

JAN 16 1997

DEPT. OF INSURANCE
BY RDI

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

4	IN THE MATTER OF:)	DOCKET NO. 96A-193-INS
)	
5	BRIAN H. LOEHNIS,)	ORDER
)	
6	PETITIONER.)	
)	
7)	

8 On December 26, 1996, the Office of Administrative Hearings, through Administrative Law
 9 Judge Richard N. Blair submitted "Recommended Decision of Administrative Law Judge" (the
 10 "Recommended Decision"), a copy of which is attached and incorporated by this reference. The
 11 Director of the Arizona Department of Insurance has reviewed the Recommended Decision of
 12 Administrative Law Judge, and enters the following order:

- 13 1. The recommended findings of fact are adopted.
- 14 2. Recommended conclusions of law paragraphs 1-3 are adopted.
- 15 3. Recommended conclusions of law paragraph 4 is rejected. In its place, the following

16 conclusions of law is entered:

17 The legislature vested the Director with the discretion to determine
 18 the qualifications of an applicant for an insurance license. A.R.S.
 19 §20-290(B). For the Director to exercise this discretion, an insurance
 20 license applicant must submit an application to the Director that fully and
 21 truthfully discloses information determined to be relevant by the
 22 Legislature to enable the Director to discharge these statutorily imposed
 23


1 obligations. A.R.S. §§20-290, 20-291. The exercise of discretion includes
2 the authority to deny an application submitted by a person who has failed
3 to disclose information material to the licensing determination. A.R.S.
4 §20-290(B)(1).

5 In light of the material misrepresentations made by Mr. Loehnis on
6 the application to become licensed as an insurance agent by failing to
7 disclose his arrest and conviction record, a record which includes an arrest
8 and conviction of a theft-related offense, the exercise of discretion in this
9 case does not support a finding that Mr. Loehnis possesses the requisite
10 qualification to be licensed by the Department as an insurance agent.

11 4. The recommended order is rejected and in its place the following Order is entered:

12 It is ordered denying the application for a property and casualty
13 agent license submitted to the Department by Brian H. Loehnis on July 12,
14 1996.

15 DATED this 16 day of January, 1997

16
17 
18 John A. Greene
19 Director of Insurance

20 NOTIFICATION OF RIGHTS

21 The aggrieved party may request a rehearing with respect to this Order by filing a written petition
22 with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the
23 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 County for
2 judicial review pursuant to A.R.S. §§ 20-166 and 20-481.30

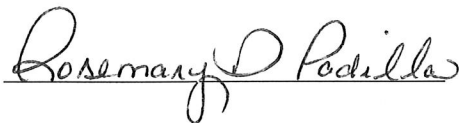
3
4 A copy of the foregoing mailed
this 10th day of January, 1997

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

13 Office of Administrative Hearings
14 1700 W. Washington, Suite 602
15 Phoenix, AZ 85007

16 Michael J. De La Cruz
17 Assistant Attorney General
18 1275 West Washington
19 Phoenix, AZ 85007

20 Brian H. Loehnis
21 Rt. 2 Box 352C
22 Laveen, AZ 85339

23


1 or not, whether expunged, set aside, reversed or dismissed. Exclude ONLY minor traffic
2 violations which resulted in a penalty not exceeding \$100.00 and any juvenile
3 proceedings?"

4 4. In a letter dated September 16, 1996, the Department informed Mr.
5 Loehnis that his conditional license was revoked and the Application denied because
6 Mr. Loehnis misrepresented his criminal background on the Application.

7 5. On October 11, 1996, Mr. Loehnis timely filed with the Department a
8 demand for hearing concerning this matter.

9 6. On June 21, 1976, Mr. Loehnis was arrested and questioned by the
10 Phoenix Police Department and subsequently charged for the offense of Grand Theft,
11 Case No. DR#76-059508 ("Case No. DR#76-059508"). The evidence established that
12 Mr. Loehnis , together with three other individuals, took 17 sheets of plywood costing
13 \$146.03 from a construction site.

14 7. On September 23, 1976, Mr. Loehnis was convicted in Case No.
15 DR#76-059508 of Petty Theft, a misdemeanor, and sentenced to six months probation
16 and ordered to pay a \$100.00 fine.

17 8. On February 5, 1977, Mr. Loehnis was arrested by the Phoenix Police
18 Department and charged with DWI, Complaint No. 2017231, in violation of A.R.S. § 28-
19 692(A); Title Transfer, Complaint No. 2239720, in violation of A.R.S. § 28-314(A); and
20 Driving Off Pavement, Complaint No. 2222829, in violation of A.R.S. § 28-724(B).

21 9. On February 24, 1977, the City of Phoenix amended Complaint No.
22 2017231 by dismissing the DWI charge and charging Mr. Loehnis instead with Improper
23 Speed. Mr. Loehnis was found guilty of Improper Speed, in violation of A.R.S. 28-
24 701(A), and sentenced to 10 days in jail and fined \$100.00. On March 2, 1977, the City
25 of Phoenix dismissed Complaint Nos. 2239720 and 2222829.

26 10. On June 29, 1977, Mr. Loehnis was arrested by the Phoenix Police
27 Department for driving on a suspended driver's license and charged with Driving While
28 License Suspended For Points, Complaint No. 2289332, in violation of A.R.S. § 28-
29

1 473(A). On August 17, 1977, Mr. Loehnis was found guilty and sentenced to 10 days in
2 jail, which was reduced to one day time served.

3 11. On July 14, 1977, Mr. Loehnis was arrested by the Phoenix Police
4 Department and charged with Count 1: Driving A Vehicle While License Suspended For
5 Points, Compliant No. 2338552, in violation of A.R.S. § 28-473(A); Count 2: No
6 Motorcycle Rear View Mirror, Complaint No. 2309772, in violation of A.R.S. § 28-964(B);
7 and Count 3: Failure to Appear, Complaint No. 2309772, in violation of A.R.S. § 13-1423.

8 12. On July 14, 1977, Mr. Loehnis was found guilty of No Motorcycle Rear
9 View Mirror in Complaint No. 2309772 and was sentenced to pay \$10.00 or serve one
10 day in jail. The Court also found Mr. Loehnis guilty of Failure To Appear in Complaint No.
11 2309772 and sentenced Mr. Loehnis to pay \$40.00 or serve four days in jail.

12 Subsequently, on August 21, 1977, Mr. Loehnis was found guilty of Driving A Vehicle
13 While License Suspended For Points in Complaint No. 2338552 and sentenced to twenty
14 (20) days in jail and fined \$145.00. According to Mr. Loehnis, the jail sentence was
15 suspended because he completed a driver's education program.

16 13. On August 17, 1977, Mr. Loehnis was arrested by the Phoenix Police
17 Department for driving on a suspended license and charged with Suspended License in
18 violation of A.R.S. § 28-473(A) in Complaint No. 2289332. Mr. Loehnis was sentenced to
19 10 days in jail on August 17, 1977, with one day time served.

20 14. Mr. Loehnis recalled that he was issued a citation for DWI in January
21 1981, but did not recall being arrested, appearing in court , or being convicted for that
22 charge. The Department presented no evidence that Mr. Loehnis was convicted for the
23 1981 DWI.

24 15. In mitigation, Mr. Loehnis credibly testified that his criminal record resulted
25 from several incidents which occurred approximately 20 years ago, when Mr. Loehnis
26 was twenty years old. Shortly after the 1977 incidents, Mr. Loehnis enlisted and served
27 in the United States Army until he received an Honorable Discharge on February 22,
28 1979. Since 1977, Mr. Loehnis has not been convicted of a crime.
29
30

1 16. Mr. Loehnis established a steady employment history since his release
2 from the Army in 1979 and presented credible testimony concerning his involvement in
3 community activities.

4 17. Mr. Loehnis explained that at the time of completing the Application he did
5 not recall the 1976 conviction for misdemeanor Petty Theft. Additionally, Mr. Loehnis
6 credibly testified that he believed because his other arrests were related to traffic
7 violations, disclosure was not required. Mr. Loehnis cited the portion of Question F(3)
8 which "excludes minor traffic violations..." as the source underlying his
9 misunderstanding the Application. Mr. Loehnis credibly testified that he mistakenly
10 believed that traffic related offenses need not be disclosed on the Application even
11 though that traffic offense may be also be designated as a misdemeanor.

12 18. Mr. Loehnis credibly stated that his failure to affirmatively answer
13 Questions F(1) and F(3) on the Application was done without any intent to misrepresent
14 or perpetuate fraud.

15 **CONCLUSIONS OF LAW**

16 1. The Director has jurisdiction over this matter pursuant to A.R.S. § 20-161.

17 2. The failure of Mr. Loehnis to correctly answer Questions F(1) and F(3) on
18 the Application in the affirmative is a material misrepresentation, in the application for or
19 attempt to obtain, any insurance license within the meaning of A.R.S. § 20-290(B)(1).

20 3. Pursuant to A.R.S. § 20-290(B)(1), the Director may refuse to issue a
21 license to Mr. Loehnis if the Director finds that Mr. Loehnis made a material
22 misrepresentation or committed fraud in the application for, or attempt to obtain, any
23 insurance license.

24 4. Notwithstanding the unintentional material misrepresentation made by Mr.
25 Loehnis on his Application, Mr. Loehnis has sustained the burden of proof by
26 establishing that he possesses the requisite qualifications to be licensed by the
27 Department as a property and casualty insurance agent.


28 . . .

29 . . .

RECOMMENDED ORDER

1
2 Under the particular facts and circumstances of this case, including the amount
3 of time which has elapsed since Mr. Loehnis' commission of the offenses and the
4 resulting convictions, which all occurred during 1976 and 1977, and considering Mr.
5 Loehnis' credibility and accomplishments during the past twenty years, it is
6 recommended that the application for a property and casualty insurance agent license
7 submitted to the Department by Brian H. Loehnis on July 12, 1996, be granted.

8 Done this day, December 20, 1996.

9
10
11
12 

13 **Richard N. Blair**
14 Administrative Law Judge

15
16
17
18 *Original*
19 Copy transmitted by mail
20 December 23, 1996
21 by Chris Crawford ; to:

22 John King
23 Director
24 Department of Insurance
25 2910 North 44th Street, #210
26 ATTN: Curvey Burton
27 Phoenix, AZ 85018-7256
28
29
30