

FEB 17 2016

DEPT OF INSURANCE
BY nlb

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:

KOVACH, MICHELLE
(Arizona License No. 1094894)
(National Producer No. 17415430)

No. 15A-146-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 1, 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:

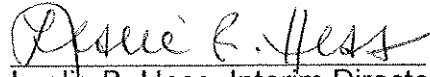
1. The Interim Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Interim Director revokes the Arizona resident insurance producer license, No. 1094894, of **Michelle Kovach** effective immediately.

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 12th day of February, 2016.

6
7 
8 Leslie R. Hess, Interim Director
Arizona Department of Insurance

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

11 Michelle Kovach
12 16001 N. 28th Ave.
13 Phoenix, AZ 85053
Respondent

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

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

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

21
22 
23 Maidene Scheiner

RECEIVED

FEB 01 2016

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 15A-146-INS

ARIZONA DEPT. OF INSURANCE
ADMINISTRATIVE SERVICES

MICHELLE KOVACH
(Arizona License #1094894)

ADMINISTRATIVE LAW JUDGE
DECISION

Respondent.

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; Michelle Kovach ("Respondent") failed to appear.

ADMINISTRATIVE LAW JUDGE: Diane Mihalsky

FINDINGS OF FACT

1. On or about November 3, 2014, Respondent applied for an insurance license.¹ Respondent submitted a fingerprint card with the application.
2. The Department issued license number 1094894 to Respondent ("the License). The License was active on the date of the hearing.²
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 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

¹ See the Department's Exhibit 1.

² 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 business address of record, informing her that the fingerprint card that she
5 submitted with the application was illegible and had been returned by DPS.³ The
6 Department requested that Respondent submit a replacement set of fingerprints on or
7 before July 13, 2015.

8 6. The United States Postal Service returned the Department's June 12, 2015
9 letter to Respondent as undeliverable.⁴

10 7. Mr. Fromholtz testified that the Department's policy is to send two letters to
11 licensees. After the Department did not receive a response to its first letter, on July 31,
12 2015, the Department sent a second letter to Respondent at her residential address of
13 record requesting that she submit a full set of fingerprints on or before August 24,
14 2015, and informing her that if he failed to do so, the Department would take
15 disciplinary action against her License.⁵

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

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

23 10. 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 _____
30 ³ See the Department's Exhibit 3.

⁴ See the Department's Exhibit 4.

1 11. 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.⁶

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

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

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

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

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

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

27 ⁵ See the Department's Exhibit 5.

28 ⁶ See A.R.S. §§ 20-281 to 20-301.

29 ⁷ See A.R.S. §§ 41-1092.04; 41-1092.05(D).

30 ⁸ 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).

⁹ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

ORDER

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

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

7 Done this day, February 1, 2016.

8 /s/ Diane Mihalsky
9 Administrative Law Judge

10 Transmitted electronically to:

11
12 Andy Tobin, Director
13 Arizona Department of Insurance
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