

DEC 19 2011

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY CB

In the Matter of:

LARA, FRANK JR.,

Petitioner.

No. 11A-146-INS

FIRST AMENDED NOTICE OF HEARING

(ALJ Lewis Kowal)

PLEASE TAKE NOTICE that pursuant to the provisions of Arizona Revised Statutes ("A.R.S.") §§ 20-161 through and including 20-165 and 41-1092 *et seq.*, the above-captioned matter will be heard before the Director of Insurance of the State of Arizona (the "Director") or her duly designated representative, on January 20, 2012, at 1:00 p.m. at the Office of Administrative Hearings, 1400 West Washington Street, Suite 101, Phoenix, Arizona 85007, telephone number 602-542-9826, (the "Hearing").

Motions to continue this matter shall be made in writing to the Administrative Law Judge not less than fifteen (15) days prior to the date set for the hearing. A copy of any motion to continue shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of Administrative Hearings.

A.R.S. § 20-164(B) entitles any person affected by this Hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence, to examine witnesses, to present supporting evidence in support of his interests, and to have subpoenas issued by the Administrative Law Judge to compel attendance of witnesses and production of evidence.

If Petitioner is represented by counsel, the attorney shall be licensed to practice law in the State of Arizona or, if applicant is an insurer, it may be represented by a corporate officer, pursuant to A.R.S. § 20-161(B). Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be made by a court reporter or by electronic means.

1 Any party that requests a transcript of the proceeding shall pay the cost of the transcript to
2 the court reporter or other transcriber.

3 Questions concerning issues raised in this Notice of Hearing should be directed to
4 Assistant Attorney General Alyse C. Meislik, telephone number (602) 542-7727, 1275 West
5 Washington Street, Phoenix, Arizona 85007-2926, Alyse.Meislik@azag.gov.

6 **NOTICE OF APPLICABLE RULES**

7 On January 23, 1992, the Arizona Department of Insurance ("Department") adopted
8 A.A.C. R20-6-101 through R20-6-115, setting forth the rules of practice and procedure
9 applicable in contested cases before the Director of Insurance. The hearing will be
10 conducted pursuant to these rules.

11 Pursuant to A.A.C. R20-6-106, PETITIONER SHALL FILE A WRITTEN ANSWER
12 WITHIN 20 DAYS AFTER ISSUANCE OF THIS NOTICE OF HEARING AND SHALL MAIL
13 OR DELIVER A COPY OF THE ANSWER TO THE ASSISTANT ATTORNEY GENERAL
14 DESIGNATED ABOVE. The Answer shall state the Petitioner's position or defense and
15 shall specifically admit or deny each assertion in the notice of hearing. Any assertion not
16 denied shall be deemed to be admitted. Any defense not raised in the Answer shall be
17 deemed waived. If an Answer is not timely filed, Petitioner shall be deemed in default and
18 the Director may deem the allegations are true, and take whatever action is appropriate,
19 including suspension, revocation, denial of a license, or renewal of a license, imposition of
20 a civil penalty and/or order restitution to any party injured.

21 Persons with disabilities may request reasonable accommodations such as
22 interpreters, alternative formats, or assistance with physical accessibility. Requests for
23 accommodations should be made as early as possible to allow time to arrange the
24 accommodations. If you require accommodations, please contact the Office of
25 Administrative Hearings at (602) 542-9826.

26 ...

1 The allegations supporting this Notice of Hearing are as follows:

2 1. On or about September 9, 2011, Frank Lara, Jr. ("Lara" or "Petitioner")
3 submitted to the Department an NAIC Uniform Application for an Individual Producer
4 License/Registration ("application").

5 2. Petitioner answered "yes" to questions 2 and 3 of the Background Information
6 section of the application: 2) "Have you ever been named or involved as a party in an
7 administrative proceeding regarding any professional or occupational license or
8 registration; 3) "Has any demand been made or judgment rendered against you or any
9 business in which you are or were an owner, partner, officer or director, or member or
10 manager of a limited liability company, for overdue monies by an insurer, insured or
11 producer, or have you ever been subject to a bankruptcy proceeding?" Lara provided
12 various documents with his application, including a copy of an October 1, 2009, Consent
13 Order, No. 09A-115-INS, that he had entered into with the Department ("2009 Consent
14 Order"), which revoked Lara's accident/health, life and property and casualty insurance
15 producer's license.

16 3. On November 1, 2011, the Department denied Lara's application.

17 4. In a letter dated November 9, 2011, Lara timely requested a hearing.

18 **2009 Consent Order**

19 5. In the 2009 Consent Order, Petitioner admitted to the Findings of Fact ("FOF")
20 and consented to entry of the Conclusions of Law and Order.

21 6. According to the FOF, Lara was licensed as an Arizona resident
22 accident/health, life and property and casualty insurance producer, Arizona license number
23 66274. Lara admitted that, on or about January 23, 2008, Lara contracted with American
24 Access Casualty Company ("American Access") to transact insurance on its behalf in
25 Arizona. Between June and July, 2009, Lara collected \$2,766.39 in premium from 35
26 clients, failed to remit it to American Access, and converted the money for his own use.

1 American Access kept all or the clients' policies in force so the clients would not suffer any
2 lapses in coverage.

3 7. The Department found that Lara violated A.R.S. § 20-295(A)(4) for improperly
4 withholding, misappropriating or converting monies or property received in the course of
5 insurance business; and A.R.S. § 20-295(A)(8) for using fraudulent, coercive or dishonest
6 practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in
7 the conduct of business in this state or elsewhere.

8 8. Upon entry of the 2009 Consent Order, the Department revoked Lara's
9 insurance license and ordered him to make restitution to American Access in the amount of
10 \$2,766.39.

11 Conclusions of Law

12 9. Petitioner's conduct, as described above, constitutes improperly withholding,
13 misappropriating or converting any monies or properties received in the course of doing
14 insurance business, in violation of A.R.S. § 20-295(A)(4).

15 10. Petitioner's conduct, as described above, constitutes using fraudulent, coercive
16 or dishonest practices, or demonstrating incompetence, untrustworthiness or financial
17 irresponsibility in the conduct of business in this state or elsewhere, in violation of A.R.S. §
18 20-295(A)(8).

19 11. Petitioner's conduct, as described above, constitutes having an insurance
20 producer license, or its equivalent, denied, suspended or revoked in any state, province,
21 district or territory, in violation of A.R.S. § 20-295(A)(9).

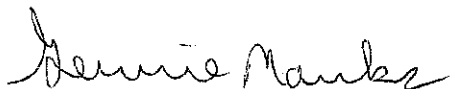
22 12. Grounds exist to deny Petitioner's insurance license, pursuant to A.R.S. § 20-
23 295(A).

24 WHEREFORE, if after hearing, the Director finds one or more of the above-
25 described grounds alleged above, the Director may deny an insurance producer's license,
26 within the meaning of A.R.S. § 20-295(A).

1 Pursuant to A.R.S. § 20-150, the Director of Insurance delegates the authority
2 vested in the Director of Insurance of the State of Arizona, to the Director of the Office of
3 Administrative Hearings or his designee to preside over the hearing of this matter as the
4 Administrative Law Judge, to make written recommendations to the Director of Insurance
5 consisting of proposed findings of fact, proposed conclusions of law, and a proposed order.
6 This delegation does not include delegation of the authority of the Director of Insurance to
7 make the order on hearing or other final decision in this matter.

8 Pursuant to A.R.S. § 41-1092.01, your hearing will be conducted through the Office
9 of Administrative Hearings, an independent agency. Please find enclosed a copy of the
10 procedures to be followed. Further hearing information may also be found at the Office of
11 Administrative Hearings website: www.azoah.com.

12 DATED this 19th day of December, 2011.

13
14 
15 _____
16 GERRIE MARKS, Deputy Director
Arizona Department of Insurance

17 COPY of the foregoing mailed this
18 19th day of December, 2011 to:

19 Lewis Kowal, Administrative Law Judge
20 Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007

21 Mary Kosinski, Executive Assistant for Regulatory Affairs
22 Steven Fromholtz, Licensing Supervisor
Arizona Department of Insurance
2910 North 44th Street, Suite 210
23 Phoenix, Arizona 85018
Alyse C. Meislik
24 Assistant Attorney General
1275 West Washington Street
25 Phoenix, Arizona 85007
26 Attorneys for the Arizona Department of Insurance

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Frank Lara, Jr.
6320 N. 6th Way
Phoenix, AZ 85012
Petitioner

Frank Lara, Jr.
Humana Insurance Company
10400 N. 25th Avenue, Suite 200
Phoenix, AZ 85021
Petitioner

AND COPY MAILED SAME DATE by
Certified Mail, Return Receipt Requested, to:

Frank Lara, Jr.
6320 N. 6th Way
Phoenix, AZ 85012
Petitioner

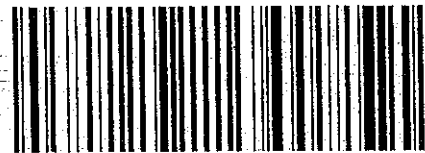
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Phoenix, AZ 85021
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Curvey Buxton

#2543428



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