

JUN 16 2016

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY MLB

In the Matter of:

No. 16A-049-INS

WEWERKA, MARTIN BRUNER,

ORDER

Petitioner.

On May 27, 2016, the Office of Administrative Hearings, through Administrative Law Diane Mihalsky, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Interim Director of the Department of Insurance ("Interim Director") on May 27, 2016, a copy of which is attached and incorporated by this reference. The Interim Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The Interim Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Interim Director denies Martin Bruner Wewerka'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 Interim 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.

RECEIVED

MAY 27 2016

AZ DEPT. OF INSURANCE
ADMINISTRATIVE SERVICES

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the License Denial of:

No. 16A-049-INS

WEWERKA, MARTIN BRUNER,

ADMINISTRATIVE LAW JUDGE
DECISION

Petitioner.

HEARING: May 26, 2016, at 1:00 p.m.

APPEARANCES: Martin Bruner Wewerka ("Petitioner") failed to appear; the Arizona Department of Insurance ("the Department") was represented by Liane Kido, Esq., Assistant Attorney General; the Department's witness, Aqueelah Currie, also appeared for the hearing.

ADMINISTRATIVE LAW JUDGE: Diane Mihalsky

FINDINGS OF FACT

1. Petitioner submitted an application for an Arizona resident life and accident/health insurance producer license ("the Application").
2. The Department informed Petitioner that it had determined to deny the Application. Petitioner requested a hearing to appeal the denial.
3. The Department referred Petitioner's appeal to the Office of Administrative Hearings ("the OAH"), an independent state agency, for an evidentiary hearing.
4. On April 21, 2016, the Department issued a Notice of Hearing setting a hearing on Petitioner's appeal of the Department's denial of the Application on May 26, 2016, at 1:00 p.m. at the OAH. The Department mailed the Notice of Hearing by certified and regular mail to Petitioner at the address on the Application.
5. The Department's attorney and witness appeared at the OAH for the duly noticed hearing.
6. Petitioner did not request to appear telephonically at the hearing and did not request that the hearing be continued. Although the start of the duly noticed hearing was delayed twenty minutes to allow Petitioner additional travel time, he did not appear, personally or through an attorney, and did not contact the OAH to request that

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1 the start of the hearing be further delayed. Consequently, Petitioner did not present
2 any evidence to establish his qualifications to be issued an Arizona resident life and
3 accident/health insurance producer license.

4 **CONCLUSIONS OF LAW**

5 1. The Notice of Hearing that the Department mailed to Petitioner at the
6 address that he provided on the Application was reasonable and Petitioner is deemed
7 to have received notice of the hearing.¹

8 2. This matter lies within the Department's jurisdiction.

9 3. Petitioner bears the burden of proof to establish that he is qualified to be
10 issued an Arizona resident life and accident/health insurance producer license by a
11 preponderance of the evidence.² "A preponderance of the evidence is such proof as
12 convinces the trier of fact that the contention is more probably true than not."³

13 4. By failing to appear or to present any evidence of his qualifications at the
14 duly noticed hearing, Petitioner failed to carry his burden of proof. Therefore, the
15 Department may dismiss Petitioner's appeal and affirm the denial of the Application.

16 **RECOMMENDED ORDER**

17 Based on the foregoing, it is ordered that Petitioner Martin Bruner Wewerka's
18 appeal shall be dismissed and that the Department's denial of his Application for an
19 Arizona resident life and accident/health insurance producer license shall be 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 days from the date of that certification.*

23 Done this day, May 27, 2016.

24 /s/ Diane Mihalsky
25 Administrative Law Judge

26 Transmitted electronically to:
27

28 _____
29 ¹ See A.R.S. §§ 41-1092.04; 41-1092.05(D).

30 ² See A.R.S. § 41-1092.07(G)(1); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369,
372, 249 P.2d 837 (1952).

³ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

Leslie R. Hess, Interim Director
Arizona Department of Insurance

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