

MAY 11 2017

STATE OF ARIZONA
DEPARTMENT OF INSURANCE DEPT OF INSURANCE
BY MS

In the Matter of:

HOUK, KODY GARRETT,

Petitioner.

No. 17A-036-INS

ORDER

On May 8, 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 May 8, 2017, a copy of which is attached and incorporated by this reference. The Interim Director has reviewed the Recommended Decision and enters the following Order:

1. The Interim Director adopts the Recommended Findings of Fact.
2. The Interim Director adopts the Conclusions of Law except to correct the reference from "Mr. Rivera" to "Mr. Houk" at paragraph 7.
3. The Interim Director grants **Kody Garrett Houk's** application for an Arizona insurance producer license only after Petitioner applies for and is granted a 18 U.S.C. §1033 Waiver by the Arizona Department of Insurance¹.


¹ Petitioner may find instructions for obtaining a 18 U.S.C. § 1033 Waiver at the Arizona Department of Insurance website: <https://insurance.az.gov>. Search on "1033 Waiver."

1 **NOTIFICATION OF RIGHTS**

2 Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Petitioner may
3 request a rehearing with respect to this order by filling a written motion with the Interim
4 Director of the Department of Insurance within 30 days of the date of this Order, setting
5 forth the basis for relief under A.A.C. R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is
6 not necessary to request a rehearing before filing an appeal to Superior Court.

7 Petitioner may appeal the final decision of the Interim Director to the Superior Court
8 of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal
9 must notify the Office of Administrative Hearings of the appeal within ten days after filing
10 the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

11 DATED this 9th day of May, 2017.

12 
13 Leslie R. Hess, Interim Director
14 Arizona Department of Insurance

15 COPY of the foregoing mailed this
16 11th day of May, 2017, to:

17 Kody Garrett Houk
18 5710 E. Valley View Dr.
19 Florence, AZ 85132
20 Petitioner

21 Kody Garrett Houk
22 c/o American Family Insurance – Jared Gibbs Agency
23 6499 S. Kings Ranch Rd., Ste. 3
24 Gold Canyon, AZ 85118
25 Petitioner

26 Catherine O'Neil, Consumer Legal Affairs Officer
Mary Kosinski, Regulatory Legal Affairs Officer
Steven Fromholtz, Assistant Director for Consumer Protection
Aqueelah Currie, Licensing Supervisor
Arizona Department of Insurance
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MAY 08 2017

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

DEPT. OF INSURANCE

BY: MEK

In the Matter of:

No. 17A-036-INS

HOUK, KODY GARRETT

Respondent.

ADMINISTRATIVE LAW JUDGE

DECISION

HEARING: May 3, 2017

APPEARANCES: Kody Garrett Houk 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 March 8, 2017, Kody Garrett Houk (Petitioner or Mr. Houk) submitted an Application for an Insurance License for an Individual (Application) with the Arizona Department of Insurance (Department).

2. Mr. Houk answered "Yes" to Question C, Subpart 1 of the Background Questions under Additional Information on the Application. Question C, Subpart 1, 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. Houk also answered "Yes" to Question C, Subpart 4: Withholding, misappropriating, converting or stealing money or property?"

3. Mr., Houk disclosed that he had been convicted of two class D felonies stemming from possession of stolen mail when he work as a contract letter carrier for the United States Postal Service and that he had been sentenced on June 9, 2008 to three years' probation with random drug and alcohol testing. He noted his sentence was completed in March 2011 and that he had a clean record since then while engaging in gainful employment. In an attached letter submitted with the application, Mr. Houk represented the he had "been clean and sober since the incident."

1 4. In a letter dated March 20, 2017, the Department informed Mr. Houk that
2 his application had been denied pursuant to A.R.S. §§ 20-295(A)(6) and (A)(8).

3 5. Mr. Houk requested an accelerated hearing to permit him to take a
4 pending job offer with Jared Gibbs, a licensed insurance agent with an American Family
5 Insurance office. The Office of Administrative Hearings accommodated his request and
6 convened a hearing on May 3, 2017.

7 6. Steven Fromholtz, Assistant Director of the Consumer Protection Division of
8 the Department, testified as to Mr. Houk's criminal history, noting that the convictions
9 demonstrated a breach of trust in the course of employment after being afforded access
10 to individuals' personal information. Mr. Fromholtz indicated that the Department
11 determined that there was a strong nexus between this demonstrated breach of trust and
12 insurance licensure given that Mr. Houk would be placed in a position of trust by the
13 Department and would have access to money and personal information of his clients and
14 others. He acknowledged that the offenses had happened nine years ago and that Mr.
15 Houk was only 19 years old at the time of these offenses, but said that those factors were
16 give less weight due to the strong nexus Mr. Houk's employment-based breach of trust
17 had with his insurance licensure. Mr. Fromholtz said that the denial of Mr. Houk's
18 application was "a difficult decision to make" based on the facts. He noted that the
19 Department lacked the funds to monitor or supervise Mr. Houk and thus had decided to
20 deny his application at this time.

21 7. Mr. Houk testified that he does not dispute that he committed the acts
22 underlying his convictions for possession of stolen mail, except to the extent his
23 objection was sustained against the government's proposed amount of intended losses.
24 He noted that at the time of the convictions, he was a new, teenaged parent, trying to
25 support his family while addicted to drugs. Mr. Houk stated that he had been sober for
26 the last two years, after dedicating his life to God, and serving as the head of his
27 church's recovery ministry. Houk credited the church with providing him a network of
28 structure and accountability that left him confident he was a "redeemed" man who would
29 never slip back into his old ways.

30 8. Houk emphasized that he was not convicted of stealing the identity of
another and had never been accused of mishandling money in all the jobs he held since

1 his convictions. Mr. Houk detailed his work history, beginning with his own
2 entertainment business, then as a master merchandiser and operations manager, and
3 most recently as a dispatcher responsible for handling driver deposits. He also
4 indicated that he was now the father of two children and a husband and said he wanted
5 to support his family.

6 9. Mr. Houk described his job offer from Jared Gibbs, and stated that based
7 on information he received from an unidentified employee of the Department, he
8 assumed that while his application for a license would be reviewed, it would ultimately
9 be granted due to the age of the convictions. Mr. Houk quit his job and is therefore
10 without income to support his family. He asked that he be given a chance because he
11 is a changed man.

12 10. Mr. Houk presented the testimony of several character witnesses including,
13 two potential employers, numerous friends from church, his associate pastor and his
14 pastor.

15 a. Jared Gibbs testified that he is the owner of an American Family
16 Insurance branch and a licensed insurance agent who offered Mr. Houk
17 employment as part of new acquisition team at the office. Gibbs explained
18 that he had met Mr. Houk two years ago at church and become impressed
19 with his character, as well as his care and concern for others. Gibbs
20 commented that Mr. Houk's character "aligns with what our agency stands
21 for." He confirmed that should any problems or concerns arise with Mr.
22 Houk's employment, he would terminate the employment and notify the
23 Department immediately.

24 b. Curtis Calvert, American Family Insurance multi-agency manger,
25 testified that he met Mr. Houk though church softball. He said that if Gibbs
26 had not hired Mr. Houk he would have done so because he believed that
27 Mr. Houk was of "upstanding character" who could "do a lot of good" as an
28 insurance agent. Calvert indicated that he "did not have a shadow of a
29 doubt" that Mr. Houk could handle money well. Calvert said that he saw
30 Mr. Houk as a "man of faith" who he trusts implicitly.

1 c. Reggie Johnson, a Coolidge police officer and Mr. Houk's best friend,
2 testified that he loved Mr. Houk like a brother. Johnson indicated he found
3 Mr. Houk to be of "upstanding character." He acknowledged that Mr. Houk
4 had made a "dumb mistake" in his youth" but said the man Mr. Houk is
5 today "did a complete 360" and turned his life around.

6 d. Kyle Kakar, friend of Mr. Houk sine 2014 and a police officer, testified
7 he met Mr. Houk through church, had a great deal of respect for Mr. Houk
8 and considered him a brother. He found it significant that Mr. Houk had
9 never held anything back about his past. Officer Kakar indicated that he
10 trusted Mr. Houk with his kids and wanted to help him with his future
11 endeavors. Officer Kakar noted that he intended to buy insurance from
12 Mr. Houk and thought he would do well as an insurance agent.

13 e. Thomas "Tim" McFadden, a member of the church's confidential
14 morning men's coffee group, testified that he knew Mr. Houk's character
15 and that he saw no problem with Mr. Houk becoming an insurance agent.
16 McFadden, a non-practicing lawyer, indicated that Mr. Houk had turned
17 his life around. McFadden believed that the passage of time since Mr.
18 Houk's offenses should matter, as should his "sterling, flawless track
19 record" since the convictions. He noted that Mr. Houk is a class act who
20 serves his community and deserves a second chance.

21 f. Joshua Miles, associate pastor and Lifepoint church, testified that Mr.
22 Houk had helped him fight an opioid addiction after suffering an injury. He
23 said that Mr. Houk's honesty about his own past had led Miles to seek
24 treatment. In the three to four years Miles has known Mr. Houk, he has
25 found him to be a reliable person with whom things can be shared. Miles
26 said that Mr. Houck is given the responsibility for closing up the church
27 after events and has been given other positions of responsibility, such as
28 being on the list of ministry heads. Miles commented that Mr. Houk also
29 helps with the recovery program at a larger church.

30 g. Blake Wilsford, adult ministry pastor of Lifepoint, testified that he has
known Mr. Houk for three years and counseled him through his recovery.

1 Wilsford said he was confident enough in Houk's abilities to give him
2 responsibilities and place him in positions of trust at the church. Wilsford
3 found Mr. Houk to be "redeemed" and believed he would do an excellent
4 job as an insurance agent and never go back into his previous life.

5 **CONCLUSIONS OF LAW**

6 1. Mr. Houk bears the burden of persuasion. A.R.S. § 41-1092.07(G)(1).

7 2. The standard of proof on all issues is that of a preponderance of the
8 evidence. A.A.C. R2-19-119(A).

9 3. A preponderance of the evidence is "[e]vidence which is of greater weight
10 or more convincing than the evidence which is offered in opposition to it; that is,
11 evidence which as a whole shows that the fact sought to be proved is more probable
12 than not." BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

13 4. A.R.S. § 20-295(A)(6) provides that the Department's Director may deny an
14 applicant's request for a license when the applicant has "been convicted of a felony."
15 The uncontroverted evidence established that Mr. Houk was convicted of two class D
16 felonies for possession of stolen mail on June 9, 2008. Thus, the Department's
17 Director has the authority to deny Petitioner's request for a license.

18 5. A.R.S. § 20-295(A)(8) provides that the Department's Director may deny an
19 applicant's request for a license when the applicant has "[u]s[ed] fraudulent, coercive or
20 dishonest practices, or demonstrating incompetence, untrustworthiness or financial
21 irresponsibility in the conduct of business in this state or elsewhere." The
22 uncontroverted evidence demonstrated that Petition was convicted of stealing mail
23 entrusted to him in the course of his employment. Thus, the Department's Director has
24 the authority to deny Petitioner's request for a license.

25 6. It also appears that Mr. Houk may have been untruthful on his insurance
26 application when he represented that he had been clean and sober since his
27 convictions, but then stated at hearing that he had only been sober for two years.
28 Providing false or misleading information in an insurance license application is itself
29 grounds for the Department's Director to exercise his authority to deny Petitioner a
30 license. See A.R.S. § 20-295(A)(1).

