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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:

No. 16A-003-INS

HARPER, JASON JOHN,

ORDER

Petitioner.

On March 8, 2016, the Office of Administrative Hearings, through Administrative Law Judge Diane Mihalsky, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Interim Director of the Department of Insurance ("Interim Director") on March 9, 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:

- The Interim Director adopts the Recommended Findings of Fact and Conclusions of Law.
- 2. The Interim Director denies Jason John Harper'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 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.

'	Petitioner may appear the final decision of the filterial birector to the Superior Court	
2	of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appe	
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 16 mach, 2016.	
6	va · 11	
7	Leslie R. Hess, Interim Director	
8	Arizona Department of Insurance	
9		
10	COPY of the foregoing mailed this day of March, 2016, to:	
11	Jason John Harper	
12	20003 N. 20 th Way Phoenix, Arizona 85024	
13	Petitioner	
14 15	Mary Kosinski, Executive Assistant for Regulatory Affairs Catherine O'Neil, Consumer Legal Affairs Officer	
16	Steven Fromholtz, Licensing Administrator Arizona Department of Insurance	
17	2910 North 44th Street, Suite 210 Phoenix, Arizona 85018	
18	Liane Kido	
19	Assistant Attorney General 1275 West Washington Street Phoenix, Arizona 85007-2926	
20	Office of Administrative Hearings	
21	1400 West Washington, Suite 101 Phoenix, Arizona 85007	
22		
23	Maidene Scheine Maidene Scheiner	
24	iviaidene Scheiner	

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

RECEIVED

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AZ DEPT. OF INSURANCE ADMINISTRATIVE SERVICES

In the Matter of the Application for Insurance License of:

HARPER, JASON JOHN,

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28 29 30 Petitioner.

No. 16A-003-INS

ADMINISTRATIVE LAW JUDGE DECISION

HEARING: March 8, 2016, at 1:00 p.m.

<u>APPEARANCES</u>: Jason John Harper ("Petitioner") failed to appear; the Arizona Department of Insurance ("the Department") was represented by Liane Kido, Esq., Assistant Attorney General.

ADMINISTRATIVE LAW JUDGE: Diane Mihalsky

FINDINGS OF FACT

- 1. On December 7, 2015, Petitioner submitted to the Department an Application for an Insurance License for an Individual. On the application, Petitioner answered "yes" to the question, "Have you EVER been found guilty of, have you had a judgment made against you for, or have you admitted to . . . a felony (of any kind)?"¹ Petitioner provided the address of 20003 N. 20th Way, Phoenix, AZ 85024 ("address of record") on the application.
- 2. On December 11, 2015, the Department sent Petitioner a letter to his address of record, informing him that the Department had determined to deny his application under A.R.S. §§ 20-295(A)(6) and (8) and notifying him of his appeal rights.²
- 3. On January 8, 2016, the Department received Petitioner's request for a hearing.³ Petitioner's request showed his address of record.

¹ The Department's Exhibit 1 at 2.

² See the Department's Exhibit 4.

³ See the Department's Exhibit 5.

⁴ The Department's Exhibit 6 at 4.

- 4. The Department referred the matter to the Office of Administrative Hearings ("OAH"), an independent state agency, for an evidentiary hearing on Petitioner's appeal.
- 5. On January 28, 2016, the Department issued a Notice of Hearing, setting a hearing on March 8, 2016, at 1:00 p.m. at OAH. The Department sent the Notice of Hearing to Petitioner at his address of record.
- 6. A hearing was held on March 8, 2016. The Department submitted five exhibits into evidence and presented the testimony of Aqueelah Currie, its Licensing Administrative Assistant.
- 7. Petitioner did not request to appear telephonically at the hearing and did not request that the hearing be continued. Although the start of the duly noticed hearing was delayed twenty minutes to allow Petitioner additional travel time, he did not appear, personally or through an attorney, and did not contact OAH to request that the start of the hearing be further delayed. Consequently, Petitioner did not present any evidence to prosecute his appeal of the Department's denial of his license application.
- 8. Ms. Currie testified to establish foundation for the Department's exhibits that established Petitioner's criminal background, in relevant part as follows:
- 8.1 On or about December 1, 2004, Petitioner was charged by a Direct Complaint in Maricopa County Superior Court Case No. CR2004-043507-001 SE with theft, a Class 2 felony. The Release Questionnaire attached to the Direct Complaint stated as follows:

BETWEEN 06/11/01 AND 06/01/04 SUSPECT HARPER EMBEZZLED \$79,184.09 BY FALSIFYING COMPANY INVOICES AND TURNING THESE INVOICES IN WITH A COMPANY EMPLOYEE EXPENSE REPORT FOR REPAYMENT OR BY TURNING IN EXPENSE REPORTS AFTER CHARGING A WELLS FARGO BANK CORPORATE CREDIT CARD.

SUSPECT HARPER ADMITTED TO COMMITTING SEVERAL OF THE FRAUDULENT TRANSACTIONS.⁴

8.2 On April 22, 2005, the Maricopa County Superior Court entered a judgment against Petitioner in Case No. CR2004-043507-001 SE, finding him guilty of theft, a Class 4 felony, and sentencing him to three years of probation and incarceration in the county jail for six months.⁵

CONCLUSIONS OF LAW

- 1. This matter lies within the Department's jurisdiction.6
- 2. The Notice of Hearing that the Department mailed to Petitioner at his address of record was reasonable, and Petitioner is deemed to have received notice of the hearing.⁷
- 3. Petitioner has been convicted of a felony that involved fraudulent, coercive, or dishonest practices and has demonstrated untrustworthiness or financial irresponsibility in his conduct of business for his prior employer, Wells Fargo. Cause therefore exists under A.R.S. § 20-295(A)(6) and (8) for the Director of the Department to deny Petitioner's application for an insurance license.⁸
- 4. Petitioner bears the burden of proof to establish that he is rehabilitated and qualified to receive an insurance license by a preponderance of the evidence. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."
- 5. By failing to appear or to present any evidence that he is rehabilitated or qualified to be issued an insurance license, Petitioner failed to carry his burden to establish that the Department erred in denying his application.

RECOMMENDED ORDER

Based on the foregoing, it is recommended that the Director of the Department affirm its denial of Petitioner's application for an insurance license.

⁵ See the Department's Exhibit 2.

⁶ See A.R.S. §§ 20-281 to 20-302.

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

⁸ These statutory subsections allow the Director of the Department to deny Petitioner's application for an insurance producer's license for "[h]aving been convicted of a felony" and "using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere."

⁹ 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).

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 will be five days from the date of that certification. Done this day, March 8, 2016. /s/ Diane Mihalsky Administrative Law Judge

Transmitted electronically to:

Leslie R. Hess, Financial Affairs Legal Analyst Arizona Department of Insurance

¹⁰ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).