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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPARTMENT OF II

In the Matter of:

No. 13A-159-INS

JACOBS, JAMES GREGORY

ORDER

Petitioner.

On March 19, 2014, the Office of Administrative Hearings, through Administrative Law Judge Brian Brendan Tully, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on March 19, 2014, 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:

- The Director adopts the Recommended Findings of Fact and Conclusions of
- 2. The Director denies James Gregory Jacob's application for an Arizona insurance producer license.

NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Petitoiner 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
must notify the Office of Administrative Hearings of the appeal within ten days after filing
the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).
DATED this 21st day of March, 2014.
Q en 1
GERMAINE L. MARKS, Director
Arizona Department of Insurance
COPY of the foregoing mailed this, 2014 to:
James Gregory Jacobs
2638 N. Evergreen Street Phoenix, Arizona 85006
Petitioner
Mary Kosinski, Executive Assistant for Regulatory Affairs Darren Ellingson, Deputy Director
Maria Ailor, Acting Consumer Affairs Assistant Director Catherine O'Neil, Consumer Legal Affairs Officer
Steven Fromholtz, Licensing Director Arizona Department of Insurance
2910 North 44th Street, Suite 210 Phoenix, Arizona 85018
Liane Kido
Assistant Attorney General 1275 West Washington Street
Phoenix, Arizona 85007-2926
Office of Administrative Hearings 1400 West Washington, Suite 101
Phoenix, Arizona 85007
Curren Builton
Curvey Burton

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

DIRECTOR'S OFFICE INSURANCE DEPT.

In the Matter of the Insurance License

JACOBS, JAMES GREGORY,

No. 13A-159-INS

ADMINISTRATIVE LAW JUDGE DECISION

Petitioner.

Denial of:

HEARING: February 27, 2014

APPEARANCES: James Gregory Jacobs appeared personally. The Arizona Department of Insurance was represented by Assistant Attorney General Liane Kido.

ADMINISTRATIVE LAW JUDGE: Brian Brendan Tully

FINDINGS OF FACT

- On or about August 6, 2013, James Gregory Jacobs ("Petitioner") submitted an 1. Application for an Individual Insurance License (Form L-169) ("Application") to the Arizona Department of Insurance ("Department").
- Section V(C) of the Application ask the applicant the following question: 2.

Have you EVER been found guilty of, have you had a judgment made against you for, or have you admitted to any of the following:

- 1. A felony (of any kind)?
- misappropriating, 4. Withholding, converting stealing money or property?

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

6. Using fraudulent, coercive or dishonest business practices including forgery with intent to defraud?

(Emphasis in the original).

Petitioner answered "Yes" to those questions. Petitioner signed the Application.

- 3. By letter dated November 27, 2013, the Department informed Petitioner that his Application for an insurance license was denied. The Department advised Petitioner of his appeal rights.
- 4. On December 19, 2013, Petitioner timely appealed the Department's denial of his Application. The Department forwarded the appeal to the Office of Administrative Hearings, an independent agency, for an evidentiary hearing.
- 5. At the hearing, the Department presented its case through the testimony of Steve Fromholtz, the Department's Licensing Administrator, and eleven exhibits consisting of the following: (i) Petitioner's Application for an Individual Insurance License (Form L-169); (ii) Letter dated November 27, 2013 denying Petitioner's application for licensure; (iii) Notice of Appeal and Request for Hearing for Denial of Application for an Insurance License; (iv) Indictment in Case No. CR92-00871; (v) Public Access to Court Information Case Search for Case No. CR92-00871; (vii) Order of Discharge from Probation in Case No. CR92-00871; (viii) Superseding Indictment in Case No. CR-91-193-PHX-EHC; (viii) Judgment in a Criminal Case, Case Number CR-91-00193-001-PHX-SMM; (ix) Summons Case No. CR2000-019590; (x) Arizona Department of Public Safety Disposition Report; and (xi) Order of Discharge in Case No. CR2000-019590.
- 6. Petitioner presented his case through the testimonies of himself, Alesia I. Jacobs, Garry Walters, Katherine Walters, and Ted Thomas and ten exhibits consisting of the following: (i) A Letter of Explanation: 4-22-91 Fraudulent Use Access Device; (ii) Letter of Explanation Conspiracy to Commit Fraudulent Schemes; (iii) Letter of Explanation Theft; (iv) Renewal Receipt 14NC0122 for Certificate Number 09977 issued by the Arizona Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers; (v) Fingerprint Clearance Card issued by the State of Arizona Department of Public

 Safety; (vi) Order of Discharge from Probation in Cause No. CR9200871B; (vii) Order of Discharge from Probation in Cause No. CR2000-019590; (viii) Satisfaction of Judgment (Civil) in Case No. CR: 9200871B; (ix) Order in Case Number CR1992-00871; and (x) Letter dated April 1, 2005, from Dick George, Assistant Chief of Licensing of the Arizona Registrar of Contractors.

- 7. The evidence of record established that Petitioner has three felony convictions.
- 8. On or about January 29, 1992, the Superior Court for the State of Arizona, Maricopa Count ("Superior Court") indicted Petitioner for Conspiracy to Illegally Conduct an Enterprise, Leading Organized Crime, Illegal Control of an Enterprise, Theft, and Fraudulent Schemes and Artifices.
- 9. On or about December 15, 1992, the Superior Court convicted Petitioner of Conspiracy to Commit Fraudulent Schemes and Artifices, a Class 2 felony, in Case No. CR9200871B. The Superior Court placed Petitioner on probation for seven years and ordered that he pay restitution in the amount of \$158,312.00, which he later paid.
- 10. Pursuant to an Indictment in *United States of America v. James G. Jacobs,* Case No. CR-91-00193-001-PHX-SMM, on or about April 1, 1991, through April 22, 1991, Petitioner and his co-defendants knowingly and with intent to defraud, possessed 15 or more unauthorized access devises, that being American Express Company credit card numbers.
- 11. On or about January 7, 1993, Petitioner pled guilty in Case No. CR-91-00193-001-PHX-SMM. The federal District Court of Arizona convicted Petitioner of Unlawful Possession of Access Devices, a Class C felony, and sentenced him to seven months of time served.
- 12. On or about January 9, 2001, the Superior Court charged Petitioner with Fraudulent Schemes and Artifices and Theft for falsely obtaining cash assistance and property from the Arizona Department of Economic Security.
- On or about May 11, 2001, the Superior Court convicted Petitioner of Theft, a
 Class 4 felony, in Case No. CR2000-019590. In or about January 2004, the

Superior Court discharged Petitioner from his probation. Petitioner had also paid restitution in the amount of \$8,250.00.

- 14. Mr. Fromholtz testified that the Department denied Petitioner's application for licensure because of concerns about Petitioner's three felony convictions involving financial matters.
- 15. Petitioner's witnesses testified that he is a trustworthy individual.
- 16. Petitioner acknowledged that he committed the criminal acts resulting in his felony convictions. Petitioner noted that he is a licensed caregiver and the holder of a Fingerprint Clearance Card. Petitioner also noted that the Registrar of Contractors had stated to him that his felony convictions would not bar him from obtaining a contractor's license.
- 17. Mr. Fromholtz testified that Petitioner's licensing as a caregiver, possession of a Fingerprint Clearance Card, and evidence that he could have become licensed as a contractor were not relevant to the Department's denial of Petitioner's application for licensure because the standards for licensure are different.

CONCLUSIONS OF LAW

- 1. The burden of proof at an administrative hearing falls to the party asserting a claim, right, or entitlement, and the standard of proof on all issues in this matter is by a preponderance of the evidence. See A.A.C. R2-19-119.
- 2. The evidence of record established that Petitioner has three felony convictions within the meaning of A.R.S. § 20-295(A)(6).
- The evidence of record established that Petitioner's conduct resulting in his
 felony convictions involved using fraudulent, coercive, or dishonest practices, or
 demonstrated incompetence, untrustworthiness, or financial irresponsibility in
 the conduct of business in Arizona within the meaning of A.R.S. § 20-295(A)(8).
- 4. The evidence of record established grounds to deny Petitioner's application for licensure pursuant to A.R.S. § 20-295(A)(6). Therefore, Petitioner's appeal in this matter should be denied.

RECOMMENDED ORDER

 Based on the foregoing, it is recommended that Petitioner's appeal in this matter be denied, and that the Department's denial of Petitioner's application for licensure be upheld.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order shall be five (5) days from the date of the certification.

Done this day, March 19, 2014.

/s/ Brian Brendan Tully Administrative Law Judge

Transmitted electronically to:

Germaine L. Marks, Director Department of Insurance