

DEC 12 2018

STATE OF ARIZONA
DEPARTMENT OF INSURANCE
DEPT OF INSURANCE
BY MEK

In the Matter of:

No. 18A-134-INS

**JARAMILLO, MICHELLE IRENE
(f/k/a LEIGHTON, MICHELLE IRENE)**

ORDER

Petitioner.

On December 10, 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 11, 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 **Michelle Irene Jaramillo'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 **COPY** sent same date via electronic mail to:

2 Deian Ousounov

3 Assistant Attorney General

4 AdminLaw@azag.gov

5 Attorney for the Department of Insurance

6 *Francine Martinez*
Francine Martinez

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

DEC 11 2018

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

DEPT. OF INSURANCE
BY: MEK

In the Matter of:

No. 18A-134-INS

JARAMILLO, MICHELLE IRENE
(f/k/a LEIGHTON, MICHELLE IRENE)

ADMINISTRATIVE LAW JUDGE
DECISION

Petitioner.

HEARING: December 3, 2018

APPEARANCES: Petitioner Michelle Irene Jaramillo appeared on behalf of herself. Assistant Attorney General Deian Ousounov appeared on behalf of the Arizona Department of Insurance.

ADMINISTRATIVE LAW JUDGE: Velva Moses-Thompson

FINDINGS OF FACT

1. In 1995, Petitioner Michelle Irene Jaramillo pleaded guilty to the felony of "welfare fraud", a violation of California Welfare and Institutions Code § 10980(c)(2) in the Superior Court of California, County of Ventura. See Exhibits 3 and 4.

2. The conviction was based upon Ms. Jaramillo's receipt of excess subsidized housing payments. See Exhibit 3.

3. In February of 2002, Ms. Jaramillo pleaded guilty to the felony of "grand theft by embezzlement" in the Superior Court of California, County of Ventura, based upon Ms. Jaramillo's work as a bookkeeper for a medical doctor. See Exhibits 3 and 5.

3. On August 31, 2018, Ms. Jaramillo filed with the Arizona Department of Insurance ("Department") an application for an Arizona resident property and casualty producer license ("August 31, 2018 application"). See Exhibit 1.

4. Through the August 31, 2018 application, Ms. Jaramillo disclosed that she had been found guilty of a felony. See id.

1 5. Ms. Jaramillo submitted with the August 31, 2018 application an order
2 from the State of California granting consent for Ms. Jaramillo to engage in the
3 business of insurance. See Exhibit 2.

4 6. Ms. Jaramillo provided a statement regarding the facts surrounding the
5 embezzlement felony with the August 31, 2018 application. See id.

6 7. Ms. Jaramillo did not provide a statement regarding the conviction for
7 welfare fraud with the August 31, 2018 application. See id.

8 8. On or about September 13, 2018, the Department notified
9 Ms. Jaramillo that her application had been denied based on ARIZ. REV. STAT. sections
10 20-295(A)(6) and (A)(8). See Exhibit 6.

11 9. On or about October 12, 2018, Ms. Jaramillo requested a hearing.

12 10. On October 26, 2018, the Department issued a Notice of Hearing setting
13 the above-captioned matter for hearing on December 3, 2018 at the Office of
14 Administrative Hearings in Phoenix, Arizona.

15 11. A hearing was held on December 3, 2018.

16 12. Ms. Jaramillo testified on behalf of herself. The Department presented the
17 testimony of Aqueelah Currie, its Licensing Supervisor.

18 13. Ms. Jaramillo has been working for an insurance company in Arizona for
19 almost two years, but her employer had not applied for a "1033 waiver" from the State
20 of Arizona. See Hearing Audio 42:34 - 43:47 and 45:00 – 49:22. Ms. Currie testified
21 that the insurance company was required under federal law to obtain a 1033 waiver
22 from the State of Arizona before it hired Ms. Jaramillo, due to her felony convictions for
23 welfare fraud and theft. See id.

24 14. During Ms. Jaramillo's work as a bookkeeper for a medical doctor in
25 California, Ms. Jaramillo had access to the office's finances and was responsible for the
26 office ledger. Ms. Jaramillo fought the charge of embezzlement for almost two years
27 before entering a guilty plea at the advice of her attorney.

28 15. Prior to filing the August 31, 2018 application, Ms. Jaramillo submitted an
29 insurance license application to the Department in which she answered "No" to the
30

1 question of whether she had ever been denied a professional license. See Hearing
2 Audio at 45:00 – 46:00 and 49:34 - 49:56.

3 16. The Department later learned that the State of California had denied Ms.
4 Jaramillo's application for an insurance license. See Hearing Audio at 59:40 – 50:24.
5 The Department allowed Ms. Jaramillo to withdraw the application and submit a second
6 application. See id.

7 17. At hearing, Ms. Jaramillo testified to the effect that she knows that she
8 does not look good on paper, but she that she is a good person and has turned her life
9 around.

10 18. Although Ms. Jaramillo testified at the hearing that she provided a
11 statement regarding the circumstances surrounding her conviction for welfare fraud
12 with the August 31, 2018 application, Ms. Jaramillo did not provide a copy of the
13 statement at the hearing.

14 19. Ms. Jaramillo testified that she was young and naïve when she was
15 convicted of welfare fraud. Ms. Jaramillo also stated that she did not receive funds
16 directly but the money was given to her landlord. Ms. Jaramillo testified that at the time
17 of the conviction, she believed that the overpayment was the Department's fault
18 because the Department should have known that she was not eligible for the excess
19 payments.

20 20. Ms. Jaramillo denied that she embezzled funds. Ms. Jaramillo testified
21 that the doctor for whom she worked would take petty cash and go to the farmer's
22 market. Ms. Jaramillo stated that it was not a wise business practice and decided to
23 quit after working for the doctor for 10 days. Ms. Jaramillo also testified that she was
24 not the only individual who had access to the funds of the medical office. Ms. Jaramillo
25 denied any wrongdoing with respect to her work at the doctor's office.

26 21. Ms. Jaramillo's testimony is not found to be credible.

27 **CONCLUSIONS OF LAW**

28 1. Ms. Jaramillo bears the burden of persuasion. See ARIZ. REV. STAT. § 41-
29 1092.07(G)(1).

1 2. The standard of proof on all issues in this matter is that of a
2 preponderance of the evidence. ARIZ. ADMIN. CODE § R2-19-119.

3 3. A preponderance of the evidence is:

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

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

10 4. The preponderance of the evidence shows that Ms. Jaramillo has been
11 convicted of welfare fraud and grant theft by embezzlement. These convictions show
12 that Ms. Jaramillo used fraudulent, coercive or dishonest practices, or demonstrated
13 incompetence, untrustworthiness or financial irresponsibility in the conduct of business
14 in this state. Consequently, the Department's Director has discretion to deny Ms.
15 Jaramillo's application based on ARIZ. REV. STAT. sections 20-295(A)(6) and (A)(8).

16 5. Ms. Jaramillo has failed to demonstrate by a preponderance of the
17 evidence that the Department's decision to deny her application should be overturned.

18 6. Ms. Jaramillo's appeal should be dismissed.

19 **ORDER**

20 **IT IS ORDERED** that Michelle Irene Jaramillo's appeal is dismissed.

21 *In the event of certification of the Administrative Law Judge Decision by the Director of*
22 *the Office of Administrative Hearings, the effective date of the Order is five days after*
23 *the date of that certification.*

24 Done this day, December 10, 2018.

25
26 /s/ Velva Moses-Thompson
27 Administrative Law Judge

28
29 Transmitted electronically to:
30

Keith A. Schraad, Interim Director
Arizona Department of Insurance

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30