STATE OF ARIZONA
FILED

AUG 20 1997

DEPT. OF INSURANCE
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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:	)	Docket No. 97A-090
	)	
DANA ALAN KEMP,	)	**ORDER**
	)	
Applicant.	)	
	)	

On August 15, 1997, the Office of Administrative Hearings, through Administrative Law Judge Robert I. Worth, submitted "Decision and Recommended Order" ("Recommended Order"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Order and enters the following order:

1. The recommended findings of fact and conclusions of law are adopted.

2. The application for a life and disability insurance agents license submitted by Dana Alan Kemp 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).

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office of

Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal, pursuant to A.R.S. §41-1092.10.

DATED this 19 day of August, 1997

John A. Greene
Director of Insurance

A copy of the foregoing mailed
this 20th day of August, 1997

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:	Docket No. 97A-090-INS
DANA ALAN KEMP,	
Applicant.	DECISION AND RECOMMENDED ORDER

The above-entitled matter came on for hearing on August 7, 1997 pursuant to advance notice duly sent to all parties. The named Applicant, Dana Alan Kemp, appeared in his own behalf, and the Arizona Department of Insurance (herein called the "Department") was represented by Assistant Attorney General, Shelby L. Cuevas. Evidence and testimony were presented, and based upon the entire record, the following Findings of Fact, Conclusions of Law and Recommended Order have been prepared and are hereby submitted by the undersigned Administrative Law Judge for review, consideration, approval and adoption by the Director of the Department (herein called the "Director").

FINDINGS OF FACT

1. Applicant, Dana Alan Kemp (herein called "Mr. Kemp") submitted an application to the Department for a life and disability insurance agent license. In answer to a specific question on the application form as to whether any prior felony convictions existed or whether the applicant was ever arrested of charged with criminal offenses, Mr. Kemp responded in the affirmative. Following the Department's denial of the application for licensure, Mr. Kemp timely requested the convening of the instant hearing.

2. It was not disputed that Mr. Kemp, who is now almost 36 years of age, has been convicted of the felony of second degree murder pursuant to a guilty plea agreement. The underlying offense was committed on December 31, 1980 when Mr. Kemp was 19 years old.

3. The nature and circumstances of the crime for which Mr. Kemp had been convicted was admittedly very serious and involved a high degree of moral turpitude. The Court's judgment of conviction, entered on September 3, 1981, sentenced Mr. Kemp to a term of imprisonment for nineteen and one-half years, giving credit for 247 days of incarceration in the County jail that was served while awaiting sentencing.

4. The evidence revealed that Mr. Kemp was released from prison in November 1993, which was slightly less than 13 years of incarceration time. After a five or six month period of house arrest, he commenced a general probationary period in mid-1994, which he successfully served, earning his absolute discharge effective on April 22, 1996. Mr. Kemp subsequently applied for and was granted the restoration of his civil rights by Order of the Superior Court dated January 7, 1997.

5. The testimonial and documentary evidence tended to indicate that Mr. Kemp has taken major strides to improve himself educationally and socially, and to become a productive member of the community. While serving his prolonged term of imprisonment, he completed the equivalent of a high school education and also additional college level courses, attaining grades that were well above average. He participated in many activities, learning the trade of jewelry making in which he has excelled, and he was also actively involved in a newsletter publication as well as in arrangements for special events.

6. Although the long period of incarceration was not entirely free from the commission of several infractions which consisted mostly of relatively minor incidents and only a very few more substantial violations of prison rules or standards, Mr. Kemp's overall performance and conduct record, considered in its entirety, displayed an exceptionally fine work ethic and he was able to earn periodic rewards with respect to his living conditions and other privileges bestowed upon those inmates so deserving.

7. The rehabilitation objectives of the State's penal system appear to have achieved a measure of success in Mr. Kemp's case, generating substantial gains in many social and skill development directions. Moreover, he was able to produce numerous expressions of strong support from members of the business community as well as some individuals involved in the correctional sector. Of perhaps special significance was a sincere and heartfelt written endorsement from the father of the victim who had been killed by Applicant, such endorsement being obtained following Mr. Kemp's personal visit and apology shortly after his release from prison.

8. Mindful of the demonstrated change in Mr. Kemp's course of conduct during and after his incarceration and following his ultimate release which was, at all times, designed not to repeat any past mistakes but rather to alter his behavior patterns and responses, these mitigating factors must be balanced against the nature and gravity of the felony offense he committed and the relatively short duration of time that has elapsed since his unsupervised return to society. While it is possible and even probable that, at some future point in time, the ongoing demonstration of Applicant's exemplary conduct and activities, consistent with his commendable desires to become and remain a productive citizen, businessman and family man, will balance or outweigh the adverse impact generated by his prior criminal record, it is determined that insufficient rehabilitation time has elapsed since Mr. Kemp completed all prison and probation terms of his sentence slightly over one year ago.

CONCLUSIONS OF LAW

1. The Director has jurisdiction over this matter pursuant to the provisions of A.R.S.§§20-161 and 20-290.

2. The Director is empowered by the provisions of A.R.S.§20-290(B)(6) with the discretion to issue or to deny the issuance of an insurance license to applicants having

a record of one or more felony convictions which involve moral turpitude after reviewing and evaluating all facts and circumstances. The totality of the evidence of record in this case established an adequate basis to support the Director's exercise of his statutory discretion with respect to this Applicant.

3. The previous determination by the Department to deny the license application submitted by Mr. Kemp cannot be held to have been arbitrary, unreasonable or otherwise unwarranted. Stated alternatively, it must be held that Applicant has not sustained his realistic burden of proving by a preponderance of the evidence that he is presently entitled to licensure by the Department.

4. Any ineligibility at this time for Mr. Kemp to be granted an insurance license should not be and is not treated as perpetual, and a future new application may be favorably accepted, in the discretion of the Director, after the passage of a reasonable length of time upon a showing that, during such intervening period, Applicant continues to achieve and maintain a good record.

RECOMMENDED ORDER

In view of the foregoing, it is recommended that the prior denial action by the Department be affirmed and that the Director enter his Order denying the application for a life and disability insurance agent license submitted by Dana Alan Kemp.

It is further recommended that nothing in this decision should be construed to constitute a perpetual bar to Mr. Kemp's ability to receive an insurance license in the future, and that the entry of the Order denying the instant license application should be treated as being expressly without prejudice to such ability, provided that he continues

to compile a good record as a conscientious and law-abiding individual over a more prolonged time period.

Dated: August 15, 1997.

OFFICE OF ADMINISTRATIVE HEARINGS

Robert. I. Worth
Administrative Law Judge

Original transmitted on 8/15/97

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