

DEC 06 2018

DEPT OF INSURANCE
BY MEK

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STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

UNDERWOOD, RHETT MICHAEL,
Petitioner.

No. 18A-092-INS
ORDER DENYING REQUEST
FOR REHEARING

FINDINGS OF FACT

1. On September 5, 2018, the Department of Insurance ("Department") mailed, by Regular First Class mail and by Certified Mail, a Notice of Hearing In the Matter of Underwood, Rhett Michael, Docket No. 18A-092-INS ("Docket No. 18A-092-INS") setting a hearing for October 10, 2018 (Exhibit A).
2. On October 10, 2018, the Office of Administrative Hearings ("OAH") conducted a hearing in Docket No. 18A-092-INS.
3. On or about October 30, 2018, the Administrative Law Judge ("ALJ") issued an Administrative Law Judge Decision ("ALJ's Decision"), received by the Interim Director on that same date. (Exhibit B.)
4. On October 30, 2018, the Interim Director filed an Order adopting the ALJ's Decision and denying Petitioner's Arizona insurance producer application. (Exhibit C without ALJ's Decision attached.)
5. On November 26, 2018, Petitioner timely filed a request for rehearing with the Department pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09. (Exhibit D.)
6. On December 4, 2018, the Department filed the Department's Response to Request for Rehearing. (Exhibit E.)

CONCLUSIONS OF LAW

1. Petitioner timely filed his Motion for Rehearing. A.A.C. R20-6-114(A).

1 2. The Department timely filed its Response to Motion for Rehearing. A.A.C.
2 R20-6-115.

3 3. Notice to Petitioner was proper.

4 4. A.A.C. R20-6-114(B) authorizes the Interim Director to grant a rehearing or
5 review only if Petitioner establishes one or more of the following grounds which have
6 materially affected Petitioner's rights:

7 1. Irregularity in the hearing proceedings, or any order or abuse of
8 discretion whereby the party seeking rehearing or review was deprived
of a fair hearing;

9 2. Misconduct by the Director, the hearing officer or any party to the
10 hearing;

11 3. Accident or surprise which could not have been prevented by
ordinary prudence;

12 4. Newly discovered material evidence which could not have been
13 discovered with reasonable diligence and produced at the hearing;

14 5. Excessive or insufficient sanctions or penalties imposed;

15 6. Error in the admission or rejection of evidence, or errors of law
16 occurring at the hearing or during the course of the hearing;

17 7. Bias or prejudice of the Director or hearing officer;

18 8. That the order, decision, or findings of fact are not justified by the
19 evidence or are contrary to law.

20 5. The Interim Director has reviewed Petitioner's request for rehearing and the
21 Department's Response to Request for Rehearing and finds that Petitioner has failed to
22 establish a ground upon which to grant a rehearing or review pursuant to A.A.C. R20-6-
23 114.

24 ...
25 ...
26 ...

1 **ORDER**

2 IT IS ORDERED:

3 1. Petitioner's request for rehearing is denied.

4 DATED this 5th day of December, 2018.

5
6 
7 Keith A. Schraad, Interim Director
Arizona Department of Insurance

8 **COPY** with exhibits of the foregoing delivered electronically
this 7th day of December, 2018, to:

9 Administrative Law Judge Jenna Clark
10 casemanagement@azoah.com
Office of Administrative Hearings

11 **COPY** with exhibits mailed same date by Regular Mail
12 and Certified Mail, Return Receipt Requested, to:

13 Rhett Michael Underwood
14 4870 North Harlequin Drive
15 Prescott Valley, Arizona 86314
Petitioner

16 **COPY** of the foregoing delivered same date (without exhibits) to:

17 Mary Kosinski, Regulatory Legal Affairs Officer
18 Mary Jordan, Business Services Supervisor
19 Aqueelah Currie, Licensing Supervisor
Arizona Department of Insurance
100 N. 15th Ave, Suite 102
20 Phoenix, Arizona 85007-2624

21 **COPY** sent same date via electronic mail (without exhibits) to:

22 Deian Ousounov
Assistant Attorney General
23 AdminLaw@azag.gov
24 Attorney for the Department of Insurance

25 
26 Francine Martinez

Exhibit A

Docket No. 18A-092-INS

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

UNDERWOOD, RHETT MICHAEL

Petitioner.

Docket No. 18A-092-INS

NOTICE OF HEARING

(ALJ Jenna Clark)

PLEASE TAKE NOTICE that the above-captioned matter will be heard before the Interim Director of Insurance of the State of Arizona (the "Interim Director") or a duly designated representative on **October 10, 2018 at 1:00 p.m. at the Office of Administrative Hearings, 1740 West Washington St., Lower Level, Phoenix, Arizona 85007**¹.

If you wish to continue this hearing to another date, you must file a motion in writing with the Office of Administrative Hearings not less than **15** days before the scheduled hearing date. Please send it to the attention of the Administrative Law Judge ("ALJ") and include the docket number listed above. You must also mail or hand-deliver a copy of any motion to continue to the Department of Insurance on the same date you file it with the Office of Administrative Hearings.

You are not required to have an attorney represent you. However, if you are represented, your attorney must be licensed to practice law in the State of Arizona. An insurance company may be represented by a corporate officer. A.R.S. § 20-161(B).

¹ As authorized under Arizona Revised Statutes ("A.R.S.") §§ 20-161 through and including 20-165 and Title 41, Chapter 6, Article 10 (A.R.S. § 41-1092 *et seq.*).

1 You are entitled to be present during the giving of all evidence and you will have a
2 reasonable opportunity to inspect all documentary evidence, examine witnesses, present
3 evidence that supports your case and to request that the ALJ issue subpoenas to compel the
4 attendance of witnesses and production of evidence. A.R.S. § 20-164(B).

5 A clear and accurate record of the proceedings will be made either by a court reporter
6 or by electronic means. A.R.S. § 41-1092.07(E). If you want a copy of an electronic recording,
7 you must contact the Office of Administrative Hearings at (602) 542-9826. If the hearing was
8 transcribed by a court reporter and you want a copy of the transcript, you must pay the cost of
9 the transcript to the court reporter or other transcriber.

10 Questions concerning issues raised in this Notice of Hearing should be directed to
11 Assistant Attorney General Deian Ousounov, telephone number (602) 542-8011, 2005 N.
12 Central Ave., Phoenix, Arizona 85004, Deian.Ousounov@azag.gov.

13 **NOTICE OF APPLICABLE RULES**

14 On January 23, 1992, we adopted the rules of practice and procedure applicable in
15 contested cases before the Interim Director of Insurance. The hearing will be conducted
16 pursuant to these rules. A.A.C. R20-6-101 through R20-6-115.

17 **YOU MUST FILE A WRITTEN RESPONSE (ANSWER) TO THE ALLEGATIONS IN**
18 **THIS NOTICE WITH US WITHIN 20 DAYS AFTER WE ISSUE THIS NOTICE. A.A.C.**
19 **R20-6-106. YOUR RESPONSE SHOULD STATE YOUR POSITION OR DEFENSE AND**
20 **SHOULD SPECIFICALLY ADMIT OR DENY EACH ASSERTION IN THE NOTICE. IF YOU**
21 **DO NOT SPECIFICALLY DENY AN ASSERTION, WE WILL CONSIDER IT ADMITTED. ANY**
22 **DEFENSE YOU DO NOT RAISE WILL BE CONSIDERED WAIVED.**

23 **IF YOU DO NOT FILE YOUR RESPONSE ON TIME, WE WILL CONSIDER YOU IN**
24 **DEFAULT AND THE DIRECTOR MAY DEEM THE ALLEGATIONS IN THE NOTICE AS**

1 TRUE. ACCORDINGLY, WE WILL TAKE WHATEVER ACTION IS APPROPRIATE
2 INCLUDING SUSPENSION, REVOCATION, IMPOSITION OF A CIVIL PENALTY AND
3 ORDERING RESTITUTION TO ANY INJURED PERSON.

4 **PERSONS WITH DISABILITIES**

5 PERSONS WITH DISABILITIES MAY REQUEST REASONABLE
6 ACCOMMODATIONS SUCH AS INTERPRETERS, ALTERNATIVE FORMATS, OR
7 ASSISTANCE WITH PHYSICAL ACCESSIBILITY. REQUESTS FOR ACCOMMODATIONS
8 SHOULD BE MADE AS EARLY AS POSSIBLE TO ALLOW TIME TO ARRANGE THE
9 ACCOMMODATIONS. IF YOU REQUIRE ACCOMMODATIONS, PLEASE CONTACT THE
10 OFFICE OF ADMINISTRATIVE HEARINGS AT (602) 542-9826.

11 The allegations supporting this Notice of Hearing are as follows:

12 1. On July 3, 2018, Rhett Michael Underwood ("Underwood" or "Petitioner")
13 submitted an Application for an Individual Producer License (the "Application") with a line of
14 authority in life.

15 2. Petitioner answered "Yes" to Questions 1a and 1b of the Background Questions
16 on the Application, which ask:

17 1a) "Have you ever been convicted of a misdemeanor, had a judgment withheld or
18 deferred, or are you currently charged with committing a misdemeanor?"

19 1b) "Have you ever been convicted of a felony, had a judgment withheld or deferred, or
20 are you currently charged with committing a felony?"

21 **State of Arizona v. Rhett Michael Underwood (P1300CR201600209)**

22 3. On July 6, 2016, the Superior Court of Arizona, Yavapai County, convicted
23 Petitioner of Attempted Misconduct Involving Simulated Explosive Device, a Class 6
24 Undesignated Felony, and Obstructing Governmental Operations, a Class 2 Misdemeanor, in

1 the Superior Court of Arizona, Yavapai County, case number P1300CR201600209. The Court
2 placed Petitioner on supervised probation for three (3) years. Petitioner is currently on
3 probation.

4 4. On July 27, 2018, the Department sent Petitioner notification that his application
5 for licensure had been denied.

6 5. On August 13, 2018, the Department received a letter from Petitioner appealing
7 the denial of his application.

8 **CONCLUSIONS OF LAW**

9 1. The Interim Director has jurisdiction over this matter.

10 2. Petitioner's conduct, as described above, constitutes having been convicted of a
11 felony, within the meaning of A.R.S. § 20-295(A)(6).

12 3. Grounds exist for the Interim Director to deny, suspend, revoke, or refuse to
13 renew Petitioner's insurance license, pursuant to A.R.S. § 20-295(A).

14 WHEREFORE, if after hearing, the Interim Director finds the grounds alleged above, the
15 Interim Director may deny, suspend, or revoke Petitioner's insurance producer's license.
16 A.R.S. § 20-295(A).

17 The Interim Director delegates the authority vested in him to the Director of the Office of
18 Administrative Hearings or his designee to preside over the hearing of this matter as the
19 Administrative Law Judge, to make written recommendations to the Interim Director consisting
20 of proposed findings of fact, proposed conclusions of law, and a proposed order. This
21 delegation does not include delegation of the authority of the Interim Director to make an order
22 on the hearing or any other final decision in this matter. A.R.S. § 20-150.

23 ...

24 ...

1 Pursuant to A.R.S. § 41-1092.01, your hearing will be conducted through the Office of
2 Administrative Hearings, an independent agency. Further hearing information may be found at
3 the Office of Administrative Hearings website: www.azoah.com.

4 DATED this 4th day of September, 2018.

5
6 
7 Mary Kosinski, Regulatory Legal Affairs Officer
Arizona Department of Insurance

8 **E-FILE** of the foregoing delivered electronically
9 this 5th day of September, 2018, to:

10 ALJ Jenna Clark
oahnoticesofhearing@azoah.com
Office of Administrative Hearings

11 **COPY** of the foregoing delivered same date to:

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

16 **COPY** mailed same date by Regular Mail
and Certified Mail, Return Receipt Requested, to:

17 Rhett Michael Underwood
18 4870 North Harlequin Drive
Prescott Valley, AZ 86314
19 Petitioner

20 **COPY** sent same date via electronic mail to:

21 Deian Ousounov
Assistant Attorney General
22 AdminLaw@azag.gov
Attorney for the Department of Insurance

23 
24 7257883

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Rhett Michael Underwood
 4870 North Harlequin Drive
 Prescott Valley, AZ 86314

2. Article Number
 (transfer from ser)

7004 0750 0001 8551 3213

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL™



7004 0750 0001 8551 3213
 7004 0750 0001 8551 3213

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com
OFFICIAL USE

Rhett Michael Underwood
 4870 North Harlequin Drive
 Prescott Valley, AZ 86314

Rt (Endor)
 Restr (Endor)

Total Postage & Fees \$

Sent To
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4

PS Form 3800, June 2002

See Reverse for Instructions

Exhibit B

Docket No. 18A-092-INS

OCT 30 2018

DEPT. OF INSURANCE
BY: MEK

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 18A-092-INS

UNDERWOOD, RHETT MICHAEL
Petitioner.

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING: October 10, 2018 at 1:00 PM.

APPEARANCES: Michael Rhett Underwood ("Appellant") appeared on his own behalf. Assistant Attorney General Deian Ousounov, Esq. appeared on behalf of the Arizona Department of Insurance ("Department" or "Respondent") with Aqueelah Currie as a witness. Grant Pearson and Sarah Ax observed.

ADMINISTRATIVE LAW JUDGE: Jenna Clark.

After review of the hearing record in this matter, the undersigned Administrative Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this Recommended Order to the Director of the Department.

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. On or about July 06, 2016, the Superior Court of Arizona, Yavapai County, convicted Petitioner of Attempted Misconduct Involving Simulated Explosive Device, a class 6 undesignated felony, and Obstructing Governmental Operations, a class 2 misdemeanor.¹ Petitioner was placed on supervised probation for three years.²

2. On or about July 03, 2018, Petitioner submitted an application for an Individual Producer License to the Department.³

3. Petitioner answered "Yes" to Questions #1a and #1b of the Background Questions section of the application⁴, which ask:

1a) Have you ever been convicted of a misdemeanor, had a judgement withheld or deferred, or are you currently charged with committing a misdemeanor?

¹ See Department Exhibits 4-12.

² See Department Exhibit 5. As of the date of the hearing, Petitioner was still on probation.

³ See Department Exhibit 1.

⁴ *Id.*

1 1b) Have you ever been convicted of a felony, had a judgment withheld or
2 deferred, or are you currently charged with committing a felony?

3 4. On or about July 27, 2018, the Department mailed Petitioner a notification
4 that his application for licensure had been denied.⁵

5 5. On or about August 13, 2018, the Department received an appeal from
6 Petitioner regarding the denial of his licensure application.⁶

7 6. The Department referred the matter to the Office of Administrative
8 Hearings ("OAH"), an independent state agency, for an evidentiary hearing to determine
9 whether grounds exist to deny Petitioner an Insurance Producer's License.

10 7. On September 04, 2018, the Department issued a NOTICE OF HEARING,
11 setting a hearing on October 10, 2018, at 1:00 p.m. A hearing was held on October 10,
12 2018. The Department presented the testimony of Aqueelah Currie, its Licensing
13 Supervisor, and submitted fourteen exhibits. Petitioner testified on his own behalf.
14 Petitioner did not submit any exhibits.

15 **HEARING EVIDENCE**

16 8. Ms. Currie testified that she is a Licensing Supervisor for the Department.
17 Ms. Currie testified that protecting consumers and businesses in the statewide
18 insurance marketplace is paramount to the Department.

19 9. Regarding the case at bar, Ms. Currie testified that Petitioner provided two
20 letters to the Department regarding his felony conviction, submitted on July 06, 2018,
21 and July 22, 2018, respectively.⁷ In his letters Petitioner gave several conflicting
22 reasons for his conviction. Petitioner argued that he was convicted of a crime that he
23 did not commit, even though he accepted a guilty plea and was represented by an
24 attorney during his criminal proceedings. Petitioner blamed his ex-spouse for the
25 underlying acts that resulted in his arrest and subsequent criminal convictions.
26 Petitioner alleged that that he had become sick in custody and accepted the guilty plea
27 so that he could seek medical attention. Petitioner also alleged that he accepted the
28

29 ⁵ See Department Exhibit 13.

30 ⁶ See Department Exhibit 14.

⁷ See Department Exhibits 2-3.

1 guilty plea to return to his children's lives, even though his parental rights had been
2 terminated years prior to his arrest and he had been barred from seeing them.
3 Ultimately, Petitioner argued that because he paid all of his court fines and participated
4 in court-ordered "moral recognition" therapy, resulting in his probation being modified
5 from supervised to unsupervised status, that he should be granted a license.

6 10. Ms. Currie testified that DNA evidence was recovered from the underlying
7 simulated explosive device which linked Petitioner to the crime scene. Moreover, Ms.
8 Currie noted that the building Appellant had targeted was a state government building,
9 the Department of Child Safety ("DCS"), which had to be evacuated as a result.

10 11. Per Ms. Currie, the Department has concerns regarding Petitioner's
11 temperament ability to be truthful. Ms. Currie opined that because Petitioner had not
12 taken full responsibility for the underlying acts that resulted in his felony conviction, and
13 because he was still on probation, the Department believed he could not yet be
14 regulated. Hence, why the Director declined to issue Petitioner a license. Ms. Currie
15 also noted that Petitioner appeared to not realize or have concern that employees and
16 families, including children, could have been hurt during DCS' evacuation.

17 12. Regarding his criminal convictions, Petitioner testified that "a friend" set
18 him up. Per Petitioner, he entered into guilty plea agreements with the State against his
19 attorney's advice so that he could get out of jail. Petitioner also testified that he received
20 advice not to "over answer" the Departments questions, which is why he issued a
21 second statement to provide more clarity and detail regarding the underlying acts
22 resulting in his arrest and his subsequent convictions.

23 13. Petitioner admitted that he omitted an August 2014 arrest for Assault from
24 his application in error, because he had forgotten about it.

25 14. Petitioner did not disagree with any of the Department's evidence, or
26 provide additional evidence to refute any of it.

27 **CONCLUSIONS OF LAW**

28 1. This matter lies with the Department's jurisdiction and was properly
29 brought before OAH for adjudication.⁸

30 ⁸ See ARIZ. REV. STAT. §§ 20-282 and 41-1092 et seq.

1 2. Petitioner bears the burden of proof to establish that he is rehabilitated and
2 qualified to receive an insurance license.⁹ The standard of proof on all issues in this
3 matter is that of a preponderance of the evidence.¹⁰

4 3. A preponderance of the evidence is:

5 The greater weight of the evidence, not necessarily established
6 by the greater number of witnesses testifying to a fact but by
7 evidence that has the most convincing force; superior
8 evidentiary weight that, though not sufficient to free the mind
9 wholly from all reasonable doubt, is still sufficient to incline a
10 fair and impartial mind to one side of the issue rather than the
11 other.

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

13 4. ARIZ. REV. STAT. § 20-285(B)(2) provides that "[b]efore the director
14 approves the application of the individual, the director shall find that the individual has
15 not committed any act that is a ground for denial, suspension or revocation prescribed
16 in section 20-295."

17 5. ARIZ. REV. STAT. § 20-285(E)(1) provides that "[b]efore the director grants
18 a license, the director may require the applicant to provide any document that is
19 reasonably necessary to verify the information that is contained in an application and
20 other information including prior criminal records."

21 6. ARIZ. REV. STAT. § 20-295(A)(6) provides, in pertinent part, that the
22 director may deny to issue an insurance producer's license if an applicant has been
23 convicted of a felony.

24 7. In the case at bar, Petitioner has admitted that the felony conviction that
25 appears on his criminal record is correct, and that by the date of the underlying hearing
26 he was still on probation for that offense. Petitioner's refusal during his testimony to
27 acknowledge and take responsibility for the underlying acts that resulted in his felony
28 conviction establish that he is unregulatable at this time.

29 ⁹ See ARIZ. REV. STAT. § 41-1092.07(G)(1).

30 ¹⁰ See ARIZ. ADMIN. CODE R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

1 8. Pursuant to the above-captioned statute(s), the Director of the
2 Department is entitled to deny licensure to any applicant that has been lawfully
3 convicted of a felony offense.

4 9. While the tribunal applauds Petitioner for attempting to secure gainful
5 employment, Petitioner provided no binding authority or statute under which the tribunal
6 or Department would be bound to accept and approve his application for licensure.

7 10. Based on the relevant and credible evidence in the record, the
8 undersigned Administrative Law Judge holds that the Department has sustained its
9 burden of proof in this matter. As such, the Appellants appeal should be denied.

10 **RECOMMENDED DECISION**

11 Based upon the foregoing findings of fact and conclusions of law,

12 **IT IS RECOMMENDED** that Appellant's Individual Producer License application
13 be denied pursuant to ARIZ. REV. STAT. §§ 20-285(B)(2) and 20-295(A)(6).

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

17 Done this day, October 30, 2018.

18 /s/ Jenna Clark
19 Administrative Law Judge

20
21 Transmitted electronically to:

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

Exhibit C

Docket No. 18A-092-INS

OCT 30 2018

DEPT OF INSURANCE
BY MSK

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

UNDERWOOD, RHETT MICHAEL
Petitioner.

No. 18A-092-INS

ORDER

On October 30, 2018, the Office of Administrative Hearings, through Administrative Law Judge Jenna Clark, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Interim Director of the Department of Insurance ("Interim Director") on October 30, 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:

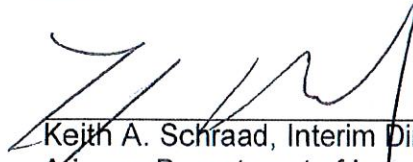
1. The Interim Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Interim Director denies **Rhett Michael Underwood's** application for an Arizona insurance producer license.

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 filling 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 30th day of October, 2018.

6
7
8 
Keith A. Schraad, Interim Director
Arizona Department of Insurance

9 **COPY** of the foregoing mailed this
10 31st day of October, 2018, to:

11 Rhett Michael Underwood
12 4870 North Harlequin Drive
13 Prescott Valley, AZ 86314
14 Petitioner

15 Office of Administrative Hearings
16 1740 West Adams St., Lower Level
17 Phoenix, Arizona 85007

18 **COPY** delivered same date to:

19 Mary Kosinski, Executive Assistant for Regulatory Affairs
20 Catherine O'Neil, Consumer Legal Affairs Officer
21 Steven Fromholtz, Asst. Dir., Consumer Protection Division
22 Aqueelah Currie, Licensing Supervisor
23 Sharyn Kerr, Consumer Protection Division
24 Arizona Department of Insurance
25 2910 North 44th Street, Suite 210
26 Phoenix, Arizona 85018

COPY sent same date via electronic mail to:

27 Deian Ousounov
28 Assistant Attorney General
29 AdminLaw@azag.gov
30 Attorney for the Department of Insurance

31 
Francine Martinez

Exhibit D

Docket No. 18A-092-INS

11/20/2018

Dear Aqueelah Currie,

I Rhett Underwood do hereby give notice of my request for a rehearing with respect to the Department's decision to deny my application for an insurance license. Any future mailings in regards to scheduling a hearing should be sent to 4870 North Harlequin Drive Prescott Valley, Arizona 86314.

It is my belief that I personally did not provide adequate evidence and witnesses to the appeal hearing with the Office of Administrative Hearings in regards to the Department of Insurance decision to deny my application for an insurance license. It is my desire to provide a more prepared defense as to why the State should grant me this honor and privilege.

Grace and Peace to You,

Rhett Underwood

928-460-9741



Exhibit E

Docket No. 18A-092-INS

DEC 04 2018

DEPT OF INSURANCE
BY MEK

1 MARK BRNOVICH
2 Attorney General
3 Firm Bar No. 14000

4 Deian Ousounov
5 State Bar No. 031656
6 Assistant Attorney General
7 Public Law Section
8 2005 N. Central Ave.
9 Phoenix, Arizona 85004
10 Telephone: (602) 542-4951
11 Facsimile: (602) 542-4385
12 E-mail: Deian.Ousounov@azag.gov
13 Attorneys for the Arizona Department of Insurance
14

15 **BEFORE THE ARIZONA DEPARTMENT OF INSURANCE**

16 **In the Matter of:**

No. 18A-092-INS

17 **UNDERWOOD, RHETT MICHAEL**

**DEPARTMENT'S RESPONSE TO
REQUEST FOR REHEARING**

18 **Petitioner.**

19 The Arizona Department of Insurance ("Department"), by and through undersigned
20 counsel, hereby responds to Rhett Michael Underwood's ("Underwood") Request for
21 Rehearing. The Department requests that Underwood's Request is denied. This Response is
22 supported by the following Memorandum of Points and Authorities.

23 MARK BRNOVICH, Attorney General

24 DATED this 4th day of December, 2018.

25 By: /s/ Deian Ousounov
26 Ousounov, Assistant Attorney General
Attorney for the Arizona Department of Insurance

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE FACTS

Underwood applied for an insurance producer license with the Department on July 3, 2018. After reviewing Underwood’s application, on July 27, 2018 the Department issued and sent a denial letter to Underwood. On August 13, 2018 Underwood timely appealed the Department’s decision to deny his license.

The Department filed its Notice of Hearing on September 4th, 2018, setting an administrative hearing on October 10, 2018 at 1:00 p.m. The Department sent the Notice of Hearing by First Class Mail and Certified Mail to Underwood’s address of record. The Office of Administrative Hearings (“OAH”) held the hearing on October 10, 2018. Administrative Law Judge (“ALJ”) Jenna Clark presided over the hearing. At the hearing Underwood presented his case in the form of testimony and was given the opportunity to offer exhibits into evidence. At no point during the hearing did Underwood indicate that he was not prepared for the hearing and ask for a continuance.

On October 30th, 2018, the Interim Director issued his Order adopting the ALJ’s decision, adopting all of ALJ’s recommended findings of fact and conclusion of law and affirming Underwood’s denial for insurance producer license. On November 26, 2018, the Department received Underwood’s letter requesting a rehearing.

II. STATEMENT OF THE ISSUES

Underwood, in his letter, states that he does not believe that he provided “adequate evidence and witnesses” at the hearing. Underwood then expressed his desire to provide a more prepared defense regarding Department’s decision to deny his license application. The

1 issue is therefore whether Underwood alleged specific grounds, as required by law, under
2 which OAH can grant him a rehearing.

3 **III. ARGUMENT**

4 **A. Underwood Failed to Allege Any Grounds as a Basis for Granting a Rehearing** 5 **Under A.A.C. R20-6-114(B) and (C).**

6 The grounds for granting a rehearing or review are identified in Arizona
7 Administrative Code ("A.A.C.") R20-6-114(B). In addition, a motion for rehearing or review
8 must specify the grounds upon which the motion is based, and set forth specific facts and law
9 supporting rehearing or review according to A.A.C. R20-6-114(C).
10

11 A.A.C. R20-6-114(B) states:

12 A rehearing or review of the decision may be granted for any one of the
13 following causes that materially affect the moving party's rights:

- 14 1. Irregularity in the hearing proceedings or any order or abuse of
15 discretion whereby the party seeking rehearing or review was deprived
of a fair hearing;
- 16 2. Misconduct by the Director, the hearing officer, or any party to the
hearing;
- 17 3. Accident or surprise which could not have been prevented by
ordinary prudence;
- 18 4. Newly discovered material evidence which could not have been
19 discovered with reasonable diligence and produced at the hearing;
- 20 5. Excessive or insufficient sanctions or penalties imposed;
- 21 6. Error in the admission or rejection of evidence, or errors of law
occurring at the hearing or during the course of the hearing;
- 22 7. Bias or prejudice of the Director or hearing officer;
- 23 8. That the order, decision, or findings of fact are not supported by the
evidence or is contrary to law.

24 Underwood, in his Request for Rehearing, fails to state any specific legal grounds for
25 rehearing, as required by A.A.C. R20-6-114(C). Analyzing the exact statements of
26 Underwood's Request for Rehearing, the Department will address Underwood's claims as an

1 argument that there was irregularity in the hearing proceedings whereby the party seeking
2 rehearing was deprived of a fair hearing, pursuant to A.A.C. R20-6-114(B)(1); and that
3 there was an error in the admission or rejection of evidence or errors of law occurring at the
4 hearing or during the course of the hearing, pursuant to A.A.C. R20-6-114(B)(6).

5 **B. There was No Irregularity During the Hearing Proceedings that Deprived**
6 **Underwood of a Fair Hearing.**

7 The Department sent the Notice of Hearing to Underwood's address of record.

8 Underwood did not claim insufficient notice when he presented for the hearing. Underwood
9 did not claim, at any time before or during the hearing, that he lacked sufficient time to
10 prepare for the hearing. Underwood did not raise any concerns or issues before, during or
11 after the hearing.
12

13 During the hearing, Underwood was presented with many opportunities to present
14 evidence in support for his arguments. In addition, Underwood was specifically asked if he
15 has any evidence to support his arguments. Underwood did not submit any evidence on his
16 behalf, however he was allowed to make statements on his behalf throughout the hearing.
17 Underwood's ability to present his case and submit evidence on his behalf was never limited
18 or curtailed.
19

20 In this case, Underwood was provided proper and timely notice of the hearing, which
21 he attended. Underwood did not raise any issues with his preparedness before the hearing
22 and in fact made compelling arguments on his behalf. Although Underwood failed to submit
23 any exhibits, he was allowed to make his case to the ALJ and was allowed to present his case
24 without any disruptions. There were no irregularities during the hearing that deprived
25
26

1 Underwood of a fair hearing under A.A.C. R20-6-114(B)(1) and therefore Underwood is not
2 provided a basis for granting his Request for Rehearing.

3 **C. No Error in the Admission of Evidence Occurred and the ALJ Did Not**
4 **Make Any Errors of Law During the Hearing.**

5 Underwood does not directly claim that there was an error during the administrative
6 hearing, however, he asserts that he should be granted a rehearing in order to present better
7 arguments and evidence in support of his position.

8 As discussed above, Underwood did not make any requests to the ALJ regarding
9 evidence or lack of opportunity to present his arguments. On the contrary, Underwood was
10 specifically asked if he has evidence to present and given multiple opportunities to submit
11 any exhibits. Underwood did not submit any exhibits during the hearing.

12 Additionally, Underwood was given the opportunity to present his best arguments,
13 which he did. Underwood was able to do an opening statement, provide direct statements to
14 the court, cross examine Department's only witness, and do a closing argument. Underwood
15 only failed to cross examine Department's witnesses. Underwood presented his case during
16 the hearing and the ALJ did not commit any errors of law during the course of the hearing.
17

18 Therefore, Underwood's Request for Rehearing should be denied because he has not
19 established grounds for granting his request under pursuant to A.A.C. R20-6-114(B)(6).
20

21 **IV. CONCLUSION**

22 Underwood's Request for Rehearing fails to allege the specific grounds allowing for
23 rehearing under A.A.C. R20-6-114(B). On its face, Underwood's Request for Rehearing
24 should be denied because it fails to establish any grounds for rehearing pursuant to A.A.C.
25

26

1 R20-6-114(B). However, even if the ALJ gives Underwood the benefit of the doubt, and
2 assumes that Underwood has made an appropriate argument under to A.A.C. R20-6-
3 114(B)(1) and to A.A.C. R20-6-114(B)(6), the evidence does not support Underwood relief
4 as Underwood has not proven the grounds under the rules. Underwood was given timely
5 notice, given the opportunity to present his case and submit evidence on his behalf and cross
6 examine the Department's witness. Underwood has not proven any grounds that support
7 granting his Request for Relief. Therefore, the Department respectfully requests that
8 Underwood's Request for Rehearing be denied.
9

10 RESPECTFULLY SUBMITTED this 4th day of December, 2018.

11 MARK BRNOVICH, Attorney General

12
13 BY: /s/ Deian Ousounov

14 Deian Ousounov

15 Assistant Attorney General

16 Attorneys for the Department of Insurance

17 **E-FILE** of the foregoing
18 this 4th day of December, 2018 to:

19 Keith Schraad, Interim Director
20 Mary Kosinski, Regulatory Legal Affairs Officer
21 Arizona Department of Insurance

22 **COPY** of the foregoing mailed
23 same date to:

24 Rhett Underwood
25 4870 North Harlequin Drive
26 Prescott Valley, Arizona 86314
Petitioner

/s/ Monesa Carranza
7507293