

JUN 19 2015

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY ms

In the Matter of the Insurance License of:

No. 14A-014-INS

TREVINO, RODRIGO ALBERTO
(Arizona License No. 899529)

AMENDED ORDER
(NUNC PRO TUNC)

Respondent.

1. On June 2, 2014, the Arizona Department of Insurance ("Department") entered an Order in the above captioned matter. The Director of the Department ("Director") adopted the Administrative Law Judge's Recommended Findings of Fact and Conclusions of Law. The Director also immediately revoked Respondent's insurance producer license and imposed a civil penalty in the amount of \$5,000.00 payable to the General Fund within 60 days of the filing of the Order.

2. The Administrative Law Judge's Recommended Decision ("Recommended Decision") is attached to and incorporated into this Amended Order by this reference.

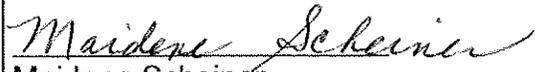
3. Pursuant to A.R.S. § 41-1092.08(B), if the Director modifies the Recommended Decision, she must provide a written justification setting forth the reasons for the modification.

4. The Director modifies the Recommended Decision as follows:

- a. The Director strikes the sentence "Further, a civil penalty should be imposed of \$5,000.00, which consists of \$2,500.00 for each incident of failing to report." on page 6, lines 10 and 11.
- b. The Director strikes the phrase "and that a civil penalty of \$5,000.00 be imposed" on page 6, line 15.

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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
29

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
11 the following causes:

12 1. Providing incorrect, misleading, incomplete or materially untrue
13 information in the license application.

14 2. Violating any provision of this title or any rule, subpoena or order
15 of the director.

16 3. Obtaining or attempting to obtain a license through
17 misrepresentation or fraud.

18 4. Improperly withholding, misappropriating or converting any
19 monies or properties received in the course of doing insurance
20 business.

21 5. Intentionally misrepresenting the terms of an actual or proposed
22 insurance contract or application for insurance.

23 6. Having been convicted of a felony.

24 7. Having admitted or been found to have committed any insurance
25 unfair trade practice or fraud.

26 8. Using fraudulent, coercive or dishonest practices, or
27 demonstrating incompetence, untrustworthiness or financial
28 irresponsibility in the conduct of business in this state or
29 elsewhere.

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

10 Forging another's name to any document related to an
11 insurance transaction.

12 Aiding or assisting any person in the unauthorized transaction
13 of insurance business.

14 Violating section 41-624, subsection B or C.

15 Violating section 6-1410, 6-1412 or 6-1413.

16 Using the insurance producer's license principally to procure
17 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.

15
16 *In the event of certification of the Administrative Law Judge Decision by the*
17 *Director of the Office of Administrative Hearings, the effective date of the Order is the*
18 *date of certification.*

19
20 Done this day, May 28, 2014.

21 /s/ Dorinda M. Lang
22 Administrative Law Judge
23

24 Transmitted electronically to:

25 Darren Ellingson, Deputy Director
26 Arizona Department of Insurance
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