

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of:

No. 24A-032-FIN

4 **CERTIFICATION OF**
5 **ADMINISTRATIVE LAW**
6 **JUDGE DECISION**

7 Donald Francis Smith

8
9 I have reviewed the records of the Office of Administrative Hearings and as co-custodian
10 of such records have determined:

11
12 1. The Office of Administrative Hearings transmitted the Administrative Law Judge
13 Decision in the above entitled matter to the Department of Insurance and Financial Institutions -
14 Financial by electronic filing.

15 2. The Department of Insurance and Financial Institutions - Financial was required to
16 accept, reject, or modify the Administrative Law Judge Decision within the statutory deadline as
17 calculated pursuant to A.R.S. § 41-1092.08 and A.R.S. § 1-243, as evidenced by receipt of such
18 action by the Office of Administrative Hearings.

19 3. No action by the Department of Insurance and Financial Institutions - Financial was
20 received by the Office of Administrative Hearings as of December 12, 2024, more than five days
21 beyond the statutory deadline.

22
23 Therefore, pursuant to A.R.S. § 41-1092.08(D), the attached Administrative Law Judge
24 Decision is certified as the final administrative decision of the Department of Insurance and
25 Financial Institutions - Financial.

26
27 **NOTICE**

28 Rights for Rehearing or judicial review will be lost without action taken in a timely manner.
29 A Party has the right to request a rehearing from the Department of Insurance and Financial
30 Institutions - Financial pursuant to A.R.S. § 41-1092.09(A). In addition, the matter may be
reviewed by the Superior Court, pursuant to A.R.S. § 41-1092.08(H), although a party may be

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1 required to seek a rehearing from the Department of Insurance and Financial Institutions -
2 Financial before petitioning the Superior Court for such review. *See* A.R.S. § 41-1092.09(B).
3 Further rights may be lost without action taken in a timely manner. Parties may wish to review
4 these statutes as quickly as possible after receipt of this notice. The relevant statutes may be found
5 at the local library or on the internet at: <http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp>.

6 Not later than ten days after a complaint for judicial review of an administrative decision
7 is filed with the Superior Court, the party who filed the complaint must file a notice of the action
8 with the Office of Administrative Hearings.

9 Done this day, December 12, 2024.

10 /s/ Tammy L. Eigenheer
11 Assistant Presiding Administrative Law Judge

12
13 Copy mailed/e-mailed/faxed to:

14
15 Barbara D. Richardson
16 Arizona Department of Insurance and Financial Institutions
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22 By: OAH Staff
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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 24A-032-FIN

Donald Francis Smith, Petitioner

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARING: September 27, 2024

APPEARANCES: Donald Francis Smith represented himself. Assistant Attorney Zachary Smith represented the Arizona Department of Insurance and Financial Institutions.

ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn

EXHIBITS ADMITTED INTO EVIDENCE: Department Exhibits 1 through 8; Petitioner's Exhibits 1 and 2.

FINDINGS OF FACT

1. The Arizona Department of Insurance and Financial Institutions (Department) has jurisdiction over licensure and regulation of real estate appraisers in Arizona by issuing licenses, investigating complaints, and disciplining licensees pursuant to ARIZ. REV. STAT. §§ 6-121 and 32-3601 *et seq.*

2. Under ARIZ. REV. STAT. § 32-3620(A), the Department may deny initial licensure or renewal of a license of a license or certificate as a registered trainee appraiser, a supervisory appraiser or a state-licensed or state-certified appraiser to any applicant who has been convicted of a felony, or on any of the grounds prescribed in Title 32, Chapter 36.

3. The matter was properly brought before the Office of Administrative Hearings pursuant to ARIZ. REV. STAT. §§ 6-138, 32-3632 and 41-1092 *et seq.*

4. On June 4, 2024, Donald Francis Smith (Petitioner) filed an application (Application) with the Department for a Trainee Appraiser License.¹

5. Petitioner disclosed in the Application that he had prior convictions in the State of Arizona: (1) Upon pleading guilty, on April 18, 2003, he had been convicted of Theft, a Class 3 Felony, in Case #CR2002-019588 in Maricopa County Superior Court; and (2) Upon pleading guilty, on April 18, 2003, he had been convicted on two counts of

¹ See Department's Exhibit 1.

1 Attempted Fraudulent Use of a Credit Card, a Class 6 Felony, in Case #CR2003-007390-
2 002 in Maricopa County Superior Court. Petitioner also provided a letter of explanation.²

3 6. Petitioner subsequently provided additional specific documentation
4 regarding the convictions.³

5 7. On July 25, 2024, the Department notified Petitioner that, based on the
6 information he had supplied regarding the convictions, the Application was denied
7 pursuant to ARIZ. REV. STAT. § 32-3620(A).⁴ The Department also informed Petitioner that
8 he had the right to an appeal of the determination.

9 8. The matter was referred to the Arizona Office of Administrative Hearings, an
10 independent state agency, for an evidentiary hearing.

11 9. On August 21, 2024, the Department issued a Notice of Hearing (Notice)
12 setting the matter for hearing and provided that the issue set for determination was the
13 denial of the Application. The Notice provided, in relevant part, as follows:

14 The purpose of the Hearing is to determine whether grounds exist to affirm
15 the denial of Petitioner's application for an Arizona Trainee Appraiser
16 license.

17 10. At hearing, Petitioner testified on his own behalf and submitted two
18 Maricopa County Superior Court records, from February of 2012, each setting aside one
19 of the two convictions.⁵

20 11. The Department presented the testimony of Jessica Sapio, Appraisal
21 Licensing Coordinator and submitted Exhibits 1 through 8.

22 12. Ms. Sapio testified that the Department reviewed the court documents and
23 determined that the nature of the felonies had bearing with regard to concerns the
24 Department would have with regard to a trainee likely dealing with a client's financial
25 information.

26 13. At hearing, Petitioner acknowledged responsibility and was remorseful
27 about his past actions and the convictions, testifying credibly that these isolated incidents
28

29 ² See Department's Exhibit 7.

30 ³ See Department's Exhibits 3, 4, 5, and 6; see *also* ARIZ. REV. STAT. § 32-3611(D)(1).

⁴ See Department's Exhibit 8.

⁵ See Petitioner's Exhibits 1 and 2.

1 were far in the past. Petitioner testified credibly regarding his life changes and his work
2 experience over the last 20 years, during which time he has had no offenses of any kind.

3 14. Petitioner obtained an Associate Degree in technology and worked in that
4 field for 12 years as an IT person. Petitioner worked for the Scottsdale Unified School
5 District for 2 years. Petitioner has worked for a mortgage company for nearly 9 years, at a
6 help desk, as a data analyst and then, most recently, with the appraisers. Petitioner
7 indicated he has been through multiple background checks and had not needed to be
8 bonded or insured in those jobs, despite his background.

9 15. In June 2024, Petitioner completed the requisite 150 hours of training.
10 Petitioner noted that he knows multiple appraisers with whom he could work to have their
11 supervision for the work to obtain a license. Petitioner requested that he be given the
12 opportunity to become a trainee appraiser.

13 16. The Department argued that the Department was justified in making the
14 denial determination pursuant to Arizona statute and requested that the Tribunal affirm
15 the denial determination.

16 17. Arizona law does not provide any time frame parameters for purposes of
17 *not* considering prior convictions.

18 CONCLUSIONS OF LAW

19 1. Petitioner has the burden of proof to establish by a preponderance of the
20 evidence that he should be granted a trainee appraiser license; Petitioner bears the
21 burden of proof to establish, essentially, that he is rehabilitated and qualified to receive a
22 trainee appraiser license.⁶ The standard of proof on all issues in this matter is that of a
23 preponderance of the evidence.⁷

24 2. A preponderance of the evidence is:

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

⁶ See ARIZ. REV. STAT. § 41-1092.07(G)(1).

⁷ See ARIZ. ADMIN. CODE R2-19-119; see also *Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

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

2 3. ARIZ. REV. STAT. § 32-3611 provides, in pertinent part as follows:

3 C. At the time of filing an application for registration, licensure or
4 certification, each applicant shall sign a pledge to comply with the standards
5 set forth in this chapter and shall state that the applicant understands the
6 types of misconduct for which disciplinary proceedings may be initiated
7 against a registered trainee appraiser or a state-licensed or state-certified
8 appraiser, as set forth in this chapter.

9 D. Except as otherwise provided in this chapter, the deputy director
10 shall require such other proof and request such documents, through the
11 application or otherwise, as the deputy director deems necessary for the
12 interests of the public and to verify the honesty, truthfulness, reputation and
13 competency of the applicant and shall require that the applicant for
14 registration, licensure or certification:

15 4. State whether or not the applicant has ever been convicted in a
16 court of competent jurisdiction in this or any other state of a felony or
17 of forgery, theft, extortion or conspiracy to defraud or any other crime
18 involving dishonesty or moral turpitude.

19 4. It is undisputed that Petitioner had previously been convicted of Theft and
20 Attempted Fraudulent Use of a Credit Card. Petitioner disclosed his past convictions on
21 his Application. The Department's concern is that of protection of the public and any
22 possible future issues with Petitioner dealing with a client's financial information.

23 5. In this case, through his work experience and having technology expertise,
24 Petitioner has had access to family and consumers' financial and/or confidential
25 information at a school district and at a mortgage company. Petitioner has credibly
26 testified that, in his 20+ years of work history, he has had no offenses of any kind; he had
27 been background checked and never been required by his employers to be bonded or
28 insured against possible issues. By law, an Applicant for this license is required to
29 disclose any convictions involving dishonesty and, on his Application, Petitioner did
30 disclose such. By law, an applicant is required to sign a pledge to comply with the
standards set forth in this chapter and shall state that the applicant understands the types
of misconduct for which disciplinary proceedings may be initiated against a registered
trainee appraiser.⁸ Petitioner did so.

⁸ An Attestation thereto is contained in the online application. See Department Exhibit 1.

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6. The Department has discretion in these licensure matters.

7. Based on the hearing record, the Administrative Law Judge concludes that Petitioner met the burden of proving by a preponderance of the evidence that he should be granted a trainee appraiser license and that the Department's denial of the Application should be reversed.

RECOMMENDED ORDER

IT IS RECOMMENDED that the Department's July 25, 2024, denial of Petitioner's Application be reversed.

Pursuant to A.R.S. § 41-1092.08(I), the licensee may accept the Administrative Law Judge Decision by advising the Office of Administrative Hearings in writing not more than ten (10) days after receiving the decision. If the licensee accepts the Administrative Law Judge Decision, the decision shall be certified as the final decision by the Office of Administrative Hearings.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order will be forty (40) days from the date of that certification.

Done this day, October 17, 2024.

/s/ Kay A. Abramsohn
Administrative Law Judge

Transmitted electronically to:
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By: OAH Staff