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STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

DANIEL LEE HENRY

Petitioner.

No. 07A-064-INS

**NOTICE OF DECLINATOIN TO
REVIEW RECOMMENDED DECISION**

On May 16, 2007, the Office of Administrative Hearings, through Administrative Law Judge ("ALJ") Daniel G. Martin, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on May 21, 2007. The Director declines to review the Recommended Decision. A.R.S. § 41-1092.08(B). The Director does not accept, reject or modify the Recommended Decision, therefore, the Office of Administrative Hearings shall certify the Recommended Decision as the final decision. A.R.S. § 41-1092.08(D). The certification of the Recommended Decision shall include the applicable Notification of Rights regarding the aggrieved party's right to request a rehearing or file an appeal with the Superior Court. A copy of this Notice shall be placed in the Department's permanent records and a copy of the Recommended Decision, together with this Notice, provided to the Petitioner.

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 filling 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 Petitioner 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
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 23rd day of May, 2007.

6
7 

8 CHRISTINA URIAS, Director
9 Arizona Department of Insurance

10 COPY of the foregoing mailed this
11 24th day of May, 2007 to:

12 Mary Kosinski, Executive Assistant for Regulatory Affairs
13 Catherine O'Neil, Consumer Legal Affairs Officer
14 Steve Fromholtz, Licensing Director
15 Arizona Department of Insurance
16 2910 North 44th Street, Suite 210
17 Phoenix, Arizona 85018

18 Jennifer Boucek
19 Assistant Attorney General
20 1275 West Washington Street
21 Phoenix, Arizona 85007-2926

22 Daniel Lee Henry
23 c/o Liberty Mutual Insurance Company
24 14415 S. 50th Street, #150
25 Phoenix, AZ 85044
26 Petitioner

27 Daniel Lee Henry
28 2225 W. Ross Ave.
29 Phoenix, AZ 85027
30 Petitioner

31 Office of Administrative Hearings
32 1400 West Washington, Suite 101
33 Phoenix, Arizona 85007

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35 

36 Curvey Burton

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 07A-064-INS

DANIEL LEE HENRY,

**ADMINISTRATIVE
LAW JUDGE DECISION**

Petitioner.

HEARING: May 3, 2007

APPEARANCES: Petitioner Daniel Lee Henry appeared on his own behalf. Assistant Attorney General Jennifer Boucek represented the Arizona Department of Insurance.

ADMINISTRATIVE LAW JUDGE: Daniel G. Martin

Daniel Lee Henry appealed the Arizona Department of Insurance's decision to deny his application for an insurance producer's license. Based on the evidence of record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On January 8, 2007, the Arizona Department of Insurance (the "Department") received an application for an individual property and casualty producer's license (Form L-169) from Petitioner Daniel Lee Henry ("Mr. Henry"). See Exhibit 1.

2. Section VII of the application asks: "Have you EVER been convicted of a felony?". Mr. Henry answered this question in the affirmative, and disclosed to the Department that he had been convicted in 1999 in Maricopa County Superior Court of Possession of Burglary Tools, a class 6 Designated Felony.

3. Mr. Henry further disclosed to the Department that he had been convicted of misdemeanor DUI in 2000, of misdemeanor driving on a suspended license in 2001, and of misdemeanor driving on a suspended license in 2003.

4. After completing its review of Mr. Henry's application, including his criminal convictions, the Department concluded that Mr. Henry did not meet the qualifications for licensure as an insurance producer and that his application should be

1 denied under A.R.S. § 20-295(A)(6). The Department so notified Mr. Henry by letter
2 dated February 8, 2007. See Exhibit 3.

3 5. Mr. Henry appealed the Department's decision to deny his application,
4 and this matter was referred for hearing to the Office of Administrative Hearings, an
5 independent state agency.

6 6. On March 26, 2007, the Department issued a Notice of Hearing, pursuant
7 to which the Department alleged that Mr. Henry had been convicted of a felony, in
8 violation of A.R.S. § 20-295(A)(6), and that grounds therefore existed to deny Mr.
9 Henry's application.

10 7. In accordance with the aforementioned Notice of Hearing, the
11 Administrative Law Judge convened the hearing in this matter on May 3, 2007 at 9:00
12 a.m.

13 8. Mr. Henry appeared on his own behalf at hearing; Assistant Attorney
14 General Jennifer Boucek represented the Department.

15 9. The evidence with respect to Mr. Henry's felony conviction demonstrated
16 the following:

17 a. On March 24, 1999, Phoenix Police responded to a burglary call
18 and observed Mr. Henry and an accomplice exiting the window of a residence.
19 Mr. Henry admitted to his involvement in the burglary. See Exhibits 2 and 6.

20 b. Although he was only 16 years old at the time, Mr. Henry was tried
21 as an adult based on several previous contacts with the juvenile justice system,
22 the results of which were deemed not to have deterred Mr. Henry from engaging
23 in further criminal conduct.

24 c. On June 3, 1999, Mr. Henry pleaded guilty in Maricopa County
25 Superior Court to one count of Possession of Burglary Tools, a class 6
26 Designated Felony in violation of A.R.S. §§ 13-501, 13-1505, 13-1501, 13-701,
27 13-702, and 13-801. See Exhibit 5.

28 d. At the sentencing hearing on July 12, 1999, the Court suspended
29 sentence and placed Mr. Henry on probation for a period of two years. See
30

1 Exhibit 7. As conditions of probation, the Court ordered that Mr. Henry (i)
2 complete 50 hours of community service, (ii) pay a fine in the amount of \$750.00,
3 (iii) pay restitution in the amount of \$170.00, and (iv) pay court fees and
4 probation costs.

5 e. Upon his release from probation in or about July 2001, Mr. Henry
6 still owed \$1,115.00 to the State of Arizona in unpaid fines and probation service
7 fees. In consequence of this debt, the Court issued a Criminal Restitution Order.
8 See Exhibit 8. Mr. Henry paid the outstanding balance on January 5, 2007, three
9 days prior to the submission of his application to the Department.

10 10. At hearing, Mr. Henry did not contest the fact of his felony conviction, nor
11 the Department's decision to deny his application (Mr. Henry stated that he would have
12 done the same). Mr. Henry requested, however, that consideration be given to his age
13 (16) at the time the events that gave rise to his conviction occurred, and to the time that
14 since has passed. Mr. Henry apologized for his behavior, and stated that he has
15 learned his lesson and wishes to move on with his life.

16 11. Steven Fromholtz, the Department's producer licensing administrator,
17 testified to the particular concerns that the Department assigns to felony convictions
18 involving theft, given the fact that persons who are granted producer licenses stand in a
19 fiduciary capacity to their clients and handle client property. Mr. Fromholtz further
20 testified to the Department's concern in the case of Mr. Henry's application that Mr.
21 Henry's multiple misdemeanor convictions following his felony conviction evinced a
22 pattern of disregard for the law and the legal process.

23 CONCLUSIONS OF LAW

24 1. In this proceeding, Mr. Henry bears the burden to prove, by a
25 preponderance of the evidence, that the Department's denial of his application for an
26 insurance producer's license should be reversed. See A.R.S. § 41-1092.07(G) and
27 Arizona Administrative Code R2-19-119.

28 2. A preponderance of the evidence is "such proof as convinces the trier of
29 fact that the contention is more probably true than not." Morris K. Udall, ARIZONA LAW
30 OF EVIDENCE § 5 (1960).

1 3. In this case, the Department alleged that Mr. Henry had violated A.R.S. §
2 20-295(A)(6). This provision states:

3 A. The director may deny, suspend for not more than twelve
4 months, revoke or refuse to renew an insurance producer's license
5 or may impose a civil penalty in accordance with subsection F of
6 this section or any combination of actions for any one or more of
7 the following causes:

8 * * *

9 6. Having been convicted of a felony.

10 4. Mr. Henry did not dispute his conviction, nor his violation of A.R.S. § 20-
11 295(A)(6). The Administrative Law Judge concludes, therefore, that grounds exist to
12 support the Department's denial of Mr. Henry's application.

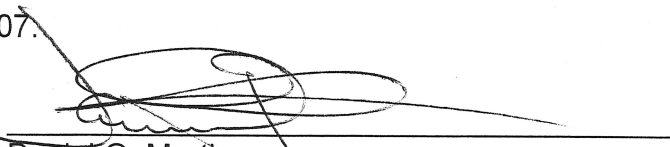
13 5. The Administrative Law Judge has considered Mr. Henry's request that
14 consideration be given to his age at the time he was involved in the burglary that gave
15 rise to his felony conviction. The Administrative Law Judge finds Mr. Henry's youth to
16 be a mitigating circumstance; however, Mr. Henry's age at the time he committed the
17 crime is not sufficient to warrant reversal of the Department's decision, particularly
18 when viewed in light of Mr. Henry's subsequent misdemeanor convictions and his
19 failure to have paid his outstanding court costs until three days prior to submitting his
20 application.

21 6. In view of the foregoing, and in light of Mr. Henry's demonstrated violation
22 of A.R.S. § 20-295(A)(6), the Department's decision to deny Mr. Henry's application for
23 an insurance producer's license should be affirmed.

24 **ORDER**

25 The Department's decision to deny Mr. Henry's January 8, 2007 application for
26 an insurance producer's license is affirmed.

27 Done this day, May 16, 2007.

28 
29 Daniel G. Martin
30 Administrative Law Judge

1 Original transmitted by mail this 18 day of May, 2007, to:

2 Christina Urias, Director
3 Department of Insurance
4 2910 N. 44th Street, Suite 210
5 Phoenix, AZ 85018

6 By Chris Fiehler

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF ARIZONA
RECEIVED

JUN 27 2007

DIRECTOR'S OFFICE
INSURANCE DEPT.

In the Matter of:

No. 07A-064-INS

DANIEL LEE HENRY,

**CERTIFICATION OF DECISION OF
ADMINISTRATIVE LAW JUDGE**

Petitioner.

I have reviewed the records of the Office and as co-custodian of such records have determined:

1. On May 18, 2007, the Administrative Law Judge Decision in the above entitled matter was transmitted to the Department of Insurance by mail.
2. Pursuant to A.R.S. § 41-1092.08 and A.R.S. § 1-243, the Department of Insurance may accept, reject or modify the Administrative Law Judge Decision, as evidenced by receipt of such action by the Office of Administrative Hearings, on or before June 22, 2007.
3. No action by the Department of Insurance was received by the Office of Administrative Hearings as of June 22, 2007. On May 25, 2007, a "Notice of Declination to Review Recommended Decision" was received by the Office of Administrative Hearings.

Therefore, pursuant to A.R.S. § 41-1092.08(D), the attached Administrative Law Judge Decision is certified as the final administrative decision of the Department of Insurance.

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

1 You have the right to request a rehearing from the Department of Insurance
2 pursuant to A.R.S. § 41-1092.09(A). In addition, you have the right to appeal your
3 action to the Superior Court, pursuant to A.R.S. § 41-1092.08(H), although you may be
4 required to seek a rehearing from the Department of Insurance before you appeal (see
5 A.R.S. § 41-1092.09(B)). Your further rights will be lost if you do not act in a timely
6 manner. You may wish to review these sections as quickly as possible after receipt of
7 this notice. They may be found at your local library or on the internet at
8 <http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp>.

9
10 Done this day, June 25, 2007.

11
12
13 
14 _____
15 Cliff J. Vanell
16 Director

17 Original transmitted by mail this 26 day of June, 2007 to:

18 Christina Urias, Director
19 Department of Insurance
20 2910 North 44th Street, Ste. 210
21 Phoenix, AZ 85018

22 Daniel Lee Henry
23 c/o Liberty Mutual Insurance Company
24 14415 S. 50th Street, #150
25 Phoenix, AZ 85044

26 Daniel Lee Henry
27 2225 W. Ross Avenue
28 Phoenix, AZ 85027

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By 