





MAR 19 2014

DIRECTOR'S OFFICE  
INSURANCE DEPT.

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Insurance License  
Denial of:

No. 13A-159-INS

JACOBS, JAMES GREGORY,

ADMINISTRATIVE LAW JUDGE

DECISION

Petitioner.

**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**

1. On or about August 6, 2013, James Gregory Jacobs ("Petitioner") submitted an Application for an Individual Insurance License (Form L-169) ("Application") to the Arizona Department of Insurance ("Department").

2. Section V(C) of the Application ask the applicant the following question:

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)?

...

4. Withholding, misappropriating, converting or stealing money or property?

...



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; (vi) Order of Discharge from Probation in Case No. CR92-00871; (vii) 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

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

- 6 7. The evidence of record established that Petitioner has three felony convictions.
- 7 8. On or about January 29, 1992, the Superior Court for the State of Arizona,  
8 Maricopa County ("Superior Court") indicted Petitioner for Conspiracy to Illegally  
9 Conduct an Enterprise, Leading Organized Crime, Illegal Control of an  
10 Enterprise, Theft, and Fraudulent Schemes and Artifices.
- 11 9. On or about December 15, 1992, the Superior Court convicted Petitioner of  
12 Conspiracy to Commit Fraudulent Schemes and Artifices, a Class 2 felony, in  
13 Case No. CR9200871B. The Superior Court placed Petitioner on probation for  
14 seven years and ordered that he pay restitution in the amount of \$158,312.00,  
15 which he later paid.
- 16 10. Pursuant to an Indictment in *United States of America v. James G. Jacobs*, Case  
17 No. CR-91-00193-001-PHX-SMM, on or about April 1, 1991, through April 22,  
18 1991, Petitioner and his co-defendants knowingly and with intent to defraud,  
19 possessed 15 or more unauthorized access devices, that being American  
20 Express Company credit card numbers.
- 21 11. On or about January 7, 1993, Petitioner pled guilty in Case No. CR-91-00193-  
22 001-PHX-SMM. The federal District Court of Arizona convicted Petitioner of  
23 Unlawful Possession of Access Devices, a Class C felony, and sentenced him to  
24 seven months of time served.
- 25 12. On or about January 9, 2001, the Superior Court charged Petitioner with  
26 Fraudulent Schemes and Artifices and Theft for falsely obtaining cash  
27 assistance and property from the Arizona Department of Economic Security.
- 28 13. On or about May 11, 2001, the Superior Court convicted Petitioner of Theft, a  
29 Class 4 felony, in Case No. CR2000-019590. In or about January 2004, the  
30



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

3 14. Mr. Fromholtz testified that the Department denied Petitioner's application for  
4 licensure because of concerns about Petitioner's three felony convictions  
5 involving financial matters.

6 15. Petitioner's witnesses testified that he is a trustworthy individual.

7 16. Petitioner acknowledged that he committed the criminal acts resulting in his  
8 felony convictions. Petitioner noted that he is a licensed caregiver and the  
9 holder of a Fingerprint Clearance Card. Petitioner also noted that the Registrar  
10 of Contractors had stated to him that his felony convictions would not bar him  
11 from obtaining a contractor's license.

12 17. Mr. Fromholtz testified that Petitioner's licensing as a caregiver, possession of a  
13 Fingerprint Clearance Card, and evidence that he could have become licensed  
14 as a contractor were not relevant to the Department's denial of Petitioner's  
15 application for licensure because the standards for licensure are different.

16 **CONCLUSIONS OF LAW**

17 1. The burden of proof at an administrative hearing falls to the party asserting a  
18 claim, right, or entitlement, and the standard of proof on all issues in this matter  
19 is by a preponderance of the evidence. See A.A.C. R2-19-119.

20 2. The evidence of record established that Petitioner has three felony convictions  
21 within the meaning of A.R.S. § 20-295(A)(6).

22 3. The evidence of record established that Petitioner's conduct resulting in his  
23 felony convictions involved using fraudulent, coercive, or dishonest practices, or  
24 demonstrated incompetence, untrustworthiness, or financial irresponsibility in  
25 the conduct of business in Arizona within the meaning of A.R.S. § 20-295(A)(8).

26 4. The evidence of record established grounds to deny Petitioner's application for  
27 licensure pursuant to A.R.S. § 20-295(A)(6). Therefore, Petitioner's appeal in  
28 this matter should be denied.

29 **RECOMMENDED ORDER**

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

4  
5 *In the event of certification of the Administrative Law Judge Decision by the*  
6 *Director of the Office of Administrative Hearings, the effective date of the Order shall be*  
7 *five (5) days from the date of the certification.*

8 Done this day, March 19, 2014.

9 /s/ Brian Brendan Tully  
10 Administrative Law Judge

11  
12 Transmitted electronically to:

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14 Germaine L. Marks, Director  
15 Department of Insurance  
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