

JUN 5 2013

DEPT OF INSURANCE
BY 

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

MORITOMO, MICHAEL MASAYOSHI,

No. 13A-031-INS

Petitioner.

ORDER

On June 4, 2013, the Office of Administrative Hearings, through Administrative Law Judge ("ALJ") Sondra J. Vanella, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on June 4, 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:

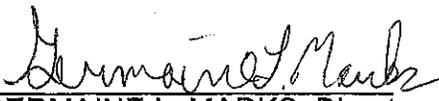
1. The Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Director denies Michael Masayoshi Moritomo's application for an insurance producer's license.

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 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.

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

5 DATED this 5th day of June, 2013.

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

9
10 COPY of the foregoing mailed this
5th day of June, 2013 to:

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

15 Liane C. Kido
16 Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

17 Office of Administrative Hearings
18 1400 West Washington, Suite 101
Phoenix, Arizona 85007

19 Michael Masayoshi Moritomo
20 10639 North 43rd Ave.
Phoenix, Arizona 85029
Petitioner

21 Michael Masayoshi Moritomo
22 27035 N. 35th Ave.
Phoenix, Arizona 85083
23 Petitioner

24 
25 Curvey Burton

1 5. On March 19, 2007, Mr. Moritomo signed a Consent Order with the Department.
2 See Exhibit 4. In the Consent Order, Mr. Moritomo admitted to misrepresenting
3 insurance premium prices to clients by overcharging premiums based on what the
4 market would bear and disguising the overcharges as premiums for Accidental Death
5 and Dismemberment ("AD&D") insurance. *Id.* Mr. Moritomo further admitted in the
6 Consent Order that as owner and operator of his company, he instructed his employees
7 to overcharge clients and to give clients fictitious applications for AD&D coverage. *Id.*
8 On April 11, 2007, the Consent Order took effect, revoking Mr. Moritomo's individual
9 and company insurance licenses. *Id.*

10 6. Steven Fromholtz, the Licensing Administrator for the Department, testified that
11 Mr. Moritomo's 2007 license revocation occurred after the Department investigated him
12 and his company and discovered the business practice as delineated above. Mr.
13 Fromholtz testified that Mr. Moritomo admitted to the findings contained in the Consent
14 Order and that the Department has continuing concerns about Mr. Moritomo because of
15 the prior admitted violations of his fiduciary responsibility to his clients. Mr. Fromholtz
16 further testified that the Department has no additional information to consider from the
17 past six years showing a change in circumstances.

18 7. Mr. Moritomo expressed shame over the Consent Order. However, he
19 acknowledged that he consented to the findings contained therein. Mr. Moritomo
20 testified that he has been a stay-at-home father to six children since 2001, and as such,
21 was an absentee business owner. Although Mr. Moritomo acknowledged that he was
22 responsible for the actions of his employees, he blamed the misrepresentations on a
23 particular employee and explained that when he confronted that employee, the
24 employee threatened to report Mr. Moritomo to the Department, and did so. Mr.
25 Moritomo testified that he signed the Consent Order on the advice of counsel. Mr.
26 Moritomo explained that he wants to work as an insurance producer again because all
27 of his children will be in school full time. Mr. Moritomo testified that he will no longer be
28 an absentee owner and that he will uphold his fiduciary responsibility and will oversee
29 his business operations. Mr. Moritomo further testified that when he possessed the
30 insurance license, there had been no consumer complaints against him. However, the

1 evidence failed to establish that Mr. Moritomo's former clients were aware of the
2 misrepresentations and overcharges. Mr. Moritomo did not bring any character
3 witnesses or letters of reference to the hearing, and does not have any work history
4 since his license revocation.

5 CONCLUSIONS OF LAW

6 1. Mr. Moritomo bears the burden of proof and the standard of proof on all issues is
7 by a preponderance of the evidence. A.A.C. R2-19-119.

8 2. A preponderance of the evidence is "evidence of greater weight or more
9 convincing than the evidence which is offered in opposition to it; that is, evidence which
10 as a whole shows that the fact sought to be proved is more probable than not."
11 BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

12 3. A.R.S. § 20-295(A) and (F) provide the Director of the Department with the
13 discretion to deny, suspend, or revoke an insurance producer's license, and/or impose
14 a civil penalty, and/or order restitution.

15 4. The weight of the evidence of record established that in the Consent Order, Mr.
16 Moritomo admitted to misrepresenting insurance premium prices to clients by
17 overcharging premiums based on what the market would bear, disguising the
18 overcharges as premiums for AD&D insurance, and that as owner and operator of his
19 company, he instructed his employees to overcharge clients and to give clients
20 fictitious applications for AD&D coverage. See Exhibit 4. The conduct underlying the
21 Consent Order constitutes improperly withholding, misappropriating, or converting any
22 monies or properties received in the course of doing insurance business, within the
23 meaning of A.R.S. § 20-295(A)(4).

24 5. Mr. Moritomo's conduct, as set forth above in the Findings of Fact, established
25 by a preponderance of the evidence that he intentionally misrepresented the terms of
26 an actual or proposed insurance contract or application for insurance, within the
27 meaning of A.R.S. § 20-295(A)(5).

28 6. Mr. Moritomo's conduct, as set forth above in the Findings of Fact, constitutes
29 using fraudulent, coercive, or dishonest practices, or demonstrating incompetence,
30

1 untrustworthiness, or financial irresponsibility in the conduct of business in this state,
2 within the meaning of A.R.S. § 20-295(A)(8).

3 7. Mr. Moritomo's conduct, as set forth above in the Findings of Fact, constitutes
4 having an insurance producer license, or its equivalent, denied, suspended, or revoked
5 in any state, province, district, or territory, within the meaning of A.R.S. § 20-295(A)(9).

6 8. Mr. Moritomo did not offer any evidence in mitigation, and did not bring any
7 character witnesses to the hearing. Mr. Moritomo claimed that there were no consumer
8 complaints against his license, yet there was no evidence establishing that his clients
9 were aware of his wrongdoing. Under the circumstances presented herein, Mr.
10 Moritomo failed to establish that he has the requisite qualifications to hold an insurance
11 producer's license.

12 9. The weight of the evidence of record established that the Department had
13 sufficient grounds to deny the Application pursuant to A.R.S. §§ 20-295(A)(4), (A)(5),
14 (A)(8), and (A)(9).

15 10. Mr. Moritomo failed to prove by a preponderance of the evidence that the
16 Department's denial of the Application should be reversed.

17 **ORDER**

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

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

23
24 Done this day, June 4, 2013.

25 /s/ Sondra J. Vanella
26 Administrative Law Judge

27 Transmitted electronically to:

28 Germaine L. Marks, Acting Director
29 Department of Insurance
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