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STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:)	Docket No. 96A-126-INS
)	
JAMES S. ALLRED)	ORDER
)	
Applicant.)	
)	
)	

On December 12, 1996, the Office of Administrative Hearings, through Administrative Law Judge Rovert I. Worth, submitted the "Decision and Recommended Order" (the "Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Decision and enters the following order:


1. The recommended findings of fact and conclusions of law are adopted.
2. The application for a bail bond agent license submitted by James S. Allred on or about March 27, 1996 is denied.

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

1 DATED this 30th day of December, 1996

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3 
4 John King
Director of Insurance

5 A copy of the foregoing mailed
6 this 30th day of December, 1996

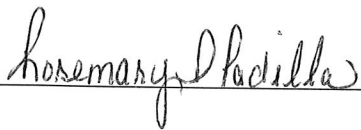
7 Charles R. Cohen, Deputy Director
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11 Office of Administrative Hearings
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15 James S. Allred
16 c/o Dons Bail Bonds
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Scottsdale, Arizona 85251

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1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 **In the Matter of:**

No. 96A-126-INS

4 **JAMES S. ALLRED,**

5 **Applicant.**

DECISION AND RECOMMENDED ORDER

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11 The above-entitled matter came on for hearing on November 25, 1996. The
12 Applicant was represented by his attorney, David B. Cassidy, and the Arizona
13 Department of Insurance (herein called the "Department") was represented by Assistant
14 Attorney General, Gerrie L. Marks. Evidence and testimony were presented, and
15 based upon the entire record, including post-hearing memoranda submitted by both
16 counsel, the following Findings of Fact Conclusions of Law and Recommended Order
17 have been prepared and are hereby submitted by the undersigned Administrative Law
18 Judge for review, consideration, approval and adoption by the Director of the
19 Department (herein called the "Director").

20
21 **FINDINGS OF FACT**

22
23 1. Applicant, James S. Allred, (herein called "Allred"), submitted an application
24 to the Department for a bail bond agent license. In answer to a specific question on the
25 application form as to whether the named applicant had any prior felony convictions or
26 whether he had ever been arrested or charged with criminal offenses, Mr. Allred
27 responded in the negative. The Department denied the application for licensure, which
28 also resulted in the revocation of a conditional license that had been issued upon the
29 filing of the within application pending completion of a criminal background check. Mr.
30 Allred timely exercised his right to request the convening an administrative hearing to
contest the propriety of the Department's denial action.

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2 2. It was uncontroverted that Mr. Allred had been convicted of a felony in the
3 State of Arizona, a judgment of guilt having been entered on April 17, 1986, on charges
4 of conspiracy to sell a narcotic drug. The offense was committed almost thirteen years
5 ago between late 1983 and early 1984 when Mr. Allred was approximately 27 years of
6 age. It is further found that the aforesaid felony is one which involves moral turpitude
7 and also is one that is reasonably related to the occupational functions of a bail bond
8 agent for which the insurance license is sought.

9
10 3. The sentence imposed upon Mr. Allred was for five (5) years of probation plus
11 payment of certain probation-related fees. The entire period of probation was fully and
12 successfully served by Mr. Allred. One potential problem stemming from a move out-of-
13 state and the non-assignment of a successor probation officer was ultimately resolved.

14
15 4. Mr. Allred began working in the bail bond industry in 1994. It did not appear
16 that he had disclosed his prior criminal record to his employer, nor to an Investigator
17 from the Department with whom he had several dealings on matters within his
18 company's office.

19
20 5. Motivated primarily by his desire to be able to carry or use a weapon, Mr.
21 Allred retained counsel in November, 1994 in order to initiate proceedings to set aside
22 or expunge the prior felony conviction, thereby effectively restoring his civil rights. Such
23 relief was granted by Court Order dated January 6, 1995.

24
25 6. Following specific advice and admonitions from the Department's Investigator, Mr.
26 Allred was prompted to apply for an appropriate bail bond license as a condition for
27 continuing with most of his duties with his employer. In March, 1996, a license
28 application was completed without disclosure of the previous felony as expressly
29 required on the form despite the fact that Mr. Allred's prior 1986 criminal conviction had
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2 been the very subject of recent court proceedings which were initiated for the purpose
3 of enabling him to possess weapons and which were concluded only fourteen months
4 earlier.

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6 7. The testimony at the hearing by Mr. Allred by way of explanations given for
7 this important omission tended to demonstrate a careless oversight in a rush to
8 complete and submit the necessary forms. Conversely, a written communication
9 previously filed by the Applicant during the application review process sought to explain
10 the omission on the basis that a disclosure was not necessary in light of the subsequent
11 court proceeding dismissing the charges and vacating the judgment of guilt. However,
12 it was demonstrated that the questions on the form were very explicit in their content
13 with respect to the need to disclose even subsequently expunged or dismissed
14 convictions.

15
16 8. The record herein contains numerous matters in mitigation encompassing Mr.
17 Allred's marriage and raising of young children, his prior cooperation with other law
18 enforcement officials between the time of the offense and his conviction, leading to a
19 probationary sentence, and also the expressed genuine belief of the Department's
20 Investigator that Mr. Allred should and would become a valued licensee,

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23 **CONCLUSIONS OF LAW**
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26 1. The Director has jurisdiction over this matter pursuant to the provisions of
27 A.R.S. §§ 20-161 and 20-290.
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2 2. The Director is empowered by statute with discretion to issue or to deny
3 insurance licenses to applicants who have previously been convicted of a felony after
4 full review and evaluation of the entire record in the matter as presented at an
5 administrative hearing. Although at first glance, the language contained in 1990
6 amendments to A.R.S. §§ 20-321(A)(9) and 20-321(B) appears to mandate a denial of
7 a bail bond agent license to every applicant with any prior record of a felony conviction,
8 the previously existing language set forth in A.R.S. § 13-904(E) relating to restoration of
9 civil rights after a felony conviction purports to vest discretion in any licensing authority,
10 prior to issuance or denial of a license application, to ascertain whether the felony
11 offense committed has a reasonable relationship to the employment or occupation for
12 which the license is sought. In this case, the subsequent setting aside of the prior
13 judgment of guilt by a court of competent jurisdiction is felt to create a measure of
14 discretion for the Director to exercise as may be appropriate in any given fact situation.
15

16 3. The failure by the within-named applicant to disclose his prior felony
17 conviction by an affirmative answer to a specific question on the application form
18 constitutes a material misrepresentation in an applying for a license in violation of
19 A.R.S. § 20-290(B)(1). Although perhaps not willful on the part of Mr. Allred, this
20 omission reflects a high degree of carelessness, if not a near-reckless disregard of
21 responsibilities, when completing and submitting an official document.
22

23 4. Pursuant to the provisions of A.R.S. § 20-290 (B) (6), the Director is
24 empowered to deny an application for licensure by the Department if the Applicant has
25 a record of conviction by final judgment of a felony involving moral turpitude.
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27 5. Based upon all the facts, as presented, and upon applicable case law in the
28 State of Arizona, a determination is warranted that the felony for which Mr. Allred was
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1 convicted is an offense involving moral turpitude as well as constituting an offense
2 bearing a reasonable relationship to the employment or occupation functions of a bail
3 bond agent for which applicant seeks a license from the Department.
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6 6. The totality of the evidence of record sufficiently supported the prior action of
7 the Department in denying the license application submitted by Mr. Allred. Under all the
8 circumstances, including the above-described failure to disclose a prior felony
9 conviction contrary to clear instructions on the application form as well as the nature of
10 the felonious conduct itself, adequate justification is determined to exist for the Director,
11 in his discretion, to affirm the Department's denial of the license application in this case.
12

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14 **RECOMMENDED ORDER**
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17 In view of the foregoing, it is recommended that the Director enter his Order
18 denying the application for the bail bond agent license submitted by James S. Allred.
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20 Dated: December 12 , 1996
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22 OFFICE OF ADMINISTRATIVE HEARINGS

23 

24 ROBERT I. WORTH
25 Administrative Law Judge
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Original transmitted on 12/12/96

by Chris Crawford; to:

John King, Director
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ATTN: Curvey Burton