

APR 8 2010

DEPT OF INSURANCE
BY 

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

KIRKLAND, CHARLES ST. GEORGE,
Petitioner.

No. 09A-139-INS
ORDER

On April 6, 2010, 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 April 7, 2010, 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 Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Director upholds the Department's denial of Petitioner's Arizona producer Application.

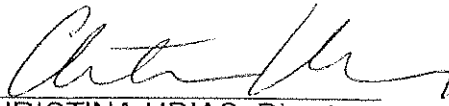
NOTIFICATION OF RIGHTS

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.

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

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 7th day of April, 2010.

4
5 
6 CHRISTINA URIAS, Director
Arizona Department of Insurance

7
8 COPY of the foregoing mailed this
8th day of April, 2010 to:

9 Mary Kosinski, Executive Assistant for Regulatory Affairs
10 Mary Butterfield, Assistant Director
11 Catherine O'Neil, Consumer Legal Affairs Officer
12 Steven Fromholtz, Licensing Director
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

13 Alyse Meislik
14 Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

15 Charles St. George Kirkland
16 111 East Dunlap, No. 1-293
Phoenix, Arizona 85020
17 Petitioner

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

20 
21 Curvey Burton

APR 7 2010

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

DIRECTOR'S OFFICE
INSURANCE DEPT.

In the Matter of:

No. 09A-139-INS

CHARLES ST. GEORGE KIRKLAND,

ADMINISTRATIVE LAW JUDGE

Petitioner.

DECISION

HEARING: March 29, 2010

APPEARANCES: Charles St. George Kirkland appeared on his own behalf;
Assistant Attorney General Alyse C. Meisik appeared for the Department of Insurance

ADMINISTRATIVE LAW JUDGE: Thomas Shedden

FINDINGS OF FACT

1. On September 9, 2009, Petitioner Charles St. George Kirkland filed with the Arizona Department of Insurance an "Application for an Individual Insurance License" (the "Application"). See Exhibit 1.

2. In the Application, Mr. Kirkland answered "yes" to Question V(A), indicating that he had had a professional license suspended or revoked. In conjunction with his Application, Mr. Kirkland submitted a Statement showing that he formerly had been licensed as an attorney in Arizona and Michigan, and that he entered an agreement with the State Bar of Arizona (the "Bar") under which he was no longer a member of the Bar. See Exhibit 1.

3. Mr. Kirkland also submitted to the Department documents showing that in 2003, the Bar had issued a "Judgment and Order" under which Mr. Kirkland was suspended for a period of four years. See Exhibits 5, 6, and 7. This matter involved 11 charges that the Bar referred to collectively as Case Number 00-1039. See Exhibit 4 ("Disposition Summaries" from the Bar website).

4. In a letter dated October 15, 2009, the Department informed Mr. Kirkland that his Application was denied pursuant to A.R.S. § 20-295(A)(8) and (A)(9). See Exhibit 2.

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

1 5. Mr. Kirkland filed an appeal and, on December 16, 2009, the Department
2 issued a Notice of Hearing setting the matter for 8:00 a.m. March 29, 2010, at the
3 Office of Administrative Hearings in Phoenix, Arizona.

4 6. Mr. Kirkland appeared and testified on his own behalf. The Department
5 presented the testimony of its Licensing Manager, Mr. Steven Fromholtz.

6 7. Mr. Fromholtz testified that he reviewed Mr. Kirkland's Application and that
7 he prepared the letter of denial.

8 8. Mr. Fromholtz testified that during his review of Mr. Kirkland's Application,
9 he learned that in addition to Bar Case Number 00-1039, Mr. Kirkland had been subject
10 to two other disciplinary proceedings by the Bar on a total of 17 charges (Bar Case
11 Numbers 98-1746 and 02-2020). One of these other proceedings led to Mr. Kirkland
12 being disbarred (Bar Case Number 02-2020). See Exhibit 4.

13 9. When evaluating an application, the Department generally relies on
14 information provided by the applicant. In Mr. Kirkland's case, Mr. Fromholtz relied on
15 the Bar's Disposition Summaries for Bar Case Numbers 98-1746 and 02-2020 because
16 Mr. Kirkland did not submit to the Department the Bar's Orders or other case materials
17 related to those matters.

18 10. In conjunction with its discipline against Mr. Kirkland, the Bar assessed
19 costs against Mr. Kirkland and ordered him to make restitution to at least one client.

20 11. Mr. Fromholtz also learned that Mr. Kirkland had been disbarred by the
21 State Bar of Michigan in a "Reciprocal Revocation" and that the Michigan Bar had
22 assessed Mr. Kirkland \$1,641.04 in costs. See Exhibits 8 and 9.

23 12. After his review of Mr. Kirkland's Application and his disciplinary history
24 with the Bar, Mr. Fromholtz determined that Mr. Kirkland does not meet the
25 requirements to be licensed as an insurance producer.

26 13. In reaching that conclusion, Mr. Fromholtz considered a number of factors
27 including that: (1) the Bar found that Mr. Kirkland's activities included violations related
28 to his trust account, which was a concern because insurance producers, like attorneys,
29 are fiduciaries; (2) the Bar found Mr. Kirkland had engaged in a pattern of misconduct,
30 including a pattern of dishonesty; (3) Mr. Kirkland was found to have continued to

1 practice law while his law license was suspended; and (4) Mr. Kirkland did not provide
2 the Department with information showing that he had paid either the Bar or the
3 Michigan Bar the costs that were assessed against him.

4 14. Mr. Fromholtz's opinion is that considering the Department's obligation to
5 protect consumers, Mr. Kirkland has not shown that he meets the requirements to be
6 licensed as an insurance producer at this time.

7 15. Mr. Kirkland testified that his trust account violations were all related to
8 errors on the banks' part. Exhibit 5 supports that testimony with respect to Bar Case
9 Number 00-1039. But Mr. Kirkland also committed trust account violations in Bar Case
10 Numbers 98-1746 and 02-2020, and he offered no evidence to corroborate his
11 testimony that these were also the result of bank errors. See Exhibit 4.

12 16. Mr. Kirkland testified that he has paid all the costs assessed by the Bar,
13 but that he has not paid the costs assessed by the Michigan Bar. According to Mr.
14 Kirkland, he did not learn that the Michigan Bar had assessed costs against him until
15 late 2009, when the Department brought it to his attention. Mr. Kirkland presented no
16 evidence to show why he has not paid the Michigan Bar since learning of his obligation.

17 17. Mr. Kirkland testified that he submitted his Application over-the-counter
18 and that he provided the Department with his last copies of the documents related to
19 the Bar's discipline in Case Numbers 98-1746 and 02-2020.

20 18. Mr. Kirkland testified that the Bar's finding that he was practicing law while
21 his license was suspended was due to a misunderstanding on his part, but he
22 addressed only Bar Case Number 00-1039 and not Case Number 02-2020.

23 19. According to Mr. Kirkland, in Case No. 00-1039, he was representing the
24 LLC that he manages in the Justice Court, which generally is allowable under the
25 Supreme Court Rules. According to Mr. Kirkland, the Bar found that that exception did
26 not apply to him.

27 20. In Bar Case Number 02-2020, the Bar found that Mr. Kirkland was
28 representing litigants who thought he was a licensed attorney and that Mr. Kirkland did
29 not correct their misperceptions when he learned that these people thought he was
30

1 licensed to practice law. Mr. Kirkland did not provide any evidence related to this
2 finding that he was practicing law without a license.

3 21. Mr. Kirkland testified that he acknowledged his errors to the Bar and
4 accepts responsibility for his actions.

5 22. Mr. Kirkland is eligible to apply for readmission to the Bar.

6 **CONCLUSIONS OF LAW**

7 1. Mr. Kirkland bears the burden of persuasion. See A.R.S. § 41-1092.07(G).

8 2. The standard of proof on all issues in this matter is by a preponderance of the
9 evidence. See A.A.C. R2-19-119.

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

14 4. Mr. Kirkland has failed to meet the burden of proof to show that the Director
15 should grant him an insurance producer's license.

16 5. The Department's decision to deny Mr. Kirkland's Application was based on the
17 conduct that led to Mr. Kirkland's disbarment. The Department concluded that that
18 conduct was in violation of A.R.S. § 20-295(A)(8).

19 6. A.R.S. § 20-295 provides in pertinent part:

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

24 * * *

25 8. Using fraudulent, coercive or dishonest practices, or
26 demonstrating incompetence, untrustworthiness or financial
27 irresponsibility in the conduct of business in this state or
elsewhere.

28 7. The preponderance of the evidence shows that Mr. Kirkland's conduct that led
29 to his suspension and disbarment constitute violations of A.R.S. § 20-295(A)(8). Mr.
30 Kirkland presented no substantial evidence to show that he has reformed his character

1 since his disbarment. Mr. Kirkland also presented no substantial evidence to show that
2 the Department's Director should exercise her discretion and issue an insurance
3 license despite his violations of A.R.S. § 20-295(A)(8).

4 8. The Department also based its denial of Mr. Kirkland's Application on a finding
5 that his disbarment constitutes a violation of A.R.S. § 20-295(A)(9), which provides that
6 "[h]aving an insurance producer license, or its equivalent, denied, suspended or
7 revoked" provides a basis for the Director to deny an application. The Administrative
8 Law Judge concludes that there is insufficient evidence to show that a law license is
9 equivalent to an insurance producer's license within the meaning of the statute.
10 Consequently, A.R.S. § 20-295(A)(9) does not provide an independent basis on which
11 to deny Mr. Kirkland's Application.

12 9. Because Mr. Kirkland has not met the burden of truth to show that he should be
13 granted an insurance producer's license, his appeal should be dismissed.

14 **ORDER**

15 **IT IS ORDERED** that Charles St. George Kirkland's appeal is dismissed.

16 Done this day, April 6, 2010.

17
18 /s/ Thomas Shedden
19 Thomas Shedden
20 Administrative Law Judge

21 Transmitted electronically to:

22 Christina Urias, Director
23 Department of Insurance
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