

MAY 23 2014

DEPT OF INSURANCE  
BY                     

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

In the Matter of:

**No. 14A-039-INS**

**SIMMONS, TODD MICHAEL,**

**ORDER**

Petitioner.

On May 20, 2014, the Office of Administrative Hearings, through Administrative Law Judge Thomas Shedden, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on May 21, 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:

1. The Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Director rejects the Recommended Order dismissing the appeal.
3. The Director denies Todd Michael Simmons's application for an Arizona insurance adjuster license.

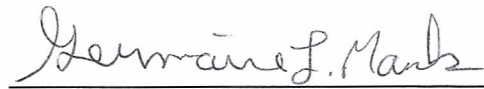
**NOTIFICATION OF RIGHTS**

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

1 to request a rehearing before filing an appeal to Superior Court.

2 Petitioner may appeal the final decision of the Director to the Superior Court of  
3 Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal  
4 must notify the Office of Administrative Hearings of the appeal within ten days after filing  
5 the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

6 DATED this 22<sup>nd</sup> day of May, 2014.

7  
8   
9 GERMAINE L. MARKS, Director  
Arizona Department of Insurance

10  
11 COPY of the foregoing mailed this  
12 23<sup>rd</sup> day of May, 2014 to:

13 Todd Michael Simmons  
14 5901 West Behrend Drive, Apt. 3094  
Glendale, Arizona 85308  
Petitioner

15 Mary Kosinski, Executive Assistant for Regulatory Affairs  
16 Darren Ellingson, Deputy Director  
17 Maria Ailor, Acting Consumer Affairs Assistant Director  
18 Catherine O'Neil, Consumer Legal Affairs Officer  
19 Steven Fromholtz, Licensing Director  
Arizona Department of Insurance  
2910 North 44th Street, Suite 210  
Phoenix, Arizona 85018

20 Liane Kido  
21 Assistant Attorney General  
1275 West Washington Street  
Phoenix, Arizona 85007-2926

22 Office of Administrative Hearings  
23 1400 West Washington, Suite 101  
Phoenix, Arizona 85007

24  
25   
26 Curvey Walters

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2  
3 In the Matter of Insurance License of:

**No. 14A-039-INS**

4 SIMMONS, TODD MICHAEL,

**ADMINISTRATIVE LAW JUDGE**

5  
6 Petitioner.

**DECISION**

7  
8  
9 **HEARING:** May 15, 2014

10 **APPEARANCES:** No one appeared for Petitioner; Liane Kido, Esq. for the  
11 Department of Insurance

12 **ADMINISTRATIVE LAW JUDGE:** Thomas Shedden

13  
14 **FINDINGS OF FACT**

15 1. On April 9, 2014, the Arizona Department of Insurance ("Department")  
16 issued a Notice of Hearing setting the above-captioned matter for hearing at 1:00 p.m.  
17 May 15, 2014, at the Office of Administrative Hearings in Phoenix, Arizona.

18 2. The hearing was set to consider Petitioner Todd Michael Simmons's  
19 appeal of the Department's denial of his application for a license as an insurance  
20 adjuster.

21 3. No representative for Mr. Simmons appeared by 1:20 p.m. and the matter  
22 was convened in his absence at about that time.

23 4. The Department presented the testimony of its Producer Licensing  
24 Administrator, Steven Fromholtz.

25 5. The Department received Mr. Simmons's application on February 4, 2014.  
26 In the application, Mr. Simmons disclosed that he had been convicted of a felony.

27 6. On August 27, 2003, Mr. Simmons pleaded no contest to Failure to  
28 Stop/Respond to the Command of a Police Officer, a felony in the State of Utah. Mr.  
29 Simmons was sentenced to an indefinite term of confinement in the Utah State Prison,  
30 with the sentence suspended, and he was fined \$5000.

1 7. On August 10, 2004, Mr. Simmons was convicted of Attempted Burglary, a  
2 felony in the State of Utah. Mr. Simmons was sentenced to an indefinite term of  
3 confinement in the Utah State Prison, with the sentence suspended, and he was fined  
4 \$9250.

5 8. On December 16, 2008, in Maricopa County Superior Court, Mr. Simmons  
6 pleaded guilty to Aggravated Assault, a Class 6 Designated Felony. Mr. Simmons was  
7 sentenced to a fifteen month term of imprisonment.

8 9. On June 27, 2012, the Department issued to Mr. Simmons a Cease and  
9 Desist Order, in which the Department concluded that Mr. Simmons was acting as an  
10 unlicensed insurance adjuster. Mr. Simmons did not appeal the Cease and Desist  
11 Order, which was still in effect as of the hearing date in this matter.

12 10. Mr. Fromholtz provided credible testimony showing that Mr. Simmons's  
13 felony convictions and the Department's Cease and Desist Order provided the  
14 Department with a sufficient basis on which to deny Mr. Simmons's application.

#### 15 **CONCLUSIONS OF LAW**

16 1. Mr. Simmons bears the burden of persuasion. ARIZ. REV. STAT. § 41-  
17 1092.07(G)(1).

18 2. The standard of proof on all issues in this matter is that of a  
19 preponderance of the evidence. ARIZ. ADMIN. CODE § 2-19-119.

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

24 4. The Department had authority to deny Mr. Simmons's application because  
25 he has been convicted of a felony and because he has acted as an insurance adjuster  
26 without a license. ARIZ. REV. STAT. § 20-295(A)(1) and (A)(6).

27 5. Mr. Simmons did not show by a preponderance of the evidence that his  
28 application should be granted. Consequently, Mr. Simmons's appeal should be  
29 dismissed.

#### 30 **ORDER**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

**IT IS ORDERED** that Todd Michael Simmons's appeal is dismissed.

*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 is five days after the date of that certification.*

Done this day, May 20, 2014.

/s/ Thomas Shedden  
Thomas Shedden  
Administrative Law Judge

Transmitted electronically to:  
Darren Ellingson, Deputy Director  
Arizona Department of Insurance