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STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

**NICOLOSI, SAM ANTHONY,
(Arizona License No. 975367)
(NPN # 6719325)**

Respondent.

**No. 11A-109-INS
ORDER**

On December 20, 2011, 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 December 20, 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 revokes Respondent's Arizona producer's license, effective immediately.


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

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 21st day of December, 2011.

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6 CHRISTINA URIAS, Director
Arizona Department of Insurance

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8 COPY of the foregoing mailed this
9 21st day of December, 2011 to:

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

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

15 Sam Anthony Nicolosi
16 349 N. James Ct.
Apache Junction, Arizona 85120
17 Respondent

18 
19 Curvey Burton

1 6. The Department forwarded Respondent's fingerprints the Arizona Department of
2 Public Safety ("DPS") for a criminal records background check.

3 7. It typically takes DPS 4 to 8 weeks to conduct a criminal records background
4 check. Consequently, rather than making all applicants for licensure wait for the results
5 of the background check, the Department issues licenses while the background check
6 is pending.

7 8. DPS informed the Department that Respondent's fingerprints were not of
8 sufficient quality for use in conducting the background check.

9 9. In a letter dated January 5, 2011, the Department informed Respondent that on
10 or before February 4, 2011, he was required to submit to the Department a replacement
11 set of fingerprints. The January 5, 2011 letter was sent to Respondent's address of
12 record.

13 10. DPS does not charge a processing fee for reviewing replacement fingerprint
14 cards.

15 11. As of the hearing date, Respondent had not submitted a replacement set of
16 fingerprints and he had not surrendered his license.

17 12. Because Respondent did not submit to the Department a set of fingerprints of
18 sufficient quality for DPS's use in conducting the background check, his application is
19 not complete.

20 CONCLUSIONS OF LAW

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

24 2. A preponderance of the evidence is "[e]vidence which is of greater weight or
25 more convincing than the evidence which is offered in opposition to it; that is, evidence
26 which 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. With his application, Respondent was required to submit to the Department a
29 set of fingerprints. Respondent's submission of fingerprints did not satisfy that

30

1 requirement because the quality was not sufficient for DPS's use in conducting the
2 required background check. See A.R.S. § 20-285(E)(2).

3 4. Respondent's conduct constitutes a violation of A.R.S., Title 20, which provides
4 grounds for the Director of the Department to revoke Respondent's license. See A.R.S.
5 § 20-295(A)(2).

6 5. Because Respondent did not submit fingerprints of sufficient quality, his
7 application is incomplete in a violation of A.R.S. § 20-295(A)(1), which also provides
8 grounds for the Director of the Department to revoke Respondent's license.

9 **RECOMMENDED ORDER**

10 **IT IS ORDERED** that Respondent Sam Anthony Nicolosi's License No. 975367
11 is revoked.

12 *In the event of certification of the Administrative Law Judge Decision by the Director of*
13 *the Office of Administrative Hearings, the effective date of the Order will be the date of*
14 *that certification.*

15 Done this day, December 20, 2011.

16 /s/ Thomas Shedden
17 Thomas Shedden
18 Administrative Law Judge

19 Transmitted electronically to:

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21 Christina Urias, Director
22 Department of Insurance
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