

STATE OF ARIZONA
FILED

JUN 18 2015

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY MS

In the Matter of:

No. 14A-135-INS

WAGNER, WILLIAM JAY,

ORDER

Petitioner.

On June 17, 2015, the Office of Administrative Hearings, through Administrative Law Judge Thomas Shedden, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on June 18, 2015, 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 William Jay Wagner's application for an Arizona insurance producer 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 6. On September 27, 2010, Mr. Wagner pleaded guilty to theft. Mr. Wagner
2 was sentenced to two years of probation and ordered to pay the Kiwanis Club of Tempe
3 \$7563.30 in restitution.

4 7. Mr. Wagner paid the required restitution and his probation was terminated
5 early in or around August 2011.

6 8. In a letter dated November 21, 2014, the Department informed Mr.
7 Wagner that his application had been denied based on ARIZ. REV. STAT. section 20-
8 295(A)(8).

9 9. Mr. Wagner requested a hearing, which led to the instant matter be
10 scheduled.

11 10. Mr. Wagner acknowledged that during 2009, while he was the Kiwanis
12 Club treasurer, he used the club's money for repairs and supplies for his computer.

13 11. Based on his testimony however, Mr. Wagner does not acknowledge that
14 the amount of his theft was equal to the amount he was required to pay in restitution.
15 According to Mr. Wagner, he agreed to pay the full \$7563.30 in restitution because
16 doing so would lead to the best result, which was to avoid a trial and to go on with life
17 with his children.

18 12. According to Mr. Wagner, when he became the Kiwanis treasurer there
19 was no audit of the existing accounts. Mr. Wagner was trying to clean up the existing
20 accounts and to help transition from accounting using excel to using QuickBooks.

21 13. According to Mr. Wagner, the matter could have been resolved more
22 readily than it was but for the fact that the Kiwanis's president was a member of the
23 Tempe city council, which caused the matter to be designated by the county attorney
24 as a high-profile matter.

25 14. Mr. Wagner testified as to his desire to become an insurance producer
26 with a goal being that of helping others.

27 15. If he receives his license, Mr. Wagner has an employer that is prepared to
28 hire him.

29 16. In support of his case, Mr. Wagner had submitted into evidence six letters
30 that had been written in his support during the underlying criminal matter in 2010.

1 17. Mr. Fromholtz provided credible testimony that the type of misconduct Mr.
2 Wagner engaged in has relevance to the duties of an insurance producer because Mr.
3 Wagner was in a position of trust as treasurer and insurance producers are also often
4 in a position of trust holding clients' money.

5 **CONCLUSIONS OF LAW**

6 1. Mr. Wagner bears the burden of persuasion. See ARIZ. REV. STAT. § 41-
7 1092.07(G)(1).

8 2. The standard of proof on all issues in this matter is that of a
9 preponderance of the evidence. ARIZ. ADMIN. CODE § R2-19-119.

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

14 4. The preponderance of the evidence shows that Mr. Wagner has been
15 convicted of theft, which constitutes the use of dishonest practices and
16 untrustworthiness in the conduct of business. Consequently, the Department's Director
17 has discretion to deny Mr. Wagner's application based on ARIZ. REV. STAT. section 20-
18 295(A)(8).

19 5. Mr. Wagner has failed to demonstrate by a preponderance of the
20 evidence that the Department's decision to deny his application should be overturned.¹

21 6. Mr. Wagner's appeal should be dismissed.

22 **ORDER**

23 **IT IS ORDERED** that William Jay Wagner's appeal is dismissed.

24 *In the event of certification of the Administrative Law Judge Decision by the Director of*
25 *the Office of Administrative Hearings, the effective date of the Order is five days after*
26 *the date of that certification.*

27
28 _____
29 ¹ It is not possible in the abstract to say what would be required for Mr. Wagner to show that the
30 Department's decision to deny his application should be overturned, but in this case Mr. Wagner did not
present any witnesses who could speak to his character or reputation for trustworthiness. Although Mr.
Wagner did provide letters of reference, these letters were all five years old and the authors were not
subject to cross examination.

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Done this day, June 17, 2015.

/s/ Thomas Shedden
Thomas Shedden
Administrative Law Judge

Transmitted electronically to:

Darren Ellingson, Deputy Director
Arizona Department of Insurance