

MAR 3 2017

DEPT OF INSURANCE  
BY MS

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

In the Matter of:

No. 16A-164-INS

SCHAFFER, SEAN TYRE,

ORDER

Petitioner.

On February 24, 2017, the Office of Administrative Hearings, through Administrative Law Judge Thomas Shedden, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Interim Director of the Department of Insurance ("Interim Director") on February 24, 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:

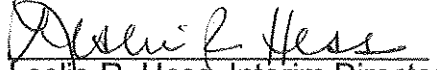
1. The Interim Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Interim Director denies **Sean Tyre Schaffer's** application for an Arizona insurance producer license.

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

5 DATED this 28<sup>th</sup> day of February, 2017.

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

10 COPY of the foregoing mailed this  
11 6<sup>th</sup> day of March, 2017, to:

12 Sean Tyre Schaffer  
13 15829 W. Diamond St.  
14 Goodyear, AZ 85338  
15 Petitioner

16 Mary Kosinski, Executive Assistant for Regulatory Affairs  
17 Catherine O'Neil, Consumer Legal Affairs Officer  
18 Steven Fromholtz, Asst. Dir., Consumer Protection Division  
19 Arizona Department of Insurance  
20 2910 North 44th Street, Suite 210  
21 Phoenix, Arizona 85018

22 Liane Kido  
23 Assistant Attorney General  
24 1275 West Washington Street  
25 Phoenix, Arizona 85007-2926

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

  
Maidene Scheiner

FEB 24 2017

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

DEPT. OF INSURANCE  
BY: MEK

In the Matter of the Application for  
Licensure of:

No. 16A-164-INS

SCHAFFER, SEAN TYRE

ADMINISTRATIVE LAW JUDGE

Petitioner.

DECISION

**HEARING:** February 8, 2017

**APPEARANCES:** Sean Tyre Schaffer on his own behalf; Liane Kido, Esq. for the  
Department of Insurance

**ADMINISTRATIVE LAW JUDGE:** Thomas Shedden

**FINDINGS OF FACT**

1. On December 29, 2016, the Arizona Department of Insurance ("Department") issued a Notice of Hearing setting the above-captioned matter for hearing on February 8, 2017, at the Office of Administrative Hearings in Phoenix, Arizona.
2. The issue for hearing is Petitioner Sean Tyre Schaffer's appeal of the Department's denial of his application for a license.
3. Mr. Schaffer appeared and testified on his own behalf. Mr. Schaffer also presented the testimony of Nichole Schaffer and Doug Milen.
4. Ms. Schaffer is an Allstate agent who has employed Mr. Schaffer for about six months, but the two are not related. Mr. Milen also works at the agency.
5. The Department presented the testimony of Assistant Director Steven Fromholtz.
6. On October 27, 2016, Mr. Schaffer filed with the Department an application for an insurance license. In his application, Mr. Schaffer disclosed that he had been found guilty of a felony.
7. On February 17, 2005, Mr. Schaffer was found guilty by plea to second degree murder, a felony, in King County Washington Superior Court. The crime itself

1 occurred on April 1, 1993. Mr. Schaffer was sentenced to confinement in the custody of  
2 the Washington Department of Corrections for a term of 165 months.

3 8. In a letter dated December 1, 2016, the Department informed Mr. Schaffer  
4 that pursuant to ARIZ. REV. STAT. section 20-295(A)(8), without limitation, his application  
5 was denied. The Notice of Hearing shows that Mr. Schaffer's application was denied  
6 because he had violated ARIZ. REV. STAT. section 20-295(A)(6).

7 9. Through a letter dated December 5, 2016, Mr. Schaffer requested a  
8 hearing. In that letter Mr. Schaffer disclosed that he had been denied an insurance  
9 license in California and that he held a license in Colorado.

10 10. In the application at issue, Mr. Schaffer had responded "no" to the question  
11 of whether he had ever had a professional license denied.

12 11. California's denial of Mr. Schaffer's application for a license in that state  
13 was in essence a default hearing, which he said occurred because he failed to  
14 prosecute the application after California requested more information.

15 12. The Department has access to a database through which it could have  
16 learned that Mr. Schaffer had been denied a license in California, but most likely would  
17 not have checked when he submitted his application because he disclosed the felony  
18 conviction.

19 13. Mr. Fromholtz testified that the Department had requested more  
20 information from Mr. Schaffer, including a request for more comprehensive employment  
21 information, and that Mr. Schaffer did not fully comply with that request because he did  
22 not provide detailed information regarding his dates of employment.

23 14. Mr. Fromholtz provided credible testimony showing that the Department  
24 had considered the fact that Mr. Schaffer's crime occurred in 1993, which is a mitigating  
25 factor, but this was negated by the incomplete disclosures in his application and in his  
26 work history. The Department had also considered that Mr. Schaffer's conviction  
27 occurred in 2005 and the length of his sentence, the duration of which was not time that  
28 the Department considered as mitigation.

29 15. Ms. Schaffer and Mr. Milen each testified to the effect that they have  
30 known Mr. Schaffer for about six months, during which time Mr. Schaffer has worked for  
Ms. Schaffer.

1           16. Ms. Schaffer testified that she trusts Mr. Schaffer "100%" and was of the  
2 opinion that Mr. Schaffer should be granted a license. She was also of the opinion that  
3 Mr. Schaffer's failures to make a complete disclosure to the Department were errors,  
4 not a sign of bad character. Ms. Schaffer acknowledged that her opinions were based  
5 only on her observations of Mr. Schaffer in the workplace.

6           17. Mr. Milen testified that Mr. Schaffer has been forthright and that he has  
7 demonstrated a quality work ethic. He was of the opinion that Mr. Schaffer's failures to  
8 make complete disclosures were errors, not misrepresentations.

9           18. Mr. Schaffer testified that he had not kept a complete employment history  
10 by date and that he is now an ordained minister. He also drew attention to the passage  
11 of time since his criminal act, and testified to the effect that he is now a changed person.

12           19. At the hearing, the Department had entered into evidence an email from  
13 Mr. Schaffer to the Department in which he informed the Department that as of  
14 November 10, 2016 he was unemployed. This email is not consistent with Ms.  
15 Schaffer's testimony that Mr. Schaffer had been working for her for the past six months.  
16 Mr. Schaffer testified that he must have been in error when he sent the email.

#### CONCLUSIONS OF LAW

17           1. Mr. Schaffer bears the burden of persuasion. ARIZ. REV. STAT. § 41-  
18 1092.07(G)(1).

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

21           3. A preponderance of the evidence is:

22                   The greater weight of the evidence, not necessarily established  
23 by the greater number of witnesses testifying to a fact but by  
24 evidence that has the most convincing force; superior  
25 evidentiary weight that, though not sufficient to free the mind  
26 wholly from all reasonable doubt, is still sufficient to incline a fair  
and impartial mind to one side of the issue rather than the other.

27                   BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

28           4. Mr. Schaffer has been convicted of a felony. Consequently, the  
29 Department's Director has discretion to deny Mr. Schaffer's application based on ARIZ.  
30 REV. STAT. section 20-295(A)(6).

