

STATE OF ARIZONA

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

In the Matter of:

RICHEY, MARK

Petitioner

No. 21A-047-INS

ORDER

On October 14, 2021, the Office of Administrative Hearings, through Administrative Law Judge Kay A. Abramsohn, issued an Administrative Law Judge Decision (“Recommended Decision”). The Director of the Arizona Department of Insurance and Financial Institutions (“Director”) received the Recommended Decision on the same date, a copy of which is attached and incorporated by reference. The Director has reviewed the Recommended Decision and enters the following:

1. The Director ADOPTS the Recommended Findings of Fact, except to correct the following:

Page 1, lines 8 and 9, should read: “the Arizona Department of Insurance **and Financial Institutions**”

2. The Director ADOPTS the Recommended Conclusions of Law.

3. The Director ADOPTS the Recommended Order.

4. The Director ORDERS that Mark Richey’s Arizona resident insurance producer license application is granted.

NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes (“A.R.S.”) § 41-1092.09, Respondent may request a rehearing or review with respect to this Order by filing a written motion with the Director within 30 days after the date of this Order, setting forth the basis for relief under

1 Arizona Administrative Code R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not
2 necessary to request a rehearing before filing an appeal to the Superior Court.

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

7 DATED and EFFECTIVE this 19th day of October, 2021.

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10 _____
11 Evan G. Daniels, Director
12 Arizona Department of Insurance and
13 Financial Institutions
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1 **COPY** of the foregoing electronically transmitted
this 26th day of October, 2021, to:

2 Kay Abramsohn, Administrative Law Judge
3 Office of Administrative Hearings
4 <https://portal.azoah.com/submission>

5 **COPY** of the foregoing mailed by U.S. Certified Mail,
6 Electronic Receipt Requested, same date to:

7 Mark Richey
19925 W. Missouri Ave. 9489 0090 0027 6266 7766 48
Litchfield Park, AZ 85340
8 Petitioner

9 **COPY** of the foregoing electronically delivered same date to:

10 Deian Ousounov, Regulatory Legal Affairs Officer
11 Ana Starcevic, Paralegal Project Specialist
12 Steven Fromholtz, Division Manager
13 Aquellah Currie, Licensing Supervisor
Linda Lutz, Legal Assistant
14 Arizona Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261
15 Phoenix, Arizona 85007

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

17 Mark Richey
mbronco94@aol.com
18 Petitioner

19 Holly Wan, Assistant Attorney General
20 Holly.Wan@azag.gov
AdminLaw@azag.gov
21 Attorney for the Arizona Department of Insurance and Financial Institutions

22 *Ana Starcevic* for _____
23 Francine Juarez
24
25
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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 21A-047-INS

MARK RICHEY,
Petitioner.

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING: September 24, 2021

APPEARANCES: Mark Richey ("Petitioner") appeared on his own behalf. Assistant Attorney General Holly Wan, Esq., appeared on behalf of the Arizona Department of Insurance ("Department").

ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn

FINDINGS OF FACT

1. On April 14, 2021, Petitioner submitted an online application (Application) for an Arizona Resident Insurance Producer License with a line of authority in life insurance.¹

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

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

3. With the Application, Petitioner included a written statement of explanation regarding the matters and the circumstances of the last 30 years.²

4. In 1992, Under a Plea Agreement, Petitioner plead guilty to and was convicted of Amended Counts I, II, and IV, ALL, of the charges for Attempted Molestation of a Child, All Class 3 felonies and Dangerous crimes against children in the second degree, in Maricopa County Superior Court, Case CR1991-008353.³ The crimes had been committed between the dates of December 5, 1988 and February 15, 1991.

¹ See Department Exhibit 1.

² See Department Exhibit 2.

³ See Department Exhibits 3 and 4.

1 5. As a result of the Plea Agreement, Petitioner was sentenced to one year in
2 jail and was placed on lifetime probation in addition to being required to register as a sex
3 offender.

4 6. After successfully completing multiple years of what Petitioner referred to
5 as "life-changing" counseling,⁴ and on/with the recommendations of his probation officer
6 and therapist, in July 2007, the Court granted Petitioner's Motion to Terminate Lifetime
7 Probation, with that record under seal.⁵

8 7. By letter dated May 12, 2021, the Department notified Petitioner that his
9 Application for licensure had been denied due to the felony conviction.⁶

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

14 9. At the hearing, Licensing Supervisor A. Currie testified regarding her review
15 of the Application and related documents.

16 10. Petitioner did not dispute the presented records and evidence.

17 11. Petitioner acknowledged responsibility and was remorseful about his past
18 actions and the conviction, testifying that these had been isolated incidents within his
19 family and not incidents out among the public, and that he himself had come forward,
20 been indicted, charged, and sentenced. Petitioner noted that his family has reunified and
21 that in the past 30 years he has had no offenses of any kind, "not even a traffic ticket."⁸

22 12. Petitioner was employed by "Room Store" for 23 years, rising to become a
23 manager for 15 years, and being in positions of trust to hire and manage employees with
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26 ⁴ See Department Exhibits 2.

27 ⁵ See Department Exhibit 5. At hearing, Petitioner indicated that a termination of lifetime probation is
28 "rare." The Petitioner is required to remain registered as a sex offender and obtain a new driver's license
29 every year.

30 ⁶ See Department Exhibit 6.

⁷ See Department's Exhibit 7.

⁸ See Department's Exhibit 2.

1 the employer having been aware of his past. Petitioner indicated that he "sometimes" did
2 have to go into customers' homes.⁹ Petitioner testified that he will be working for AFLAC,
3 which he stated would be business to business interactions.¹⁰

4 13. Petitioner argued that he has redeemed himself through years of counseling
5 (successfully completed) and has, therewith, demonstrated to the State of Arizona that
6 he was trustworthy to have his civil/gun rights restored and his lifetime probation
7 terminated, now 14 years ago.¹¹

8 14. At hearing, Petitioner noted that there was a new "Second Chance" law for
9 felons and that he believed the Department has the authority to give him a chance in this
10 new career opportunity.

11 15. The Department acknowledged the remoteness of the convictions but
12 remained concerned regarding the serious nature of Petitioner's conviction, and was
13 concerned that an insurance producer's licensure even for AFLAC might involve being in
14 other people's homes in the future. The Department posited that Petitioner had not
15 demonstrated sufficient evidence to overcome its concerns.

16 CONCLUSIONS OF LAW

17 1. This matter lies with the Department's jurisdiction and was properly brought
18 before OAH for adjudication.¹²

19 2. Petitioner bears the burden of proof to establish that he is rehabilitated and
20 qualified to receive an insurance license.¹³ The standard of proof on all issues in this matter
21 is that of a preponderance of the evidence.¹⁴

22 3. A preponderance of the evidence is:
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25 ⁹ Petitioner's particular employer/store is no longer in business.

26 ¹⁰ No further details were provided.

27 ¹¹ Counseling included individual and family/group therapy, empathy training, stress therapy, drug
28 rehabilitation therapy and annual polygraph testing; Petitioner noted that he learned about the triggers
29 that had precipitated his actions and had learned, and now avoided, those triggers.

30 ¹² See ARIZ. REV. STAT. §§ 20-282 and 41-1092 et seq.

¹³ See ARIZ. REV. STAT. § 41-1092.07(G)(1).

¹⁴ See ARIZ. ADMIN. CODE R2-19-119; see also *Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837
(1952).

1 The greater weight of the evidence, not necessarily established
2 by the greater number of witnesses testifying to a fact but by
3 evidence that has the most convincing force; superior
4 evidentiary weight that, though not sufficient to free 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.

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

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

9 5. ARIZ. REV. STAT. § 20-285(E)(1) provides that "[b]efore the director grants a
10 license, the director may require the applicant to provide any document that is reasonably
11 necessary to verify the information that is contained in an application and other
12 information including prior criminal records."

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

16 7. ARIZ. REV. STAT. § 13-905, Setting aside judgment of convicted person,
17 application, release from disabilities, certificate of second chance, firearm possession,
18 exceptions became effective August 27, 2021. While the law provides that persons
19 convicted of Class 3 felonies for which five years have elapsed since fulfilling probation
20 or sentences are eligible, the law also excepts from "set aside" and eligibility for a
21 Certificate of Second Chance certain specified convictions including convictions requiring
22 the person to register as a sexual offender. See ARIZ. REV. STAT. § 13-905(N).

23 8. At hearing, it was undisputed that Petitioner came forward in 1991 as to his
24 actions to take responsibility for his actions; thereafter, he executed a Plea Agreement,
25 again, taking responsibility for his actions.

26 9. The hearing record demonstrates that Petitioner has a felony conviction on
27 his record from 1992, the one year jail sentence (with work furlough) of which was
28 completed without incident in 1993 and the "lifetime probation" sentence for which was
29 terminated in 2007, over 14 years ago. The hearing record demonstrates the existence

1 of a 23-year employment record with one company for which Petitioner was given high
2 levels of management involving the need for trust and accountability to the company. The
3 undisputed hearing record demonstrates 30 years of Petitioner being law-abiding with no
4 criminal offenses or even traffic tickets.

5 10. Based on the hearing record, the Administrative Law Judge concludes that
6 the Department's denial of licensure should be reversed because Petitioner has
7 demonstrated that he was, and can be, trusted in employment dealing with the general
8 public and that he has been a law-abiding citizen for over 30 years since his conviction.
9 The Administrative Law Judge recommends that Petitioner be granted licensure at this
10 time.

11 **RECOMMENDED ORDER**

12 **IT IS ORDERED** that the Department's denial of Appellant's Application be
13 reversed and Petitioner's appeal be granted.

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 14, 2021.

18 /s/ Kay A. Abramsohn
19 Administrative Law Judge

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21 Transmitted electronically to:

22 Evan G. Daniels
23 Department of Insurance and Financial Institutions
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