

SEP 11 2019

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE  
BY MSK 9/11/19

**In the Matter of:**

**UNDERWOOD, RHETT MICHAEL**

**No. 19A-092-INS**

**Petitioner.**

**ORDER**

On September 4, 2019, the Office of Administrative Hearings, through Administrative Law Judge Kay A. Abramsohn, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Interim Director") on September 5, 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.
2. The Director adopts Conclusions of Law paragraphs 1 through 5, 7 and 8.
3. The Director rejects paragraph 6 because the Notice of Hearing in this matter did not allege a violation of A.R.S. § 20-295(A)(6), having been convicted of a felony. Instead, the Notice of Hearing alleged a violation of A.R.S. § 20-295(A)(9), having an insurance producer license denied in any state. At the hearing, the Department argued the A.R.S. § 20-295(A)(9) violation not the A.R.S. § 20-295(A)(6) violation. (The Department alleged and argued a violation of A.R.S. § 20-295(A)(6) in the Department's previous denial involving the same Petitioner in matter 18A-092-INS.)

Conclusions of Law paragraph 6 shall read: "Ariz. Rev. Stat. § 20-295(A)(9)

1 provides, in pertinent part, that the director may deny to issue an insurance  
2 producer's license if an applicant has had an insurance producer license, or  
3 its equivalent, denied, suspended or revoked in any state, province, district or  
4 territory."

5 4. The Director adopts the Recommended Order.

6 5. The Director denies **Rhett Underwood's** application for an Arizona insurance  
7 producer license.

### 8 NOTIFICATION OF RIGHTS

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

14 Petitioner may appeal the final decision of the Director to the Superior Court of  
15 Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal  
16 must notify the Office of Administrative Hearings of the appeal within ten days after filing  
17 the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

18 DATED this 11<sup>th</sup> day of September, 2019.

19  
20  
21   
22 Keith A. Schraad, Director  
Arizona Department of Insurance

23 **COPY** of the foregoing mailed this  
12<sup>th</sup> day of September, 2019, to:

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

1 Office of Administrative Hearings  
1740 West Adams St., Lower Level  
2 Phoenix, Arizona 85007

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

4 Mary Kosinski, Regulatory Legal Affairs Officer  
Catherine O'Neil, Consumer Legal Affairs Officer  
5 Steven Fromholtz, Assistant Director – Consumer Protection Division  
Aqueelah Currie, Licensing Supervisor  
6 Sharyn Kerr, Consumer Protection Division  
Arizona Department of Insurance  
7 100 North 15<sup>th</sup> Ave., Suite 102  
Phoenix, Arizona 85007-2624

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

9  
10 Rhett Michael Underwood  
[rhettunderwoodofs@gmail.com](mailto:rhettunderwoodofs@gmail.com)  
Petitioner

11  
12 Felicia DelSol  
[Felicia.DelSol@azoah.com](mailto:Felicia.DelSol@azoah.com)  
13 Office of Administrative Hearings

14 Susan Hack  
[Susan.hack@azag.gov](mailto:Susan.hack@azag.gov)  
15 Attorney General Paralegal

16 Lynette Evans  
Assistant Attorney General  
17 [AdminLaw@azag.gov](mailto:AdminLaw@azag.gov)  
18 Attorney for the Department of Insurance

19  
20   
Francine Martinez

21  
22  
23  
24  
25  
26

SEP 05 2019

DEPT. OF INSURANCE  
BY: MEK

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 19A-092-INS

UNDERWOOD, RHETT  
Petitioner

ADMINISTRATIVE LAW JUDGE  
DECISION

**HEARING:** August 15, 2019

**APPEARANCES:** Petitioner Rhett Michael Underwood appeared on his own behalf. Assistant Attorney General Lynette Evans, Esq., appeared on behalf of the Arizona Department of Insurance (Department).

**ADMINISTRATIVE LAW JUDGE:** Kay A. Abramsohn

**FINDINGS OF FACT**

1. On June 6, 2019, Petitioner submitted an online application (Application) for an Individual Producer License with a line of authority in life insurance.<sup>1</sup>

2. Petitioner answered "Yes" to Question #1A in the Background Questions section of the application, which reads as follows:

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

3. On July 06, 2016, the Superior Court of Arizona (Court) in 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>2</sup> Petitioner pled guilty to the charges at that time.<sup>3</sup> Petitioner was placed on supervised probation for three years.<sup>4</sup>

<sup>1</sup> See Department Exhibit 1. Petitioner's July 2018 application was denied, adopted by the Department, appealed, and rehearing denied.

<sup>2</sup> See Department Exhibits 3 - 10. In that criminal case, the evidence documented that Petitioner's DNA was found on the device or elements of the device. See Exhibit 9.

<sup>3</sup> At hearing, Petitioner explained that he had pled because he had no money for a defense attorney and needing to get out of jail due to his health and jail conditions at the time; however, the record does not demonstrate whether Petitioner has ever taken personal ownership of the actions to which he pled guilty.

<sup>4</sup> See Department Exhibit 4.

1           4.     On March 18, 2019, the Court terminated Petitioner's probation and  
2 ordered that the Class 6 Undesignated Felony for Attempted Misconduct Involving  
3 Simulated Explosive Device be re-designated as a Class 1 misdemeanor.<sup>5</sup>

4           5.     By letter dated July 27, 2019, the Department notified Petitioner that his  
5 Application for licensure had been denied.<sup>6</sup>

6           6.     After the Department received an appeal from Petitioner regarding the  
7 denial,<sup>7</sup> the Department referred the matter to the Office of Administrative Hearings  
8 ("OAH"), an independent state agency, for an evidentiary hearing to determine whether  
9 grounds exist to deny Petitioner an Insurance Producer's License.

10          7.     At the hearing, Ms. Currie testified regarding her review of the Application  
11 and related documents. Petitioner did not dispute any of the available records or  
12 evidence.<sup>8</sup>

13          8.     Petitioner argued that, now that his sentence is over, and noting that he  
14 was released from probation early, he wants to begin to work with his wife in her  
15 insurance business. Petitioner has worked for 2 years for a security company that  
16 installs home automation and security systems.<sup>9</sup> Petitioner argued that he had never  
17 harmed anyone out of anger or frustration and that, due to his faith and upbringing, he  
18 had always preached honor and integrity. Petitioner argued that the Department was  
19 likely looking at this with preconceived notions about the conviction and about him.

20          9.     Petitioner reconnected, as friends, with his current wife, Sarah Cox, about  
21 three years ago. Ms. Cox echoed her husband's statements regarding Petitioner not  
22 harming others, honor, and respect; she indicated that she had never heard him raise  
23

---

24  
25 <sup>5</sup> See Department Exhibit 11.

26 <sup>6</sup> See Department Exhibit 16.

27 <sup>7</sup> See Department's Exhibit 17.

28 <sup>8</sup> Petitioner had obtained a copy of his Criminal History Record and offered it into the hearing record;  
29 however, it was determined that such record would not add anything to documents already in the hearing  
30 record and his Criminal History Record was not admitted. In Closing, Petitioner opined that perhaps he  
should have brought forward more current scientific information regarding DNA; however, the purpose of  
this particular administrative hearing is as to licensure and does not provide an opportunity to attack the  
past conviction.

<sup>9</sup> His employer, Gary Hounslow provided a character reference letter. See Petitioner's Exhibit B.

1 his voice to anyone. Ms. Cox indicated that Petitioner had been forthcoming with her  
2 about this past conviction.

3 10. The Department remains concerned regarding Petitioner's honesty and  
4 truthfulness, given the evidence in the criminal case. The Department's sense is that  
5 Petitioner is demonstrating that he is headed in a better direction with his life at this  
6 time, but that it is too soon after the criminal conviction to allow licensure.

7 **CONCLUSIONS OF LAW**

8 1. This matter lies with the Department's jurisdiction and was properly  
9 brought before OAH for adjudication.<sup>10</sup>

10 2. Petitioner bears the burden of proof to establish that he is rehabilitated  
11 and qualified to receive an insurance license.<sup>11</sup> The standard of proof on all issues in  
12 this matter is that of a preponderance of the evidence.<sup>12</sup>

13 3. A preponderance of the evidence is:

14 The greater weight of the evidence, not necessarily  
15 established by the greater number of witnesses testifying to a  
16 fact but by evidence that has the most convincing force;  
17 superior evidentiary weight that, though not sufficient to free  
18 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.

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

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

24 5. ARIZ. REV. STAT. § 20-285(E)(1) provides that "[b]efore the director grants  
25 a license, the director may require the applicant to provide any document that is  
26

27  
28 <sup>10</sup> See ARIZ. REV. STAT. §§ 20-282 and 41-1092 et seq.

29 <sup>11</sup> See ARIZ. REV. STAT. § 41-1092.07(G)(1).

30 <sup>12</sup> See ARIZ. ADMIN. CODE R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

1 reasonably necessary to verify the information that is contained in an application and  
2 other information including prior criminal records.”

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

6 7. The hearing record demonstrates that Petitioner has a felony conviction  
7 on his record that was subsequently re-designated as a misdemeanor. It remains  
8 problematic that Petitioner did not take responsibility for the actions that resulted in his  
9 felony conviction, because the evidence available for review demonstrated his  
10 connection to the actions.

11 8. Based on the hearing record, the Administrative Law Judge concludes  
12 that the Department's denial of licensure should be upheld because Petitioner has not  
13 demonstrated that the denial was inappropriate or that he should be granted licensure  
14 at this time given his criminal conviction and under the existing statutory parameters.

15 **RECOMMENDED ORDER**

16 **IT IS ORDERED** that the Department's denial of Appellant's Application be  
17 upheld and Petitioner's appeal be denied.

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

21 Done this day, September 4, 2019.

22  
23 /s/ Kay A. Abramsohn  
24 Administrative Law Judge

25 Transmitted electronically to:

26 Keith A. Schraad, Director  
27 Arizona Department of Insurance  
28  
29  
30