

MAR 28 2017

DEPT OF INSURANCE
BY MS

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

No. 17A-012-INS

RIVERA, ERIC ANTHONY,

ORDER

Petitioner.

On March 22, 2017, the Office of Administrative Hearings, through Administrative Law Judge Suzanne Marwil, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Interim Director of the Department of Insurance ("Interim Director") on March 22, 2017, 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:

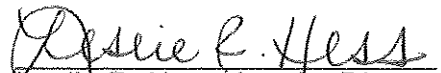
1. The Interim Director adopts the Recommended Findings of Fact, except to remove the word "Maldonado" from Paragraph 3 because it is not the Petitioner's name.
2. The Interim Director adopts the Conclusions of Law.
3. The Interim Director grants **Eric Anthony Rivera's** application for an Arizona insurance 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 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 Petitioner may appeal the final decision of the Interim Director to the Superior Court
2 of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal
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 24th day of March, 2017.

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

9
10 COPY of the foregoing mailed this
11 28th day of March, 2017, to:

12 Eric Anthony Rivera
13 888 E. Jimmie Kerr Blvd.
Casa Grande, AZ 85122
Petitioner

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

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

21 Office of Administrative Hearings
1400 West Washington, Suite 101
22 Phoenix, Arizona 85007

23 
24 Maidene Scheiner

25
26

MAR 22 2017

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

DEPT. OF INSURANCE

BY: MEK

In the Matter of the Application for
Licensure of:

No. 17A-012-INS

RIVERA, ERIC ANTHONY

ADMINISTRATIVE LAW JUDGE

Petitioner.

DECISION

HEARING: March 14, 2017 with the record held open until March 21, 2017 so
Petitioner could submit exhibits.

APPEARANCES: Petitioner Eric Anthony Rivera represented himself. The
Arizona Department of Insurance was represented by Assistant Attorney General Liane
Kido.

ADMINISTRATIVE LAW JUDGE: Suzanne Marwil

FINDINGS OF FACT

1. On or about November 21, 2016, Eric Anthony Rivera (Petitioner or Mr.
Rivera) submitted an Application for an Insurance License for an Individual (Application)
with the Arizona Department of Insurance (Department).

2. Mr. Rivera answered "Yes" to Question 1B of the Background Questions
under Additional Information on the Application. Question 1B asked: "Have you ever
been convicted of a felony, had a judgment withheld or deferred, or are you currently
charged with committing a felony? You may exclude juvenile adjudications (offenses
where you were adjudicated delinquent in a juvenile court)." Mr. Rivera disclosed that
he had been convicted of six felonies and three probation violations stemming from an
addiction to drugs. The felonies for drug possession and theft related to conduct that
occurred during the period 2001-2011, although his last guilty plea to a felony for
conspiracy to aid a criminal syndicate occurred in 2014. Mr. Rivera was released from
prison in January 2016 and released from probation for that charge in November 2016.

3. In a letter dated December 29, 2016, the Department informed Mr. Rivera
Maldonado that his application had been denied pursuant to A.R.S. § 20-295(A)(6).

1 4. Mr. Rivera requested a hearing, which led to this matter being sent to the
2 Office of Administrative Hearings. Hearing convened on March 14, 2017.

3 5. Aqueelah Currie, Licensing Supervisor for the Department, testified as to
4 Mr. Rivera's criminal history, noting that it showed a pattern of repeat offending and
5 disregard for the law that raised concerns for the Department. Ms. Currie noted that
6 these concerns were based both on the number and nature of the offenses (theft,
7 weapons) as well as the fact that Mr. Rivera had a history of reoffending when
8 unsupervised. She pointed to the fact that he appeared to reoffend every one-and-a-half
9 to two years and said that his last offense was too recent, as he had only been out of
10 prison for less than two years and off probation for four months. Currie noted that the
11 Department lacked the funds to monitor or supervise Mr. Rivera and thus had decided to
12 deny his application at this time.

13 6. Mr. Rivera testified that he first tried drugs at the age of nine and that his
14 subsequent drug addiction had taken him down a wrong path. He noted that he
15 continually fought the addiction for brief periods of time, but would then fall back with the
16 same crowd, leading to the pattern of criminal behavior discussed above. Mr. Rivera
17 explained that the theft conviction arose from him purchasing a stolen ATV, a
18 consequence of hanging out with the wrong crowd.

19 7. In 2011, Mr. Rivera decided he had had enough and fell to his knees
20 crying and asking Jesus for help. He indicated that after doing so he felt lighter and did
21 not struggle with cravings. He became active in the community, feeding the hungry and
22 coaching youth baseball teams. Mr. Rivera offered newspaper articles documenting his
23 efforts in the community and his involvement in his children's lives.¹

24 8. Mr. Rivera noted that after he "gave his life to God" he was told that he
25 would be charged in connection with a drug bust. He explained that he successfully
26 fought multiple charges for years until presented with a conspiracy charge related to his
27 giving someone in the drug ring \$50.00. On the advice of counsel, he pled guilty to

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29 ¹ This pictures and articles were laminated, and the Tribunal requested that Mr. Rivera electronically file
30 the documents he wanted to make part of the record. The record was held open until March 21, 2017 to
afford Mr. Rivera time to do so if he so chose. The Tribunal clarified that it had reviewed the submitted
materials and that submitting them was not required. Petitioner did not submit the newspaper articles and
pictures electronically.

1 conspiracy to aid a criminal syndicate to avoid the possibility of eighteen years away
2 from his family. Ultimately, he was sentenced to two and a half years. While he served
3 two years of that prison sentence, Mr. River stayed clean and committed to doing what
4 was right. He completed probation and continued to serve his community.

5 9. Mr. Rivera indicated that he has worked as a customer service
6 representative for his mother, who is a licensed insurance broker, for many years. His
7 desire to obtain his license arises so she has more freedom to care for her ailing
8 husband. Rivera said he failed the examination the first time but was determined not to
9 give up and passed it the next time. He applied for his license knowing that he might be
10 denied because of his past, but decided to fight for a second chance because he was
11 no longer that man and wanted a means to provide more for his six children and his
12 wife. He commented that he often worked with customers and money in connection
13 with his mother's business and had never had any complaints.

14 10. Mr. Rivera presented the testimony of several character witnesses including
15 his mother, the sales manager of a large property and casualty insurer who works with
16 Petitioner's mother's company extensively, and his pastor.

17 a. Paul Marchant is the Sales Manager for a large property and casualty
18 insurer who routinely works with The Auto Insurance Specialists, the
19 company run by Petitioner's mother. Mr. Marchant opined that Mr. Rivera
20 was a model employee who worked for a great company that served
21 nontraditional car insurance customers. Mr. Marchant said that Petitioner
22 was a trustworthy person who had turned his life around even after being
23 sent to prison for giving a friend \$50.00. He noted that his company had
24 concerns over the charges and so he had researched them in detail and
25 still felt comfortable working with Petitioner. Mr. Marchant stressed that
26 Petitioner's mother needed another licensed insurance broker to help her.
27 He noted that he would be obligated to self-report any issues regarding
28 Petitioner to the Department.

29 b. Josue Ibarra is the Pastor of Petitioner's church, the Fountains of
30 Living Water, and has known Petitioner for six years. Pastor Ibarra found
Petitioner to be a man of top notch honesty who made sure that all

1 donations went as allocated and was both honest and upright. Pastor
2 Ibarra said that in his view, there is no set time to ascertain whether a man
3 has put himself on the right road and has what it takes, but that he found it
4 telling that Mr. Rivera did not give up when he was sent to prison in 2014.
5 Pastor Ibarra deemed Mr. Rivera an asset to the community who was
6 worthy of second chance and an insurance license.

7 c. Janie Rivera is Petitioner's mother and the owner of The Auto
8 Insurance Specialists. She praised Petitioner for all the help he has given
9 her, from setting up the company computer system to building customer
10 trust. She acknowledged Petitioner's past history but said he had
11 changed and had never had a problem or complaint while at work. Mrs.
12 Rivera indicated that Petitioner passed the test to be licensed while her
13 other employees cannot do so. She noted she needs another licensed
14 agent and requested that Petitioner be given a chance to have a license.

15 d. Erlinda Martinez, Petitioner's wife, testified that the extensive criminal
16 background does not reflect the type of man her husband is. She noted
17 he is a good father and a good employee who deserves a second chance.

18 e. Micah Powell, Vice Mayor of Eloy, Arizona and an investigator with the
19 Pinal County Medical Examiner, has been a friend of Petitioner since
20 elementary school. He acknowledged that Petitioner had taken a wrong
21 path but had worked hard to improve himself and was reliable. Vice
22 Mayor Powell indicated that Petitioner was committed to helping people
23 and was very smart. He urged the Tribunal to put the past in the past,
24 look forward and help Mr. Rivera.

25 **CONCLUSIONS OF LAW**

- 26 1. Mr. Rivera bears the burden of persuasion. A.R.S. § 41-1092.07(G)(1).
27 2. The standard of proof on all issues is that of a preponderance of the
28 evidence. A.A.C. R2-19-119(A).
29 3. A preponderance of the evidence is "[e]vidence which is of greater weight
30 or more convincing than the evidence which is offered in opposition to it; that is,

1 evidence which as a whole shows that the fact sought to be proved is more probable
2 than not." BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

3 4. A.R.S. § 20-295(A)(6) provides that the Department's Director may deny an
4 applicant's request for a license when the applicant has "been convicted of a felony."
5 The uncontroverted evidence established that Mr. Rivera was convicted of Soliciting to
6 Possess Dangerous Drugs, a class 4 felony in 2002, Theft, a class 6 felony in 2004,
7 Possession of Dangerous Drugs, a class 4 felony in 2006 and 2008, Misconduct
8 Involving a Weapon, a class 4 felony and Attempted Conspiracy to Assist a Criminal
9 Syndicate, a class 3 felony. Thus, the Department's Director has the authority to deny
10 Petitioner's request for a license.

11 5. Notably, Mr. Rivera criminal conduct ended six years ago once he was
12 finally able to conquer his drug addiction. Since that time, Mr. Rivera has changed his
13 life and strives to help others in his church and otherwise. In doing so, Petitioner has
14 also had access to the deposits and checks at his church for many years. As an
15 employee of his mother's company, Petitioner has had access to personal information
16 and financial accounts and no reported incidents of improper conduct. Further,
17 numerous character witnesses testified that Mr. Rivera was honest and trustworthy.

18 6. For the two years he spent in prison from 2014 through January 2016 as a
19 result of conduct he engaged in 2011, it appears he was a model prisoner who resisted
20 the temptation to revert to his old ways.

21 7. The plain language of the statute in question provides that the Director of
22 the Department *may* deny Mr. Rivera's application based on the past felony convictions
23 but does not require a denial. Such a decision to deny is within the discretion of the
24 Director.

25 8. While the Department's Director has grounds to deny Mr. Rivera's
26 application, Mr. Rivera has met the burden to show that his application should be granted.

27 **ORDER**

28 **IT IS ORDERED** that Eric Anthony Rivera's appeal be granted.
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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, March 22, 2017.

/s/ Suzanne Marwil
Administrative Law Judge

Transmitted electronically to:
Leslie R. Hess, Interim Director
Arizona Department of Insurance