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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

JUL 1 7 1996 DEPT. OF INSURANCE

In the Matter of:)	Docket No.	96A-056-INS
GARY DON JONES,)		
)	ORDER	

Applicant.

On July 5, 1996, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal submitted "Recommended Decision of Administrative Law Judge", a copy of which is attached and incorporated by this reference. Director of the Arizona Department of Insurance has reviewed the recommendation, and enters the following order:

- 1. The recommended findings of fact and conclusions of law are adopted.
- 2. The application for an individual life and disability agent license submitted to the Department by Gary Don Jones on August 1, 1995 is granted.

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).

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The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. §20-166.

EFFECTIVE this 17th day of July, 1996

Chris Herstam

Director of Insurance

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A copy of the foregoing mailed this _____ day of July, 1996

Charles R. Cohen, Deputy Director Gregory Y. Harris, Executive Assistant Director John Gagne, Assistant Director Catherine O'Neil, Assistant Director Maureen Catalioto, Supervisor Department of Insurance 2910 N. 44th St., Suite 210 Phoenix, AZ 85018

Kathryn Leonard Assistant Attorney General 1275 West Washington Phoenix, AZ 85012

Office of Administrative Hearings 1700 West Washington, Suite 602 Phoenix, AZ 85007

Gary Don Jones 17441 N. 83rd Drive Peoria, AZ 85382

Kathy Lindu

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

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No. 96A-056-INS

GARY DON JONES

Applicant.

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE

HEARING:

June 20, 1996

<u>APPEARANCES</u>: James F. Henderson for the Applicant and Assistant Attorney General Michael. J. De La Cruz for the Arizona Department of Insurance

ADMINISTRATIVE LAW JUDGE:

Lewis D. Kowal

Based upon the entire record of this matter, including all pleadings, motions, testimony, and exhibits admitted during the hearing of this matter, Administrative Law Judge Lewis D. Kowal has prepared the following Findings of Fact, Conclusions of Law and Recommended Order for consideration by the Director of the Arizona Department of Insurance (the "Director").

FINDINGS OF FACT

- 1. On August 1, 1995, Gary Don Jones ("Mr. Jones") submitted an application to the Arizona Department of Insurance (the "Department") for an individual life and disability insurance agent license (the "Application") and was issued a conditional license in connection with that application upon his execution of an Agreement for Conditional License.
- 2. Mr. Jones answered "No" to question (F)(3) of the Application which asks "Have you EVER been arrested, questioned, served a criminal summons, taken into

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custody, charged with, tried for, or ever been the subject of an investigation concerning the violation of any felony or misdemeanor?".

- 3. Mr. Jones credibly testified at the hearing that he was arrested and taken into custody 6 or 7 months after September 3, 1975 when he was formally charged with the offense of "unlawfully with the intent to deprive the owner of property, did unlawfully exercise control over and obtain such property as charged in the information". Further, Mr. Jones credibly testified that prior to the arrest he was unaware of the abovementioned charge.
- 4. On June 12, 1976, Mr. Jones entered a guilty plea in Dallas County Criminal Court, State of Texas v. Gary D. Jones, case number 75-3335 ("case number 75-3335") to the offense of passing a worthless check, a misdemeanor. Mr. Jones was sentenced to one day imprisonment, and judgment was entered for him to pay a \$50.00 fine and costs of \$52.00 and restitution in the amount of \$161.03. Mr. Jones made full restitution and paid the imposed fine and costs.
- 5. On March 18, 1996, the Department denied the Application and revoked the conditional license issued to Mr. Jones because it appeared that Mr. Jones misrepresented his criminal background based upon information available to the Department.
- 6. Mr. Jones, through legal counsel, filed a demand for hearing with the Department on April 8, 1996.
- 7. On May 14, 1996, Mr. Jones, through his legal counsel, filed an Application for Writ of Habeas Corpus in case number 75-3335 of the Dallas County Criminal Court, Texas Court Number Three.
- 8. On June 6, 1996, the Dallas County Criminal Court, State of Texas, issued an Order Nunc Pro Tunc which granted Mr. Jones' Application for Writ of Habeas Corpus and dismissed the information and Affidavit in case number 75-3335 and vacated the trial, judgment and sentence in that matter.
- 9. Mr. Jones' uncontroverted testimony was that , to his knowledge, he has not had any other criminal violation. Mr. Jones credibly testified that the criminal

 violation occurred because he trusted his female friend with a two-party check he endorsed which she was to deposit in his checking account so there would be sufficient funds in that account to cover a check he wrote to K-Mart for tires. The two-party check was never deposited in his account and, as a result, he ultimately was charged with the above-mentioned criminal violation.

- 10. Mr. Jones credibly testified that upon passing the Arizona life and disability insurance agent and solicitor license examination, he went to the Ford School to apply for an insurance agent license. At that school, Mr. Jones was provided with the application form which he completed while standing in line for processing of the Application. As Mr. Jones approached the counter, the individual behind the counter told Mr. Jones to quickly complete page 3 of the Application and informed him that the questions ask whether he is a criminal. Mr. Jones credibly testified that the individual behind the counter hurried Mr. Jones in completing the Application because that person wanted to move the line along as there were a number of individuals standing in line behind Mr. Jones.
- 11. At the hearing, Mr. Jones credibly testified that he failed to answer question (F)(3) on the Application in the affirmative because he filled out the Application quickly and had forgotten about case number 75-3335 since it had occurred over 20 years ago. Mr. Jones also credibly testified that his failure to disclose his arrest and conviction in case number 75-3335 to the Department was not done with any intent to misrepresent his criminal background.
- 12. In mitigation, Mr. Jones credibly testified that he did not read question (F)(3) thoroughly and he did not read the introductory paragraphs to Section F on the Application. Further, Mr. Jones represented that the same charge today under the facts existing in 1975 would not be considered a misdemeanor in Texas.
- 13. During the time period Mr. Jones' conditional license was in effect, Mr. Jones worked as an insurance agent for the United Group Association ("UGA") selling to self-employed individuals insurance benefits and policies endorsed by UGA.

- 14. Mr. Jones credibly testified that prior to his employment with UGA, he was self-employed as a landscaper, mason and tile setter.
- 15. Kenneth Greene, a District Manager for UGA, testified as a character witness for Mr. Jones. Mr. Greene credibly testified that during Mr. Jones' employment with UGA, Mr. Jones had an excellent relationship with the other UGA representatives and was one of the top sales representatives in the Phoenix office. Mr. Green stated that knowing Mr. Jones' background, he would employ Mr. Jones.
- 16. David Irish, Division Sales Manager for UGA, also testified on behalf of Mr. Jones. Mr. Irish testified that Mr. Jones is in the top 1% of the 5,000 sales representatives employed nationally by UGA. Mr. Irish stated that knowing of Mr. Jones' background, he has no concerns as to Mr. Jones' honesty and integrity. Although Mr. Irish has a direct financial stake in the outcome of this hearing, Mr. Irish's testimony was determined to be credible.
- 17. Donald Mellon, Sr., an owner, operator and licensee of McDonalds testified that he has known Mr. Jones for 32 years. Mr. Mellon is married to Mr. Jones' sister. Mr. Mellon testified that Mr. Jones is law abiding and honest in social and business settings. Mr. Mellon's testimony was given little consideration due to his close relationship with Mr. Jones and personal bias in favor of Mr. Jones.

CONCLUSIONS OF LAW

- 1. The Director has jurisdiction over this matter pursuant to A.R.S. §20-161.
- 2. The failure of Mr. Jones to answer question (F)(3) on the Application in the affirmative is a material misrepresentation, in the application for, or attempt to obtain, any insurance license within the meaning of A.R.S. §20-290(B)(1).
- 3. The record failed to establish that Mr. Jones has a record of dishonesty in business or financial matters within the meaning of A.R.S. §20-290 (B)(2).
- 4. Pursuant to A.R.S. §§20-290(B)(1) and 20-290(B)(2), the Director may refuse to issue a license to Mr. Jones if he finds that Mr. Jones made a material

misrepresentation or committed fraud in the application for, or attempt to obtain, any insurance license or that Mr. Jones has a record of dishonesty in business or financial matters.

- 5. The evidence failed to establish that Mr. Jones wilfully misrepresented any fact required to be disclosed in an application or accompanying any statement in violation of A.R.S. §20-291(G).
- 6. Notwithstanding the unintentional material misrepresentation, Mr. Jones has sustained his burden of proof by establishing that he possesses the requisite qualifications to be licensed by the Department as an individual life and disability insurance agent.

RECOMMENDED ORDER

Under the particular facts and circumstances of this case, including but not limited to the nature of the underlying misdemeanor and the duration of time that has elapsed, the undersigned Administrative Law Judge recommends that the application for an individual life and disability agent license submitted to the Department by Gary Don Jones on August 1, 1995 be granted.

Done this day, July 5, 1996.

LEWIS D. KOWAL

Administrative Law Judge

Copy transmitted by mail to:

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

By Mris Crawford