of business. See A.R.S. § 20-295(A)(4) and (8).²

3 4. Because the above-mentioned revocation was vacated, A.R.S. § 20-295(A)(9)
4 does not constitute a valid basis to deny the Application. However, Ms. Nelson
5 admitted to having violated the State's insurance law in the Consent Order. The
6 activities underlying the Consent Order, as well as the violations contained therein,
7 constitute violations that currently can be found in A.R.S. § 20-295(A)(4) and (8).

8 5. Ms. Nelson's conduct, as set forth above, constitutes the violation of any
9 provision of A.R.S., Title 20, or order of the Director, in violation of A.R.S. § 20-
10 295(A)(2).

11 6. The weight of the evidence of record established that the Department had
12 sufficient grounds to deny the Application and exercised that discretion in a reasonable
13 manner. See A.R.S. § 20-295(A)(2),(4), and (8).

14 7. Ms. Nelson failed to prove by a preponderance of the evidence that the
15 Department's denial of the Application should be reversed.

16 **ORDER**

17 Based on the above, the determination made by the Department to deny the
18 Application is affirmed.

19 *In the event of certification of the Administrative Law Judge Decision by the*
20 *Director of the Office of Administrative Hearings, the effective date of the Order will be 5*
21 *days from the date of that certification.*

22 Done this day, August 18, 2011.

23
24 /s/ Lewis D. Kowal
25 Administrative Law Judge
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29 ² It is noted that while A.R.S. § 20-295(A)(4) is not specifically mentioned in the Notice of Hearing, A.R.S.
30 § 20-295(A)(4) was addressed in the Department's April 12, 2011 letter informing Ms. Nelson of the
denial of the license (Exhibit 2) and Ms. Nelson's May 2, 2011 request for hearing (Exhibit 3), as well as
at hearing.

1 Transmitted electronically to:

2 Christina Urias, Director
3 Department of Insurance

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