

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

STATE OF ARIZONA  
FILED

DEC 24 1996

DEPT. OF INSURANCE  
BY Kath

1  
2  
3  
4  
5 In the Matter of: ) Docket No. 96A-159-INS  
6 HEIDI JO LEAVITT )  
7 )  
8 )  
9 )  
10 )  
11 )  
12 )  
13 )  
14 )  
15 )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
Petitioner.

**ORDER**

On November 27, 1996, the Office of Administrative Hearings, through Administrative Law Judge Kip Micuda, submitted "Decision and Recommended Order" ("Recommended Order"), 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 prior denial action by the Department is vacated and an individual non resident life and disability insurance agent license is issued to Heidi Jo Leavitt.

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

3 DATED this 24th day of December, 1996

4  
5   
6 John King  
7 Director of Insurance

8 A copy of the foregoing mailed  
9 this 24th day of December, 1996

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

18 Kathryn Leonard  
19 Assistant Attorney General  
20 1275 West Washington  
21 Phoenix, AZ 85012

22 Office of Administrative Hearings  
23 1700 W. Washington, Suite 602  
Phoenix, AZ 85007

Heidi Jo Leavitt  
13219 N. 19th Way  
Phoenix, Arizona 85022-5018

20  
21   
22  
23



1 v. Heidi Jo Rushlo, CR-86-0231. She committed the offense in November 1984. Ms.  
2 Leavitt paid restitution in the sum of \$1,299.00 prior to sentencing. The court  
3 sentenced her to 1 year probation, community service, and assessed a fine against her  
4 for \$274.00.

5 3. On or about June 6, 1987, Ms. Leavitt was discharged from probation and  
6 her offense designated a misdemeanor.

7 4. On or about August 8, 1996, the Department denied Ms. Leavitt's  
8 application for licensure, citing A.R.S. §20-290(B)(2).

9 5. Ms. Leavitt filed a timely request for hearing.

10 6. During the hearing, the Department demonstrated Ms. Leavitt's conviction  
11 to be a record of dishonesty in business or financial matters.

12 7. Ms. Leavitt's uncontroverted testimony was that she has never committed  
13 any offense other than that noted above, nor has she ever committed any other act of  
14 dishonesty in business or financial matters, but for the act above. In mitigation, she  
15 credibly testified about the events leading to her offense. She testified that she was  
16 young, 24 years of age, and rash. She is now 36 years of age and markedly mature.  
17 Her boyfriend/roommate at the time left her, leaving her responsible for all the rent of  
18 their residence. She was already behind on her bills and was being pressed by  
19 collectors. In essence, Ms. Leavitt was in dire financial straits and acted in desperation  
20 to pay her bills.  
21

22 During sentencing for her conduct, she impressed upon the judge a genuine  
23 acknowledgment that her actions were terribly wrong, as well as an emphatic  
24 acceptance of personal responsibility for her actions. The judge took note of the fact  
25 that she paid complete restitution for her conduct prior to sentencing. No doubt, Ms.  
26 Leavitt's demeanor and a compelling recommendation from her employer mitigated her  
27 sentence.

28 8. Ms. Leavitt's uncontroverted testimony was also that she held an  
29 individual life and disability insurance agent license at the time of her offense. Her  
30

1 employer required that she have such a license. She held her license until it expired;  
2 the Department never took any action against her license, as a result of her conviction.  
3 Ms. Leavitt allowed her license to expire because she changed careers and did not  
4 need the license. She presently seeks to return to the insurance industry.

5 9. Ms. Leavitt further credibly testified that she has been gainfully employed  
6 since her conviction. For the last 6 years she has worked as a sales representative for  
7 Promark 1, a telemarketing firm.

8 10. Ms. Leavitt's offense occurred 12 years ago.

### 10 **APPLICABLE LAW**

11 A.R.S. §20-290(B)(2) states that the Director may refuse to accept any  
12 application or issue any license if he finds, for example, the following:

13 2. A record of dishonesty on the part of the applicant in  
14 business or financial matters.

### 15 **CONCLUSIONS OF LAW**

16 1. This matter is within the jurisdiction of the Director of the Arizona  
17 Department of Insurance pursuant to A.R.S. §20-161.

18 2. Ms. Leavitt has the burden of demonstrating by a preponderance of the  
19 evidence that an individual and disability insurance agent license should be issued to  
20 her.

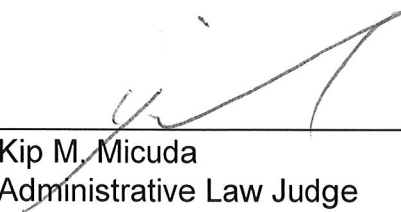
21 3. Ms. Leavitt's fraudulent scheme conviction evidences dishonesty on her  
22 part in business or financial matters. Accordingly, the Director may rely upon the  
23 conviction as a basis for refusing to issue a license to Ms. Leavitt. However, §20-161  
24 does not mandate licensure denial, rather it gives the Director discretion to determine if  
25 a license ought to be issued. No doubt, Ms. Leavitt's conduct 12 years ago is a serious  
26 offense and should raise serious questions as to her qualifications to be issued a  
27 license. However, during the hearing in this matter, Ms. Leavitt revealed a keen sense  
28 of appreciation of the broad consequences of her conduct; she has grappled with the  
29  
30

1 consequences of her youthful, foolish conduct for 12 years. As she did at the time she  
2 entered a guilty plea to the offense, Ms. Leavitt exhibited an emphatic acceptance of  
3 responsibility for her prior actions. Her acceptance of responsibility is genuine.  
4 Furthermore, the record is completely void of any other conduct even remotely  
5 comparable to her rash conduct long ago. Similarly, there is a void in the record of  
6 other conduct that might raise additional questions here as to her qualifications.  
7 Indeed, Ms. Leavitt's past since her conviction reveals a conscientious, responsible,  
8 and honest individual. This Judge concludes, therefore, in light of the complete record,  
9 that this matter is one in which the Director should exercise his discretion to refrain from  
10 a denial of licensure, and issue Ms. Leavitt an individual life and disability insurance  
11 agent license.  
12

13  
14 **RECOMMENDED ORDER**

15 Under the particular facts and circumstances of this case, including but not  
16 limited to the nature and scope of the underlying misdemeanor and the duration of time  
17 that has elapsed since the conviction, this Judge recommends that the application for  
18 an individual life and disability insurance agent license submitted to the Department by  
19 Ms. Leavitt on or about July 5, 1996, be granted.

20 Done this day, November 27, 1996.

21  
22  
23   
24 \_\_\_\_\_  
25 Kip M. Micuda  
26 Administrative Law Judge  
27  
28  
29  
30

1 Original transmitted by mail this  
2 27 day of November, 1996, to:

3 John King, Director  
4 ATTN: Curvey Burton  
5 Department of Insurance  
6 2910 North 44th Street, #210  
7 Phoenix, AZ 85018-7256

8  
9 By

A handwritten signature in cursive script that reads "Chris Crawford". The signature is written in black ink and is positioned above a horizontal line that extends to the right.