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STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of the Insurance License of:

No. 14A-014-INS

TREVINO, RODRIGO ALBERTO
(Arizona License No. 899529),

ORDER

Respondent.

On May 28, 2014, the Office of Administrative Hearings, through Administrative Law Judge Dorinda M. Lang, issued an Administrative Law Judge Decision (“Recommended Decision”), received by the Director of the Department of Insurance (“Director”) on May 29, 2014, 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 Individual Insurance Producer’s license held by Mr. Trevino, effective immediately.
3. The Director imposes a civil penalty in the amount of \$5,000.00 payable to the General Fund within 60 days of this Order.

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

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.

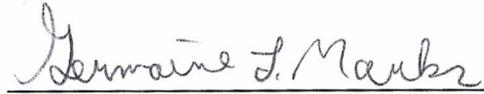
3 Respondent may appeal the final decision of the Director to the Superior Court of
4 Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal
5 must notify the Office of Administrative Hearings of the appeal within ten days after filing
6 the complaint commencing the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

7 DATED this 2nd day of June, 2014.

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GERMAINE L. MARKS, Director
Arizona Department of Insurance

12

13 COPY of the foregoing mailed this
14 2nd day of June, 2014 to:

14

15 Rodrigo A. Trevino
16 9564 E. Keats Avenue
17 Mesa, Arizona 85212
18 Respondent

17

18 Rodrigo A. Trevino
19 c/o Sterling Investment
20 1 North MacDonald, Suite 209
21 Mesa, Arizona 85201
22 Respondent

21 Mary Kosinski, Executive Assistant for Regulatory Affairs
22 Darren Ellingson, Deputy Director
23 Maria Ailor, Acting Consumer Affairs Assistant Director
24 Catherine O'Neil, Consumer Legal Affairs Officer
25 Steven Fromholtz, Licensing Director
26 Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

26

1 Lynette Evans
2 Assistant Attorney General
3 1275 West Washington Street
4 Phoenix, Arizona 85007-2926

4 Office of Administrative Hearings
5 1400 West Washington, Suite 101
6 Phoenix, Arizona 85007

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8 Curvey Walters

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Insurance License of:

No. 14A-014-INS

TREVINO, RODRIGO ALBERTO
(Arizona License No. 899529)

**ADMINISTRATIVE
LAW JUDGE DECISION**

Respondent.

HEARING: May 15, 2014

APPEARANCES: Lynette Evans, Assistant Attorney General representing the
Department of Insurance; Aqueelah Currie, Department witness

ADMINISTRATIVE LAW JUDGE: Dorinda M. Lang

FINDINGS OF FACT

1. Respondent obtained AZ License #899529 from the Arizona Department of Insurance ("Department") on August 27, 2007. Respondent's license authorized him as an accident/health producer and a life producer. See Exhibit 1.

2. Respondent's initial Application for an Individual Insurance License, received by the Department on August 27, 2007, instructs applicants to complete Section VII of the application as follows:

Carefully read and respond to each of the following questions. You should provide a "YES" answer even if you believe an incident has been cleared from your record. Willful misrepresentation of any fact required to be disclosed in any application or accompanying statement is a violation of law and a ground to deny your application.

1
2 For the purposes for this application, "convicted" includes,
3 but is not limited to, having been found guilty by judge or
4 jury or pled guilty or no contest to any felony charge. A "No"
5 response is incorrect if application has had any conviction
6 dismissed, expunged, pardoned, appealed, set aside or
7 reversed, or had its civil rights restored, had a plea
8 withdrawn or has been given probation, a suspended
9 sentence or a fine, or successfully completed a diversion
10 program. ALL applicants must complete this whole section.

11 See Exhibit 3, page 3.

12 3. Questions D(2), D(4), D(5), and D(11) of Section VII of the application state
13 as follows:

14 Have you EVER had any judgment, order or other
15 determination made against you in any civil, administrative,
16 judicial or quasi-judicial proceeding of any kind in any
17 jurisdiction, including any criminal conviction, based on any
18 of the following:

19 * * *

20 2. Improperly withholding, misappropriating or converting
21 any monies or properties received in the course of doing
22 insurance business?

23 * * *

24 4. Committing any insurance unfair trade practice or fraud?
25 5. Using fraudulent, coercive or dishonest practices in the
26 conduct of business?

27 * * *

28 11. For any other cause related to the conduct of business?
29 (whether insurance related or not)

30 Respondent checked the box next to the "No" answer on each of these questions and
signed the application on August 27, 2007. See Exhibit 3, pages 3 and 4.

4. Respondent submitted a renewal application that he signed on May 24, 2011.
See Exhibit 4. In it, Respondent answered "No" to all subparts of Question C, which
asked, among other things, whether he had been convicted, found guilty, had a
judgment made against him or admitted to withholding, misappropriating, converting or
stealing money or property, using fraudulent or dishonest business practices, or

1 conducting business in an incompetent, untrustworthy, or financially irresponsible
2 manner.

3 5. Despite Respondent's answers on his initial and renewal applications, a Plea
4 Agreement/Change of Plea was entered in the matter of State of Arizona v. Rodrigo
5 Alberto Trevino on or about August 3, 1998, by the Superior Court of Arizona, Maricopa
6 County, for theft that involved controlling the property of another, knowing or having
7 reason to know that the property was stolen. The theft was classified as a class six
8 undesignated offense. See Exhibit 6.

9 6. In 2000, the Court filed an Order of Discharge from Probation in which the
10 offense was designated a misdemeanor. See Exhibit 7. According to the Department's
11 witness, Aqueelah Currie, the victim of that crime provided a victim's impact statement.
12 See Exhibit 8. The statement states that the victim was an insurance company and that
13 Respondent was part of a ring that stole a large amount of money from the company.
14 Ms. Currie was unable to determine whether Respondent was an insurance producer
15 employed with the company at the time of the crime, though she stated that she did find
16 evidence that he held an insurance license previously. Respondent's initial application
17 states that he held a life and disability insurance producer's license in California until
18 1996. See Exhibit 3, page 2.

19 7. In a letter dated October 30, 2013, Respondent sent the Department a
20 statement claiming that he had been charged with several felonies in May of 2001. The
21 statement said he agreed to a plea bargain and the charges were dropped or reduced,
22 resulting in only one remaining charge of trespass. The statement further alleged that
23 Respondent completed his telephonic probation and the charges were to be expunged.
24 See Exhibit 2.

25 8. Respondent did not appear at the hearing. The Department offered evidence
26 and testimony in support of the foregoing findings of fact and argued that Respondent's
27 conduct constituted violations of A.R.S. §§ 20-295(A)(3), 20-295(A)(4) and 20-
28 295(A)(8). The Department argued that based on this, Respondent's license should be
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30

1 revoked as well as asking that the tribunal recommend any further disciplinary action as
2 deemed appropriate.

3 **CONCLUSIONS OF LAW**

4 1. This matter is within the jurisdiction of the Director of the Arizona Department
5 of Insurance pursuant to A.R.S. §§ 20-295(D) and (E).

6 2. A.R.S. § 20-295(A) provides as follows:

7 A. The director may deny, suspend for not more than twelve
8 months, revoke or refuse to renew an insurance producer's license
9 or may impose a civil penalty in accordance with subsection F of
10 this section or any combination of actions for any one or more of
the following causes:

- 11 1. Providing incorrect, misleading, incomplete or materially untrue
12 information in the license application.
- 13 2. Violating any provision of this title or any rule, subpoena or order
of the director.
- 14 3. Obtaining or attempting to obtain a license through
misrepresentation or fraud.
- 15 4. Improperly withholding, misappropriating or converting any
16 monies or properties received in the course of doing insurance
business.
- 17 5. Intentionally misrepresenting the terms of an actual or proposed
18 insurance contract or application for insurance.
- 19 6. Having been convicted of a felony.
- 20 7. Having admitted or been found to have committed any insurance
unfair trade practice or fraud.
- 21 8. Using fraudulent, coercive or dishonest practices, or
22 demonstrating incompetence, untrustworthiness or financial
irresponsibility in the conduct of business in this state or
23 elsewhere.
- 24 9. Having an insurance producer license, or its equivalent, denied,
suspended or revoked in any state, province, district or territory.
- 25 10. Forging another's name to any document related to an
insurance transaction.
- 26 11. Aiding or assisting any person in the unauthorized transaction
of insurance business.
- 27 12. Violating section 41-624, subsection B or C.
- 28 13. Violating section 6-1410, 6-1412 or 6-1413.
- 29 14. Using the insurance producer's license principally to procure
30 insurance that covers the life, property or insurable interests, other

1 than to insure an interest in property that is being sold under a
2 contract or that is securing a loan, of any of the following:

- 3 (a) The licensee.
- 4 (b) The licensee's family or relatives to the second degree.
- 5 (c) The licensee's employer.
- 6 (d) The licensee's employees.
- 7 (e) A firm or corporation, or its employees, in which the licensee
8 owns a substantial interest.

9 3. A.R.S. § 20-295(F) provides as follows:

10 F. In addition to or instead of any suspension, revocation or refusal
11 to renew a license pursuant to this section, after a hearing the
12 director may:

- 13 1. Impose a civil penalty of not more than two hundred fifty dollars
14 for each unintentional failure or violation, up to an aggregate civil
15 penalty of two thousand five hundred dollars.
- 16 2. Impose a civil penalty of not more than two thousand five
17 hundred dollars for each intentional failure or violation, up to an
18 aggregate civil penalty of fifteen thousand dollars.
- 19 3. Order the licensee to provide restitution to any party injured by
20 the licensee's action.

21 4. The Department has the burden of proof in this matter, and the standard of
22 proof on all issues is by a preponderance of the evidence. See A.R.S. § 41-
23 1092.07(G); A.A.C. R2-19-119. A preponderance of the evidence is "such proof as
24 convinces the trier of fact that the contention is more probably true than not." Morris K.
25 Udall, Arizona Law of Evidence, § 5 (1960). Proof by preponderance of the evidence
26 "is evidence which is of greater weight or more convincing than the evidence which is
27 offered in opposition to it; that is, evidence which as a whole shows that the fact sought
28 to be proved is more probable than not." Black's Law Dictionary 1182 (rev. 6th ed.
29 1990).

30 5. The Department has established by the greater weight of the evidence that
Respondent violated A.R.S. §§ 20-295(A)(3) and 20-295(A)(8) because Respondent
committed theft by conversion of checks that did not belong to him and did not report
being convicted of theft when he submitted his initial and his renewal applications for

1 insurance licensure. The Department also established by a preponderance of the
2 evidence that Respondent violated A.R.S. § 20-295(A)(4) because, although it was not
3 stated in the documentation that Respondent was conducting insurance business
4 during the theft, the victim was an insurance company and it is unlikely that
5 Respondent could have obtained the checks he converted without being involved in
6 doing insurance business either under his own license or someone else's. Therefore,
7 the Department has established grounds for disciplinary action.

8 6. The Department has established that it is appropriate to revoke Respondent's
9 license. Further, a civil penalty should be imposed of \$5,000.00, which consists of
10 \$2,500.00 for each incident of failing to report.

11 **RECOMMENDED DECISION**

12 Based upon the foregoing considerations, the undersigned Administrative Law
13 Judge hereby recommends that Respondent's insurance producer's license be revoked
14 and that a civil penalty of \$5,000.00 be imposed.

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16
17 *In the event of certification of the Administrative Law Judge Decision by the*
18 *Director of the Office of Administrative Hearings, the effective date of the Order is the*
19 *date of certification.*

20 Done this day, May 28, 2014.

21 /s/ Dorinda M. Lang
22 Administrative Law Judge

23
24 Transmitted electronically to:

25
26 Darren Ellingson, Deputy Director
27 Arizona Department of Insurance
28
29
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