# STATE OF ARIZONA

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JAN 27 2017

# **DEPARTMENT OF INSURANCE**

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In the Matter of:

LIPPITT, ROBIN WADE,

Docket No. 16A-137-INS

NOTICE OF DECLINATION TO REVIEW RECOMMENDED DECISION

Petitioner.

On January 11, 2017, the Office of Administrative Hearings, through Administrative Law Judge ("ALJ") Kay A. Abramsohn, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Interim Director of the Department of Insurance ("Interim Director") on January 12, 2017. 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.

# 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.

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### 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 <u>26 M</u> day of famary, 2017.

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

COPY of the forgoing mailed/delivered this 21 th day of January 2017, to:

Robin Wade Lippitt 1415 E. Baseline Rd. Phoenix. AZ 85042

Petitioner

Robin Wade Lippitt c/o OPES Financial Solutions 4742 N. 24<sup>th</sup> St., Suite 300

Phoenix, AZ 85016 Respondent

Mary Kosinski, Executive Assistant for Regulatory Affairs

Catherine O'Neil, Consumer Legal Affairs Officer Steven Fromholtz, Licensing Administrator

Aqueelah Currie, Licensing Arizona Department of Insurance 2910 North 44th Street, Suite 210

Phoenix, Arizona 85018

1	Liane Kido Assistant Attorney General
2	Assistant Attorney General 1275 West Washington Street Phoenix, Arizona 85007-2926
3	Office of Administrative Hearings 1400 West Washington, Suite 101 Phoenix, Arizona 85007
4	Phoenix, Arizona 85007
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6	Mardener Scherier
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DEPT. OF INSURANCE

ADMINISTRATIVE LAW JUDGE **DECISION** 

ROBIN WADE LIPPITT. Petitioner.

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

**HEARING:** December 22, 2016

In the Matter of the Application for the

Insurance License for:

APPEARANCES: Petitioner Robin Wade Lippett represented himself. Assistant Attorney General Liane Kido represented the Arizona Department of Insurance.

ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn

#### FINDINGS OF FACT

- 1. On or about October 12, 2016, Robin Wade Lippitt submitted an Application for an Insurance License for an Individual ("Application") with the Arizona Department of Insurance ("Department"). See Exhibit 1.
- 2. In Section V, Additional Information, Mr. Lippett answered "Yes" to Question C, Subpart 1. Question C asked: "Have you EVER been found guilty of, have you had a judgment made against you for, or have you admitted to, any of the following." Mr. Lippitt answered yes to Subpart 1, "A felony (of any kind)?" Mr. Lippitt also answered "Yes" to Question C, Subpart 4: Withholding, misappropriating, converting or stealing money or property?"
- 3. Mr. Lippitt provided a two page typed letter thoroughly explaining his past substance abuse, criminal activities, and incarcerations. See Exhibit 1. Mr. Lippitt argued therein that he was reformed and was diligently rebuilding his life, having paid his debt to society. Mr. Lippitt noted that the U.S. Department of Labor had issued rulings stating that discrimination against people with a criminal history unrelated to their profession is a form a discrimination in violation of the Equal Employment Opportunity Act.1
- 4. In its letter dated October 25, 2016, the Department informed Mr. Lippitt that his application had been denied. See Exhibit 2.
  - 5. Mr. Lippitt requested a hearing. See Exhibit 3.

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<sup>&</sup>lt;sup>1</sup> Mr. Lippitt also indicated that the Department of Labor had created a bonding program that promoted the hiring and licensing of persons with a criminal past unrelated to their profession. Copies of such rulings were not provided to the hearing record.

- 6. The Notice of Hearing shows that the Department denied Mr. Lippitt's application based on A.R.S. § 20-295(A)(6), the statutory provision giving the Department the discretionary authority to deny an applicant's request for a license when the applicant has been convicted of a felony.
- 7. On or about August 19, 1991, Mr. Lippitt was convicted of a felony offense, Armed Robbery, in Case No. 91-CR-633, in Circuit Branch #4, Rock County Wisconsin.<sup>2</sup> See Exhibit 4. He was sentenced to seven (7) years in prison.
- 8. On or about November 30, 1995, Mr. Lippitt was convicted of two felony offenses, Conspiracy to Manufacture Methamphetamine and Possession with Intent to Distribute, in Case No. 3:95CR00036-002, in U.S. District Court, Western District of Wisconsin.<sup>3</sup> See Exhibit 5. He was sentenced to forty-six (46) months in prison and five (5) years of probation on his release.
- 9. On or about November 21, 1995, the State of Wisconsin filed a criminal complaint against Mr. Lippitt in Walworth County, in Case No. 99-CF-344, alleging that he and accomplices burglarized a home and stole property from that home. See Exhibit 6. He was later convicted of burglary and theft in that case.
- 10. On or about August 29, 1997, Mr. Lippitt was convicted of Possession of Contraband in Prison, in Case No. 1:97CR10030-001, in U.S. District Court, Central District of Illinois.<sup>5</sup> See Exhibit 7. He was sentenced to thirty-seven (37) months in prison to be served consecutively with the sentence in Case No. 3:95CR00036-002.
- 11. On or about April 18, 2005, Mr. Lippitt was convicted of a felony offense, Importation of Marijuana, in Case No. CR 04-02238-001-TUC-CKJ(GEE), in U.S. District Court, District of Arizona.<sup>6</sup> See Exhibit 8. He was sentenced to twenty-seven (27) months in prison and thirty-six (36) months of supervised release.
- 12. On or about February 25, 2009, Mr. Lippitt was convicted of Possession of Contraband in Prison, in Case No. CR 08-00984-R, in U.S. District Court, Central District of California. See Exhibit 9. He was sentenced to forty-one (41) months in prison

<sup>&</sup>lt;sup>2</sup> This conviction stemmed from a March 1991 incident. See Exhibit 4A.

<sup>&</sup>lt;sup>3</sup> This conviction stemmed from a March 1995 incident.

<sup>&</sup>lt;sup>4</sup> This conviction stemmed from a March 1995 incident.

<sup>&</sup>lt;sup>5</sup> This conviction stemmed from an August 1996 incident.

<sup>&</sup>lt;sup>6</sup> Mr. Lippitt had entered a guilty plea in February of 2005.

consecutive with time served and, upon his release, one year supervised release; he was subsequently moved to a Pennsylvania facility.

- 13. On or about May 8, 2011, Mr. Lippitt was convicted of Assault Resulting in Serious Bodily Injury, in Case No. 09-00131-GAF-1, in U.S. District Court, Central District of California. See Exhibit 10. He was sentenced to fifty-two (52) months in prison to be served consecutively with the sentence in Case No. CR08-00984-R.
- 14. On or about October 1, 2012, Mr. Lippitt was convicted of Possession of Heroin, in Case No. 04F09298X, in Justice Court, Las Vegas Township, Clark County Regional Justice Center. See Exhibit 11. He was sentenced to six (6) months in prison to run concurrently with his sentence from the prison assault conviction.
- 15. At hearing, Mr. Lippitt was forthcoming and open about his past, not making any excuses for his past actions. He did not dispute his background having raised departmental concerns regarding licensure but argued that these convictions with the exception of the prison assault (which he since realized was not a fruitful action) were years ago, or were based on actions he took years ago, and that ten years had passed. Mr. Lippitt argued that he had made substantial changes in his life and should not be prevented from making a living. Mr. Lippitt acknowledged that he has approximately two more years of probation.
- 16. Since his release from prison in August 2015, Mr. Lippitt lived in a transitional halfway house for 6 months and moved to Arizona in May of 2016 from Los Angeles where he had driven for Uber with over 1000 rides in her personal vehicle with no incidents. Mr. Lippitt is driving for Lyft with over 1000 rides to date. Mr. Lippitt is now drug-free for 3½ years.
- 17. Mr. Lippitt is in training with OPES Financial Solutions, a company that educates the public about equity annuities and alternatives to retirement accounts.
- 18. Mr. Lippitt did not present any character witnesses; however, he indicated that persons from OPES had offered to come to the hearing with him but he had told them it was not necessary as it was so close to the holidays.

<sup>&</sup>lt;sup>7</sup> This conviction stemmed from a 2004 arrest.

19. Steven Fromholtz, Producer Licensing Administrator for the Department, testified that part of the role of the Department is to protect the public. The Department agreed that the robbery and theft convictions were in the past, but was concerned about the more recent incidents, which the Department argued demonstrated a continued disregard of laws. The Department argued that not enough time had passed as to the more recent convictions.

#### **CONCLUSIONS OF LAW**

- 1. Mr. Lippitt bears the burden of persuasion. A.R.S. § 41-1092.07(G)(1).
- 2. The standard of proof on all issues is that of a preponderance of the evidence. A.A.C. R2-19-119(A).
- 3. A preponderance of the evidence is "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1182 (6th ed. 1990).
- 4. A.R.S. § 20-295(A)(6) provides that the Department's Director may deny an applicant's request for a license when the applicant has been convicted of a felony. The uncontroverted evidence established that Mr. Lippitt was convicted of felonies in 1991, 1995 and 2005. The hearing record documents that the 2012 conviction stems from a 2004 incident and, thus, the Tribunal reasonably considers that as an old incident related to Mr. Lippitt's past drug or substance use/abuse rather than a more recent circumstance of actions criminalized as a felony. Mr. Lippitt acknowledged that the incidents and convictions related to substance use and abuse occurred but testified with credibility that he is now drug-free and has been for over 3½ years. The Department correctly indicates that Mr. Lippitt has not yet completed his probationary sentences. The plain language of the statute in question provides the discretionary authority for the Director of the Department to deny Mr. Lippitt's application based on the felony conviction, the statute does not require a denial. Such a decision to deny remains within the discretion of the Director.
- 5. Given Mr. Lippitt's credibility as to being drug-free and over 10 years passing since his felony convictions, while the Department's Director has grounds to

deny Mr. Lippitt's application, the Administrative Law Judge concludes that Mr. Lippitt's application should be granted.

## **RECOMMENDED ORDER**

IT IS ORDERED that Robin Wade Lippitt's appeal be granted.

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 after the date of that certification.

Done this day, January 11, 2017.

/s/ Kay A. Abramsohn Administrative Law Judge

Transmitted electronically to:

Leslie R. Hess, Interim Director Arizona Department of Insurance