

MAY 4 2015

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY ML

In the Matter of:

WING, MICHAEL JAMES,

Petitioner.

No. 15A-016-INS

ORDER

On May 1, 2015, the Office of Administrative Hearings, through Administrative Law Judge Diane Mihalsky, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on May 1, 2015, 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:

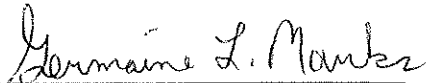
1. The Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Director denies Michael James Wing's application for an Arizona insurance producer license.

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 filing 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.

1 Petitioner may appeal the final decision of the Director to the Superior Court of
2 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 4th day of May, 2015.

6
7 
8 GERMAINE L. MARKS, Director
Arizona Department of Insurance

9
10 COPY of the foregoing mailed this
11 4th day of May, 2015, to:

12 Michael James Wing
13 c/o Vector Financial Inc.
14 2480 W. Silver Vista Place
Tucson, Arizona 85745
Petitioner

15 Mary Kosinski, Executive Assistant for Regulatory Affairs
16 Darren Ellingson, Deputy Director
17 Yvonne Hunter, Consumer Affairs Assistant Director
18 Catherine O'Neil, Consumer Legal Affairs Officer
19 Steven Fromholtz, Licensing Director
Barbara Beltran, Business Office
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
24 Phoenix, Arizona 85007

25 
26 Maidene Scheiner

RECEIVED

MAY 01 2015

AZ DEPT. OF INSURANCE
ADMINISTRATIVE SERVICES

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Application for
Insurance License of:

WING, MICHAEL JAMES,

Petitioner.

No. 15A-016-INS

ADMINISTRATIVE
LAW JUDGE DECISION

HEARING: April 20, 2015, at 1:00 p.m.

APPEARANCES: Petitioner Michael James Wing appeared on his own behalf;
the Arizona State Department of Insurance was represented by Liane Kido, Esq.,
Assistant Attorney General.

ADMINISTRATIVE LAW JUDGE: Diane Mihalsky

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. On or about December 9, 2014, Petitioner Michael James Wing ("Mr. Wing")
submitted an Application for an Insurance License for an Individual to the Arizona
Department of Insurance ("the Department").¹

2. Mr. Wing answered "Yes" to two questions on the application:

2.1 Question A about whether he had ever had any professional, vocational,
business license or certification suspended, revoked, or restricted; and

2.2 Question C-1 about whether he had ever been found guilty of, had a
judgment made against him for, or admitted to a felony.²

3. On or about February 10, 2015, the Department sent a letter to Mr. Wing to
notify him that it had determined to deny his license application under A.R.S. § 20-
295(A).³ Mr. Wing requested a hearing on the Department's decision.⁴

¹ See the Department's Exhibit 1.

² See *id.* at 2.

³ See the Department's Exhibit 6.

⁴ See the Department's Exhibit 7.

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

1 4. The Department referred the matter to the Office of Administrative Hearings,
2 an independent state agency, for an evidentiary hearing. A hearing was held on April
3 20, 2015. The Department submitted seven exhibits and presented the testimony of
4 Steven Fromholtz, its Producer Licensing Administrator. Mr. Wing submitted five
5 exhibits, presented the testimony of Vincent Echols, his friend and prospective
6 employer, and testified on his own behalf.

7 HEARING EVIDENCE

8 5. On or about April 4, 2006, a federal grand jury in the United States District
9 Court for the Eastern District of Texas issued an indictment against Mr. Wing in Case
10 No. 6:06CR40, charging him with eighteen counts of scheme and artifice to defraud
11 and wire fraud in violation of 18 U.S.C. § 1343.⁵

12 6. The indictment in United States District Court for the Eastern District of Texas
13 Case No. 6:06CR40 generally alleged that while Mr. Wing was licensed to practice law
14 in the State of Texas, he devised a scheme and artifice to defraud by representing
15 himself as an expert in the field of mergers and acquisitions to potential investors. Mr.
16 Wing then offered the investors an opportunity to invest in "bridge loans" to overcome a
17 gap in funding for a large, publicly-traded multi-national company that was in the
18 process of merging with or acquiring another large company. Mr. Wing characterized
19 the investments as virtually risk-free and guaranteed that the investors would receive a
20 transaction fee ranging from 50% to 100% of the amount loaned, repayment of
21 principal, interest, and in some bridge loan opportunities, a contribution to a charity that
22 the investor chose. Mr. Wing never identified the companies that he represented were
23 involved in the mergers and acquisitions; instead, to create an appearance of
24 legitimacy, he created false or fictitious entities with code names. After investors gave
25 Mr. Wing funds for the purported bridge loans, he diverted the funds for his own
26 personal use and business expenses or to pay other investors whom he had
27 defrauded.⁶

28
29
30 ⁵ See the Department's Exhibit 2.

⁶ See *id.* at 2-4.

1 7. The indictment in United States District Court for the Eastern District of Texas
2 Case No. 6:06CR40 alleged that some investors never received any return of their
3 principal, interest, or transaction fees, some investors received only partial repayment
4 of their principal, and that some investors threatened or actually brought legal action
5 against Mr. Wing. The indictment alleged further that Mr. Wing agreed to pay the
6 investors who sued or threatened to sue him, but then solicited other investors in new
7 bridge loan transactions to pay the settlements.⁷

8 8. The indictment in United States District Court for the Eastern District of Texas
9 Case No. 6:06CR40 alleged that throughout the course of the scheme and artifice, Mr.
10 Wing made extensive use of interstate wire communications to defraud investors. The
11 indictment charged Mr. Wing with 18 counts of wire fraud in violation of 18 U.S.C. §
12 1343 based on 18 specific wire transactions.⁸

13 9. On or about August 30, 2007, the United States District Court for the Eastern
14 District of Texas accepted Mr. Wing's guilty plea to Count 12 of the indictment in Case
15 No. 6:06CR40, which involved a wire transfer in the amount of \$500,000.00 to Mr. Wing
16 in Texas from an investor in California identified as RB.⁹ As a result of the guilty plea,
17 Mr. Wing was sentenced to serve 120 months in federal prison, to serve three years of
18 supervised probation upon his release, and to pay a total of \$9,171,262.07 in restitution
19 to 35 individuals and two business entities.¹⁰ Mr. Wing was ordered to pay at least
20 10% of his gross income on a monthly basis as restitution.¹¹

21 10. On or about February 6, 2008, Mr. Wing submitted his resignation to the
22 State Bar of Texas.¹² On or about October 16, 2008, the Bar of the District of Columbia
23 disbarred Mr. Wing pursuant to his consent to disbarment.¹³

24 11. Mr. Fromholtz testified that the Department was concerned because Mr.
25 Wing had used his bar membership to further his scheme or artifice to defraud potential
26

27 ⁷ See *id.* at 3-4.

28 ⁸ See *id.* at 11-12.

29 ⁹ See the Department's Exhibit 3.

30 ¹⁰ See *id.* at 43, 44, and 46-47.

¹¹ See *id.* at 48.

¹² See the Department's Exhibit 4.

¹³ See the Department's Exhibit 5.

1 investors. Mr. Fromholtz testified that the crime for which Mr. Wing was convicted
2 concerned the conversion of other people's money that he was able to obtain due to his
3 status as a licensed attorney. The Department considered a law license to be the
4 equivalent of an insurance producer's license because both licenses allow the licensee
5 to access client funds.

6 12. Mr. Wing testified that unlike A.R.S. § 20-295, which afforded the
7 Department discretion to grant an applicant or to allow a licensee to retain a license
8 even though the applicant or licensee had been convicted of a felony, applicable
9 regulations required the Texas State Bar and Bar of the District of Columbia to revoke
10 his law licenses after his felony conviction. Mr. Wing testified that he planned to
11 reapply for a law license.

12 13. In addition to the documents that the Department submitted, Mr. Wing
13 submitted a Confidential Personal Statement with his application for an insurance
14 producer's license that provided in relevant part as follows:

15 I have been abundantly blessed to have been on the
16 senior White House staff of [P]resident Bush and then,
17 President Clinton, a successful President/CEO of eleven
18 large companies, a senior partner in a prestigious
19 Washington, D.C. law firm, a best-selling author and holder
20 of six graduate degrees; and then, unfortunately in federal
21 custody at the Federal Prison Camps in Bastrop, Texas and
22 then Florence, Colorado – not planned stops on my
23 intended career path!

24 My area of legal expertise is in the area of business law,
25 the handling of very large (multi-billion dollar) mergers and
26 acquisitions. My criminal charge was a "white collar" charge
27 of wire fraud. I will always vigorously contend and proclaim
28 my innocence of any criminal act of wire fraud. However, so
29 as to control the downside exposure of a trial verdict going
30 against us given the complexity of the financial transactions
involved, a plea agreement was entered into. Thus, in spite
of my protestations to the contrary, I am officially "guilty"
because of the plea. As an attorney, I found the entire
experience to be surreal and kept thinking to myself this
can't be happening – this isn't how it is supposed to be, this
is just a bad dream; especially after meeting with authorities

1 in Washington and Houston who quickly concluded after
2 reviewing the facts of the case that there was absolutely no
3 wrongdoing on my part or the firm whatsoever. The case
4 ended up being brought in this small town of Tyler, Texas in
5 which I had no clients or businesses other than my ranching
6 interests.

7 I had spent my entire professional life working hard and
8 consistently to be a man of integrity and a strong family
9 man. I had been blessed with great success in my
10 professional life and wonderfully blessed with three
11 awesome children. My oldest, Lindsay, is 32. She received
12 her undergraduate and graduate degrees from Stanford
13 University. She was on the U.S. national gymnastics team
14 for 7 years and was a 12-time All-American gymnast at
15 Stanford. She lives and works in San Francisco with her
16 husband. My second daughter, Jacque, is 30. She
17 graduated from the University of Colorado (my alma mater).
18 She was an all-state volleyball player in Texas. She and her
19 husband also live and work in San Francisco. My son,
20 Brody, is 26. He was an all-state baseball and soccer
21 player in Texas all four years of his high school career. He
22 played baseball collegiately until an arm injury ended his
23 playing career. He graduated from the UT system. He lives
24 and works in Dallas.

25 Always close with each of the kids, this "ordeal" served
26 to bring us even closer together. It helped us to realize how
27 much we loved each other and how important it is never to
28 take anything for granted and to cherish our time together.

29 I was born in Tucson and grew up there in a wonderful
30 family setting until leaving for the University of Colorado on
a baseball scholarship. I've been blessed with great
parents. My father was a baseball coach at the University of
Arizona for 23 years and won 3 national championships and
my mother was an elementary schoolteacher for 40 years.
They have been very loving and extremely supportive
throughout this "ordeal." As one can well imagine, going
through an "ordeal" like this has several costs associated
with it – tangible as well as intangible:

- a) A sense of perspective. When you agree to a plea agreement, there is only one side that is released to the press. You are never given an opportunity to

1 present your side and provide a sense of context and
2 perspective. I will always regret never being able to
3 present my side in a public forum.

4 In a white collar case, the government usually always
5 follows where a civil case has been filed by people or
6 entities alleging wrongdoing (i.e. breach of contract,
7 misrepresentation, fraud, etc.). It is important to note
8 that in my case there was never any suit filed by any
9 individuals or entities alleging any wrongdoing
10 whatsoever, on my part, or the law firm's part, and
11 that is still the case many years later.

12 b) Relationships. I have come to truly value what
13 friendship and family really mean. While riding high
14 on the wave of success, I had hundreds of friends.
15 Through this "ordeal," my family has stood by me and
16 I have come to realize that I have but just a few true
17 friends. One such casualty was my marriage of 29
18 years. I had been loyal and faithful throughout my
19 marriage (the only time I have been married) and I
20 was committed to the notion that it was a commitment
21 for life. However, a few years into my sentence, I
22 received a divorce papers from the court advising me
23 otherwise. I have now been divorced for five years.

24 Although I would not ever wish such an experience as this
25 "ordeal" on anyone else, it has been a blessing in many
26 respects:

27 a) Faith. I always considered my faith to be strong and
28 an important part of my life since accepting Christ in
29 high school. However, in retrospect, I don't think it
30 was "real" in this sense of it ever been tested or
functional in reaching out to people. It was a
comfortable faith. However, an experience like this
brings you face to face with the old adage, "You don't
realize that God is all you need until you realize that
God is all you have." My faith has been greatly
strengthened through this "ordeal" and for that I will
forever be grateful. I have been blessed in countless
ways through this "sojourn," not the least of which is
with great health and being kept safe the entire time.

1 b) Humility – a different perspective. One cannot go
2 through this experience and remain a prideful. The
3 process is embarrassing and humiliating. It strips
4 one of any sense of dignity and is a debilitating blow
5 to one’s self-esteem. However, from that you come to
6 realize that it is not one’s title, resume, bank account
7 or perceived power, prestige, or influence that is
8 important. What is really important you realize is
9 your faith, your dependence on God, your
10 relationship with loved ones; never again to take for
11 granted holding them close, a hug, a kiss, holding a
12 hand; telling them how much you love them and how
13 much they mean to you, and you come to cherish
14 freedom – to do even the simplest things, freedom,
15 never ever to be taken for granted again.

16 You also come to realize how abundantly blessed
17 you’ve been. I was very fortunate to have been in a
18 “camp” setting where there were several other “white
19 collar” people there. However, it was a minority of
20 the population of the camp. Through my experience
21 of this “ordeal,” I was able to meet and live with and
22 be around people I would in all likelihood otherwise
23 never have met. I would only have known them as a
24 statistic, but not as a person with a name and a face
25 and a personal history – people having led hard lives
26 and having a tough life stories. I have now seen a
27 side of life through these people’s eyes and
28 experiences that have forever changed my
29 perspective and driven home in a profound way how
30 much I have to be thankful for for, in spite of
circumstances. I tried to be as helpful as I could to
these people with their legal problems and otherwise.
However, through this experience, I have come to
realize that people don’t care how much you know
until they first know how much you care. Thus, I
came to care a great deal about these guys and their
plight.

I have now through this experience learned to be a lot
more forgiving and understanding – not to be so
judgmental. I had frequently thought of the incident in
the Bible in which the woman caught in adultery is
brought before Jesus by the religious leaders and
they ask Him what He would have them do given that

1 the Mosaic law instructed that as an adulteress, she
2 should be stoned to death. Jesus paused and then
3 said, "He that is without sin may cast the first stone."
4 Before long, all her accusers had left without a single
5 stone having been thrown (John 8:1-11). I am much
6 more empathetic now towards people and not so
7 quick to judge others. I hope and pray that going
8 forward, I will never "throw a stone at another" with a
9 judgmental attitude.

10 I have come to consider this present set of
11 circumstances as any type of "halftime" using a football
12 analogy. It has been a time of reflection and contemplation
13 regarding my first 50 years – to evaluate my life with regards
14 to good things and bad, things done well and not, and to
15 formulate a plan for the "second half" having drawn upon
16 and learned from the "first half." I come through this
17 experience with greater humility and no longer taking
18 anything for granted. Upon the start of this "ordeal," with
19 tears streaming down his cheeks as he gave me a hug
20 good-bye, my father said, "Michael, ... don't get bitter... get
21 better." I have, by God's grace, guidance and direction
22 endeavored to do exactly that. I am, as a result of this
23 experience, a better man.¹⁴

24 14. Mr. Wing submitted four notarized letters of reference in support of his
25 application:

26 14.1 Steve Hard is the Director of Sales and Marketing for GSS Coatings, LLC
27 in South Jordan, Utah. Mr. Hard has known Mr. Wing for a relatively short period that
28 feels like decades. Mr. Hard praised Mr. Wing for his many degrees, work for the Bush
29 Sr. and Clinton presidential administrations, and projects on which he used his
30 education, which would go "hand-in-glove" with an insurance producer's license. Mr.
Hard stated that he knew about Mr. Wing's criminal background:

I say all of these things about Michael with **full knowledge**
of Michael's incarceration for fraud-related crimes.
Michael's situation and those of others have exposed me to
the startling power of federal prosecutors to coerce plea
bargains (which has been critically examined in several
articles in the Economist magazine over the last several

¹⁴ Mr. Wing's Exhibit 5.

1 years) from people they charge with crimes. I know that
2 there is much more to Michael's story that remains to be
3 told, but which he has wisely withheld telling so long as [he]
4 remains subject to federal jurisdiction.

5 Regulators are required to uphold the public trust in the
6 professions which they license. The easy "knee-jerk"
7 reaction would be to simply deny Michael's application.
8 Obviously, there would be no need for "good cause
9 exceptions" if that always held true. If there is anyone
10 warranting such an exception, it is Michael.

11 Michael is as professional and well-organized as they come.
12 He is sincere, loving, humble, well-grounded, honest,
13 responsible, and a highly-principled man. He does not duck
14 difficult issues and meets them head-on with full candor. He
15 is dearly-loved by family and friends.¹⁵

16 14.2 Charles W. Bowles is an Associate Broker at Russ Lyon Sotheby's
17 International Realty in Tucson. Mr. Bowles has known Mr. Wing for over 20 years and
18 has always found him to be forthright, reliable, and trustworthy, especially in business
19 transactions:

20 [M]y business experience with Mike was several years ago
21 through my investment in Info Plan a customer service
22 concept which ultimately did not work out but [I] did receive
23 a refund of most of the investment dollars put in. During that
24 time Mike was quick to keep me informed and regularly
25 updated on the progress or lack of progress. He has always
26 willingly looked me in the eye and honestly shared the facts
27 and details of what was happening, answer[ed] my direct
28 and probing questions, including the circumstances
29 surrounding his Federal custody. . . . Since Mike's release
30 he has continued the process of personal development,
rehabilitation and self-improvement with the challenging
goal of being able to re-enter our American workforce by
taking the required courses making him eligible to receive
his Arizona Insurance License. He has also taken all the
required courses including the required exam in order to
receive his Arizona Real Estate License. This is just step
number one and two as he has also completed the required
courses for the Arizona State General Contractor's License

¹⁵ Mr. Wing's Exhibit 1 at 1-2.

1 and the graduate courses for Project Management
2 Engineering

3 It is my opinion that Mike is doing what most of us would
4 consider significant steps in the right direction that is
5 demonstrating why he should be granted an exception for
6 issuance of his Arizona Insurance License. . . .¹⁶

7 14.3 Robert Gunn is a strategist at e3 Partners in Fischer, Texas. Mr. Gunn
8 has been closely acquainted with Mr. Wing for seven years and has visited him
9 regularly while he was in prison. Mr. Gunn praised Mr. Wing's character, good works
10 with his community in prison, including helping fellow inmates prepare for their release,
11 leadership, and rehabilitation. Mr. Gunn explained how had had become acquainted
12 with Mr. Wing as follows:

13 I met Mike after he contacted the Pastor of my church in
14 Austin asking them to place his membership in the church
15 that he had watched so many times on television (Hyde Park
16 Church). I am the teacher of an Adult Men's Bible Class (53
17 years teaching). After my Pastor passed the opportunity to
18 me I immediately began my correspondence and visitation
19 with Mike. My wife, Jane, and I both count him as a dear
20 friend, one that we have the deepest respect for. We have
21 spent quality time with him in Tucson and have personal
22 knowledge of his outstanding commitment in the care-giving
23 to his parents and his commitment to his church family.¹⁷

24 14.4 Vincent T. Echols is the Chief Executive Officer of Vector Financial Inc. in
25 Thatcher, Arizona. Mr. Echols met Mr. Wing in early November 2014, when Mr. Echols
26 was interviewing potential employees. Mr. Echols stated that during the last three
27 months, he has spent considerable time with Mr. Wing, talking and consulting about the
28 matters that are important to Mr. Echols and his business, which caused him to trust
29 Mr. Wing, in relevant part as follows:

30 Because of the matters discussed, and his ethical and
honest approach to things, I have no reservations in trusting
him with anything from personal confidences, to loyalty, with
money, or any fiduciary responsibilities.

¹⁶ Mr. Wing's Exhibit 2.

¹⁷ Mr. Wing's Exhibit 3 at 2.

1 I had recruited and helped over 300 people in the past 35
2 years get an insurance license and start a career in
3 insurance. During that time I have interviewed a number of
4 candidates with felonies in their background. Michael Wing
5 is the first person with a background felony that I have ever
6 hired to work with me. I can wholeheartedly say that I
7 consider him an ideal candidate for the insurance business,
8 and I am certain that he can succeed. . . .¹⁸

9 15. Mr. Echols also testified on Mr. Wing's behalf at the hearing. Mr. Echols
10 testified that he has been licensed and insurance since April of 1980. Mr. Echols
11 testified that he possesses resident licenses in Utah, Arizona, and New Mexico and
12 nonresident licenses in 16 other states.

13 16. Mr. Echols testified that when he interviewed Mr. Wing for a job, he
14 disclosed his criminal convictions. Mr. Echols testified that he has interviewed 2,500
15 people over the course of his career and that Mr. Wing is equal to the best in
16 credentials, capability, and trustworthiness. Mr. Echols has looked into the possibility
17 of getting a fiduciary bond for Mr. Wing to cover the risk of any breach of his fiduciary
18 duty and has found a bonding company that is willing to issue the bond.

19 17. Mr. Wing testified consistently with his Confidential Personal Statement.
20 He noted that although only 2% of persons who are ordered to pay restitution actually
21 do so, he has made payments on the restitution that was included in his sentence every
22 month that he had access to his accounts during and after the time that he was in
23 prison. Mr. Wing acknowledged that because his income was drastically reduced
24 during the time he was in prison and after his release, he still owed more than \$9
25 million in restitution.

26 18. Mr. Wing testified that his mother has Parkinson's disease and his father
27 has a terminal illness and that since his release from prison, he has been a caregiver
28 for his elderly parents in Tucson. Mr. Wing testified that he is the eldest of three
29 children and that because his children are grown, he took responsibility for caring for
30 his parents.

¹⁸ Mr. Wing's Exhibit 4 at 2.

1 19. Mr. Wing acknowledged that on June 11, 2014, he was released from
2 prison to home confinement and that he was still serving his three-year term of
3 supervised probation United States District Court for the Eastern District of Texas Case
4 No. 6:06CR40.

5 **CONCLUSIONS OF LAW**

6 1. This matter lies within the Department's jurisdiction.

7 2. Mr. Wing bears the burden of proof to establish that he meets statutory
8 qualifications for an insurance producer's license by a preponderance of the
9 evidence.¹⁹

10 3. "A preponderance of the evidence is such proof as convinces the trier of fact
11 that the contention is more probably true than not."²⁰ A preponderance of the evidence
12 is "[t]he greater weight of the evidence, not necessarily established by the greater
13 number of witnesses testifying to a fact but by evidence that has the most convincing
14 force; superior evidentiary weight that, though not sufficient to free the mind wholly from
15 all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of
16 the issue rather than the other."²¹

17 4. A.R.S. § 20-285(A) includes among the grounds for the Department to deny
18 an insurance producer's license application the following:

19 6. Having been convicted of a felony.

20

21 8. Using fraudulent, coercive or dishonest practices, or
22 demonstrating incompetence, untrustworthiness or
23 financial irresponsibility in the conduct of business in
24 this state or elsewhere.

25 9. Having an insurance producer license, or its equivalent,
26 denied, suspended or revoked in any state, province,
27 district or territory.

28 ¹⁹ See A.R.S. § 41-1092.07(G)(1); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369,
29 372, 249 P.2d 837 (1952).

²⁰ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

30 ²¹ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 Mr. Wing has been convicted of a felony that consisted of taking money from investors
2 for sham investments and converting the monies to his own use or diverting the monies
3 to pay other investors. The Texas State Bar disbarred Mr. Wing pursuant to his
4 resignation and the Bar of the District of Columbia disbarred Mr. Wing pursuant to his
5 consent. Therefore, cause exists under A.R.S. § 20-285(A)(6), (8), and (9) for the
6 Department to deny Mr. Wing's license application.

7 5. Mr. Wing attempted to deny that he ever committed any crime and to attribute
8 his entry into the plea bargain in United States District Court for the Eastern District of
9 Texas Case No. 6:06CR40 to coercion from a prosecutor, whom he characterized as
10 corrupt and over-reaching, and legitimate fears about his possible fate with an East
11 Texas jury, which he characterized as likely to be ignorant and gullible. However, a
12 guilty plea to a crime establishes that the person committed the crime. Neither the
13 Administrative Law Judge nor the Department can accept Mr. Wing's invitation to go
14 behind the fact of the conviction to determine in this administrative hearing regarding
15 Mr. Wing's license application whether the evidence supported the criminal conviction
16 in Texas.²²

17 6. Denial or revocation of a license based on past criminal history does not
18 constitute additional punishment, even if the denial or revocation is based on the same
19 misconduct that caused the license applicant or licensee to be punished by a term of
20 imprisonment in the criminal justice system. The licensing proceeding "is not a second
21 criminal proceeding placing [the licensee] in double jeopardy Rather, the purpose
22 is to maintain sound professional standards of conduct for the purpose of protecting the
23 public and the standing of the . . . profession in the eyes of the public."²³ Disciplinary
24 actions are not punishment; rather, "the primary purpose of a disciplinary proceeding is
25 the ascertainment of moral fitness and professional competency . . . , and a
26 determination of whether it is necessary for the protection of the public interest that the

27
28 ²² See, e.g., *Bear v. Nicholls*, 142 Ariz. 560, 562, 691 P.2d 326, 328 (App. 1984).

29 ²³ *Schillerstrom v. State Board of Chiropractic Examiners*, 180 Ariz. 468, 470, 885 P.2d 156, 158 (App.
30 1994), review denied, December 20, 1994 (quoting *Kaplan v. Department of Registration and Educ.*, 46
Ill. App. 3d 968, 5 Ill. Dec. 303, 308, 361 N.E.2d 626, 631 (1977) (citations omitted)).

1 [licensee] be disciplined These are public interests not addressed by the
2 underlying criminal proceeding."²⁴

3 7. An insurance producer's license is a privilege, not a right. Even though
4 cause may exist to deny a license application, however, an applicant may establish that
5 he is rehabilitated, has reestablished good character, and no longer poses a threat to
6 the public. The issue of what constitutes good character or a lack thereof is nebulous
7 at best. Former United States Supreme Court Justice Frankfurter noted:

8 No doubt satisfaction of the requirement of moral character
9 involves an exercise of delicate judgment on the part of
10 those who reach a conclusion, having heard and seen the
11 applicant . . . , a judgment of which it may be said as it was
12 of "many honest and sensible judgments" in a different
13 context that it expresses "an intuition of experience which
14 outruns analysis and sums up many unnamed and tangled
15 impressions; impressions which may lie beneath
16 consciousness without losing their worth." . . .²⁵

17 Once good character is shown to be absent, however, it is not automatically regained
18 by the mere passage of time and positive and affirmative activities are required for a
19 person to regain what was lost. Mr. Wing credibly testified that while he was in prison,
20 he helped others learn to make better decisions and that as a result of his conviction,
21 he is more compassionate of others. Although Mr. Wing's intelligence, education,
22 professional acumen, and eloquence bode well for his success in any profession, he
23 denies that he ever committed a crime and expresses no remorse for 37 victims' loss of
24 more than \$9 million as a result of his criminal acts.²⁶ Mr. Wing did not explain what he
25 has learned in this "ordeal" that make it unlikely that he will engage in similar criminal
26 activities in the future that could injure consumers.

27 ²⁴ *Id.* at 470-71, 885 P.2d at 158-59 (quoting *Matter of Rabideau*, 102 Wis. 2d 16, 26-27, 306 N.W.2d 1,
28 7, appeal dismissed, 454 U.S. 1025, 102 S. Ct. 559, 70 L. Ed. 2d 469 (1981) (citations omitted)).

29 ²⁵ *Schwartz v. Board of Bar Examiners of the State of New Mexico*, 353 U.S. 232, 248, 77 S. Ct. 752, 761
30 (1957) (citation omitted; concurring opinion).

²⁶ Criminal restitution is "[c]ompensation for loss; esp., full or partial compensation paid by a criminal to a
victim not awarded in a civil trial for tort, but ordered as part of a criminal sentence or as a condition of
probation." BLACK'S LAW DICTIONARY, *supra*, at 1339. The restitution that a criminal defendant is ordered
to pay his victims is "damages in satisfaction of, or in recompense for, loss or injury sustained; such
compensation or damages for an injury as follow from the nature of the act, and will put the injured party

1 8. The legislature established the Department to protect consumers.²⁷ The time
2 period for which a license applicant must establish rehabilitation is commensurate with
3 the period of misconduct and the severity of the offenses. Mr. Wing's criminal acts that
4 led to his convictions were serious and repeated. It has only been a little more than ten
5 months since Mr. Wing was released from prison and he is still on probation and owes
6 the bulk of the restitution that he agreed to pay. On this record, Mr. Wing has not
7 established sufficient rehabilitation for licensure to avoid exposing the public to an
8 unreasonable risk of harm.

9 **RECOMMENDED ORDER**

10 Based on the foregoing, it is recommended that on the effective date of the
11 Department's order, the decision to deny Michael James Wing's application for an
12 insurance producer's license be affirmed.

13 *In the event of certification of the Administrative Law Judge Decision by the*
14 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
15 *five days from the date of that certification.*

16 Done this day, May 1, 2015.

17 /s/ Diane Mihalsky
18 Administrative Law Judge

19 Transmitted electronically to:

20 Darren Ellingson, Deputy Director
21 Arizona Department of Insurance
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29 in the position which he was in before he was injured." *State v. Morris*, 173 Ariz. 14, 17, 839 P.2d 434,
30 437 (App. 1992) (quoting 25 C.J.S., *Damages* § 2 at 615).

²⁷ See Laws 1990, Ch. 38, § 1.