

FEB 6 2013

DEPT OF INSURANCE
BY 

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

FINE, TYSON HEATH,
(Arizona License # 105369)
(National Producer # 1918574)
and **FINE RETIREMENT SERVICES, LLC**
(Arizona License # 877970)

No. 12A-120-INS

**ORDER DENYING REQUEST
FOR REHEARING**

Petitioners.

FINDINGS OF FACT

1. On October 18, 2012, the Department of Insurance ("Department") filed a Notice of Hearing In the Matter of Fine, Tyson Heath and Fine Retirement Services, LLC, Docket No. 12A-120-INS ("Docket No. 12A-120-INS").

2. On December 10, 2012, the Office of Administrative Hearings ("OAH") conducted a hearing in Docket No. 12A-120-INS.

3. On or about January 8, 2013, the Administrative Law Judge ("ALJ") issued an Administrative Law Judge Decision ("ALJ's Decision"), received by the Director on January 9, 2013. (Exhibit A.)

4. On January 17, 2013, the Director filed an Order adopting the ALJ's Decision and revoking Petitioners' licenses. (Exhibit B without ALJ's Decision attached.)

5. On January 31, 2013, Petitioner filed a request with the Department for a rehearing pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09. (Exhibit C.)

6. On February 6, 2013, the Department filed the Department's Response to Request for Rehearing. (Exhibit D.)

CONCLUSIONS OF LAW

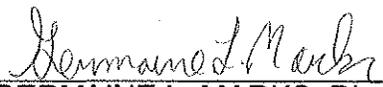
1. Petitioners' request does not establish grounds for a rehearing under A.A.C. R20-6-114(B)(6).

1 **ORDER**

2 IT IS ORDERED:

3 1. Petitioners' request is denied.

4 DATED this 6th day of February, 2013.

5 
6 GERMAINE L. MARKS, Director
7 Arizona Department of Insurance

8
9 COPY of the foregoing mailed
10 without exhibits this
11 6th day of February, 2013 to:

12 Mary Kosinski, Executive Assistant for Regulatory Affairs
13 Steven Fromholtz, Licensing Supervisor
14 Arizona Department of Insurance
15 2910 North 44th Street, Suite 210
16 Phoenix, Arizona 85018

17 Office of the Arizona Attorney General
18 PAD/CPA
19 1275 West Washington Street
20 Phoenix, Arizona 85007-2926

21 COPY of the foregoing mailed this
22 6th day of February, 2013,
23 with exhibits to:

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

27 Tyson Heath Fine
28 Fine Retirement Services, LLC
29 2290 Blythe Ave., SE
30 Cleveland, TN 37311
31 Petitioners

32 
33 Curvey Burton

Exhibit A

JAN 9 2013

DIRECTOR'S OFFICE
INSURANCE DEPT.

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In The Matter Of:

No. 12A-120-INS

FINE, TYSON HEATH
(Arizona License # 105369)
(National Producer # 1918574)
and FINE RETIREMENT SERVICES, LLC
(Arizona License # 877970)

ADMINISTRATIVE LAW JUDGE
DECISION

Respondents.

HEARING: December 10, 2012

APPEARANCES: No one appeared for Respondents; Assistant Attorney
General Alyse Meislik appeared for the Department of Insurance

ADMINISTRATIVE LAW JUDGE: Thomas Shedden

FINDINGS OF FACT

1. On October 18, 2012, the Arizona Department of Insurance ("Department") issued a Notice of Hearing setting the above-captioned matter for hearing at 1:00 p.m. December 10, 2012, at the Office of Administrative Hearings.
2. No representative appeared for either Respondent Tyson Heath Fine or Respondent Fine Retirement Services, LLC and the matter was convened in their absence at about 1:20 p.m.¹
3. The Department presented the testimony of its investigator Randy Markham.

¹ Mr. Fine had been informed that he could appear by telephone provided that he called the Office of Administrative Hearings ("OAH") at the scheduled hearing time. On December 17, 2012, Mr. Fine filed with the OAH a letter that the Administrative Law Judge ("ALJ") construed as a Motion to Reopen the Record or, in the alternative, a Motion to Reconsider the November 21, 2012 Order Denying Continuance. In response to that Motion, the ALJ reopened the record in this matter for the limited purpose of allowing the Department enough time to respond to Mr. Fine's Motion before the Administrative Law Judge Decision was due. On December 28, 2012, the Department filed its Response, in which it objected to reopening the record. In an Order dated December 31, 2012, the undersigned ALJ denied Mr. Fine's Motion.

1 4. Mr. Fine holds license No. 105369 and Fine Retirement Services, LLC holds
2 license No. 877970, both of which were issued by the Department.

3 5. Mr. Fine's license expired on October 31, 2012.

4 6. Fine Retirement Services, LLC's license is due to expire on November 30,
5 2014.

6 7. Mr. Fine is the sole officer and member of Fine Retirement Services, LLC and
7 he is its Designated Responsible Licensed Producer.

8 8. Mr. Fine accepted \$21,000 from a client with the understanding that the money
9 would be invested for the client's benefit. Mr. Fine did not invest the money, but rather
10 used it for personal expenses. Based on his actions, on May 22, 2012, Mr. Fine
11 pleaded guilty to, and was convicted of Theft of Property, a Class D Felony in the State
12 of Tennessee.

13 9. Mr. Fine was sentenced to two years in the Tennessee Department of
14 Corrections, with the sentence suspended in favor of two years probation.

15 10. On December 10, 2012, officials in Tennessee informed Mr. Markham that as of
16 that date, Mr. Fine was in jail.

17 11. Mr. Fine did not report to the Department that he had been subject to criminal
18 prosecution.

19 12. Mr. Fine's address of record with the Department is 19357 North Madison Road
20 in Maricopa Arizona, which is also the address of record for Fine Retirement Services,
21 LLC.

22 13. Mr. Markham mailed certified documents to Mr. Fine's address of record, but
23 these documents were returned as not deliverable.

24 14. Mr. Fine's Probation Order, dated May 22, 2012, shows his address as 195
25 Armstrong Ferry Road in Dayton Tennessee.

26 15. Mr. Fine did not inform the Department that he had changed his residential or
27 business addresses.

28 16. The Department requests that Mr. Fine's and Fine Retirement Services, LLC's
29 licenses be revoked.

30 **CONCLUSIONS OF LAW**

1. The Department bears the burden of persuasion. A.R.S. § 41-1092.07(G).
2. The burden of proof at an administrative hearing falls to the party asserting a claim, right or entitlement. The standard of proof is that of the preponderance of the evidence. A.A.C. R2-19-119.
3. A preponderance of the evidence is “[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.” BLACK’S LAW DICTIONARY 1182 (6th ed. 1990).
4. Mr. Fine was convicted of a felony, which is a violation of A.R.S. § 20-295(A)(6).
5. The facts underlying Mr. Fine’s felony conviction demonstrate that he used fraudulent or dishonest practices, demonstrating untrustworthiness in the conduct of business, which is a violation of A.R.S. § 20-295(A)(8).
6. Mr. Fine’s failure to inform the Department that he was subject to criminal prosecution is a violation of A.R.S. § 20-301(B).
7. Mr. Fine’s failure to inform the Department of a change in his business and residential addresses are violations of violation of A.R.S. § 20-286(C)(1).
8. Based on Mr. Fine’s proven violations of A.R.S. § 20-295(A), the Department has the authority to revoke Mr. Fine’s license. A.R.S. § 20-295(H). Considering the nature of Mr. Fine’s violations, his license No. 105369 should be revoked.
9. Based on Mr. Fine’s proven violations of A.R.S. § 20-295(A), the Department has the authority to revoke Fine Retirement Services, LLC’s license. A.R.S. § 20-295(B). Considering the nature of Mr. Fine’s violations and that there are no other members of Fine Retirement Services LLC, its license No. 877970 should be revoked.

ORDER

IT IS ORDERED that Tyson Heath Fine’s license No. 105369 is revoked;

IT IS FURTHER ORDERED that Fine Retirement Services, LLC’s license No. 877970 is revoked.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

Done this day, January 8, 2013.

/s/ Thomas Shedden
Thomas Shedden
Administrative Law Judge

Transmitted electronically to:

Germaine L. Marks, Director
Department of Insurance

Exhibit B

JAN 17 2013

DEPT OF INSURANCE
BY 

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

FINE, TYSON HEATH,
(Arizona License # 105369)
(National Producer # 1918574)
and **FINE RETIREMENT SERVICES, LLC**
(Arizona License # 877970)

No. 12A-120-INS

ORDER

Respondents.

On January 8, 2013, 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 January 9, 2013, 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 revokes the Arizona producer license (# 105369) of **Tyson Heath Fine** effective immediately.
3. The Director revokes the Arizona producer license (#877970) of **Fine Retirement Services, LLC** effective immediately.

NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Respondents 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

1 for relief under A.A.C. R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary
2 to request a rehearing before filing an appeal to Superior Court.

3 Respondents may appeal the final decision of the Director to the Superior Court of
4 Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal
5 must notify the Office of Administrative Hearings of the appeal within ten days after filing
6 the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

7 DATED this 16th day of January, 2013.

8
9 
10 GERMAINE L. MARKS, Director
Arizona Department of Insurance

11
12 COPY of the foregoing mailed this
13 17th day of January, 2013 to:

14 Tyson Heath Fine
15 c/o Bradley Judicial Complex/Bradley County Jail
2290 Blythe Ave.
16 Cleveland, TN 37311
Respondent

17 Tyson Heath Fine
18 P.O. Box 23148
Chattanooga, TN 37422
19 Respondent

20 Tyson Heath Fine
21 C/O Fine Retirement Services LLC
19357 N. Madison Rd.
22 Maricopa, AZ 85239
Respondent

23 Tyson Heath Fine
24 c/o Hamilton County Jail
601 Walnut Street
25 Chattanooga TN, 37402
26 Respondent

1 Tyson Heath Fine
195 Armstrong Ferry Road, #1
2 Dayton, TN 37321
3 Respondent

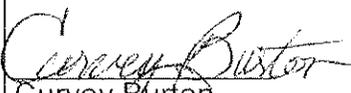
4 Fine Retirement Services, LLC
P.O. Box 93464
5 Phoenix, AZ 85070
6 Respondent

7 Fine Retirement Services, LLC
1300 Ridenour Blvd NW Ste 100
8 Kennesaw, GA 30152-4528
9 Respondent

10 Mary Kosinski, Executive Assistant for Regulatory Affairs
Mary Butterfield, Assistant Director
11 Catherine O'Neil, Consumer Legal Affairs Officer
Steven Fromholtz, Licensing Director
12 Charles Gregory, Investigations Supervisor
Randy Markham, Investigator
13 Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

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

16 Office of Administrative Hearings
17 1400 West Washington, Suite 101
Phoenix, Arizona 85007

18 
19 Curvey Burton

20

21

22

23

24

25

26

Exhibit C

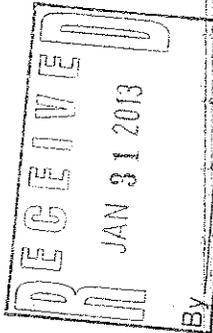
JAN 31 2013

1-25-13

Dept. of Insurance:

ARIZONA DEPT. OF INSURANCE
ADMINISTRATIVE SERVICES

My name is Tyson H. Fine and also the owner of Fine Retirement Services (license # 105369, #877970 respectively) and I received a letter stamped Jan. 17th 2013 revoking both of the above mentioned licenses effective immediately. In Pursuant to Arizona Revised Statutes ("A.R.S.") 41-1092.09 I may request a rehearing with respect to this order by filing a written notice within 30 days of the date of this letter with the Director of the Department of Insurance. That is what I am doing with this letter asking for a rehearing. I did not get a chance to explain my side of the story and I think I am at least entitled to that. This is my livelihood and my career. I have done nothing else in my life other than this career. I would also like to know my options? Can I ever get my licenses back? If so, when? As you can tell I am not being represented by an attorney. With my limited ability to the outside world I am limited in what I can do from here. I wouldn't even know where to begin with finding an attorney to represent me. I know the Dept. of Insurance's job is to protect the public and not help me, but I am still asking for your help please. I am still asking for a rehearing knowing I will be there by myself without representation to plead my case. I believe I should still be able to keep both of my licenses. I mean can't you put me on probation for five years and revoke them if I screw up or even get one complaint



against me. I know I am asking for a huge favor, but I really truly made an extreme effort trying to make me Dec. 10th 2012 court date. Please help me with this and grant me a rehearing. Also, make sure it is a telephonic hearing and notify Bradley Co. Jail of such hearing just in case I'm still in here. I have a court date here on March 4th, 2013. Also, please tell me my options on whether if and when I can get my license reinstated or when can I reapply for them again. Please help me and I would appreciate your prompt attention to this matter.

Anxiously waiting

#105369 Tyson H. Fine &

#877970 Fine Retirement Services

Return address:

2290 Blythe Ave. SE

Cleveland, TN. 37311

Exhibit D

FEB 6 2013

DIRECTOR'S OFFICE
INSURANCE DEPT.

1 THOMAS C. HORNE
Attorney General
2 Firm Bar No. 14000

3 Alyse C. Meislik
State Bar No. 024052
4 Assistant Attorney General
Consumer Protection & Advocacy Section
5 1275 West Washington Street
Phoenix, Arizona 85007-2926
6 Telephone: (602) 542-7727
Facsimile: (602) 542-4377
7 Attorneys for the Arizona Department of Insurance

8 STATE OF ARIZONA

9 DEPARTMENT OF INSURANCE

10 In The Matter Of:

No. 12A-120-INS

11 FINE, TYSON HEATH and
12 FINE RETIREMENT SERVICES, LLC

**DEPARTMENT'S RESPONSE TO
REQUEST FOR REHEARING**

13 Respondents.
14

15 The Arizona Department of Insurance ("Department"), by and through undersigned
16 counsel, hereby submits its Response to Respondents' Motion for Rehearing ("Respondents'
17 Motion"). The Department opposes Respondents' Motion because Respondents have failed
18 to show irregularity, new material evidence warranting rehearing, and that the order of the
19 Director of the Department of Insurance and the Administrative Law Judge is not justified by
20 the evidence and is contrary to law. This Response is supported by the following
21 Memorandum of Points and Authorities.

22 DATED this 6th day of February, 2013.

23 THOMAS C. HORNE, Attorney General

24 By: /s/ Alyse C. Meislik
Alyse C. Meislik, Assistant Attorney General
25 Consumer Protection & Advocacy Section
26 Attorneys for the Arizona Department of Insurance

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. Background**

3 On October 18, 2012, the Department issued a Notice of Hearing against Tyson Heath
4 Fine and Fine Retirement Services, LLC ("Respondents") seeking to revoke Respondents'
5 resident accident/health and life insurance producer licenses. The Department alleged
6 violations of A.R.S. §§ 20-295(A)(6), (A)(8), 20-301(B), and 20-286(C)(1).

7 Mr. Fine never filed an Answer in this matter, despite the Notice of Hearing's
8 requirement for him to do so within 20 days after the issuance of the Notice of Hearing.
9 According to the Notice of Hearing, "[a]ny assertion not denied shall be deemed to be
10 admitted." (p. 2).

11 On November 20, 2012, Mr. Fine filed a Motion to Continue in which he contended
12 that he should be granted a continuance because he "is in Tn [sic] and am unable to be there
13 in person." Mr. Fine's Motion to continue stated nothing about the fact that he was
14 incarcerated in a correctional facility. He simply provided the Office of Administrative
15 Hearings ("OAH") with a P.O. Box as his contact information. He also never provided OAH
16 a date that he could appear for a hearing. Mr. Fine admitted that he received notice of this
17 hearing on October 24, 2012.

18 On November 21, 2012, OAH issued an order denying Mr. Fine's Motion to Continue
19 on the ground that "good cause has not been presented to continue the hearing." The order
20 further ordered that "Mr. Fine may appear telephonically at the hearing."

21 The hearing in this matter took place on December 10, 2012. The Administrative
22 Law Judge ("ALJ") delayed the hearing approximately twenty minutes to give Mr. Fine an
23 opportunity to appear. Mr. Fine's mother called and left a message at the Office of
24 Administrative Hearings ("OAH"); however, when OAH attempted to return her phone call,
25 it could not reach her. The hearing proceeded without Mr. Fine.

26 ///

1 During the hearing, the Department presented documentary evidence proving that Mr.
2 Fine pled guilty to and was convicted of Theft of Property, a class D felony. The
3 Department also presented testimony that Mr. Fine never notified the Department of this
4 criminal prosecution and of his change in address. Mr. Fine is the sole officer and member
5 of Fine Retirement Services, LLC and he is its Designated Responsible Licensed Producer.

6 After the hearing, on December 17, 2012, Mr. Fine filed another request to continue
7 (“Second Motion”). Mr. Fine stated that he was unable to appear for the hearing because he
8 was “incarcerated and ha[d] been since Aug. 23rd 2012 in Hamilton Co. Tn [sic]. . . . [that]
9 Silverdale Jail would not let [him] make a long distance phone call.” Mr. Fine also stated:

10 I **should** be out of jail within thirty days of the date of this letter so if we
11 could get this put off until Feb. 2013 I would be able to appear in court in
12 person. . . .

13 (Emphasis not in original). Mr. Fine’s Second Motion was silent regarding the efforts he
14 made to arrange his telephonic appearance and the reasons he was unable to appear
15 telephonically. He also represented that he “should” be out of jail within thirty days (in
16 February). OAH denied Mr. Fine’s Second Motion.

17 The ALJ issued an ALJ Decision on or about January 9, 2013, recommending that the
18 Department revoke Respondents’ insurance producer licenses. On January 16, 2013, the
19 Director certified the ALJ’s Recommended Decision in its entirety as the final administrative
20 decision (the “Order”) of the Department of Insurance. The Order found that Respondent
21 was convicted of a felony in violation of A.R.S. § 20-295(A)(6) and that the facts underlying
22 the felony conviction “demonstrate that he used fraudulent or dishonest practices,
23 demonstrating untrustworthiness in the conduct of business, which is a violation of A.R.S.
24 § 20-295(A)(8).” The Order also found that Respondent failed to inform the Department he
25 was subject to criminal prosecution, in violation of A.R.S. § 20 -301(B), and that he failed to
26 inform the Department of a change in his business and residential addresses, in violation of

1 A.R.S. § 20-286(C)(1). The Order concluded that “[b]ased on Mr. Fine’s proven violations
2 of A.R.S. 20-295(A), the Department has the authority to revoke” Respondents’ licenses.
3 The Order went on to say that “considering the nature of Mr. Fine’s violations and that there
4 are no other members of Fine Retirement Services LLC,” Respondents’ licenses should be
5 revoked.

6 The Department received Respondents’ Request for Rehearing on January 31, 2013. In
7 Respondents’ Motion, they request a rehearing because Mr. Fine did not get a chance to
8 explain his side of the story. Mr. Fine indicates that he is still incarcerated and mentions that
9 he has a hearing on March 4, 2013.

10 **II. ARGUMENT**

11 **A. Respondent Failed to Demonstrate any Grounds as a Basis for Granting a** 12 **Rehearing Under R20-6-114(B).**

13 The grounds for granting a rehearing or review are identified in Arizona
14 Administrative Code (“A.A.C.”) R20-6-114(B). A request for rehearing “shall be based”
15 upon one or more of eight grounds “which have materially affected the rights of a party” as
16 set forth in A.A.C. R20-6-114(B). According to A.A.C. R20-6-114(C), Respondents must
17 specify which of the enumerated grounds in subsection B they base their request upon, and
18 they must set forth specific facts and law in support of the request. A request for rehearing
19 or review must be based on one or more of the following grounds which have materially
20 affected the rights of a party:

- 21 1. Irregularity in the hearing proceedings, or any order or abuse of
22 discretion whereby the party seeking rehearing or review was deprived of a fair
23 hearing;
- 24 2. Misconduct by the Director, the hearing officer or any party to the
25 hearing;
- 26 3. Accident or surprise which could not have been prevented by ordinary
prudence;
4. Newly discovered material evidence which could not have been
discovered with reasonable diligence and produced at the hearing;

- 1 5. Excessive or insufficient sanctions or penalties imposed;
- 2 6. Error in the admission or rejection of evidence, or errors of law
- 3 occurring at the hearing or during the course of the hearing;
- 4 7. Bias or prejudice of the Director or hearing officer;
- 5 8. That the order, decision, or findings of fact are not justified by the
- 6 evidence or are contrary to law.

7 A.A.C. R20-6-114(B).

8 Respondents' Motion failed to include any of the grounds set forth in A.A.C. R20-6-
9 114; therefore, their Motion should be denied. Respondents' Motion requests a rehearing on
10 the ground that Mr. Fine did not get a chance to explain his side of the story. Respondents'
11 assertion does not fall within any of the enumerated statutory grounds for a rehearing in
12 A.A.C. R20-6-114(B).

13 **B. Respondents' Motion for Rehearing Should Be Denied Because Respondent**
14 **Has Not Shown That the Director's Final Order Was Arbitrary, Capricious or**
15 **an Abuse of Discretion.**

16 The test for whether an agency head's decision is arbitrary or capricious and
17 therefore, an abuse of discretion, is set forth in *Petras. Petras v. Arizona State Liquor Bd.*,
18 129 Ariz. 449, 631 P.2d 1107 (App. Ct. 1981). The Court stated that in order to determine
19 whether an administrative agency has acted arbitrarily or capriciously, and therefore has
20 abused its discretion, a review of the record must show that there has been unreasoned
21 action, without consideration, and disregard for the facts and circumstances. *Id.*, at 452.
22 Where there is room for two opinions, the action is not arbitrary or capricious if exercised
23 honestly and upon due consideration, even though it may be believed that an erroneous
24 conclusion has been reached. *Id.*

25 The ALJ found that Respondent was convicted of a felony in violation of A.R.S. § 20-
26 295(A)(6) and that the facts underlying the felony conviction "demonstrate that he used
fraudulent or dishonest practices, demonstrating untrustworthiness in the conduct of

1 business, which is a violation of A.R.S. § 20-295(A)(8).” The ALJ also found that
2 Respondent failed to inform the Department he was subject to criminal prosecution, in
3 violation of A.R.S. § 20-301(B), and that he failed to inform the Department of a change in
4 his business and residential addresses, in violation of A.R.S. § 20-286(C)(1). These
5 violations of A.R.S. 20-295(A) constitute grounds for the revocation of Respondents’
6 insurance producer’s license. The ALJ considered the evidence presented by Respondent
7 and determined that revocation was justified by the record. The ALJ’s decision clearly
8 demonstrates reasoned action and consideration for the facts and circumstances in the case.

9 The Director did not abuse her discretion in adopting the ALJ’s Decision in its
10 entirety, and the Final Order is not arbitrary and capricious. The legislature has expressly
11 vested the head of an agency with the authority to accept, reject, or modify the decisions of
12 the ALJ. A.R.S. §41-1092.08. The Director properly exercised her authority to adopt the
13 ALJ’s Decision.

14 Respondent has failed to demonstrate that the Director’s adoption of the ALJ’s
15 Decision is unreasoned action, without consideration and disregard for the facts and
16 circumstances. Accordingly, the Director should deny Petitioner’s request for rehearing.

17 **C. Respondent’s Request Should Be Denied Because There Was No Error In the**
18 **Admission or Rejection of Evidence Or Any Other Error of Law During the**
19 **Course of the Hearing.**

20 Respondents argue that they should be granted a rehearing because Mr. Fine did not
21 get a chance to explain his side of the story at the hearing. Mr. Fine has been given his Due
22 Process in this matter. The fundamental requirement of Due Process is “the opportunity to
23 be heard at a meaningful time and in a meaningful manner. When this opportunity to be
24 heard is granted to a complainant who chooses not to exercise it, that complainant cannot
25 later plead a denial of procedural due process.” *Watahomigie v. Arizona Bd. of Water*
26 *Quality Appeals*, 181 Ariz. 20, 27, 887 P.2d 550, 557 (App. 1994).

1 Mr. Fine had an opportunity to present his position by filing an answer; however, he
2 chose not to avail himself of this opportunity. Mr. Fine also had the opportunity to appear
3 telephonically at the hearing, but he failed to do so. He has never demonstrated that he made
4 any effort to make arrangements with the correctional facility to appear telephonically for the
5 hearing.

6 Mr. Fine received notice of this hearing on October 24, 2012. On November 20,
7 2012, Mr. Fine requested a continuance of the hearing because he “is in Tn [sic] and am
8 unable to be there in person.” At that time, he never informed either the court or the attorney
9 for the State that he was incarcerated. He gave simply gave a PO Box as his address and said
10 he was in Tennessee so he could not be at the hearing in person. Based on the information
11 Respondents provided to OAH, the ALJ denied Respondents’ continuance and ordered Mr.
12 Fine to appear telephonically.

13 Had Mr. Fine been candid that he was in jail and needed assistance arranging a
14 telephonic hearing, this would have been possible. Instead, Mr. Fine never notified anyone
15 that he was in jail until the day of the hearing (when his mother left a message with OAH).
16 Essentially, each time Mr. Fine communicated with OAH, he omitted information and
17 inaccurately portrayed his situation.

18 **D. The Revocation of Respondent’s License is Supported by Substantial**
19 **Evidence and is Not Contrary to Law.**

20 The revocation of Respondent’s license in this case is supported by substantial
21 evidence and is not contrary to law. Pursuant to Arizona law, if two inconsistent factual
22 conclusions could be supported by the record, then there is substantial evidence to support an
23 administrative decision that elects either conclusion. *Webster v. State Bd. of Regents*, 123
24 Ariz. 363, 365-366, 599 P.2d 816, 818-819 (App. 1979). Under *Webster*, substantial
25 evidence has been presented to support the Commissioner’s Final Order. Pursuant to A.R.S.
26 §20-295(A), the Director may revoke a license in a number of instances, including the

1 licensee's conviction for a felony offense. It is indisputable in this case that Respondent was
2 convicted of Theft of Property, a class D felony. The Department also presented testimony
3 that Mr. Fine never notified the Department of this criminal prosecution and of his change in
4 address. Clearly, both the law and evidence support the revocation of Respondent's license;
5 therefore, the Commissioner's Final Order is supported by substantial evidence and is not
6 contrary to law.

7 **III. Conclusion**

8 Based on the foregoing, Respondents' Motion fails to establish any of the grounds for
9 rehearing or review. Therefore, the Department respectfully requests that the Director deny
10 Respondents' motion for rehearing and affirm the Final Order in this case.

11 DATED this 6th day of February, 2013.

12 THOMAS C. HORNE, Attorney General

13
14 By: /s/ Alyse C. Meislik
15 Alyse C. Meislik, Assistant Attorney General
16 Consumer Protection & Advocacy Section
17 Attorneys for the Arizona Department of
Insurance

18 ORIGINAL of the foregoing filed this
19 6th day of February, 2013 in the office of:

20 Germaine L. Marks, Director
21 ARIZONA DEPARTMENT OF INSURANCE
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

22 COPY of the foregoing e-filed this
23 6th day of February, 2013, in the office of:

24 Thomas Shedden, Administrative Law Judge
25 Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007

26 COPY of the foregoing
e-mailed this same date to:

1 Mary Kosinski, Executive Assistant for Regulatory Affairs
2 Steven Fromholtz, Licensing Supervisor
3 Arizona Department of Insurance
4 2910 North 44th Street, Suite 210
5 Phoenix, Arizona 85018
6 mkosinski@azinsurance.gov

7 COPY of the foregoing
8 mailed/faxed this same date, to:

9 Tyson Heath Fine
10 Fine Retirement Services LLC
11 2290 Blythe Ave, SE
12 Cleveland, TN 37311

13 Tyson Heath Fine
14 c/o Bradley Judicial Complex/Bradley County Jail
15 2290 Blythe Avenue, SE
16 Cleveland, TN, 37311
17 Fax: 423-339-0724
18 Respondent

19 Tyson Heath Fine
20 195 Armstrong Ferry Road, #1
21 Dayton, TN 37321
22 Respondent

23 /s/Lisa Romeo
24 #3031096
25
26