

STATE OF ARIZONA
FILED

JAN 24 2017

STATE OF ARIZONA
DEPARTMENT OF INSURANCE BY JLS DEPT OF INSURANCE

In the Matter of:

WHITE, MICHAEL
(Arizona License No. 1125235)
(National Producer No. 17727370)

No. 16A-084-INS

ORDER

Respondent.

On January 20, 2017, the Office of Administrative Hearings, through Administrative Law Judge Suzanne Marwil, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on January 20, 2017, 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 except to change the references from "Petitioner" to "Respondent" throughout.
2. The Interim Director revokes the Arizona resident insurance producer license, No. 1125235, of **Michael White** effective immediately.

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 filing 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.

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

5 DATED this 23rd day of January, 2017.

6
7 
8 Leslie R. Hess, Interim Director
Arizona Department of Insurance

9
10 COPY of the foregoing mailed this
24th day of January, 2017, to:

11 Michael White
12 3218 E. Bell Rd., #313
13 Phoenix, AZ 85032
Respondent

14 Mary Kosinski, Regulatory Legal Affairs Officer
15 Catherine O'Neil, Consumer Legal Affairs Officer
16 Steven Fromholtz, Assistant Director – Consumer Protection Division
17 Aqueelah Currie, Licensing
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

18 Liane Kido
19 Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

20 Office of Administrative Hearings
21 1400 West Washington, Suite 101
Phoenix, Arizona 85007

22 
23 Maidene Scheiner

24
25
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JAN 20 2017

DEPT. OF INSURANCE
BY: MEK

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 16A-084-INS

WHITE, MICHAEL
(Arizona License Number 1125235)
(National Producer Number 17727370)

ADMINISTRATIVE LAW JUDGE
DECISION

Respondent.

HEARING: January 19, 2017, at 1:00 p.m.

APPEARANCES: Michael White ("Petitioner") failed to appear; the Arizona Department of Insurance ("the Department") was represented by Liane Kido, Esq., Assistant Attorney General.

ADMINISTRATIVE LAW JUDGE: Suzanne Marwil

FINDINGS OF FACT

1. On September 28, 2015, Petitioner submitted to the Department an Application for an Insurance License for an Individual. On the application, Petitioner answered "no" to the question, "Have you EVER been found guilty of, have you had a judgment made against you for, or have you admitted to . . . a felony (of any kind)?"¹ Petitioner provided the address of 3218 East Bell Road, #313, Phoenix, AZ 85032 ("address of record") on the application.

2. Petitioner was issued license no. 1125235 on September 28, 2015.

3. Through the results of a background check, the Department discovered that on May 3, 2001, Petitioner had pled nolo contendere to a charge of grand theft, a class 3 felony in case no. R2001-1190A in Leon, County Florida.²

¹ Exhibit 1 at 2.

² Exhibit 3.

1 4. On November 20, 2016, the Department issued a Notice of Hearing, setting a
2 hearing on January 19, 2017, at 1:00 p.m. at the Office of Administrative Hearings
3 ("OAH"). The Department sent the Notice of Hearing to Petitioner at his address of
4 record. The Notice of Hearing sought to revoke Petitioner's license because he provided
5 misleading, incomplete or materially untrue information on his application pursuant to
6 A.R.S. § 20-295(A)(1) and had been convicted of a felony within the meaning of A.R.S.
7 § 20-295(A)(6).

8 5. A hearing was held on January 19, 2017. The Department submitted three
9 exhibits into evidence and presented the testimony of Aqueelah Currie, its Licensing
10 Supervisor, who testified consistently with the facts detailed above.

11 6. Petitioner did not request to appear telephonically at the hearing and did not
12 request that the hearing be continued. Although the start of the duly noticed hearing was
13 delayed twenty minutes to allow Petitioner additional travel time, he did not appear,
14 personally or through an attorney, and did not contact OAH to request that the start of the
15 hearing be further delayed. Consequently, Petitioner did not present any evidence to
16 defend his license.

17 **CONCLUSIONS OF LAW**

18 1. This matter lies within the Department's jurisdiction.³

19 2. The Notice of Hearing that the Department mailed to Petitioner at his address
20 of record was reasonable, and Petitioner is deemed to have received notice of the
21 hearing.⁴

22 3. A.R.S. § 20-295(A) provides in pertinent part that:

23 The director may deny, suspend for not more than twelve months,
24 revoke or refuse to renew an insurance producer's license or may
25 impose a civil penalty in accordance with subsection F of this section
26 or any combination of actions for any one or more of the following
27 causes:

28 1. Providing incorrect, misleading, incomplete or materially untrue
29 information in the license application.

30 ³ See A.R.S. §§ 20-281 to 20-302.

⁴ See A.R.S. §§ 41-1092.04; 41-1092.05(D).

1 * * *

2 6. Having been convicted of a felony.

3 4. Petitioner has been convicted of a felony of theft. Cause therefore exists
4 under A.R.S. § 20-295(A)(6) for the Director of the Department to revoke Petitioner's
5 insurance license.

6 5. In addition, Petitioner failed to disclose his conviction for theft and answered
7 "no," when asked if he had ever been convicted of a felony. The failure to disclose his
8 conviction constitutes providing incomplete, misleading or materially untrue information
9 on an insure application pursuant to A.R.S. § 20-295(A)(1) and provides the Department
10 with additional grounds to revoke Petitioner's insurance license.

11 6. Petitioner bears the burden of proof to establish that he is rehabilitated and
12 qualified to receive an insurance license by a preponderance of the evidence.⁵ "A
13 preponderance of the evidence is such proof as convinces the trier of fact that the
14 contention is more probably true than not."⁶

15 7. By failing to appear or to present any evidence that he is rehabilitated or
16 qualified to hold an insurance license, Petitioner failed to carry his burden to establish
17 that the Department erred in deciding to revoke his insurance license.

18 **RECOMMENDED ORDER**

19 Based on the foregoing, it is recommended that the Director of the Department
20 revoke Petitioner's insurance license.

21 *In the event of certification of the Administrative Law Judge Decision by the*
22 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
23 *five days from the date of that certification.*

24
25 Done this day, January 20, 2017.

26 /s/ Suzanne Marwil
27 Administrative Law Judge
28

29 ⁵ 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,
30 249 P.2d 837 (1952).

⁶ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

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Transmitted electronically to:
Leslie R. Hess, Interim Director
Arizona Department of Insurance