

DEC 17 2019

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY AS 12/17/2019

In the Matter of:

MARTINEZ, DESTYNY ELEVYSS
(National Producer Number 18799440)

No. 19A-037-INS

ORDER

Respondent.

On December 10, 2019, the Office of Administrative Hearings, through Administrative Law Judge Diane Mihalsky, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Arizona Department of Insurance ("Director") on December 11, 2019, a copy of which is attached and incorporated by this reference. The Director has reviewed the Recommended Decision and enters the following Order:

1. The Director adopts the Recommended Findings of Fact, Conclusions of Law and Recommended Order.
2. The Director orders that Destyny Evelyss Martinez's insurance producer license number 18799440 is revoked, effective immediately.

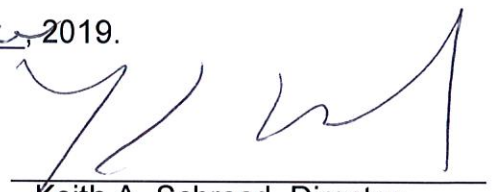
NOTIFICATION OF RIGHTS

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 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.

Respondent may appeal the final decision of the Director to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal

1 must notify the Office of Administrative Hearings of the appeal within ten days after filing
2 the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

3 DATED this 17th day of December, 2019.

4 
5 _____
6 Keith A. Schraad, Director
7 Arizona Department of Insurance

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9
10 **COPY** of the foregoing electronically transmitted
11 this this 18th day of December, 2019, to:

12 Diane Mihalsky, Administrative Law Judge
13 Office of Administrative Hearings
<https://portal.azoah.com/submission>

14 **COPY** of the foregoing mailed same date
15 by U.S. First-Class Mail and Certified Mail,
16 Return Receipt requested, to:

17 Destyny Evelyss Martinez
18 7520 East Billings Street, #2103
19 Mesa, AZ 85207
20 Respondent

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

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

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

2 Deian Ousounov, Assistant Attorney General

3 AdminLaw@azag.gov

4 Attorney for the Department of Insurance

5 Susan Hack, Paralegal

6 Susan.hack@azag.gov

7 Office of the Attorney General

8 Felicia DelSol

9 Felicia.DelSol@azoah.com

10 Office of Administrative Hearings

11 *Francine Martinez*
12 _____
13 Francine Martinez

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DEC 11 2019

DEPT. OF INSURANCE

BY: AS 12/11/2019

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 19A-037-INS

MARTINEZ, DESTYNY EVELYSS
(National Producer No. 18799440)

**ADMINISTRATIVE LAW JUDGE
DECISION**

Respondent.

HEARING DATES: November 12, 2019, at 1:00 p.m. and December 10, 2019, at 1:00 p.m.

APPEARANCES: Destyny Evelyss Martinez ("Respondent") did not appear at the November 12, 2019 hearing date, but requested that the hearing be continued to allow her to comply with the Arizona Department of Insurance's ("the Department's") requirements for licensensure; Respondent failed to appear at the December 10, 2019 hearing date; the Department was represented on both hearing dates by Chloe Woods, Esq., Assistant Attorney General.

ADMINISTRATIVE LAW JUDGE: Diane Mihalsky

FINDINGS OF FACT

1. The Department referred this matter to the Office of Administrative Hearings ("OAH"), an independent state agency, for an evidentiary hearing.
2. On or about September 27, 2019, the Department issued a Notice of Hearing, setting a hearing on November 12, 2019, at 1:00 p.m. on the issue of whether cause existed under A.R.S. §§ 20-285(E)(1) and (2) and 20-295(A)(1) and (2) to discipline Respondent's insurance producer's license. The Department sent the Notice of Hearing to Respondent at her addresses of record via U.S. First-Class Mail and Certified Mail, Return Receipt.
3. The Department's attorney and witness appeared for the scheduled hearing on November 12, 2019. Although Respondent did not appear, the Department's attorney stated that she had contacted the Department to request that the hearing be

1 continued to allow her additional time to comply with the Department's requirements
2 and to keep her insurance producer's license.

3 4. On November 12, 2019, the Administrative Law Judge at OAH issued an
4 order setting a continued hearing on December 10, 2019, at 1:00 p.m. OAH staff sent
5 the order to Respondent at her address of record.

6 5. The Department submitted four exhibits and presented the testimony of
7 Aqueelah Currie, its Licensing Supervisor.

8 6. Respondent did not request to appear telephonically at the hearing and did not
9 request that the hearing again be continued. Although the start of the duly noticed
10 hearing did not conclude until 1:15 p.m., Respondent did not appear, personally or
11 through an attorney, and did not contact OAH to request additional time. Consequently,
12 Respondent did not present any evidence to defend her insurance producer's license.

13 HEARING EVIDENCE

14 7. Ms. Currie testified that persons who desire to be licensed as insurance
15 producers in Arizona are required to take an examination and, after they have passed
16 the examination, to file an application to the Department. Applicants are also required
17 to provide additional documentation, including their fingerprints, to allow the Department
18 to obtain a criminal background check from the Arizona Department of Public Safety
19 ("ADPS").

20 8. Ms. Currie testified that, after the Department issues a license, licensees are
21 required to notify the Department of any changes in contact information within 30 days.
22 This requirement allows the Department to communicate with and to regulate licensees.

23 9. On or about May 25, 2018, Respondent filed a handwritten application with
24 the Department to be licensed as an insurance producer in Arizona. Respondent
25 provided the address, 7520 E. Billings St., #2103, Mesa, Arizona 85207, for her
26 residence, business, and mailing address.¹

27 10. On or about May 25, 2018, the Department issued National Insurance
28 Producer's License No. 18799440 to Respondent. As of this date, Respondent's
29 insurance producer's license is active.²

30 ¹ See the Department's Exhibit 2.

² See the Department's Exhibit 1.

1 11. On or about August 10, 2018, the Department sent a letter to Respondent at
2 her address of record on E. Billings St., informing her that, because ADPS had returned
3 the fingerprint card to the Department as illegible, the Department required Respondent
4 to submit a replacement set of fingerprints on or before August 22, 2018. An
5 attachment to the letter provided the locations of fingerprinting services.³

6 12. Ms. Currie testified that Respondent did not respond to the Department's
7 August 10, 2018 letter. She also did not ever update her address of record.

8 13. On or about September 10, 2018, the Department sent a second letter to
9 Respondent at business address on E. Billings St., requiring her to either submit a new
10 set of fingerprints or to submit a voluntary surrender of her insurance producer's license
11 to the Department on or before October 1, 2018.⁴

12 14. As noted above, the Department requested that OAH allow Respondent
13 additional time to submit a new set of fingerprints or to submit a voluntary surrender of
14 her insurance producer's license. Ms. Currie testified that Respondent did not submit a
15 new set of fingerprints or to submit a voluntary surrender of her insurance producer's
16 license. Ms. Currie testified that Respondent's license application was therefore
17 incomplete.

18 **CONCLUSIONS OF LAW**

19 1. This matter lies within the Department's jurisdiction.⁵

20 2. The Notice of Hearing that the Department mailed to Respondent at the
21 address that she provided on application was reasonable she is deemed to have
22 received notice of the hearing.⁶

23 3. A.R.S. § 20-285 required Respondent to file an application with the
24 Department to be licensed and to transact business as an insurance producer. A.R.S. §
25 20-285(E) allows the Department to require Respondent to submit fingerprints to allow
26 ADPS to obtain a criminal history as a condition of licensure.⁷

27 ³ See the Department's Exhibit 3.

28 ⁴ See the Department's Exhibit 4.

29 ⁵ See A.R.S. §§ 20-142, 20-282.

30 ⁶ See A.R.S. §§ 41-1092.04; 41-1092.05(D).

⁷ A.R.S. § 20-282(E) provides as follows:

Before the director grants a license, the director may require the
applicant to:

1 4. Because Respondent's illegible fingerprint submission did not satisfy the
2 requirement of A.R.S. § 20-285(E)(2), the Department established that her application is
3 incomplete. Grounds therefore exist under A.R.S. § 20-295(A)(1) and (2) to discipline
4 her insurance producer's license.⁸

5 5. Respondent's failures to respond to the Department's correspondence, to
6 update her addresses of record with the Department, to comply with the Department's
7 requirements, even though she was given additional time to do so, or to appear at the
8 duly noticed continued hearing indicate that, at this time, she cannot be regulated.

9 **ORDER**

10 Based upon the above, **IT IS ORDERED** that, on the effective date of the final
11 order in this matter, Respondent's National Producer License No. 18799440 shall be
12 revoked.

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

16 Done this day, December 10, 2019.

17 /s/ Diane Mihalsky
18 Administrative Law Judge

19 Transmitted electronically to:

20 Keith A. Schraad, Director
21 Arizona Department of Insurance

22 1. Provide any document that is reasonably necessary to verify the
23 information that is contained in an application and other information
24 including prior criminal records.

25 2. Submit a full set of fingerprints to the department. The department of
26 insurance shall submit the fingerprints to the department of public safety
27 for the purpose of obtaining a state and federal criminal records check
28 pursuant to section 41-1750 and Public Law 92-544. The department of
29 public safety may exchange this fingerprint data with the federal bureau
30 of investigation.

⁸ A.R.S. § 20-295(A) provides in relevant part as follows:

The director may deny, suspend for not more than twelve months,
revoke or refuse to renew an insurance producer's license or may
impose a civil penalty in accordance with subsection F of this section or
any combination of actions for any one or more of the following causes:

1. Providing incorrect, misleading, incomplete or materially untrue
information in the license application.

2. Violating any provision of this title or any rule, subpoena or order of
the director.