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STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

RICHARD ERVIN SHAFFAR
(License Number 900740)

Respondent.

No. 08A-055-INS

ORDER

On June 30, 2008, the Office of Administrative Hearings, through Administrative Law Judge ("ALJ") Eric Bryant, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on July 7, 2008, 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. Respondent's license is revoked immediately.

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 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.

Petitioner may appeal the final decision of the Director to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal

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...

1 must notify the Office of Administrative Hearings of the appeal within ten days after filing
2 the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

3 DATED this 9th day of July, 2008.

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CHRISTINA URIAS, Director
Arizona Department of Insurance

COPY of the foregoing mailed this
10th day of July, 2008 to:

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

Catherine O'Neil, Consumer Legal Affairs Officer
Steven Fromholtz, Licensing Supervisor
Mary E. Kosinski, Executive Assistant for Regulatory Affairs
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

Richard Ervin Shaffer
8615 E. Main Street, F-83
Mesa, Arizona 852207
Respondent


Curvey Burton

STATE OF ARIZONA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 08A-055-INS

Richard Ervin Shaffar
(License No. 900740),

Licensee.

ADMINISTRATIVE
LAW JUDGE
DECISION

HEARING: June 10, 2008

APPEARANCES: No one appeared on behalf of Licensee; the State of Arizona, Department of Insurance was represented by Special Assistant Attorney General Mary Kosinski and witness Steven Fromholtz, Producer Licensing Administrator, Licensing Section, Arizona Department of Insurance.

ADMINISTRATIVE LAW JUDGE: Eric A. Bryant

This disciplinary action brought by the Arizona Department of Insurance ("Department") alleges that Licensee Richard Ervin Shaffar failed to provide a full set of legible fingerprints as part of his application for an insurance producer's license. As noted above, no one on behalf of Licensee appeared at the hearing to put forth any evidence in defense of the allegations; therefore, the Department's evidence is uncontested. The Department submitted Exhibits 1 (Affidavit of Steven Fromholtz), 2 (Application for Individual Insurance License), 3 (FBI report), and 4 (Letter Re: Notice of Illegible Fingerprints). Based upon the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law, and Decision finding that Licensee failed to provide a complete set of fingerprints with his application and provided incomplete information with his application, and recommending that the license be revoked.¹

...

¹ The Office of Administrative Hearings received ex parte correspondence from Licensee on April 21, 2008. By Minute Entry, the correspondence was rejected and returned to Licensee. The correspondence did not request any action by the tribunal or notify it that Licensee could not be present for the hearing. The correspondence shows that Licensee had notice of the hearing, but chose not to attend.

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FINDINGS OF FACT

1. Licensee holds a license (No. 900740) issued by the Arizona Department of Insurance that authorizes him to act as a life insurance producer, and as an accident/health producer. It expires on February 28, 2011.²

2. With his application, filed September 11, 2007, Licensee submitted a set of fingerprints as he is required to do. At the time, the Department had no knowledge that the fingerprints submitted by Licensee were illegible. The Department sent the fingerprints to the Arizona Department of Public Safety (DPS) for processing of a state and federal criminal records background check and granted the application for licensure.

3. Steven Fromholtz, Producer Licensing Administrator with the Arizona Department of Insurance, testified at the hearing and by affidavit³ that licenses are issued before the results of background checks are received because of relatively short regulatory timeframes for issuing licenses upon receipt of a complete application and the relatively longer timeframe for obtaining the criminal records results. If a problem is later discovered, the Department will then take action.

4. Here, DPS later informed the Department that the set of fingerprint images on Licensee's fingerprint card were illegible because "the quality of the characteristics is too low to be used."⁴ On November 19, 2007, the Department sent to Licensee a letter informing him that he must submit a replacement set of fingerprints by December 20, 2007. Licensee did not respond

5. Notice of Hearing for this matter was sent by certified mail on April 9, 2008. Licensee did not contact the Department and failed to show for the hearing.

CONCLUSIONS OF LAW

1. The Department bears the burden of showing, by a preponderance of the evidence, that a licensee has violated the statutes regulating the licensee's practice. *Culpepper v. State*, 187 Ariz. 431, 437, 930 P.2d 508, 514 (Ct. App. 1996). The Department has met its burden.

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² Exhibit 2.

³ Exhibit 1.

⁴ Exhibit 3.

1 2. The Director of the Arizona Department of Insurance may take disciplinary
2 action against a licensee for violation of any applicable statute or rule.⁵ "Disciplinary
3 action" includes revocation, suspension for not more than 12 months, or a civil penalty.⁶

4 3. Licensee was required to submit a full set of fingerprints to the Department
5 with his application.⁷ Because the set of fingerprints he provided did not contain legible
6 prints, Licensee did not submit a full set. He is, therefore, subject to disciplinary action
7 on this ground.⁸

8 4. Licensee is also subject to disciplinary action if he has filed incomplete
9 information with his application.⁹ Because the set of fingerprints he provided were
10 incomplete, his application provided incomplete information. He is, therefore, subject to
11 disciplinary action on this ground as well.

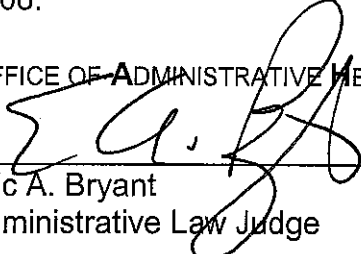
12 5. Licensee's insurance producer license should be revoked.

13 **DECISION**

14 IT IS RECOMMENDED that the Director of the Arizona Department of Insurance
15 revoke producer's license number 900740 held by Richard Ervin Shaffar.

16 Done this 30th day of June 2008.

17 OFFICE OF ADMINISTRATIVE HEARINGS

18 
19 _____
20 Eric A. Bryant
21 Administrative Law Judge

22 Original mailed this 30 day of June 2008, to:

23 Christina Urias, Director
24 Arizona Department of Insurance
25 2910 North 44th Street, Suite 210
26 Phoenix, AZ 85018

27 By 
28 _____

29 ⁵ A.R.S. § 20-295(A)(2).

30 ⁶ A.R.S. § 20-295(A).

⁷ A.R.S. § 20-285(F)(2).

⁸ Mr. Fromholtz testified about alternatives to fingerprints that may be used in extraordinary circumstances, but Licensee did not avail himself of those options because he did not contact the Department.

⁹ A.R.S. § 20-295(A)(1).