

DEC 10 2018

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY MEK

In the Matter of:

AVITIA, ALFONSO MIGUEL
(National Producer Number 18462470)

Respondent

No. 18A-063-INS

ORDER

On December 6, 2018, the Office of Administrative Hearings, through Administrative Law Judge Velva Moses-Thompson, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Interim Director of the Department of Insurance ("Interim Director") on December 10, 2018, 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:

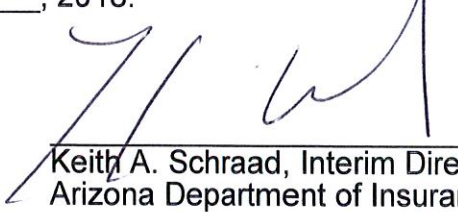
1. The Interim Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Interim Director revokes the Arizona resident insurance producer license of **Alfonso Miguel Avitia**, National Producer Number 18462470, effective immediately.

NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Respondent 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 Respondent may appeal the final decision of the Interim Director to the Superior
2 Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an
3 appeal must notify the Office of Administrative Hearings of the appeal within ten days after
4 filing the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

5 DATED this 16th day of December, 2018.

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8 
Keith A. Schraad, Interim Director
Arizona Department of Insurance

9 **COPY** of the foregoing mailed this
10 11th day of December, 2018, to:

11 Alfonso Miguel Avitia
12 2470 W. Ruthrauff Rd.
13 Tucson, AZ 85705-1959
14 Respondent

15 Alfonso Miguel Avitia
16 2422 N. Ironwood Ridge Dr.
17 Tucson, AZ 85745
18 Respondent

19 Deian Ousounov
20 Assistant Attorney General
21 State Government Division
22 Agency Counsel Section
23 15 S. 15th Ave.
24 Phoenix, Arizona 85007

25 Office of Administrative Hearings
26 1400 West Washington, Suite 101
Phoenix, Arizona 85007

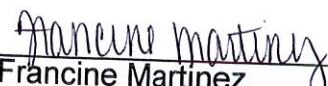
COPY of the foregoing delivered, same date, to:

22 Mary Kosinski, Regulatory Legal Affairs Officer
23 Catherine O'Neil, Consumer Legal Affairs Officer
24 Steven Fromholtz, Assistant Director – Consumer Protection Division
25 Aqueelah Currie, Licensing Supervisor
26 Sharyn Kerr, Consumer Protection Division
Arizona Department of Insurance
100 North 15th Ave., Suite 102
Phoenix, Arizona 85007-2624

1 COPY sent same date via electronic mail to:

2 Alfonso Miguel Avitia
3 Alfonsoavitia@yahoo.com
4 Respondent

5 Deian Ousounov
6 Assistant Attorney General
7 AdminLaw@azag.gov
8 Attorney for the Department of Insurance

9 
10 Francine Martinez

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DEC 10 2018

DEPT. OF INSURANCE

BY: mk

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 18A-063-INS

AVITIA, ALFONSO MIGUEL
(National Producer Number 18462470)

ADMINISTRATIVE LAW JUDGE
DECISION

Respondent.

HEARING: December 6, 2018

APPEARANCES: Assistant Attorney General Deian Ousounov appeared on behalf of the Arizona Department of Insurance. Respondent Alfonso Miguel Avita did not appear.

ADMINISTRATIVE LAW JUDGE: Velva Moses-Thompson

FINDINGS OF FACT

1. On October 11, 2018, the Arizona Department of Insurance ("Department") issued a Notice of Hearing setting the above-captioned matter for hearing at 1:00 p.m. on December 6, 2018.
2. No representative for Respondent Alfonso Miguel Avita appeared at the scheduled time and the matter was convened in his absence at about 1:20 p.m.
3. On or about July 3, 2017, Respondent submitted to the Department an application for a license as a resident insurance producer with a line of authority in life insurance. With the application, Respondent included a copy of his fingerprints.
4. The Department issued to Respondent License No. 18462470, which is scheduled to expire on May 31, 2021.
5. The Department forwarded Respondent's fingerprints the Arizona Department of Public Safety ("DPS") for a criminal records background check. Respondent's fingerprints were not of sufficient quality for use in conducting the background check.

1 6. An applicant who submits illegible fingerprints is considered by the Department
2 to have submitted an incomplete application.

3 7. In a letter dated November 6, 2017, the Department informed Respondent that
4 on or before November 30, 2017, he was required to submit to the Department a
5 replacement set of fingerprints. The November 6, 2017 letter was mailed to
6 Respondent's business address.

7 8. The Department did not receive from Respondent any response to its November
8 6, 2017 letter. The November 6, 2017 letter was not returned to the Department as
9 undeliverable.

10 9. In a letter dated March 2, 2018, the Department informed Respondent that it
11 was preparing to initiate an administrative action against his license because he had
12 failed to submit a full set of fingerprints.

13 10. The Department's March 2, 2018 letter also informed Respondent that on or
14 before March 30, 2018, he was required to submit the replacement set of fingerprints
15 by, or in the alternative, he could surrender his license. The March 2, 2018 letter was
16 mailed to Respondent's residential address.

17 11. On or about March 9, 2018, the March 2, 2018 letter was returned to the
18 Department as undeliverable. See Exhibit 3.

19 12. Respondent did not submit a replacement set of fingerprints and he did not
20 surrendered his license.

21 13. The Department requested that Respondent's license be revoked.

22 **CONCLUSIONS OF LAW**

23 1. The Department bears the burden of persuasion. ARIZ. REV. STAT. § 41-
24 1092.07(G)(2).

25 2. The standard of proof on all issues is that of a preponderance of the evidence.
26 Ariz. Admin. Code § R2-19-119.

27 3. A preponderance of the evidence is:

28 The greater weight of the evidence, not necessarily
29 established by the greater number of witnesses testifying to a
30 fact but by evidence that has the most convincing force;
superior evidentiary weight that, though not sufficient to free

1 the mind wholly from all reasonable doubt, is still sufficient to
2 incline a fair and impartial mind to one side of the issue rather
3 than the other.

BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

4 4. With his application, Respondent was required to submit to the Department a
5 complete set of fingerprints. Respondent's submission of fingerprints did not satisfy this
6 requirement because the quality was not sufficient for DPS's use in conducting the
7 required background check. See ARIZ. REV. STAT. § 20-285(E)(2).

8 5. Because Respondent did not submit fingerprints of sufficient quality, his
9 application is incomplete, which is a violation of ARIZ. REV. STAT. section 20-295(A)(1).

10 6. Respondent's conduct constitutes a violation of ARIZ. REV. STAT., Title 20, which
11 provides grounds for the Director of the Department to revoke Respondent's license.
12 ARIZ. REV. STAT. § 20-295(A)(2).

13 **RECOMMENDED ORDER**

14 **IT IS ORDERED** that Respondent Alfonso Miguel Avita's License No. 18462470
15 is revoked.

16 Done this day, December 6, 2018.

17 /s/ Velva Moses-Thompson
18 Administrative Law Judge
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21 Transmitted electronically to:

22 Keith A. Schraad, Interim Director
23 Arizona Department of Insurance
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