

DEC 20 2013

DEPT OF INSURANCE
BY 

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

MARQUEZ, SAMUEL,
(Arizona License No. 938899)
(National Producer No. 13244373)

No. 13A-116-INS

ORDER

Petitioner.

On December 18, 2013, the Office of Administrative Hearings, through Administrative Law Judge ("ALJ") Diane Mihalsky, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on December 18, 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:

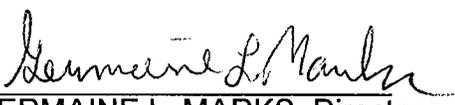
1. The Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Director refuses to renew Samuel Marquez's insurance producer's license.

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 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.

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 19th day of December, 2013.

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

10 COPY of the foregoing mailed this
11 20th day of December, 2013 to:

12 Mary Kosinski, Executive Assistant for Regulatory Affairs
13 Darren Ellingson, Deputy Director
14 Catherine O'Neil, Consumer Legal Affairs Officer
15 Steven Fromholtz, Licensing Director
16 Arizona Department of Insurance
17 2910 North 44th Street, Suite 210
18 Phoenix, Arizona 85018

19 Liane C. Kido
20 Assistant Attorney General
21 1275 West Washington Street
22 Phoenix, Arizona 85007-2926

23 Office of Administrative Hearings
24 1400 West Washington, Suite 101
25 Phoenix, Arizona 85007

26 Samuel Marquez
6370 N, Camino Aguante
Tucson, Arizona 85704
Petitioner

27 
28 Curvey Barton

DEC 18 2013

DIRECTOR'S OFFICE
INSURANCE DEPT.

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 13A-116-INS

MARQUEZ, SAMUEL,
(Arizona License Number 938899)
(National Producer Number 13244373)

ADMINISTRATIVE LAW JUDGE
DECISION

Petitioner.

HEARING: December 17, 2013

APPEARANCES: Petitioner Samuel Marquez did not appear. Assistant Attorney General Liane C. Kido represented the Arizona Department of Insurance.

ADMINISTRATIVE LAW JUDGE: Sondra J. Vanella

The issue in this matter is whether grounds existed for the Arizona Department of Insurance ("Department") to refuse to renew Petitioner Samuel Marquez's ("Mr. Marquez") insurance producer's license. Based on the evidence presented by the Department and Mr. Marquez's failure to appear for the duly noticed administrative hearing, the Administrative Law Judge recommends that the Director of the Department's refusal to renew be upheld for the reasons set forth in the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Mr. Marquez was licensed as an accident/health, life, variable life/variable annuities, casualty, and property insurance producer, Arizona license number 938899, which expired on November 30, 2012. See Exhibit 1. Mr. Marquez was first licensed with the Department on February 27, 2009 (accident/health, life, casualty, and property lines of authority) and on September 8, 2009 (variable life/variable annuities line of authority). *Id.*

1 2. On July 23, 2013, Mr. Marquez submitted to the Department a late-renewal
2 Insurance License Renewal Application (Form L-191) ("Application").¹ See Exhibit 2.
3 Mr. Marquez sought to renew all of his lines of authority including his variable
4 life/variable annuities line of authority which requires an active registration with the
5 Financial Industry Regulatory Authority ("FINRA"). *Id.*

6 3. Part II, question A of the Application asks: "[h]ave you had any professional,
7 vocational, business license or certification refused, denied, suspended, revoked or
8 restricted, OR a fine/assessment/forfeiture, consent order, administrative action etc[.]
9 imposed by any public authority that has not been previously disclosed in a written
10 format by you to this agency?" (Emphasis in original.) See Exhibit 2 at 2. Mr. Marquez
11 answered affirmatively. *Id.*

12 4. Part II, question C.3. of the Application asks: "[h]ave you been convicted or found
13 guilty of, have you had a judgment made against you for, or have you admitted to
14 [f]orging another's name to any document related to an insurance transaction?" See
15 Exhibit 2 at 2. Mr. Marquez answered affirmatively. *Id.*

16 5. On February 6, 2012, Mr. Marquez entered into a Letter of Acceptance, Waiver
17 and Consent ("Consent Order") in matter number 20110264353 with FINRA. See
18 Exhibit 3. The Consent Order found that Mr. Marquez had used personal information
19 from a prospective employee to create insurance policies and had forged the
20 prospective employee's signature to obtain those policies. *Id.* Mr. Marquez did not
21 admit or deny the findings in the Consent Order. *Id.*

22 6. The Consent Order further found that Mr. Marquez had violated FINRA Rule
23 2010, "[a] member, in the conduct of its business, shall observe high standards of
24 commercial honor and just and equitable principles of trade." See Exhibit 3 at 2.

25 7. Pursuant to the Consent Order, FINRA suspended Mr. Marquez for seven
26 months and assessed a fine in the amount of \$15,000.00. See Exhibit 3 at 2.

27 8. Mr. Marquez did not report the FINRA action to the Department within 30 days.

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30 ¹ Pursuant to A.R.S. § 20-289(E), licensees are allowed to late-renew for a year after their license expires.

1 9. On September 13, 2013, the Department denied Mr. Marquez's Application.²
2 See Exhibit 4.

3 10. On September 17, 2013, Mr. Marquez timely requested a hearing to appeal the
4 Department's denial of the Application. See Exhibit 5.

5 11. On November 7, 2013, the Department issued a Notice of Hearing regarding its
6 refusal to renew Mr. Marquez's insurance producer's license pursuant to A.R.S. §§ 20-
7 295(A) and (F).

8 12. The Department mailed the Notice of Hearing via certified mail and standard first
9 class mail to Mr. Marquez at his address of record. Mr. Marquez's address of record
10 with the Department was: 6370 North Camino Aguante, Tucson, Arizona 85704.

11 13. Although the beginning of the duly noticed hearing was delayed 30 minutes to
12 allow Mr. Marquez additional travel time, he did not appear personally or through a duly
13 authorized representative, contact the Office of Administrative Hearings to request a
14 continuance or that the time for the hearing be further delayed, or present any evidence
15 at the hearing to establish that the Department improperly refused to renew his
16 insurance producer's license.

17 14. The Department appeared through its attorney and presented the testimony of its
18 Producer and Licensing Administrator, Steven Fromholtz, who testified and provided
19 foundation for admission of the documents establishing the Findings of Fact set forth
20 above. Mr. Fromholtz further testified regarding a July 22, 2013 letter written and
21 signed by Mr. Marquez and submitted to the Department. See Exhibit 6. In the July 22,
22 2013 letter, Mr. Marquez explained his actions underlying the 2012 FINRA action. Mr.
23 Marquez explained in pertinent part as follows:

24 The way my performance was measured was by the number of new
25 agents hired and their ability to "Qualify" and meeting their initial quota of
26 40 Property & Casualty policies and 4 Life cross-sold insurance policies
27 within a period of 90 days, in other words my performance relied on my
new recruited agents [*sic*] results.

28 It was mid-November of 2010 where my team was at the last hour to meet
29 the quota within the deadline for the last cut off date of the year which

30 ² The date on the denial letter, January 15, 2013, is a typographical error.

1 would define my position to get promoted or for the company to end my
2 contract.

3 With the deadline just hours away, I had the worst idea I ever had in my
4 professional life: To artificially manufacture a Renters policy and Life
5 policy for one of my new recruits to get qualified. I wrongly used a job's
6 [sic] applicant personal information to create those policies with the
7 intention of canceling them after my agent got qualified and for me to
8 keep my job. It is important to mention the agent was not involved or
9 even knew where the policy came from.

10 As it turns out, the family of this individual whom I created the policies for,
11 was already a client of the insurance company and received copies and
12 confirmation of the unrequested policies. The father of the individual
13 made a complaint to the district office of my wrong doing, I tried to amend
14 the situation but it [sic] things got even worse, needless to say, my district
15 manager at that time reported this malpractice to FINRA authorities, which
16 suspended my securities license and I lost my job.

17 *Id.*

18 CONCLUSIONS OF LAW

19 1. This matter lies within the jurisdiction of the Department. See A.R.S. §§ 20-281
20 to 302.

21 2. The Department bears the burden of proof and must establish cause to refuse to
22 renew Mr. Marquez's insurance producer's license by a preponderance of the evidence.
23 See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*,
24 74 Ariz. 369, 372, 249 P.2d 837 (1952).

25 3. "A preponderance of the evidence is such proof as convinces the trier of fact that
26 the contention is more probably true than not." MORRIS K. UDALL, ARIZONA LAW OF
27 EVIDENCE § 5 (1960). A preponderance of the evidence is "[t]he greater weight of the
28 evidence, not necessarily established by the greater number of witnesses testifying to a
29 fact but by evidence that has the most convincing force; superior evidentiary weight
30 that, though not sufficient to free the mind wholly from all reasonable doubt, is still
sufficient to incline a fair and impartial mind to one side of the issue rather than the
other." BLACK'S LAW DICTIONARY at 1220 (8th ed. 1999).

4. A.R.S. § 20-295(A) provides, in pertinent part:

A. The director may deny, suspend for not more than twelve months,
revoke or refuse to renew an insurance producer's license or may impose

1 a civil penalty in accordance with subsection F of this section or any
2 combination of actions for any one or more of the following causes:

3 2. Violating any provision of this title or any rule, subpoena or order of the
4 director.

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6 5. Intentionally misrepresenting the terms of an actual or proposed
7 insurance contract or application for insurance.

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9 8. Using fraudulent, coercive or dishonest practices, or demonstrating
10 incompetence, untrustworthiness or financial irresponsibility in the
11 conduct of business in this state or elsewhere.

12

13 9. Having an insurance producer license, or its equivalent, denied,
14 suspended or revoked in any state, province, district or territory.

15 5. Mr. Marquez acknowledged in his July 22, 2013 letter to the Department that he
16 "artificially manufacture[d] a Renters policy and Life policy for one of my new recruits to
17 get qualified." Mr. Marquez also acknowledged using personal information of a job
18 applicant to create those policies, thereby intentionally misrepresenting the terms of an
19 actual insurance contract and using dishonest practices in violation of A.R.S. §§ 20-
20 295(A)(5) and (A)(8).

21 6. Mr. Marquez's seven month FINRA suspension is a violation of A.R.S. § 20-
22 295(A)(9).

23 7. A.R.S. § 20-301(A) provides:

24 A. Within thirty days after the final disposition of the matter, an insurance
25 producer shall report to the director any administrative action taken
26 against the producer in another jurisdiction or by another governmental
27 agency in this state. The report shall include a copy of the order, consent
28 to order or other relevant dispositive document.

29 8. Mr. Marquez's failure to report the FINRA action to the Department within 30
30 days is a violation of A.R.S. § 20-301(A).

9. Due to the above found violations of Title 20 of the Arizona Revised Statutes, Mr.
Marquez is in violation of A.R.S. § 20-295(A)(2).

1 10. Based on the above violations of this State's insurance laws, grounds exist
2 pursuant to A.R.S. § 20-295(A) for the Department to refuse to renew Mr. Marquez's
3 insurance producer's license.
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RECOMMENDED ORDER

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2 Based on the foregoing, it is recommended that the Department's decision to
3 refuse to renew Mr. Marquez's insurance producer's license number 938899 be
4 affirmed.

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

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11 Done this day, December 18, 2013.

12
13 /s/ Sondra J. Vanella
14 Administrative Law Judge

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16 Transmitted electronically to:

17 Germaine L. Marks, Director
18 Department of Insurance
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