

APR 21 1997

DEPT. OF INSURANCE
BY Kathy

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

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4 In the Matter of:) Docket No. 97A-007-INS
5 BRUCE ALLEN SWARTZ,) **ORDER**
6 Petitioner.)
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9 On March 24, 1997, the Arizona Department of Insurance received the "Recommended
10 Decision of Administrative Law Judge" ("Recommended Decision") issued by the Office of
11 Administrative Hearings, through Administrative Law Judge Richard N. Blair. A copy of the
12 Recommended Decision is attached and incorporated by this reference. The Director of the Arizona
13 Department of Insurance has reviewed the Recommended Decision and enters the following order:

- 14 1. Proposed Findings of Fact 1 through 17 are adopted.
15 2. A new finding of fact number 18 is added:

16 The order entered by the Arizona Department of Real Estate in Case No. H-1784 contained Mr.
17 Swartz's consent both to the conclusion that his conduct and the activities leading to his conviction have
18 a bearing upon his character and his consent to revocation of the real estate agent license he held.

- 19 3. Proposed Finding of Fact 18 is renumbered as Finding of Fact number 19.
20 4. Proposed Conclusions of Law 1-3 are adopted.
21 5. Proposed Conclusions of Law 4 is rejected. In its place, the following conclusion

22 of law is entered:
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1 The legislature has vested in the Director the responsibility to determine whether a person meets
2 the requisite requirements to hold an insurance license. The legislature has specifically vested in the
3 Director the power to determine whether a person convicted of a felony involving a crime of moral
4 turpitude may hold an insurance license. Mr. Swartz has only recently been convicted of such an offense,
5 which raises serious questions about his "honesty, integrity, or personal values." *State ex rel. Dean v.*
6 *Dolny*, 161 Ariz. 297, 300, fn. 3, 778 P.2d 1193, 1196, fn. 3 (Ariz. 1989). As noted by the Supreme
7 Court of Arizona, Mr. Swartz's felony conviction involving the trafficking of illegal drugs, meets the
8 elements of moral turpitude. *In re Marquardt*, 161 Ariz. 206, 212, 778 P.2d 241, 247 (1989) (citation
9 omitted). The recent occurrence of his conviction, together with the nature of the offense giving rise to
10 his conviction, raises serious questions about the appropriateness of granting an insurance license to Mr.
11 Swartz.

12 6. The Recommended Order is rejected. In its place, the following order is entered:

13 The application for a resident life and disability insurance agent license submitted to the Arizona
14 Department of Insurance by Bruce Allen Swartz on November 20, 1996 is denied.

15 NOTIFICATION OF RIGHTS

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


19 The final decision of the Director may be appealed to the Superior Court of Maricopa
20 County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office of

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1 Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal,
2 pursuant to A.R.S. §41-1092.10.

3 DATED this 21 day of April, 1997

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6 John A. Greene
7 Director of Insurance

8 A copy of the foregoing mailed
9 this 21 day of April, 1997

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

17 Office of Administrative Hearings
18 1700 W. Washington, Suite 602
19 Phoenix, AZ 85007

20 Gerrie L. Marks
21 Assistant Attorney General
22 1275 W. Washington, Room 259
23 Phoenix, AZ 85007

Robert N. Bass, Ltd.
3200 N. Central, Suite 1850
Phoenix, AZ 85012

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

BRUCE ALLEN SWARTZ,

Petitioner.

No. 97A-007-INS

RECOMMENDED DECISION

OF ADMINISTRATIVE

LAW JUDGE

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HEARING: March 6, 1997

APPEARANCES: Robert Bass, Esq., appeared on behalf of Bruce Allen Swartz, Petitioner; Assistant Attorney General Gerrie Marks appeared on behalf of the Arizona Department of Insurance .

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ADMINISTRATIVE LAW JUDGE: Richard N. Blair

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Based upon the entire record, the following recommended Findings of Fact, Conclusions of Law, and Recommended Order are made:

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FINDINGS OF FACT

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1. On November 20, 1996, Bruce Allen Swartz ("Mr. Swartz") submitted an application for a life and disability insurance agent license ("Application") to the Arizona Department of Insurance ("Department"). In the Application, Mr. Swartz disclosed that he had been convicted of a felony and provided an explanatory letter as part of the Application.

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2. In a letter dated November 29, 1996, the Department informed Mr. Swartz that the Application was denied by the Department pursuant to A.R.S. § 20-290(B)(6).

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3. On December 18, 1996, Mr. Swartz timely filed with the Department a demand for hearing concerning this matter.

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4. On February 21, 1995, Mr. Swartz pleaded guilty to Possession With Intent To Distribute A Controlled Substance in violation of 21 U.S.C. 841(a)(1), in United States Of America v. Bruce Allen Swartz, United States District Court, District of Nevada, Case No. CR-S93-134-LDG RJJ ("Case No. CR-S93-134-LDG").

Office of Administrative Hearings
1700 West Washington, Suite 602
Phoenix, Arizona 85007
(602) 542-9826

1 5. On February 22, 1995, the United States District Court entered a
2 Judgment in Case No. CR-S93-134-LDG, convicting Mr. Swartz of Possession With
3 Intent To Distribute A Controlled Substance, a felony, in violation of 21 U.S.C. §
4 841(a)(1). The Court placed Mr. Swartz on three (3) years probation and ordered Mr.
5 Swartz to pay a fine of \$6,000.00.

6 6. On September 30, 1996, Mr. Swartz was discharged from probation
7 pursuant to an Order Terminating Probation Prior to Original Expiration Date which was
8 entered by the United States District Court, District of Arizona, in United States of
9 America v. Bruce Swartz, Case No. 95-PT-32-PHX-PGR.

10 7. Mr. Swartz credibly testified that prior to being discharged from probation
11 he had fully paid the \$6,000.00 fine which was assessed in Case No. CR-S93-134-
12 LDG.

13 8. Mr. Swartz testified as to the underlying circumstances leading to his
14 arrest and conviction in Case No. CR-S93-134-LDG. According to Mr. Swartz, in 1993
15 Michael Greisman, a cousin living in Las Vegas, Nevada, asked Mr. Swartz to assist in
16 locating a retail location in Phoenix for a record store Mr. Greisman intended to open.
17 After locating a store location Mr. Greisman asked Mr. Swartz to find a rental home for
18 William Boudewyns, Mr. Greisman's store manager. Mr. Swartz agreed to rent to Mr.
19 Boudewyns a home which Mr. Swartz owned in Phoenix. After approximately four
20 months Mr. Boudewyns defaulted on the rent and upon visiting the rental home Mr.
21 Swartz found a FBI notice on the front door requesting that the owner of the home
22 contact the FBI. Mr. Swartz contacted the FBI and subsequently learned that Mr.
23 Boudewyns had been arrested for possession of marijuana with the intent to distribute.

24 9. Mr. Swartz further claimed that on two occasions Mr. Greisman asked Mr.
25 Swartz to reserve a rental car for him because he was coming to Phoenix for business
26 and to play golf with Mr. Swartz. After arriving in Phoenix Mr. Swartz took Mr.
27 Greisman to the car rental agency where Mr. Greisman paid cash for the rental and Mr.
28 Swartz's credit card receipt was returned to Mr. Swartz. Mr. Swartz represented that he
29 was unaware that his cousin and Mr. Boudewyns were involved in the distribution of
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1 drugs or that the rented vehicle was used to transport marijuana from Phoenix to Las
2 Vegas.

3 10. It is undisputed that the crime of possession with the intent to distribute
4 drugs is a crime of moral turpitude with the meaning of A.R.S. § 20-290(B)(6).
5 However, Mr. Swartz contended that his conviction in Case No. CR-S93-134LDG does
6 not constitute a conviction for a felony involving moral turpitude considering the totality
7 of the circumstances as set forth above in paragraphs 8 and 9. Accordingly, Mr. Swartz
8 contends that he had no knowledge that drugs were being distributed by Mr. Greisman
9 and Mr. Boudewyns and that he never received personal gain from his acts, nor was
10 there evidence of a breach of trust, violence, dishonesty or false statements by Mr.
11 Swartz.

12 11. Although Mr. Swartz contended that he was unaware of any illegal
13 activities regarding the distribution of drugs, the evidence clearly established that Mr.
14 Swartz knowingly pleaded guilty to and was convicted of the crime of Possession With
15 Intent To Distribute A Controlled Substance, and that crime constitutes a felony
16 involving moral turpitude.

17 12. Clay Foust ("Mr. Foust"), an owner of West USA Realty and a licensed
18 real estate broker, testified as character witness on behalf of Mr. Swartz. Mr. Foust
19 became acquainted with Mr. Swartz about 8 years ago when Mr. Swartz started
20 working at West USA Realty as a real estate salesperson. Based upon Mr. Foust's
21 working relationship with Mr. Swartz, Mr. Foust described Mr. Swartz as an honest
22 individual and a diligent sales agent. As an example of Mr. Swartz's good character, Mr.
23 Foust testified that Mr. Swartz informed Mr. Foust about the pending criminal charges
24 before a conviction was entered in that matter. Mr. Foust further testified that he would
25 employ Mr. Swartz at West USA if Mr. Swartz had a real estate license. As a part owner
26 of Safeguard Insurance and as a former licensed insurance agent for 20 years, Mr.
27 Foust opined that Mr. Swartz possesses the requisite qualifications to be licensed as an
28 insurance agent. Mr. Foust was a credible and sincere witness.
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1 13. Gary Russell, the vice-president of Safeguard Insurance ("Safeguard"),
2 testified on behalf of Mr. Swartz. Safeguard is an insurance affiliate of West USA. Mr.
3 Russell, who has known Mr. Swartz for the past 5 to 6 years, credibly testified that he
4 considers Mr. Swartz to be an honest person and that the conduct for which Mr. Swartz
5 was convicted was completely out-of-character for Mr. Swartz. Mr. Russell further
6 stated that Mr. Swartz always demonstrated a good work ethic and had an excellent
7 reputation in the real estate business community.

8 14. Mr. Russell first learned of Mr. Swartz's criminal conviction around the
9 same time that Mr. Swartz submitted the Application to the Department. According to
10 Mr. Russell, Mr. Swartz informed Mr. Russell of the circumstances underlying the
11 criminal conviction and asked whether Mr. Russell would employ Mr. Swartz as a
12 insurance agent at Safeguard. Mr. Russell testified that he would hire Mr. Swartz as an
13 insurance agent at Safeguard if Mr. Swartz is granted a license by the Department.
14 Mr. Russell was a sincere and credible witness.

15 15. Arnie Lakeyn testified on behalf of Mr. Swartz. Mr. Lakeyn has been Mr.
16 Swartz's close personal friend for the past 25 years. Mr. Lakeyn considers Mr. Swartz
17 to be a person of honesty, truthfulness, and integrity. Mr. Lakeyn further testified that as
18 a business owner he has dealt with insurance agents for many years and believes that
19 Mr. Swartz possesses the requisite qualifications to be licensed as an insurance agent.
20 Although Mr. Lakeyn's knowledge of Mr. Swartz's criminal conviction was based on
21 information received from Mr. Swartz, Mr. Lakeyn testified that based on his long
22 relationship with Mr. Swartz any involvement with the sale of illegal drugs would
23 represent an aberration from Mr. Swartz's character. Mr. Lakeyn was a sincere and
24 credible witness.

25 16. In mitigation, Mr. Swartz established that his criminal record consists only
26 of the conviction in Case No. CR-S93-134 LDG, wherein the U.S. Probation Office
27 recommended his release from probation after serving only 18 months of a 3 year
28 probation. Based on the character testimony, it is apparent that Mr. Swartz's conviction
29 in Case No. CR-S93-134-LDG represented an aberration from Mr. Swartz's character.
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1 17. Mr. Swartz contended that his conduct regarding the severance of his real
2 estate license is evidence of his integrity and honesty. It is undisputed that within ten
3 days of the conviction Mr. Swartz notified the Arizona Department of Real Estate
4 ("ADRE") of his conviction in Case No. CR-S93-134 LDG pursuant to A.A.C. R4-28-
5 301(c). The evidence established that Mr. Swartz then proceeded to voluntarily sever
6 his real estate license from West USA before ADRE initiated any disciplinary
7 proceedings and immediately ceased any further real estate activity. Subsequently, Mr.
8 Swartz agreed to enter into a Consent Order with the ADRE, in Case No. H-1784,
9 wherein Mr. Swartz's real estate salesperson's license was revoked. The testimony of
10 Mr. Foust and Mr. Swartz established that Mr. Swartz could have continued to operate
11 under his real estate license for a period of months before ADRE initiated and
12 completed any disciplinary proceedings against his license. Mr. Swartz understood the
13 consequences of his conviction and proceeded to act in a forthright manner by
14 voluntarily ceasing further real estate activity. It is therefore determined that Mr.
15 Swartz's conduct and actions in dealing with his real estate license corroborated
16 character testimony which showed Mr. Swartz to be a person of honesty, truthfulness
17 and good character.

18 18. Mr. Swartz credibly testified that he held an Arizona real estate
19 salesperson's license since June 24, 1985, and prior to entering into the 1996 Consent
20 Order no disciplinary action had ever been taken against his license. The testimony
21 from Mr. Foust and Mr. Russell established that Mr. Swartz was an honest, trustworthy,
22 hard working and respected real estate agent . Since his conviction in February 1996,
23 Mr. Swartz has maintained steady employment and recently started a business wherein
24 Mr. Swartz publishes a real estate relocation guide and sells advertising for that
25 publication.

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CONCLUSIONS OF LAW

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

2. Mr. Swartz's criminal conviction in Case No. CR-S93-134 LDG constitutes a record of conviction by final judgment of a felony involving moral turpitude within the meaning of A.R.S. § 20-290(B)(6).

3. Pursuant to A.R.S. § 20-290(B)(6), the Director may refuse to issue a license to Mr. Swartz if the Director finds a record of conviction by final judgment of a felony involving moral turpitude.

4. Notwithstanding Mr. Swartz's criminal felony conviction, Mr. Swartz has sustained his burden of proof by establishing that he possesses the requisite qualifications to be licensed by the Department as a resident life and disability insurance agent.

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RECOMMENDED ORDER

Under the particular facts and circumstances of this case, it is recommended that the application for a resident life and disability insurance agent license submitted to the Department by Bruce Allen Swartz on November 20, 1996, be granted.

Done this day, March 20, 1997.



Richard N. Blair
Administrative Law Judge

1 Original transmitted by mail this
2 21 day of March, 1997, to:

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

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By Shea Rull