

JUN 1 2006

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
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| In the Matter of: |) | Docket No. 06A-037-INS |
| |) | |
| STEVEN MICHAEL MADDEN, |) | ORDER |
| |) | |
| Petitioner. |) | |
| |) | |
| |) | |

On May 19, 2006, the Office of Administrative Hearings, through Administrative Law Judge ("ALJ") Thomas Shedden, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on May 24, 2006, a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The Recommended Findings of Fact and Conclusions of Law are adopted.
2. The Department's prior decision denying Petitioner's license renewal application shall be upheld.

NOTIFICATION OF RIGHTS

Pursuant to A.R.S. § 41-1092.09, Respondent may request a rehearing with respect to this order by filing a written motion with the 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 Director to the Superior Court of
2 Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must
3 notify the Office of Administrative Hearings of the appeal within ten days after filing the
4 complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

5 DATED this 31st of May, 2006

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8 CHRISTINA URIAS
Director of Insurance

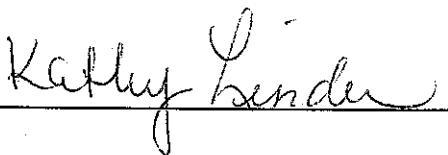
9 A copy of the foregoing mailed
10 this 1st day of June, 2006

11 Mary Kosinski, Executive Assistant for Regulatory Affairs ✓
12 Catherine O'Neil, Consumer Legal Affairs Officer
13 Steve Fromholtz, Producer Licensing Administrator
14 Arizona Department of Insurance
2910 N. 44th Street, Suite 210
15 Phoenix, AZ 85018

16 Office of Administrative Hearings
1400 W. Washington, Suite 101
17 Phoenix, AZ 85007

18 Moira McCarthy
Assistant Attorney General
1275 W. Washington
19 Phoenix, AZ 85007

20 Steven Michael Madden
39939 N. Peale Court
21 Anthem, AZ 85086

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

STEVEN MICHAEL MADDEN

Petitioner.

No. 06A-037-INS

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARING: May 15, 2006.

APPEARANCES: Steven Michael Madden appeared on his own behalf;
Assistant Attorney General Moira A. McCarthy appeared on behalf of the Arizona
Department of Insurance.

ADMINISTRATIVE LAW JUDGE: Thomas Shedden

The Arizona Department of Insurance asserted that grounds exist to deny Petitioner
Steven Michael Madden's renewal license application.

FINDINGS OF FACT

1. Petitioner Steven Michael Madden is licensed by the Arizona Department of Insurance as an Accident/Health Producer, Property Casualty and Life Producer, license number 89678.
2. On February 23, 2006 the Department received Mr. Madden's license renewal application. In that application Mr. Madden disclosed that he had been convicted of a felony that he had not previously disclosed to the Department. See Exhibit 1.
3. In a letter dated March 9, 2006 the Department informed Mr. Madden that it had denied his renewal application. The Department denied the renewal application based on A.R.S. § 20-295(A)(2), (A)(6), and (A)(8), without limitation to those provisions. See Exhibit 2.
4. Mr. Madden filed a timely appeal.

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

1 5. On March 24, 2006 the Department issued a Notice of Hearing setting the
2 matter for hearing on May 15, 2006. The Notice alleged, among other things, that Mr.
3 Madden had been indicted and charged with 5 felony counts.

4 6. The Notice alleged that on February 16, 2005 Mr. Madden had pleaded guilty to
5 Theft, a class 3 felony in that he had received checks (totaling \$52,011.94) from the
6 Arizona Department of Education for work that he had not performed. The Notice
7 alleged that on March 23, 2005 a Judgment was entered and Mr. Madden was
8 convicted of Theft a class 3 felony. Mr. Madden was sentenced to 3 months in
9 Maricopa County Jail, 36 months supervised probation, and to pay \$52,011.94
10 restitution.

11 7. At the instant hearing, the Department presented the testimony of Mr. Steven
12 Fromholtz and had 6 exhibits entered into evidence. Mr. Madden presented the
13 testimony of Mr. Brian Tyler, and he gave an opening statement but did not testify.

14 Mr. Fromholtz's Testimony

15 8. Mr. Fromholtz is the Department's Producer's Licensing Administrator, a
16 position he has held for about 1 ½ years. His duties include checking new and renewal
17 applicant's qualifications.

18 9. Mr. Fromholtz was the author of the March 9, 2006 letter in which the
19 Department informed Mr. Madden his renewal application was denied.

20 10. Mr. Madden's renewal application was denied because of his felony conviction
21 and his failure to timely disclose that conviction. See Exhibits 4 (plea agreement) and 5
22 (judgment and sentencing order).

23 11. Mr. Fromholtz testified that a felony conviction does not automatically result in a
24 license denial. The Department considers the type of conviction and how many years
25 since the felony occurred.

26 12. In Mr. Madden's case the Department had considered that the conviction
27 involved dishonesty while Mr. Madden was acting in a position of trust as a independent
28 contractor for the Arizona Department of Education.

29 Mr. Tyler's Testimony

30 13. Mr. Tyler is Mr. Madden's employer and his step-father.

1 14. Mr. has been a Farmer's agent since 1993; he has employed Mr. Madden since
2 2000.

3 15. Mr. Madden's responsibilities include soliciting business and building clientele.
4 His duties also include collecting money, which can be \$10,000 to \$15,000 in a day. Mr.
5 Madden then deposits the money in the trust account.

6 16. There has never been an issue with this money and Mr. Tyler has never
7 distrusted Mr. Madden, and there has never been a penny missing.

8 Mr. Madden's Statement

9 17. Mr. Madden did not dispute that he was convicted of a felony, but would like to
10 keep his license.

11 18. Mr. Madden was not arguing his guilt or innocence. Mr. Madden asserted that
12 he was not a witting participant in the fraud that was perpetrated on Arizona.

13 19. Mr. Madden has paid the restitution. See Exhibit 6.

14 **CONCLUSIONS OF LAW**

15 1. The Department bears the burden of proof, and the standard of proof on all issues
16 in this matter is by a preponderance of the evidence. See A.A.C. R2-19-119.

17 2. A preponderance of the evidence is "[e]vidence which is of greater weight or more
18 convincing than the evidence which is offered in opposition to it; that is, evidence which
19 as a whole shows that the fact sought to be proved is more probable than not." BLACK'S
20 LAW DICTIONARY 1182 (6th ed. 1990).

21 3. The Department alleged that grounds exist to deny Mr. Madden's application
22 based on: (1) A.R.S. § 20-295(A)(6) (conviction of a felony); (2) A.R.S. § 20-295(A)(8)
23 (fraudulent, coercive, dishonest practices or untrustworthiness in the conduct of
24 business); (3) A.R.S. § 20-295(A)(2) (violation of A.R.S. Title 20); and/or (4) A.R.S. § 20-
25 301(B) (failure to report criminal prosecution within 30 days).

26 4. There is no dispute that Mr. Madden pleaded guilty to, and has been convicted of
27 Theft a class 3 felony. This felony conviction involved dishonest practices and shows that
28 Mr. Madden is not trustworthy in business. There is also no dispute that Mr. Madden did
29 not report his prosecution within 30 days as required. Mr. Madden's conviction is recent in
30 that it occurred about 14 months ago, and he will be on probation until March 2008. Mr.

1 Madden showed no remorse for his actions, but rather tries to imply that he is not actually
2 guilty of the charge to which he pled.

3 5. The Department has met its burden to show that Mr. Madden has violated A.R.S.
4 §§ 20-295(A) and 20-301(B) and grounds exist to deny Mr. Madden's renewal application
5 to be licensed as an insurance producer. Because these actions are recent and Mr.
6 Madden is still on probation, and because Mr. Madden offered no substantial evidence in
7 his own behalf, the Department's decision to deny his renewal application should be
8 affirmed.

9 **RECOMMENDED ORDER**

10 **IT IS RECOMMENDED** that the Director of the Arizona Department of Insurance affirm
11 the decision to deny Mr. Madden's February 23, 2006 License Renewal Application.
12

13
14 Done this day, May 19, 2006.

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16 

17 _____
18 Thomas Shedden
19 Administrative Law Judge

20 Original transmitted by mail this
21 23 day of May, 2006, to:

22 Christina Urias, Director
23 Department of Insurance
24 2910 North 44th Street, Ste. 210
25 Phoenix, AZ 85018

26
27 By  _____
28
29
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