

JUL 17 1996

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

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BY KHL

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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. The Director of the Arizona Department of Insurance has reviewed the recommendation, and enters the following order:

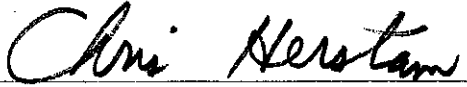
1. The recommended findings of fact and conclusions of law are adopted.
2. The application for an individual life and disability agent license submitted to the Department by Gary Don Jones on August 1, 1995 is granted.

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).

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

4 EFFECTIVE this 17th day of July, 1996

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7 Chris Herstam
8 Director of Insurance

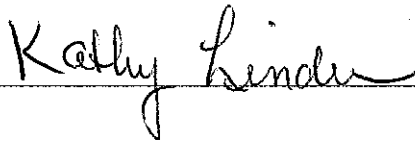
9 A copy of the foregoing
10 mailed this 17th day of
11 July, 1996

12 Charles R. Cohen, Deputy Director
13 Gregory Y. Harris, Executive Assistant Director
14 John Gagne, Assistant Director
15 Catherine O'Neil, Assistant Director
16 Maureen Catalioto, Supervisor
17 Department of Insurance
18 2910 N. 44th St., Suite 210
19 Phoenix, AZ 85018

20 Kathryn Leonard
21 Assistant Attorney General
22 1275 West Washington
23 Phoenix, AZ 85012

24 Office of Administrative Hearings
25 1700 West Washington, Suite 602
26 Phoenix, AZ 85007

27 Gary Don Jones
28 17441 N. 83rd Drive
Peoria, AZ 85382



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

3 3. Mr. Jones credibly testified at the hearing that he was arrested and taken
4 into custody 6 or 7 months after September 3, 1975 when he was formally charged with
5 the offense of “unlawfully with the intent to deprive the owner of property, did unlawfully
6 exercise control over and obtain such property as charged in the information”. Further,
7 Mr. Jones credibly testified that prior to the arrest he was unaware of the above-
8 mentioned charge.

9 4. On June 12, 1976, Mr. Jones entered a guilty plea in Dallas County
10 Criminal Court, State of Texas v. Gary D. Jones, case number 75-3335 (“case number
11 75-3335”) to the offense of passing a worthless check, a misdemeanor. Mr. Jones was
12 sentenced to one day imprisonment, and judgment was entered for him to pay a \$50.00
13 fine and costs of \$52.00 and restitution in the amount of \$161.03. Mr. Jones made full
14 restitution and paid the imposed fine and costs.

15 5. On March 18, 1996, the Department denied the Application and revoked
16 the conditional license issued to Mr. Jones because it appeared that Mr. Jones
17 misrepresented his criminal background based upon information available to the
18 Department.

19 6. Mr. Jones, through legal counsel, filed a demand for hearing with the
20 Department on April 8, 1996.

21 7. On May 14, 1996, Mr. Jones, through his legal counsel, filed an Application
22 for Writ of Habeas Corpus in case number 75-3335 of the Dallas County Criminal Court,
23 Texas Court Number Three.

24 8. On June 6, 1996, the Dallas County Criminal Court, State of Texas, issued
25 an Order Nunc Pro Tunc which granted Mr. Jones’ Application for Writ of Habeas
26 Corpus and dismissed the information and Affidavit in case number 75-3335 and
27 vacated the trial, judgment and sentence in that matter.

28 9. Mr. Jones’ uncontroverted testimony was that , to his knowledge, he has
29 not had any other criminal violation. Mr. Jones credibly testified that the criminal
30

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

6 10. Mr. Jones credibly testified that upon passing the Arizona life and disability
7 insurance agent and solicitor license examination, he went to the Ford School to apply
8 for an insurance agent license. At that school, Mr. Jones was provided with the
9 application form which he completed while standing in line for processing of the
10 Application. As Mr. Jones approached the counter, the individual behind the counter
11 told Mr. Jones to quickly complete page 3 of the Application and informed him that the
12 questions ask whether he is a criminal. Mr. Jones credibly testified that the individual
13 behind the counter hurried Mr. Jones in completing the Application because that person
14 wanted to move the line along as there were a number of individuals standing in line
15 behind Mr. Jones.

16 11. At the hearing, Mr. Jones credibly testified that he failed to answer question
17 (F)(3) on the Application in the affirmative because he filled out the Application quickly
18 and had forgotten about case number 75-3335 since it had occurred over 20 years ago.
19 Mr. Jones also credibly testified that his failure to disclose his arrest and conviction in
20 case number 75-3335 to the Department was not done with any intent to misrepresent
21 his criminal background.

22 12. In mitigation, Mr. Jones credibly testified that he did not read question
23 (F)(3) thoroughly and he did not read the introductory paragraphs to Section F on the
24 Application. Further, Mr. Jones represented that the same charge today under the facts
25 existing in 1975 would not be considered a misdemeanor in Texas.

26 13. During the time period Mr. Jones' conditional license was in effect, Mr.
27 Jones worked as an insurance agent for the United Group Association ("UGA") selling
28 to self-employed individuals insurance benefits and policies endorsed by UGA.
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1 misrepresentation or committed fraud in the application for, or attempt to obtain, any
2 insurance license or that Mr. Jones has a record of dishonesty in business or financial
3 matters.

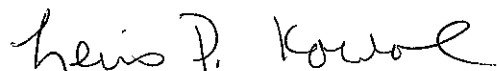
4 5. The evidence failed to establish that Mr. Jones wilfully misrepresented any
5 fact required to be disclosed in an application or accompanying any statement in
6 violation of A.R.S. §20-291(G).

7 6. Notwithstanding the unintentional material misrepresentation, Mr. Jones
8 has sustained his burden of proof by establishing that he possesses the requisite
9 qualifications to be licensed by the Department as an individual life and disability
10 insurance agent.

11
12 **RECOMMENDED ORDER**

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

18 Done this day, July 5, 1996.

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22 LEWIS D. KOWAL
23 Administrative Law Judge
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1 Copy transmitted by mail to:

2 Chris Herstam


3 Director

4 Department of Insurance

5 2910 North 44th Street, 210

6 Phoenix, AZ 85018-7256

7 By

8 A handwritten signature in cursive script that reads "Chris Crawford". The signature is written over a horizontal line.