

FEB 17 2016

DEPT OF INSURANCE  
BY MS

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:

**GARDNER, fka HUMPHRIES, JESSICA  
LYNN**

(Arizona License No. 1095792)  
(National Producer No. 17422511)

**No. 15A-143-INS**

**ORDER**

Respondent.

On February 1, 2016, 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 February 10, 2016, a copy of which is attached and incorporated by this reference. The Interim Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

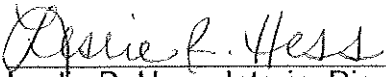
1. The Interim Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Interim Director revokes the Arizona resident insurance producer license, No. 1095792, of **Jessica Lynn Gardner (fka Humphries)** effective immediately.

#### NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Respondent may request a rehearing with respect to this order by filing a written motion with the Interim 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 Respondent may appeal the final decision of the Interim Director to the Superior  
2 Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an  
3 appeal must notify the Office of Administrative Hearings of the appeal within ten days after  
4 filing the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

5 DATED this 12<sup>th</sup> day of February, 2016.

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7   
8 Leslie R. Hess, Interim Director  
Arizona Department of Insurance

9  
10 COPY of the foregoing mailed this  
17<sup>th</sup> day of February, 2016 to:

11 Jessica Lynn Gardner fka Humphries  
12 1586 West Maggio Way, Apt. 1038  
Chandler, Arizona 85224  
Respondent

13  
14 Mary Kosinski, Executive Assistant for Regulatory Affairs  
Catherine O'Neil, Consumer Legal Affairs Officer  
15 Steven Fromholtz, Licensing Director  
Arizona Department of Insurance  
2910 North 44th Street, Suite 210  
16 Phoenix, Arizona 85018

17 Liane Kido  
Assistant Attorney General  
18 1275 West Washington Street  
Phoenix, Arizona 85007-2926

19  
20 Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, Arizona 85007

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Maidene Scheiner

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

RECEIVED

FEB 10 2016

AZ DEPT. OF INSURANCE  
ADMINISTRATIVE SERVICES

In the Matter of:

No. 15A-143-INS

JESSICA LYNN HUMPHRIES  
(Arizona License #1095792)

ADMINISTRATIVE LAW JUDGE

Respondent.

DECISION

**HEARING:** January 26, 2016, at 1:00 p.m.

**APPEARANCES:** The Arizona Department of Insurance ("the Department") was represented by Liane Kido, Esq., Assistant Attorney General; Jessica Lynn Humphries ("Respondent") failed to appear.

**ADMINISTRATIVE LAW JUDGE:** Diane Mihalsky

**FINDINGS OF FACT**

1. On or about November 5, 2014, Respondent applied for an insurance license.<sup>1</sup> Respondent submitted a fingerprint card with the application.
2. The Department issued license number 1095792 to Respondent ("the License"). The License was active on the date of the hearing.<sup>2</sup>
3. Steven Fromholtz, Producer Licensing Administrator of the Licensing Section of the Department, testified that when the Department receives an application for a license and fingerprint card, the Department forwards the fingerprint card to the Arizona Department of Public Safety ("DPS") for processing, which includes processing by the Federal Bureau of Investigation for a criminal history background check to be conducted.
4. Mr. Fromholtz testified that although the application is not complete until the Department receives the results of the criminal background check, the Department issues the license based on the information contained in the application until the

<sup>1</sup> See the Department's Exhibit 1.

<sup>2</sup> See the Department's Exhibit 2.

1 Department can confirm the information in the application with the results of the  
2 criminal background check.

3 5. On June 12, 2015, the Department issued a letter to Respondent by mail to  
4 her address of record, informing her that the fingerprint card that she submitted with the  
5 application was illegible and had been returned by DPS.<sup>3</sup> The Department requested  
6 that Respondent submit a replacement set of fingerprints on or before July 13, 2015.

7 6. The United States Postal Service returned the Department's June 12, 2015  
8 letter to Respondent as undeliverable.<sup>4</sup>

9 7. Mr. Fromholtz testified that the Department's policy is to send two letters to  
10 licensees. After the Department did not receive a response to its first letter, on June  
11 24, 2015, the Department sent a second letter to Respondent at her address of record  
12 requesting that she submit a full set of fingerprints on or before August 24, 2015, and  
13 informing her that if she failed to do so, the Department would take disciplinary action  
14 against her License.<sup>5</sup>

15 8. Mr. Fromholtz explained that the Department only had one address of record  
16 for Respondent.

17 9. On December 22, 2015, the Department issued a Notice of Hearing that an  
18 evidentiary hearing would be held at the Office of Administrative Hearings ("the OAH"),  
19 an independent state agency, on January 26, 2016, at 1:00 p.m. The Department sent  
20 the Notice of Hearing to Respondent at her address of record.

21 10. The Department appeared for the duly noticed hearing, presented Mr.  
22 Fromholtz' testimony, and submitted five exhibits.

23 11. Respondent did not request to appear telephonically and did not request  
24 that the hearing be continued. Although the start of the duly noticed hearing was  
25 delayed more than fifteen minutes to allow Respondent additional travel time,  
26 Respondent did not appear, personally or through an attorney, and did not contact the  
27 OAH to request that the start of the hearing be further delayed. Consequently,  
28 Respondent did not present any evidence to defend her license.

29 <sup>3</sup> See the Department's Exhibit 3.

30 <sup>4</sup> See the Department's Exhibit 4.

1 12. Mr. Fromholtz testified that to date, Respondent had not responded to any  
2 of the Department's letters and had not submitted to the Department a legible set of  
3 fingerprints.

#### 4 CONCLUSIONS OF LAW

5 1. This matter lies within the Department's jurisdiction.<sup>6</sup>

6 2. The Notice of Hearing that the Department mailed to Respondent at her  
7 address of record was reasonable. A.R.S. § 20-286(C)(1) required Respondent to  
8 notify the Department within 30 days of any change in her residential or business  
9 address. Respondent is deemed to have received notice of the hearing.<sup>7</sup>

10 3. The Department bears the burden of proof to establish cause to discipline  
11 Respondent's License by a preponderance of the evidence.<sup>8</sup> "A preponderance of the  
12 evidence is such proof as convinces the trier of fact that the contention is more  
13 probably true than not."<sup>9</sup>

14 4. During the application process, pursuant to statute, the Department required  
15 Respondent to submit a full set of fingerprints. Respondent's illegible fingerprint  
16 submission did not satisfy the requirement set forth in A.R.S. § 20-285(E)(2).

17 5. Respondent thereby failed to submit a complete application, in violation of  
18 A.R.S. § 20-295(A)(1).

19 6. Respondent's conduct, as set forth above, constitutes the violation of any  
20 provision of A.R.S., Title 20, or any rule, subpoena, or order of the Department within  
21 the meaning of A.R.S. § 20-295(A)(2).

22 7. Grounds exist for the Director of the Department to suspend, revoke, or  
23 refuse to renew the License pursuant to A.R.S. § 20-295(A) and (F). Respondent's  
24 failures to respond to the Department's letters or to appear at the hearing indicate that  
25 at this time, she cannot be regulated.

#### 26 ORDER

27  
28 <sup>5</sup> See the Department's Exhibit 5.

29 <sup>6</sup> See A.R.S. §§ 20-281 to 20-301.

30 <sup>7</sup> See A.R.S. §§ 41-1092.04; 41-1092.05(D).

<sup>8</sup> See A.R.S. § 41-1092.07(G)(1); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

1 Based upon the above, Respondent's License shall be revoked on the effective  
2 date of the Order entered in this matter.

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

6 Done this day, February 1, 2016.

7 /s/ Diane Mihalsky  
8 Administrative Law Judge

9 Transmitted electronically to:

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11 Andy Tobin, Director  
12 Arizona Department of Insurance  
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30 <sup>9</sup> MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).