

STATE OF ARIZONA

OCT 28 1996

DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY KHL

In the Matter of:)	Docket No. 96A-127-INS
)	
SHELDON F. SIGALA,)	ORDER
)	
Petitioner.)	
)	
)	

On October 2, 1996, the Office of Administrative Hearings, through Administrative Law Judge Robert I. Worth submitted "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. Findings of fact paragraphs 1 - 4 of the Recommended Decision are adopted.
2. Findings of fact paragraph 5 of the Recommended Decision is rejected.
3. Conclusions of law paragraphs 1 - 2 of the Recommended Decision are adopted.
4. Conclusions of law paragraph 3 of the Recommended Decision is rejected. In its

place, the following conclusion of law is adopted:

The Legislature has not prohibited the issuance of an insurance license for every criminal offense or even every criminal offense constituting an offense of moral turpitude. Instead, the Legislature has empowered the Director to exercise discretion to determine who possesses the requisite qualifications to hold an insurance license.

Mr. Sigala has been convicted of a crime of moral turpitude. This conviction stemmed from a 1991 offense intended to include the sale of cocaine worth at

1 least \$5,000. In view of these facts, reasonable questions arise concerning Mr. Sigala's
2 honesty, integrity and personal values, factors which all relate critically to the
3 responsibilities of the holder of an insurance license.

4 Mr. Sigala, during the sentence of probation received following his conviction
5 entered then three years ago, has taken steps to demonstrate that conduct bearing on his
6 personal values will not recur. However, the exercise of discretion by the Director of
7 Insurance when making licensing decision requires that the applicant demonstrate
8 entitlement to the license. While Mr. Sigala has made a partial showing, insufficient time
9 has passed since his offense, since his conviction, and since he has been under the careful
10 scrutiny of probation, to meet the burden and to justify the exercise of discretion in favor
11 of the application.

12 5. The recommended order of the Recommended Decision is rejected. In its place,
13 the following order is entered:

14 The application for the issuance of an insurance license submitted by
15 Sheldon Sigala, is denied.

16 NOTIFICATION OF RIGHTS

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

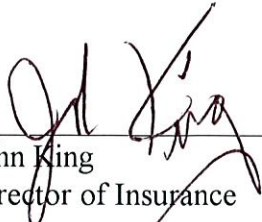
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1 The final decision of the Director may be appealed to the Superior Court of Maricopa
2 County for judicial review pursuant to A.R.S. § 20-166.

3 EFFECTIVE this 28th day of October, 1996

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5 
6 _____
7 John King
8 Director of Insurance

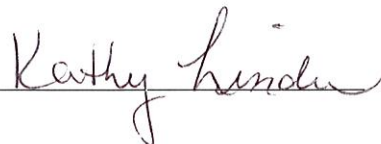
9 A copy of the foregoing mailed
10 this 28 day of October, 1996

11 Charles R. Cohen, Deputy Director
12 John Gagne, Assistant Director
13 Catherine O'Neil, Assistant Director
14 Scott Greenberg, Business Administrator
15 Maureen Catalioto, Supervisor
16 Department of Insurance
17 2910 North 44th Street, Suite 210
18 Phoenix, AZ 85018

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20 1700 West Washington, Suite 602
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22 Michael J. De La Cruz
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2. It was not disputed that Mr. Sigala was convicted of a felony consisting of attempted sale of a narcotic drug. The offense was committed on January 13, 1992 when the Applicant was 19 years of age. Although he voluntarily participated in a cooperation program with law enforcement authorities to secure evidence against other individuals involved in illegal drug-related activities, such efforts were unsuccessful, and formal charges were brought against Mr. Sigala resulting in the conviction in May, 1994.

3. The actual wrongdoing by Mr. Sigala was shown to have been a one-time only participation in a sale of a significant quantity of cocaine whereby he agreed to and did act as the vehicle driver, readily admitting that his primary motivation was the opportunity for his financial gain. The sentence imposed following conviction, as subsequently modified, was to contribute 100 hours of community service, to pay over \$3,000.00 in fines and fees, and to serve a three year period of probation. All potential terms of incarceration were deleted. The community service and monetary payment obligations have been fully satisfied by Mr. Sigala who has also been successfully serving his probation. The term of probation is to expire May 1, 1997, but there is a strong probability that he will imminently earn an early release from such probation, a result that has already been initiated by and supported by the assigned probation officer based on Mr. Sigala's ongoing attitude and conduct.

4. The record herein abounds with numerous and persuasive mitigating factors. Since the commission of the offense at a relatively young age, Mr. Sigala has undertaken and achieved a substantial turn-around in his family and business life. He has become and remained a devoted husband and the father of two small dependent children, continued to be

1 an upstanding member of his church, and perhaps most significantly, has
2 completely disassociated himself from all persons who had previously
3 exerted any bad influence upon him or his activities. He was shown to
4 have turned himself in voluntarily when he discovered that the above-
5 mentioned cooperation program had not produced results sufficient to
6 erase the felony charges. Moreover, he has exhibited an excellent work
7 ethic and also has made time to further his education at a local college.
8 His present employer emphasized the candor with which the Applicant
9 owned up to his past conviction and his exceptionally good performance
10 of all work-related duties, confirming his strong support of Mr. Sigala's
11 efforts to obtain the license sought.

12
13 5. While in no way condoning the criminal conduct for which Applicant
14 was convicted, it did appear from all credible evidence that the
15 rehabilitation objective of the penal system has been fully and
16 commendably achieved in the case of Mr. Sigala. It is found and
17 determined that the elapsed time since commission of what appeared to
18 be his single instance of anti-social behavior, his age at the time and his
19 demonstrated success in maturing into a responsible member of both the
20 business and social communities, are felt, in combination, to outweigh the
21 adverse impact generated by his prior felony conviction.

22 23 CONCLUSIONS OF LAW

24
25 1. The director has jurisdiction over this matter pursuant to the provisions
26 of A.R.S. §§ 20-161 and 20-290.

27
28 2. The Director is empowered by statute with the discretion to issue or to
29 deny insurance licenses to applicants with a record of one or more
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1 criminal convictions after reviewing and evaluating the entire record of the
2 matter, as presented at an administrative hearing.

3
4 3. Although the record in this case did provide a basis for upholding the
5 prior denial action by the Department, having sufficiently established one
6 of the grounds specifically enumerated in the statutory subsection
7 charged in the Notice of Hearing, a denial of the instant application is not
8 mandated, but instead the favorable exercise of the aforementioned
9 discretion by the Director in granting the within license application is
10 nevertheless fully warranted under all the circumstances. Mr. Sigala has
11 satisfied his burden of proving that he presently possesses the requisite
12 good characters so as to support his entitlement to licensure by the State
13 of Arizona.

14
15 **RECOMMENDED ORDER**

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17 In view of the foregoing, it is recommended that the prior denial action by the
18 Department be vacated and that the Director enter his Order that an individual property
19 and casualty insurance agent license be issued to Sheldon F. Sigala.

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21 Dated: October 2, 1996.

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23 OFFICE OF ADMINISTRATIVE HEARINGS

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26 ROBERT I. WORTH
27 Administrative Law Judge
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Original
Copy transmitted on 10/2/96
by *Chris Crawford*; to:

John King, Director
Department of Insurance
2910 North 44th Street, #210
Phoenix, AZ 85018-7256

ATTN: Curvey Burton