

MAY 2 1996

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

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In the Matter of:)	Docket No. 96A-005-INS
)	
ANTHONY WILFRED O'NEILL)	
)	ORDER
Petitioner.)	
)	
_____)	

On April 24, 1996, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal submitted "Recommended Findings of Fact, Conclusions of Law and Recommended Order", a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the recommendation, and enters the following order:

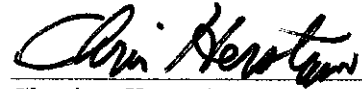
1. The recommended findings of fact and conclusions of law are adopted.
2. The application for an individual life and disability agent license submitted on May 31, 1995 by Petitioner Anthony Wilfred O'Neill to the Arizona Department of Insurance is denied.

NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

1 The final decision of the Director may be appealed to
2 the Superior Court of Maricopa County for judicial review
3 pursuant to A.R.S. §20-166.

4 EFFECTIVE this 15th day of May, 1996

6 

7 Chris Herstam
8 Director of Insurance

9 A copy of the foregoing
10 mailed this 2nd day of
11 May, 1996

12 Charles R. Cohen, Deputy Director
13 Gregory Y. Harris, Executive Assistant Director
14 John Gagne, Assistant Director
15 Maureen Catalioto, Supervisor
16 Catherine O'Neil, Assistant Director
17 Department of Insurance
18 2910 N. 44th St., Suite 210
19 Phoenix, AZ 85018

20 Office of Administrative Hearings
21 1700 West Washington, Suite 244
22 Phoenix, AZ 85007

23 Michael J. De La Cruz
24 Assistant Attorney General
25 1275 West Washington
26 Phoenix, Arizona 85007
27 Attorney for Department

28 Anthony W. O'Neill
4726 North Granite Reef Road
Scottsdale, AZ 85253
Petitioner



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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of

No. 96A-005-INS

ANTHONY WILFRED O'NEILL,

**RECOMMENDED FINDINGS OF
FACT, CONCLUSIONS OF LAW AND
RECOMMENDED ORDER**

Petitioner.

On April 9, 1996, a hearing took place in the above-referenced matter. Assistant Attorney General Michael De La Cruz appeared on behalf of the Arizona Department of Insurance ("Department"). Petitioner Anthony Wilfred O'Neill ("Mr. O'Neill") appeared unrepresented by legal counsel.

Based upon the entire record, including all pleadings, motions, testimony, and exhibits, Administrative Law Judge Lewis D. Kowal prepared the following Recommended Findings of Fact, Conclusions of Law, and Recommended Order for consideration by the Director of the Department ("Director").

FINDINGS OF FACT

1. On May 31, 1995, Mr. O'Neill filed an application for a life and disability insurance agent license (the "Application") with the Department. In connection with the Application, Mr. O'Neill executed an Agreement for a Conditional License and the Department issued a Conditional License to Mr. O'Neill pending the Department's completion of a background investigation.

2. Mr. O'Neill answered "No" to question F(1) of the Application which asked, "Have you EVER been convicted of a misdemeanor?".

3. Mr. O'Neill answered "No" to question F(3) of the Application which asked, "Have you EVER been arrested, questioned, served a criminal summons, taken into custody, charged with, tried for, or ever been the subject of an investigation concerning the violation of any felony or misdemeanor, or are any charges now pending against you?".

4. On December 28, 1995, the Department revoked Mr. O'Neill's conditional license and denied the Application.

5. On January 11, 1996, Mr. O'Neill timely demanded a hearing on the denial of the Application.

1 6. Mr. O'Neill failed to disclose in the Application that on May 12, 1988, the
2 Scottsdale Police Department arrested him for violation of A.R.S. §13-1802, felony
3 theft.

4 7. Mr. O'Neill also failed to disclose in the Application that on September
5 22, 1988, in Maricopa County Justice of the Peace Court, Scottsdale Division,
6 Docket No. CR88-01169AFE, he pleaded no contest to theft, a class one
7 misdemeanor, in violation of A.R.S. §§13-1802, 13-1801, 13-707 and 13-802. As a
8 result thereof, the Court placed Mr. O'Neill on summary probation for 24 months.

9 8. The Department contends that Mr. O'Neill made a material
10 misrepresentation in the Application. Mr. O'Neill claims that he did not remember the
11 1988 arrest or misdemeanor conviction as a result of memory loss due to having a
12 condition diagnosed as Guillain-Barre Syndrome.

13 9. Evidence presented at the hearing established that in April 1994, Mr.
14 O'Neill was admitted to St. Joseph's Hospital and Medical Center and was diagnosed
15 as having Guillain-Barre Syndrome.

16 10. Other than Mr. O'Neill's testimony, no evidence was presented to
17 establish that memory loss is a result of or symptom of Guillain-Barre Syndrome.

18 11. Mr. O'Neill failed to explain how it was that he could recall having been
19 licensed as an insurance agent in Arizona, Utah and Nevada and remember his prior
20 employment history but could not recall the 1988 arrest for theft misdemeanor or the
21 conviction. Further, Mr. O'Neill could not recall any other incident where he had
22 learned that he did not relate an event from his past.

23 12. Under the circumstances, it is determined that Mr. O'Neill did not answer
24 questions F(1) and F(3) of the Application truthfully.

CONCLUSIONS OF LAW

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26 1. Mr. O'Neill received notice of this proceeding as prescribed by A.R.S.
27 §§20-163 and 41-1061.

28 2. The Director has jurisdiction over this matter pursuant to A.R.S.
29 §§20-161 and 20-290.

30 3. Mr. O'Neill's failure to answer questions F(1) and F(3) of the Application
31 truthfully is a material misrepresentation with the meaning of A.R.S. §20-290(B)(1).
32 Upon that finding, the Director may refuse to issue Mr. O'Neill an insurance license.

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RECOMMENDED ORDER

The undersigned Administrative Law Judge recommends that the application for an individual life and disability agent license submitted on May 31, 1995 by Petitioner Anthony Wilfred O'Neill to the Arizona Department of Insurance be denied.

DATED this 24th day of April, 1996.

OFFICE OF ADMINISTRATIVE HEARINGS

Lewis D. Kowal

LEWIS D. KOWAL
Administrative Law Judge

COPY of the foregoing mailed/delivered this 24th day of April, 1996, to:

Chris Herstam, Director
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, AZ 85018

Chris Crawford
Chris Crawford