

DEC 30 1996

DEPT. OF INSURANCE  
BY         

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

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In the Matter of:	)	Docket No. 96A-175-INS
	)	
MICHAEL L. OLIVA,	)	<b>ORDER</b>
	)	
Petitioner.	)	
	)	
	)	

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On December 16, 1996, the Office of Administrative Hearings, through Administrative Law Judge Robert I. Worth, submitted "Decision and Recommended Order", 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 prior denial action by the Department is vacated and a life and disability insurance agent's license is granted to the Applicant, Michael L. Oliva.

**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 30<sup>th</sup> day of December, 1996

2  
3   
4 John King  
Director of Insurance

5 A copy of the foregoing mailed  
6 this 30<sup>th</sup> day of December, 1996

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

15 Office of Administrative Hearings  
16 1700 West Washington, Suite 602  
17 Phoenix, AZ 85007

18 Michael J. De La Cruz  
19 Assistant Attorney General  
20 1275 West Washington  
21 Phoenix, AZ 85012

22 Michael L. Oliva  
23 925 E. Via Velitas  
Tucson, AZ 85718-1051

  
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2 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

3  
4 **In the Matter of:**

**No. 96A-175-INS**

5 **MICHAEL L. OLIVA,**

6 **Petitioner.**

**DECISION AND RECOMMENDED ORDER**

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12 The above-entitled matter came on for hearing on December 11, 1996. The  
13 Petitioner, Michael L. Oliva (herein called "Mr. Oliva") appeared in his own behalf, and  
14 the Arizona Department of Insurance (herein called the "Department") was represented  
15 by Assistant Attorney General Michael J. De La Cruz. Evidence and testimony were  
16 presented, and based upon the entire record, the following Findings of Fact,  
17 Conclusions of Law and Recommended Order have been prepared and are hereby  
18 submitted by the undersigned Administrative Law Judge for review, consideration,  
19 approval and adoption by the Director of the Department (herein called the "Director").  
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21 **FINDINGS OF FACT**

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24 1. In early September, 1996, the Applicant/Petitioner, Mr. Oliva, submitted an  
25 application to the Department for a life and disability agent license. In addition to  
26 disclosing a record of prior arrests and convictions for misdemeanor offenses, Mr. Oliva  
27 also responded in the affirmative to another question as to whether he had ever been  
28 denied a license in any jurisdiction.  
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Office of Administrative Hearings  
1700 West Washington, Suite 602  
Phoenix, Arizona 85007  
(602) 542-9826

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2           2. The Department denied Mr. Oliva's application for an Arizona insurance  
3 license on the basis that the Applicant/Petitioner had materially misrepresented his  
4 previous criminal background on an application for licensure in the State of Wisconsin  
5 several years ago. Mr. Oliva thereupon timely filed a request for a hearing in order to  
6 contest the Department's denial action.  
7

8           3. It appeared that in April, 1992, Mr. Oliva, who was then a long time Wisconsin  
9 resident, had applied for an insurance license in that State. It was not disputed that on  
10 the written application for the Wisconsin license, Mr. Oliva failed to disclose his prior  
11 record of several misdemeanor convictions by responding in the negative to a specific  
12 question on the application form as to whether the applicant had been convicted of  
13 either a felony or a misdemeanor within the last three years.  
14

15           4. It was similarly uncontroverted that Mr. Oliva had been convicted of several  
16 battery misdemeanors committed between 1988 and 1991, all relating to domestic  
17 violence situations directly or indirectly involving a female with whom he was living at  
18 the time and whom he has subsequently married. He continues to be married to the  
19 same individual, and his present household includes two of his natural children plus two  
20 stepchildren.  
21

22           5. The reasons given by Mr. Oliva for omitting to disclose his criminal record on  
23 the Wisconsin application was his misunderstanding of the question, as worded on the  
24 form, and the significance of his prior no contest pleas. By contrast, on the instant  
25 Arizona license application, Mr. Oliva not only fully disclosed all of the misdemeanors  
26 omitted from the Wisconsin application, consisting of those committed within three  
27 years of that application, but also disclosed a prior misdemeanor offense committed in  
28 1985 plus a driving while intoxicated offense committed in 1993. It is further found that  
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1  
2 the original non-disclosure incident in Wisconsin did not involve any element of  
3 willfulness or intentional deception on the part of Mr. Oliva.

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5 6. The credible testimonial and documentary evidence tended to establish that  
6 Mr. Oliva has successfully resolved his drinking problem, which had contributed in large  
7 part to all of his past criminal convictions, and has attained a high level of achievement  
8 and reliability in the business sector as well as remaining a dedicated husband, father  
9 and step-father, solely responsible for the support of his family.

10  
11 7. The evidence further revealed that, upon learning of the non-disclosure on his  
12 Wisconsin application, the Commissioner of Insurance after completion of all review  
13 and evaluations, confirmed on June 8, 1992 that his application would be denied.  
14 However, despite the characterization as a denial, the practical result of such letter  
15 actually provided for the delayed granting of the license following the expiration of a 30-  
16 day period, thereby effectively imposing a 30-day suspension as the sanction or penalty  
17 by the Wisconsin Commissioner for the misrepresentation on the application.

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20 8. Mr. Oliva was shown to have continually and successfully operated under his  
21 Wisconsin insurance license for approximately four years without generating any  
22 complaints in his activities which encompassed the sale and monitoring of insurance  
23 policies issued to a substantial quantity of customers. He surrendered his Wisconsin  
24 license in order to obtain the Arizona license sought herein.

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26 **CONCLUSIONS OF LAW**

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28 1. The Director has jurisdiction over this matter pursuant to the provisions of  
29 A.R.S. §§ 20-161 and 20-290.

1  
2           2. Although any failure to disclose a record of prior misdemeanor conviction in  
3 an application for an insurance license in another State does constitute a material  
4 misrepresentation when applying for a license and provides grounds for denial of an  
5 Arizona application pursuant to A.R.S. § 20-290(B)(1), the Director retains discretion to  
6 review and evaluate all prior, contemporaneous and subsequent conduct prior to finally  
7 acting on any pending application.  
8

9           3. Similarly, the fact that the other State to which the material misrepresentation  
10 was made ultimately and fairly rapidly issued a license to the applicant does not  
11 operate to preclude the Director from denying an application for a license in Arizona.  
12 However, it must be recognized that any denial of a license is tantamount to a  
13 revocation in its practical impact. The fact that the Wisconsin Insurance Commission, in  
14 full awareness of the non-disclosure as well as the nature and circumstances of the  
15 misdemeanors, had seen fit to grant a license to Mr. Oliva subject to a short delay  
16 period should prompt and encourage the Director to favorably exercise his aforesaid  
17 discretion by giving substantial persuasive weight to the action taken by the other State  
18 in evaluating Applicant's present entitlement to licensure in Arizona. At the very  
19 minimum, the actions of the other jurisdiction may properly be viewed as corroborating  
20 Applicant's claim that, at the present time, he does possess the necessary  
21 qualifications, including the requisite good character, to support the granting of the  
22 license he has applied for.  
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25           4. The issuance and subsequent renewals of Mr. Oliva's Wisconsin license, his  
26 complaint-free record of business operations under that license, his more than  
27 adequate full disclosures on the Arizona application of all past wrongdoing and the  
28 significant four-year time period which has elapsed since the non-disclosure event  
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2 combine to establish sufficient and compelling reasons for the granting of the license  
3 sought herein. Under all the circumstances, it is concluded that Mr. Oliva has sustained  
4 his burden of proving by credible evidence that he is not a risk to the public or the  
5 public's interest, and that he is otherwise fully qualified and entitled to receive a license  
6 enabling him to engage in insurance activities in the State of Arizona.  
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9 **RECOMMENDED ORDER**

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11 In view of the foregoing, it is recommended that the prior denial action by the  
12 Department be vacated and that the Director enter his Order that a life and disability  
13 insurance agent's license be issued to the Applicant, Michael L. Oliva.

14 Dated: December 16, 1996.

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16 OFFICE OF ADMINISTRATIVE HEARINGS

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20 ROBERT I. WORTH  
21 Administrative Law Judge  
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Original transmitted on 12/16/96

by Chris Crawford; to:

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

ATTN: Curvey Burton