

OCT 30 2018

DEPT OF INSURANCE  
BY MEK

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

In the Matter of:

No. 18A-092-INS

**UNDERWOOD, RHETT MICHAEL**

**ORDER**

Petitioner.

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:

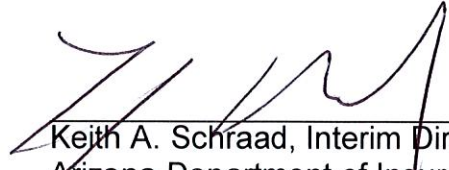
1. The Interim Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Interim Director denies **Rhett Michael Underwood's** application for an Arizona insurance producer license.

**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 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 30<sup>th</sup> day of October, 2018.

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

9 **COPY** of the foregoing mailed this  
10 31<sup>st</sup> 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:

21 Deian Ousounov  
22 Assistant Attorney General  
23 [AdminLaw@azag.gov](mailto:AdminLaw@azag.gov)  
24 Attorney for the Department of Insurance

25   
Francine Martinez



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.<sup>1</sup> Petitioner was placed on supervised probation for three years.<sup>2</sup>

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

3. Petitioner answered "Yes" to Questions #1a and #1b of the Background Questions section of the application<sup>4</sup>, 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?

<sup>1</sup> See Department Exhibits 4-12.

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

<sup>3</sup> See Department Exhibit 1.

<sup>4</sup> *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.<sup>5</sup>

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

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.<sup>7</sup> 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 <sup>5</sup> See Department Exhibit 13.

30 <sup>6</sup> See Department Exhibit 14.

<sup>7</sup> 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.<sup>8</sup>

30 <sup>8</sup> 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.<sup>9</sup> The standard of proof on all issues in this  
3 matter is that of a preponderance of the evidence.<sup>10</sup>

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 <sup>9</sup> See ARIZ. REV. STAT. § 41-1092.07(G)(1).

30 <sup>10</sup> 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  
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