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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:

RIVERA, RAMSES
(National Producer Number 17936909)

Petitioner.

No. 18A-145-INS

ORDER

On January 15, 2019, the Office of Administrative Hearings, through Administrative Law Judge Linda Marie Brown, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Interim Director") on January 15, 2019, a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The Director adopts the Recommended Findings of Fact and Conclusions of Law with the following correction:
 - a. Finding of Fact paragraph 6: references to "State Fair" shall be changed to "Department of Insurance."
2. The Director denies Petitioner's application to add lines of authority for Property and Casualty to his existing license.
3. The Director revokes the Arizona resident insurance producer license of **Ramses Rivera**, National Producer Number 17936909, effective immediately.

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1 **NOTIFICATION OF RIGHTS**

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

7 Respondent may appeal the final decision of the Director to the Superior Court of
8 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 22nd day of January, 2019.

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13 
14 Keith A. Schraad, Director
Arizona Department of Insurance

15 **COPY** of the foregoing mailed this
16 23rd day of January, 2019, to:

17 Ramses Rivera
18 1865 N. Higley Road, Unit 1066
Mesa, AZ 85205
19 Petitioner

20 Office of Administrative Hearings
1740 West Adams St., Lower Level
21 Phoenix, Arizona 85007

22 **COPY** of the foregoing delivered, same date, to:

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

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

2 Ramses Rivera
3 RAMSES.RIVERA@AMPF.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*
11 _____
12 Francine Martinez

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JAN 15 2019

DEPT. OF INSURANCE
BY: MEK

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 18A-145-INS

RIVERA, RAMSES

ADMINISTRATIVE LAW JUDGE
DECISION

Respondent.

HEARING: December 26, 2018, at 8:30 AM

APPEARANCES: Ramses Rivera ("Mr. Rivera" or "Respondent"); Deian Ousounov ("Mr. Ousounov," Assistant Attorney General for Arizona Department of Insurance, "Department"); and Aqueelah Currie ("Ms. Currie," witness for the Department).

ADMINISTRATIVE LAW JUDGE: Linda Marie Brown

Respondent appealed the Department's denial of his application for added lines of authority of Property and Casualty to his existing license, and revocation of Respondent's Arizona insurance producer license in lines of authority of Life and Personal lines. Having considered the hearing record in this matter, the undersigned Administrative Law Judge hereby makes the following Findings of Fact and Conclusions of Law and issues the following Recommended Order.

FINDINGS OF FACT

1. On or about May 10, 2016, the Department issued an insurance producer license to Respondent with lines of authority in Life and Personal Lines, Insurance Producer Number 17936909 ("License"), due to expire on July 31, 2019.¹

2. On October 23, 2018, Respondent submitted a second application to the Department to add lines of authority in Property and Casualty to his existing license.²

3. In a letter dated September 5, 2018 and received by the Department on October 29, 2018, Respondent provided additional disclosures surrounding a

¹State's Exhibit 2.

² State's Exhibit 4.

1 bankruptcy, and provided additional clarification into his arrest that took place
2 sometime in May 2005.³

3 4. On November 1, 2018, the Department issued its DENIAL letter to
4 Respondent, pursuant to A.R.S. §§ 20-295(A)(1), (3), (6), and (8) without limitation,
5 citing:

- 6 i. "Providing incorrect, misleading, incomplete or materially untrue
7 information in the license application;
- 8 ii. Obtaining or attempting to obtain a license through
9 misrepresentation or fraud;
- 10 iii. Having been convicted of a felony;
- 11 iv. Using fraudulent, coercive or dishonest practices, or
12 demonstrating incompetence, untrustworthiness or financial
13 irresponsibility in the conduct of business in this state or
14 elsewhere."⁴

15 5. The DENIAL notice also provided Respondent with information on where
16 to obtain a copy of his Arizona DPS Criminal History Records, and advised Respondent
17 of his Appeal Rights.⁵

18 6. On November 1, 2018, Respondent submitted his appeal request for an
19 opportunity to be heard at a State Fair Hearing. The Department referred the matter to
20 the Office of Administrative Hearings to conduct a State Fair Hearing before an
21 Administrative Law Judge.

22 **HEARING EVIDENCE AND TESTIMONY**

23 7. Aqueelah Currie, Licensing Supervisor, testified that she oversees review
24 of applications for Arizona Insurance License, and applications that come through with
25 a "Yes" answer to the series of background questions to make a determination on
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29 ³ State's Exhibit 5.

30 ⁴ State's Exhibit 8.

⁵ *Id.*

1 whether the license should issue or not. If it is determined not to issue the license, the
2 Department then meets with staff attorneys to make a broader decision.⁶

3 8. Ms. Currie explained that an Arizona insurance license applicant, such as
4 Mr. Rivera, is asked a series of background questions specific to whether the applicant
5 has been convicted of felonies, misdemeanors, bankruptcies, etc. If the applicant
6 answers "YES" to any of the background questions, the application then goes for
7 further review. She testified the Department will overlook certain things in a background
8 review such as an altercation. She testified that an applicant is also required to submit
9 a full set of fingerprints to the Department. These fingerprints are sent to the Arizona
10 Department of Public Safety ("ADPS") to have ADPS run a state and Federal
11 background check.⁷

12 9. Because a background check may take some time, the Department grants
13 an over-the-counter license to an applicant. In doing so, the Department relies on the
14 truthfulness of the applicant's personal statements to the series of background
15 questions. If the applicant answers, Yes, to any of the questions, then the Department
16 will require a detailed written statement along with any supporting documents. If an
17 applicant misrepresents information on the initial application, it could take months
18 before it becomes known to the Department.⁸

19 10. Ms. Currie referred to Mr. Rivera's initial online application submitted in
20 2016, and testified Mr. Rivera did not answer the questions truthfully. Because she
21 believes Mr. Rivera was convicted of a felony, he should have answered, "Yes" to
22 question 1(B).^{9, 10}

23 11. Question 1 (B) reads, "Have you ever been convicted of a felony, had a
24 judgment withheld or deferred, or are you currently charged with committing a felony?
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28 ⁶ Hearing Audio Transcript: Position 08:58 – 09:58.

⁷ Hearing Audio Transcript: Position 10:07-10:59.

⁸ Hearing Audio Transcript: Position 11:45-13:10.

⁹ State's Exhibit 1.

¹⁰ Hearing Audio Transcript: Position 13:15-14:01.

1 You may exclude juvenile adjudications (offenses where you were adjudicated
2 delinquent in a juvenile court).¹¹

3 12. In review of the State's Exhibit 3, Ms. Currie testified she believes the use
4 of the word "altercation" was misused. In further review of Mr. Rivera's personal
5 statement dated May 5, 2016, he stated he was convicted of a misdemeanor and the
6 charge was for an altercation. As she testified earlier, an "altercation" would not raise a
7 red flag. For this reason, the supervisor likely granted Mr. Rivera his over-the-counter
8 license.^{12, 13}

9 13. She testified that if Mr. Rivera used the word, larceny, he would not have
10 received his license at that time because he had a debt conviction from an employer so
11 that would have raised a red flag.¹⁴ She restated that Mr. Rivera would not have been
12 granted an over-the-counter license because the nature of the charge¹⁵ involves theft
13 and the Department is charged with protecting consumers from persons who could
14 have the potential to cause harm to consumers.¹⁶

15 14. On or about October 23, 2018, Mr. Rivera submitted a new online
16 application to add lines of authority in Property and Casualty. As in his initial
17 application of April 15, 2016, Mr. Rivera responded, "yes," to question 1(A), "Have you
18 ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are
19 you currently charged with committing a misdemeanor? You may exclude the following
20 misdemeanor convictions or pending misdemeanor charges: traffic citations, driving
21 under the influence (DUI), driving while intoxicated (DWI), driving without a license,
22 reckless driving, or driving with a suspended or revoked license. You may also exclude
23 juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile
24 court). And, again, answered, "No," to question 1(B) on the application.¹⁷

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¹¹ State's Exhibit 1.

¹² State's Exhibit 3.

¹³ Hearing Audio Transcript: Position 15:49-16:20.

¹⁴ Hearing Audio Transcript: Position 16:40-17:00.

¹⁵ State's Exhibits 6 and 7.

¹⁶ Hearing Audio Transcript: Position 22:00-23:50.

¹⁷ State's Exhibit 4.

1 15. In this instance, Mr. Rivera disclosed he had a bankruptcy and further
2 stated in his personal statement¹⁸ that “he held money that did not belong to him.”¹⁹ Ms.
3 Currie further testified that in Mr. Rivera’s second application, he disclosed much more
4 information in his personal statement than in his initial application, and that this
5 “holding of money” raises red flags.²⁰

6 16. Ms. Currie indicated that based on the charge²¹, the facts expressly
7 indicate that Mr. Rivera sold a car that was \$7,000. He was paid \$5,000 in cash and it
8 looks like he stole that \$5,000 cash from the company he was working for at that time.²²
9 She further testified based on the final disposition of the charge, the grand larceny
10 charges were reduced to petit larceny.^{23, 24}

11 17. Mr. Rivera was provided an opportunity to question Ms. Currie, and asked
12 her regarding Exhibit 7, the certificate of disposition, and began to testify that petit
13 larceny is a misdemeanor and that he did not answer question 1(B) deceitfully.²⁵

14 18. The Department’s exhibits 1 through 9 were entered into evidence with no
15 objection.

16 19. At hearing, Mr. Rivera testified that this was the first time he requested a
17 copy of the certificate of disposition, as well as confirming that he was not present for
18 the court proceedings and did not even know how the conviction read. And that is why
19 part of this was ignorance and was never deceit. Mr. Rivera emphasized that he
20 handled thousands and thousands of dollars and personal information for hundreds of
21 different customers over the last 14 years, and he was finance manager of dealership,
22 worked with American Express credit card companies, was a small business
23 consultant.²⁶

24 **CONCLUSIONS OF LAW**

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26 ¹⁸ State’s Exhibit 5.

27 ¹⁹ Hearing Audio Transcript: Position 21:00-21:29.

28 ²⁰ Hearing Audio Transcript: Position 22:05-22:20.

29 ²¹ State’s Exhibit 6.

30 ²² Hearing Audio Transcript: Position 24:49-26:00.

²³ State’s Exhibit 7.

²⁴ Hearing Audio Transcript: Position 26:20-26:35.

²⁵ Hearing Audio Transcript: Position 31:20-31:53.

²⁶ Hearing Audio Transcript: Position 42:25-43:09.

1 1. This matter is a disciplinary proceeding wherein the Department must
2 prove by a preponderance of the evidence that Respondent violated the State's
3 Insurance Laws. See A.A.C. R2-19-119.

4 2. During the application process, the Department charges that
5 Respondent's provided incorrect, misleading, incomplete or materially untrue
6 information in the license application. See A.R.S. § 20-295(A)(1).

7 3. Respondent's conduct, as set forth above, constitutes obtaining or
8 attempting to obtain a license through misrepresentation or fraud. See A.R.S. § 20-
9 295(A)(3). Respondent testified that he did not intentionally seek to misrepresent but
10 that his response was based on ignorance and failure to obtain or request a copy of the
11 charge and final disposition. However, the Tribunal finds this is not enough to mitigate
12 failure to fully disclose all information, particularly facts surrounding funds belonging to
13 his employer at the time of taking.

14 4. Respondent's conduct, as set forth above, constitutes having been
15 convicted of a felony. See A.R.S. § 20-295(A)(6). While the Tribunal notes that the final
16 disposition of the conviction was reduced to a misdemeanor as set forth in the State's
17 Exhibit 7, this does not negate the fact that the Respondent had full knowledge of the
18 underlying facts upon his initial application followed by his application for additional
19 lines of authority requesting be added to his existing license but failed to fully disclose
20 his actions involving money not belonging to him, and the full nature of the charges
21 against him at that time.

22 5. Additionally Respondent's conduct constitutes use of fraudulent, coercive
23 or dishonest practices, or demonstrating incompetence, untrustworthiness or financial
24 irresponsibility in the conduct of business in this state or elsewhere, within the meaning
25 of A.R.S. § 20-295(A)(8) by having failed to provide complete information in the license
26 application.

27 6. Respondent's conduct, as set forth above, constitutes the violation of any
28 provision of A.R.S., Title 20, within the meaning of A.R.S. § 20-295(A)(2).

29 7. Grounds exist for the Director of the Department to suspend, revoke, or
30 refuse to renew or issue the License pursuant to A.R.S. § 20-295(A).

ORDER

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2 Based upon the above, Respondent's License shall be revoked on the effective
3 date of the Order entered in this matter.

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

7 Done this day, January 15, 2019.

8
9 /s/ Linda Marie Brown
10 Administrative Law Judge

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12 Transmitted electronically to:

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14 Keith A. Schraad, Interim Director
15 Arizona Department of Insurance
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