

STATE OF ARIZONA
FILED

SEP 3 - 2015

DEPT OF INSURANCE
BY MS

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

No. 15A-008-INS

DOHERTY, BRIAN GERARD,

ORDER

Petitioner.

On August 31, 2015, the Office of Administrative Hearings, through Administrative Law Judge Tammy L. Eigenheer, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on September 1, 2015, a copy of which is attached and incorporated by this reference. The Acting Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:


1. The Acting Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Acting Director denies Brian Gerard Doherty's application for an Arizona insurance producer 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 Acting 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.

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

5 DATED this 2 day of September, 2015.

6
7 
8 Yvonne R. Hunter, Assistant Director
9 Arizona Department of Insurance for
10 Acting Director, Darren Ellingson

11 COPY of the foregoing mailed this
12 3rd day of September, 2015, to:

13 Brian G. Doherty
14 40703 N. Harbour Town Court
15 Anthem, Arizona 85086-1828
16 Petitioner

17 Mary Kosinski, Executive Assistant for Regulatory Affairs
18 Darren Ellingson, Acting Director
19 Yvonne Hunter, Consumer Affairs Assistant Director
20 Catherine O'Neil, Consumer Legal Affairs Officer
21 Steven Fromholtz, Licensing Administrator
22 Barbara Beltran, Business Office
23 Arizona Department of Insurance
24 2910 North 44th Street, Suite 210
25 Phoenix, Arizona 85018

26 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

25 
26 Maidene Scheiner

RECEIVED

SEP 01 2015

AZ DEPT. OF INSURANCE
ADMINISTRATIVE SERVICES

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Insurance License
Denial of:

No. 15A-008-INS

DOHERTY, BRIAN GERARD,
Petitioner.

ADMINISTRATIVE
LAW JUDGE DECISION

HEARING: August 11, 2015

APPEARANCES: Petitioner Brian Gerard Doherty did not appear. The Arizona Department of Insurance was represented by Assistant Attorney General Liane Kido.

ADMINISTRATIVE LAW JUDGE: Tammy L. Eigenheer

FINDINGS OF FACT

1. On November 5, 2014, Brian Gerard Doherty submitted an Application for an Individual Insurance License (Application) with the Arizona Department of Insurance (Department) for a life and accident/health insurance producer license.

2. Mr. Doherty answered "No" to Question B in Section VII, Additional Information on the Application. Question B asked: "Have you EVER had any professional, vocational, business [sic] license or certification refused, denied, suspended, revoked or restricted, or a fine imposed by a public authority?"

3. In 1997, Mr. Doherty's license to practice law was suspended by the New Hampshire Bar for a period of two years. As a result, Mr. Doherty received reciprocal two year suspensions in Florida and Massachusetts. He was reinstated in Florida in March 2001.

4. On or about December 22, 2003, Mr. Doherty applied for a Life Insurance Producer license in Arizona. License number 168894 was issued on January 13, 2004, and was last renewed on March 31, 2009. Mr. Doherty did not disclose the New Hampshire bar suspension in his application for and renewal of license number 168894.

1 5. On or about February 16, 2012, Mr. Doherty was disbarred by the Florida
2 Supreme Court in Case No. SC10-332 for professional misconduct and ordered to pay
3 costs of \$8,787.80.

4 6. On or about November 16, 2012, the New Hampshire Supreme Court
5 disbarred Mr. Doherty based on the action taken by the Florida Supreme Court.

6 7. On or about July 15, 2013, the Hearing Officer for the Department of
7 Financial Services in Tallahassee, Florida issued a Written Report and
8 Recommendation in Case No. 130776-13-AG recommending a Final Order be entered
9 against Mr. Doherty for failing to timely report his disbarment by the Florida Supreme
10 Court.

11 8. On or about August 2, 2013, the Massachusetts Bar issued to Mr. Doherty
12 an Order of Suspension for an Indefinite Period based on the action taken by the
13 Florida Supreme Court.

14 9. On or about September 30, 2013, the Department of Financial Services of
15 the State of Florida entered a Final Order in Case No. 130776-13-AG, which ordered
16 that all Mr. Doherty's Florida insurance licenses be suspended for a period of 12
17 months from the date of the Final Order and assessing Mr. Doherty a fine of \$500.00.

18 10. In its decision, the Florida Supreme Court noted as aggravating factors
19 that Mr. Doherty had a history of discipline, acted with a selfish motive, refused to
20 acknowledge the wrongful nature of his misconduct, and had substantial experience in
21 the practice of law. The decision also noted that Mr. Doherty had made false
22 statements in applications for errors and omissions insurance policies regarding his
23 disciplinary history.

24 11. On or about January 12, 2015, the Department sent Mr. Doherty written
25 notification that it was denying his Application.

26 12. On or about January 20, 2015, Mr. Doherty timely appealed the
27 Department's denial of the Application, resulting in the instant matter being brought
28 before the Office of Administrative Hearings.

29 **CONCLUSIONS OF LAW**

1 Mr. Doherty bears the burden of proof and the standard of proof on all
2 issues is by a preponderance of the evidence. A.A.C. R2-19-119.

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

7 3. A.R.S. § 20-295(A) and (F) provide the Director of the Department with
8 the discretion to deny, suspend, or revoke an insurance producer's license, and/or
9 impose a civil penalty, and/or order restitution.

10 4. Mr. Doherty's conduct, as set forth above in the Findings of Fact,
11 constitutes demonstrating incompetence, untrustworthiness, or financial irresponsibility
12 in the conduct of business in this state or elsewhere, within the meaning of A.R.S. § 20-
13 295(A)(8).

14 5. Mr. Doherty's conduct, as set forth above in the Findings of Fact,
15 constitutes having an insurance producer license, or its equivalent, denied, suspended,
16 or revoked in any state, province, district, or territory within the meaning of A.R.S. § 20-
17 295(A)(9).

18 6. Mr. Doherty did not offer any evidence in support of the Application.
19 Under the circumstances presented herein, Mr. Doherty failed to establish that he has
20 the requisite qualifications to hold an insurance producer's license.

21 7. The weight of the evidence of record established that the Department had
22 sufficient grounds to deny the Application pursuant to A.R.S. § 20-295(A)(8) and A.R.S.
23 § 20-295(A)(9).

24 8. Mr. Doherty failed to prove by a preponderance of the evidence that the
25 Department's denial of the Application should be reversed.

26 **ORDER**

27 Based on the above, the determination made by the Department to deny the
28 Application is affirmed.
29
30

1 *In the event of certification of the Administrative Law Judge Decision by the*
2 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
3 *five (5) days from the date of that certification.*

4 Done this day, August 31, 2015.

5 /s/ Tammy L. Eigenheer
6 Administrative Law Judge

7
8
9 Transmitted electronically to:

10 Darren Ellingson, Deputy Director
11 Arizona Department of Insurance