

SEP 27 2016

DEPARTMENT OF INSURANCE
BY MEK

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STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

**MARTINEZ, CELINA dba MULTIPLE
INSURANCE & SERVICES**
(Arizona License No. 17901)
(National Producer No. 6747443)

No. 16A-082-INS

**NOTICE OF DECLINATION TO
REVIEW RECOMMENDED
DECISION**

Petitioner.

On August 31, 2016, the Office of Administrative Hearings, through Administrative Law Judge Kay A. Abramsohn, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on August 31, 2016, a copy of which is attached and incorporated by this reference¹. Pursuant to A.R.S. § 41-1092.08(B), the Interim Director of the Department of Insurance declines to review the Recommended Decision. The Interim Director does not accept, reject or modify the Recommended Decision, therefore, pursuant to A.R.S. § 41-1092.08(D), the Office of Administrative Hearings shall certify the Recommended Decision as the final decision. The certification of the Recommended Decision shall include the applicable Notification of Rights regarding the aggrieved party's right to request a rehearing or file an appeal with the Superior Court. A copy of this Notice shall be placed in the Department's permanent records and a copy of the Recommended Decision, together with this Notice, provided to the Petitioner.

¹ The ALJ did not issue a written decision within twenty days after the hearing was concluded as required under A.R.S. §41-1092.08(A). The hearing concluded on July 27, 2016 and the ALJ issued and transmitted the written decision on August 31, 2016, 36 days after the conclusion of the hearing.

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NOTIFICATION OF RIGHTS FOR DECLINATION TO REVIEW ORDERS

If the Interim Director declines to review the administrative law judge’s decision, the Office of Administrative Hearings (OAH) shall certify the administrative law judge’s decision as the final administrative decision. A.R.S. § 41-1092.08.

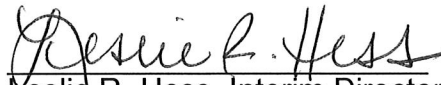
Requesting a Rehearing:

Pursuant to A.R.S. § 41-1092.09, a party may request a rehearing with respect to the final administrative decision by filing a written motion with the Interim Director of the Department of Insurance within 30 days of receipt of the final administrative decision. The motion must set forth the basis for relief under A.A.C. R20-6-114(B).

Appealing the Final Administrative Decision:

A party may appeal the final administrative decision to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. §§ 20-166 and 41-1092.08. It is not necessary to request a rehearing before filing an appeal to Superior Court. A.R.S. § 41-1092.08. A party filing an appeal must notify the Office of Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

DATED this 27th day of September, 2016.


Leslie R. Hess, Interim Director
Arizona Department of Insurance

COPY of the foregoing mailed this 27th day of September, 2016 to:

Celina Martinez
dba Multiple Insurance & Services
2651 N. Grand Avenue, Suite 25
Nogales, AZ 85621-3584
Petitioner

1 Mary Kosinski, Executive Assistant for Regulatory Affairs
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AUG 31 2016

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of Denial of Insurance License
Renewal Application of:

No. 16A-082-INS

DEPT. OF INSURANCE

BY: MEK

CELINA MARTINEZ,
Respondent.

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING: July 27, 2016

APPEARANCES: Celina Martinez appeared on her own behalf. Assistant Attorney General Liane C. Kido represented the Arizona Department of Insurance.

ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn

FINDINGS OF FACT

1. Celina Martinez (hereinafter "Ms. Martinez") dba Multiple Insurance & Services (hereinafter "Respondent") holds Arizona Insurance License Number 17901¹ and National Producer License Number 6747443.

2. On April 6, 2016, Ms. Martinez submitted a Resident License Renewal ("Application") with the Arizona Department of Insurance (hereinafter "Department").²

3. In a letter dated May 20, 2016, the Department informed Ms. Martinez that the application for her individual insurance license had been denied.³

4. In a letter dated May 27, 2016, Ms. Martinez requested a hearing.⁴ In her letter, she indicated she had dedicated herself to providing the best service and that she had an excellent relationship with the companies that she represented. In this particular case, Ms. Martinez stated that "Dairyland itself, who initiated the investigation, has admitted that they made a mistake."⁵

5. In 2015, through the National Insurance Crime Bureau, the Department received a referral from Sentry Insurance, aka Dairyland Insurance ("Sentry"), regarding possible application mismanagement for the reason that it appeared to Sentry that Respondent was writing Arizona policies for individuals who live in Mexico.

¹ This license was set to expire on May 31, 2016.

² See Exhibit 2.

³ See Exhibit 3.

⁴ See Exhibit 4. Because Ms. Martinez requested a hearing, the expiration of her license was stayed pending the outcome of the appeal. See Exhibit 3.

⁵ Ms. Martinez did not further explain this statement at the hearing.

- 1 a. The referral indicated that an insured, Mr. Arriolo, a Mexican national who did
2 not live in Arizona, was making an accident claim, on a policy written by
3 Respondent in which the address of 1270 W. Mariposa Ranch Road in
4 Nogales, Arizona was listed as the Mr. Arriola's address.⁶ The referral noted
5 that two prior claims had been received in which the same address was
6 written as each of those two insured's addresses.
- 7 b. The 1270 Mariposa Road address is a vehicle lot, the business of Auto
8 Tramites, an auto import and export company.
- 9 c. The referral indicated that, according to Mr. Arriola, the address was that of
10 Auto Tramites, an auto export company that prepares the paperwork for
11 exporting vehicles that Mr. Arriola purchases in Arizona to take back to
12 Mexico, and that a person at Auto Tramites arranged for him to obtain the
13 Sentry policy through Respondent.⁷
- 14 d. The referral indicated that Respondent had written 121 policies using the
15 1270 Mariposa Road address.

16 6. The Department's investigator went to Respondent's business location in
17 Nogales, seeking to speak with Luis Martinez, who is Ms. Martinez's husband and an
18 Arizona license holder (License number 1111805) in his own right; he was not available
19 at that time. However, on that same day, the Department obtained documents from
20 Ms. Martinez with regard to these non-owner policies from January 1, 2014 through
21 March 11, 2015.⁸ The Department's investigator subsequently reviewed all such active
22 policies.

23 7. The Department's investigator obtained information from Sentry
24 documenting that, between January 2014 and February 2015, Ms. Martinez wrote 121
25 such policies using the 1270 Mariposa Road address.⁹

26 _____
27 ⁶ The accident happened in or near Queen Creek, Arizona. Mr. Arriolo indicated to Sentry that he had
28 been staying with his sister in Queen Creek, that he did not live in the United States and that he lived in
29 Mexico.

30 ⁷ Mr. Arriolo indicated that the insurance agent was Luis Martinez and that he believed that Mr. Martinez
might work at Auto Tramites. See Exhibit 5. In her appeal and at hearing, Ms. Martinez indicated that Mr.
Martinez had not written any of these policies.

⁸ The Department had prepared a subpoena for the documents it sought to examine. See Exhibit 6.

⁹ See Exhibit 8.

1 8. At hearing, Ms. Martinez presented undisputed testimony that, because
2 the vehicles were garaged at 1270 Mariposa Road and the policy purchasers did not
3 yet own the car, the “garaged” address was appropriate to use. Ms. Martinez indicated
4 that the insurance policy says to input the address of where the vehicle is garaged or
5 where the person resides. Ms. Martinez indicated that she had been authorized by the
6 owner of Auto Tramites to use that address for these purchasers because that was
7 where the vehicles were garaged for at least a couple of days. At hearing, Ms. Martinez
8 offered that she probably should have used that address as the purchasers’ mailing
9 address; however, she did not indicate that she had been so advised by the insurance
10 company.

11 9. Ms. Martinez acknowledged that she wrote all the policies, that all the
12 insureds had presented Mexican driver’s licenses, and that there were no Arizona
13 residence addresses.¹⁰ Ms. Martinez indicated that she input the information into a
14 computerized application program, which calls for the party’s name and address and
15 that she used Auto Tramites address because that was where the vehicles were
16 garaged.¹¹

17 10. Ms. Martinez described these policies as “non-owner” policies, insuring the
18 driver’s license and not the car. Ms. Martinez indicated that such a policy covers
19 damage caused by a vehicle driven by the person whose driver’s license is on the
20 policy. Ms. Martinez indicated that some persons are in the process of test-driving cars
21 and that some persons have just purchased a car and want to be sure they have the
22 coverage required in Arizona prior to the car being exported.

23 11. At hearing, Ms. Martinez stated that Dairyland Insurance offers these non-
24 owner policies to be written and that the company had not taken any action regarding
25 her ability to write such coverage, adding that these policies are very low risk to the
26 insurance company.

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28 _____
29 ¹⁰ In her response to the Notice of Hearing, Ms. Martinez indicated that she had no information on whether
30 the Mexican nationals were in the country illegally, stating “I am unaware of their legal status.” See Exhibit
10.

¹¹ In her response to the Notice of Hearing, Ms. Martinez stated “[t]he address given is not a false
address, it is where the vehicles were garaged.”

1 12. In her answer to the Notice of Hearing, Ms. Martinez indicated that “[the
2 purchasers] qualify to obtain this insurance since the program covers Mexican driver’s
3 licenses.”

4 13. The sample policy application provided to the hearing record indicates that
5 the type of policy is a “Named Non-Owner Policy.”¹² Information thereon states: “If this
6 policy type is indicated above, this policy provides the selected coverage for only the
7 named insured while driving non-owned cars.” The person purchasing the policy was
8 purchasing bodily injury-property damage (“BI-PD”) coverage, and choosing whether to
9 have uninsured or underinsured coverage, and the limits of both coverages.

10 14. The sample policy application sets forth that the insured is responsible “to
11 report any change of garaging location to the Company within 14 days of the change.”¹³
12 The policy goes on to include the insured’s declaration that the vehicle listed in the
13 application “is garaged more than 50% of the time in the garaging zip listed.”

14 15. Under the “Vehicle Information” section of the policy application, the postal
15 zip code of 85621 is set forth as well as the statement: Named Non-Owner Policy –
16 Vehicle information does not apply.”¹⁴

17 16. The Department’s position is that the address on the policy should be the
18 “true garaging location” of the vehicle and that the insured’s home address is a “material
19 fact” that insurance companies use as one factor in determining the policy rates.¹⁵ The
20 Department argued that the “garaged” address was an untrue statement of a material fact
21 in violation of Arizona Revised Statutes (“A.R.S.”) § 20-463(A) regarding fraudulent
22 practices.

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25 ¹² See Exhibit 9.

26 ¹³ *Id.* at page 2 (Confirmation Section, clause 3). At hearing, the Department indicated that they had no
27 knowledge of any insured having changed the “garaged” address at 1270 West Mariposa Road to another
28 address and further indicated that, even if an insured had done so, it would still be an issue for the
29 insurance company due to that “garaged” address then being used as a factor for the policy rates.
Regarding “rates,” the Department indicated that the rates depend on where the insured lives; however,
Ms. Martinez noted that the rate for the Nogales zip code is all the same. Neither party was more specific
as to “rates” and/or how rates may have been impacted for this particular type of policy.

30 ¹⁴ *Id.*, page 1.

¹⁵ The Department indicated that without a good address, the insurance company would not be able to
mail documents to the insured.

1 2. The Department bears the burden to establish by a preponderance of the
2 evidence that grounds exist to refuse to renew Respondent's insurance license.¹⁷ "A
3 preponderance of the evidence is such proof as convinces the trier of fact that the
4 contention is more probably true than not."¹⁸ A preponderance of the evidence is "[t]he
5 greater weight of the evidence, not necessarily established by the greater number of
6 witnesses testifying to a fact but by evidence that has the most convincing force; superior
7 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
8 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather
9 than the other."¹⁹

10 3. A.R.S. § 20-295(A) provides as follows, in pertinent part:

11 The Director may deny, suspend for not more than twelve months, revoke or refuse
12 to renew an insurance producer's license or may impose a civil penalty in
13 accordance with subsection F of this section or any combination of actions for any
14 one or more of the following causes: (5) intentionally misrepresenting the terms of
15 an actual or proposed insurance contract or application for insurance; or (8) using
16 fraudulent, coercive or dishonest practices, or demonstrating incompetence,
17 untrustworthiness or financial irresponsibility in the conduct of business in this state
18 or elsewhere.

19 4. A.R.S. § 20-463(A)(1)(a) provides that it is a fraudulent practice and
20 unlawful for a person to knowingly "present, cause to be prepared ... a written statement,
21 including computer generated documents, to or by an insurer ... that contains untrue
22 statements of material fact or that fails to state any material fact with respect to ... [a]
23 application for the issuance or renewal of an insurance policy."

24 5. The preponderance of the evidence fails to establish that Respondent's
25 conduct, as found above, constitutes using fraudulent or dishonest practices, or
26 demonstrates incompetence or untrustworthiness, in the conduct of business in Arizona
27 within the meaning of A.R.S. § 20-295(A)(5) or (8). This conclusion is based on the
28 hearing record and springs from the testimonial evidence regarding the type of insurance

29 ¹⁷ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372,
249 P.2d 837 (1952).

30 ¹⁸ Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

¹⁹ BLACK'S LAW DICTIONARY at 1220 (8th ed. 1999).

1 being sold, the non-owner policy. Ms. Martinez credibly testified that the export company
2 referred these purchasers to Respondent for the purchase of requisite insurance. Ms.
3 Martinez credibly indicated, and this was undisputed, that the address on the application
4 for these non-owner policies could be either the residence or the garaging location. Ms.
5 Martinez credibly testified, and it was undisputed, that the use of the export company
6 address was to demonstrate the garaged location for vehicles not yet purchased or owned
7 by the insured that were being test-driven and/or being prepared for export. None of the
8 insureds had an Arizona home address; therefore, the cars being test-driven or taken to
9 the export company for export also had no other garaging address location attributable to
10 the insured. According to Ms. Martinez, and this was undisputed, this type of non-owner
11 insurance is offered by Sentry, meets the Arizona requirements to have insurance while
12 driving in Arizona, and meets the needs of the Mexican national who is purchasing a car
13 and exporting the car. Therefore, the Sentry referral regarding possible application
14 mismanagement appears to have been an erroneous referral. Ms. Martinez indicated in
15 her response to the Notice of Hearing that the insurance company had made a mistake
16 [infer, by making the referral]. While this was not further explained at hearing, this was
17 undisputed by the Department.

18 6. While the Department argued that the home address was a "material fact"
19 being misrepresented, the hearing record evidences that Ms. Martinez's use of the export
20 company address was to demonstrate the garaged location of the vehicles being
21 prepared for export. While the Department indicated that the address on the policy
22 should be the "true garaging" location, the evidence demonstrated that this was the
23 garaging location when the vehicle was being prepared for export. The hearing record
24 provides no other possible garaging location that can be attributed to the insured
25 regarding vehicles that they do not own and that are being test-driven.

26 7. Finally, Ms. Martinez also presented undisputed testimony that "Dairyland"
27 offered these types of non-owner policies and that the company took no action against her
28 with regard to the manner in which she handled such or presented such policies to the
29 company using the garaged address. When Ms. Martinez indicated that she perhaps
30 should have been using a mailing address, she did not indicate that the insurance

1 company had so advised and the Department did not counter that the use of a mailing
2 address would still have been an issue.

3 8. The preponderance of the evidence established that grounds do not exist
4 for the Director to refuse to renew Respondent's insurance license or to impose a civil
5 penalty. A.R.S. § 20-295(A) and (F).

6 **RECOMMENDED ORDER**

7 Based on the foregoing, it is ordered that the Department reverse its denial to
8 renew, and thus renew, Respondent Celia Martinez's Arizona License Number 17901
9 (National Producer Number 6747443).

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

13 Done this day, August 31, 2016.

14 /s/ Kay A. Abramsohn
15 Administrative Law Judge

16
17 Transmitted electronically to:

18 Leslie R. Hess, Interim Director
19 Arizona Department of Insurance
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