

JUL 30 1996

STATE OF ARIZONA
DEPARTMENT OF INSURANCE
DEPT. OF INSURANCE BY KHL

In the Matter of)	Docket No. 96A-052-INS
)	
LORI L. VEGA,)	
)	ORDER
Petitioner.)	
_____)	

On July 26, 1996, the Office of Administrative Hearings, through Administrative Law Judge Robert I. Worth, submitted "Decision and Recommended Order" in the above-captioned matter, a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the recommended Findings of Fact, Conclusions of Law, and Recommended Order, and enters the following order:

1. The Recommended Findings of Fact and Conclusions of Law are adopted.
2. The recommendation that the license be placed on a term of probation is rejected. The application of Lori L. Vega for a property and casualty agent's license is granted without condition.

NOTIFICATION OF RIGHTS

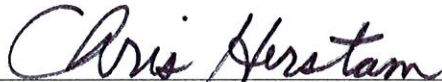
The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

The final decision of the Director may be appealed to

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the Superior Court of Maricopa County for judicial review
pursuant to A.R.S. §20-166.

DATED this ^{29th} day of July, 1996.



CHRIS HERSTAM
Director of Insurance

1 A copy of the foregoing
2 mailed this 30th day of
3 July, 1996

4 Charles R. Cohen, Deputy Director
5 Gregory Y. Harris, Executive Assistant Director
6 Catherine O'Neil, Assistant Director
7 John Gagne, Assistant Director
8 Maureen Catalioto, Supervisor
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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF ARIZONA
RECEIVED

JUL 26 1996

In the Matter of:

No. 96A-052-INS

LORI L. VEGA,

DIRECTOR OF INSURANCE
INSURANCE DEPT.

Petitioner

DECISION AND RECOMMENDED ORDER

The above-entitled matter came on for hearing on July 19, 1996. The Petitioner, Lori L. Vega (herein called "Vega") was represented by her attorneys, Thomas M. Baker and Wallace J. Baker, Jr. The Arizona Department of Insurance (herein called the "Department") was represented by Assistant Attorney General, Michael J. De La Cruz. Evidence and testimony were presented, and based upon the entire record, the Administrative Law Judge hereby submits the following Findings of Fact, Conclusions of Law and Recommended Order for review, consideration approval and adoption by the Director of the Department (herein called the "Director").

FINDINGS OF FACT

1. On or about March 31, 1995 the above-named Petitioner had completed a formal written application for a property and casualty insurance agent's license which was subsequently submitted to the Department. The Department's application form required answers by an applicant to various questions about the individual and his or her past history.
2. The Department had issued a conditional license to Petitioner on April 26, 1995 pending completion of a criminal background check. Such conditional license was revoked on March 18, 1996 by the Department

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1 which also denied the underlying application for licensure. The instant
2 hearing was convened following the filing of a timely request therefor by
3 Lori L. Vega who disagreed with the Department's denial action.

4
5 3. It was not disputed that Ms. Vega had answered "No" to a specific
6 question on her application as to whether or not she had ever been
7 convicted of a misdemeanor. Another "No" answer was recorded to a
8 separate question relating to whether she had ever been arrested,
9 charged with, tried or investigated concerning a misdemeanor violation.
10 The express wording on the application immediately before the first such
11 question and actually a part of the second question indicated that a
12 disclosure would be required even if any prior conviction had been
13 expunged or set aside.

14
15 4. Ms. Vega admittedly had been convicted of a misdemeanor on
16 December 28, 1988 for a violation committed on December 6, 1988, and
17 also had been convicted of misdemeanors on August 28, 1991 for two
18 separate violations committed on August 9, 1990 and November 30,
19 1990, respectively. These offenses consisted of forms of trespass and of
20 assault, verbal and touching (not injurious), all of which directly involved
21 an ongoing abusive relationship between Ms. Vega and her first husband.

22
23 5. The sentence imposed for convictions of the last offenses was a one-
24 year period of probation that was successfully served by Ms. Vega.
25 During this probationary period she actively participated in group therapy
26 sessions emphasizing domestic violence problems and solutions. Her first
27 marriage was dissolved by divorce around this time.
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6. Approximately one year after the expiration of her probation period, Ms. Vega, without legal representation, made an application to the Court for all judgments of guilt, as enumerated above, to be set aside. On August 27, 1993, such application received favorable action, and the judgments of guilt in both convictions, relating to all three misdemeanor violations, were set aside and expunged. Credible testimony was presented which tended to indicate that Ms. Vega was advised or at least was led to believe that she need not, in the future, affirmatively disclose any of the prior convictions.

7. Documentary evidence introduced at the hearing demonstrated that the Petitioner herein had been and still is performing her duties at her place of work, including those performed while operating under the previously issued conditional license, in a highly satisfactory manner.

8. Petitioner remarried in September, 1993. Her second spouse subsequently became incurably and fatally ill, succumbing to cancer and dying on April 14, 1995, which was after a long duration of suffering and household disruption and which was only two weeks after Petitioner had filled out the insurance license application. While not found to serve as an excuse or justification for her failure to appropriately read, understand and comply with the disclosure requirements of the application, some effect must be given to the mitigating aspects of the prior and contemporaneous circumstances surrounding the completing and filing of the within application, which were replete with stress and tragedy resulting from her previous abusive marriage and her remarriage to a terminally ill husband.

1 9. The affirming of the Department's prior denial action would have an
2 ultimate impact which is equivalent to a revocation of an existing license.
3 With this in mind, and recognizing that although any one element of
4 pressure or distraction, standing alone, might generate insufficient reason
5 to disregard an impropriety in the application process, all of the aforesaid
6 circumstances, when considered in combination, appear to fully warrant a
7 result in this case which is not tantamount to a revocation but instead
8 enables the license sought herein to be issued to the applicant.

9
10 **CONCLUSIONS OF LAW**

11
12 1. The Director has jurisdiction over this matter pursuant to the provisions
13 of A.R.S. §§ 20-161 and 20-290. Additionally, the Director is empowered
14 with discretion to issue or to deny licenses to individuals after full
15 consideration and evaluation of all pertinent information, including any
16 mitigating and/or aggravating circumstances which are applicable.

17
18 2. Although the record in this case did provide a basis for upholding the
19 prior denial action by the Department, having sufficiently established all of
20 the elements set forth in the statutory subsections specified in the notice
21 of hearing, a favorable exercise of the aforementioned discretion by the
22 Director in granting the instant license application under all the
23 circumstances appears fully warranted.

24
25 3. There is little question, under the uncontroverted facts of this case, that
26 grounds do exist for the Director to deny the application filed by Ms. Vega.
27 However, the ultimate discretionary authority granted by statute should
28 not properly begin and end with a determination of the presence or
29 absence of such grounds. Although the omission of significant historical
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2 information which the Director has every right to receive and evaluate,
3 even if not intentional but only careless, can not be condoned, especially
4 when attributable to an individual seeking licensure in a professional
5 capacity heavily dependent on accuracy in reading and understanding
6 preprinted documents, it is determined under the totality of the evidence
7 as to all relevant facts and circumstances that Petitioner has met her
8 burden of proof with respect to her entitlement to receive a license at this
9 time. In reaching such determination, consideration has been given to the
10 nature and gravity of the misdemeanors, their subsequent expungement,
11 the level of stressful conditions in her personal home life and her
12 competent job performance.

13
14 4. Notwithstanding the foregoing, it does not necessarily follow that the
15 Director's granting of the license sought hereunder by Ms. Vega must be
16 outright or unconditional. It is concluded that the Director's discretionary
17 authority to grant or to deny license applications includes the inherent
18 power to place a newly issued license on probation for a reasonable time
19 period, thereby discharging his duty to the general public by giving a
20 degree of recognition to legitimate concerns generated by this applicant's
21 failure to properly understand important instructions and to disclose
22 significant personal history items. Such conclusion is further fortified by
23 reference to other relatively recent and seldom used statutory provisions
24 set forth in A.R.S. § 20-320 (J) and § 32-3701 relating to all professional
25 or occupational licensees who are shown to be in arrears of child support
26 payments where a probation in lieu of suspension is expressly
27 contemplated and authorized so as to enable, with certain limitations,
28 continued business activity by the license holder. In this case, any
29 probation should enable Ms. Vega to perform functions and to engage in
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2 activities to the same extent as the holder of any other property and
3 casualty agent's license, but the probation period should be of sufficient
4 length so as to provide an inducement to avoid the commission of any act
5 or omission that would be grounds for discipline. In the event of a proven
6 future violation, any unexpired portion of the probation period would
7 automatically become active license suspension.

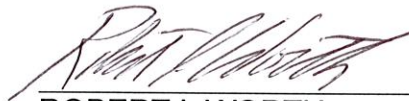
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9 **RECOMMENDED ORDER**

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11 In view of the foregoing, it is recommended that the Director enter his Order that
12 an individual property and casualty agent's license be issued to the applicant, Lori L.
13 Vega.

14
15 It is further recommended, as an express condition for the issuance of the
16 aforesaid license, that such license be placed on an initial term of probation
17 commencing on the date of issuance for a period of nine (9) months; provided however,
18 that any unexpired portion of the probationary period shall automatically become active
19 license suspension on and after a future finding, after Notice of Hearing and Hearing,
20 that Lori L. Vega has violated any of the provisions of A.R.S. § 20- 316 (A).

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22 Dated: July 25, 1996.

23 OFFICE OF ADMINISTRATIVE HEARINGS

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26 ROBERT I. WORTH
27 Administrative Law Judge

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Original transmitted on 7/25/96

by Chris Crawford ; to:

Chris Herstam, Director
Department of Insurance
2910 North 44th Street, 210
Phoenix, AZ 85018-7256

ATTN: Curvey Burton