

STATE OF ARIZONA

STATE OF ARIZONA  
FILED

DEPARTMENT OF INSURANCE

MAR 27 1997

DEPT. OF INSURANCE  
BY Kathy

|                        |   |                        |
|------------------------|---|------------------------|
| In the Matter of:      | ) | Docket No. 97A-010-INS |
|                        | ) |                        |
| THOMAS A. COLLINS, JR. | ) | <b>ORDER</b>           |
|                        | ) |                        |
| Petitioner.            | ) |                        |
|                        | ) |                        |
|                        | ) |                        |
|                        | ) |                        |

On February 25, 1997, the Office of Administrative Hearings, through Administrative Law Judge George A. Schade, Jr. submitted "Recommended Decision of Administrative Law Judge" (the "Recommended Decision"), a copy of which is attached and incorporated by this reference. Pursuant to A.R.S. §41-1092.08(B), the Director of the Arizona Department of Insurance declines to review the Recommended Decision. Therefore, pursuant to A.R.S. §41-1092.08(D)(1), the Recommended Decision is the final administrative decision.


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. A party filing an appeal must notify the Office of Administrative Hearings of the appeal within ten days after filing the complaint commencing the

1 appeal, pursuant to A.R.S. §41-1092.10.

2 DATED this 27 day of March, 1997.

3  
4   
5 John A. Greene  
6 Director of Insurance

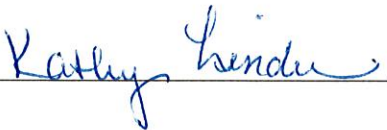
7 A copy of the foregoing mailed  
8 this 27th day of March, 1997

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

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

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

23 Thomas A. Collins  
4405 E. Verbena Drive  
Phoenix, AZ 85044



1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2  
3 In the Matter of:

No. 97A-010-INS

4 THOMAS A. COLLINS, JR.

RECOMMENDED DECISION

5 Petitioner.

6 OF ADMINISTRATIVE

7 LAW JUDGE

8  
9 HEARING: February 20, 1997; 9:00 A.M.; Phoenix, Arizona

10 APPEARANCES:

11 Arizona Department of Insurance: Michael J. De La Cruz, Esq.,

12 Assistant Attorney General

13 Petitioner: Thomas A. Collins, Jr.

14 ADMINISTRATIVE LAW JUDGE: George A. Schade, Jr.

15  
16 Based upon the testimony and evidence presented at the hearing, Administrative  
17 Law Judge George A. Schade, Jr. submits the following Recommended Decision to the  
18 Director of the Arizona Department of Insurance ("Director").

19 **FINDINGS OF FACT**

20 **PROCEDURAL BACKGROUND**

21 1. The allegations numbered 1 through 8 and 9, as amended at the hearing,  
22 contained in the Notice of Hearing Upon Denial of License, issued by the Director on  
23 January 27, 1997, are hereby adopted and incorporated by reference. At the hearing,  
24 allegation number 9 was amended to show that Mr. Collins had not been "found guilty  
25 of Threatening a Public Official, a felony," but that this charge had been amended to  
26 "assault," and Mr. Collins had entered a plea of nolo contendere or no contest to the  
27 charge of assault. *See, Department's Exhibit No. 5b.*

28 Therefore, the only convictions which Mr. Collins did not disclose in both  
29 applications were a misdemeanor conviction for driving while under the influence and a  
30 misdemeanor conviction for assault.

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

1 2. Mr. Collins has never been convicted of a felony offense.

2 3. Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.02(A), the hearing  
3 of this matter was assigned to the Office of Administrative Hearings. On February 20,  
4 1997, a hearing was held, at which the parties presented testimony and documentary  
5 evidence.

6 THE APPLICANT

7 4. Mr. Collins is a graduate of Eastern Michigan University, having earned a  
8 Bachelor of Arts in Finance. He is married and has a five months old son.

9 5. Since March, 1988, he has been employed by the Ford Motor Credit  
10 Company, a subsidiary of the Ford Motor Company. From March, 1988, to October,  
11 1995, he worked as a Dealer Service Analyst and Credit Analyst. Since November,  
12 1995, he has worked as a Sales Representative and Business Development Manager.

13 6. Mr. Collins works directly with auto dealerships, primarily Ford dealerships,  
14 located throughout Arizona. He sells insurance products, such as credit life and  
15 disability insurance products, to the dealerships, which in turn promote and sell these  
16 products to car buyers. He also provides consulting services to Finance Department  
17 Managers. Mr. Collins does not work directly, or on a one-to-one basis, with retail  
18 customers or prospective insurance purchasers.

19 7. Mr. Collins testified that he is required to obtain the licenses, for which he has  
20 applied, for his current position. He testified he does not intend to use these licenses for  
21 any other purpose.

22 8. Mr. Collins does not hold any other insurance or professional licenses issued  
23 by the State of Arizona or any other state.

24 9. Mr. Collins testified credibly and competently. He has cooperated with the  
25 Arizona Department of Insurance ("Department") throughout the course of this  
26 administrative proceeding.

27 THE MISDEMEANOR CONVICTIONS

28 10. Mr. Collins testified that in June, 1991, he had traveled to Miami, Florida,  
29 from Raleigh, North Carolina, where he resided, following a divorce. He had been  
30

1 "drinking" beginning in the early evening of June 8, 1991, and between 9:00 P.M. and  
2 10:00 P.M., he had left and driven away in his vehicle. It was raining, and his car  
3 "slipped out of control," swerved and hit another vehicle. He continued driving, and  
4 shortly thereafter, he was arrested by the Miami Beach Police Department. He had not  
5 been respectful toward one of the arresting officers.<sup>1</sup> He was held overnight, released,  
6 and he returned to North Carolina.

7 11. Mr. Collins did not deny he had been drinking alcohol and stated that the  
8 problems he went through that evening were due to his alcohol consumption. Mr.  
9 Collins testified he has not used alcoholic beverages since March, 1994.

10 12. After his arrest, he retained the services of attorney Brian R. Pingor, of  
11 Hialeah, Florida. Mr. Collins testified he did not return to Florida, and that everything  
12 dealing with this arrest was "handled by mail." The Department's Exhibit No. 4f  
13 substantiates the statement that Mr. Collins resolved this matter legally, by  
14 correspondence with his Florida attorney.

15 13. Mr. Collins pled nolo contendere or no contest to driving while under the  
16 influence and assault, as amended. Both offenses were designated misdemeanors. He  
17 was sentenced, and he has satisfied all the terms of the sentences.

18 14. Mr. Collins paid the amount of \$2,397.76 in satisfaction of all property  
19 damage claims for the damage to the other vehicle. *See, Department's Exhibit No. 4e.*  
20 Mr. Collins testified no personal injuries had occurred as a result of this accident.

#### 21 THE LACK OF DISCLOSURE

22 15. Mr. Collins testified he had read and understood the questions asked in  
23 Section F of both applications.

24 16. Mr. Collins testified that before he completed the two applications, he had  
25 ordered a copy of his "police report" from the Phoenix Police Department. This report  
26 did not make reference or indicate the existence of the two misdemeanor convictions in  
27 Florida in 1991.

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<sup>1</sup> The disrespectful behavior was verbal and related to the fact that Mr. Collins' father is a police  
30 officer.

1 17. Mr. Collins testified he had been advised and informed by Mr. Pingor, his  
2 Florida attorney, in 1991, that the criminal convictions would be "dropped off from [his]  
3 record after five years." As he filed his two applications in July, 1996, he was under the  
4 impression that the two misdemeanor convictions had dropped off from his record, and  
5 he did not need to report them. This belief was further supported by the fact that the  
6 report he had obtained from the Phoenix Police Department did not show these two  
7 convictions.

8 18. Mr. Collins testified he did not have, in his possession after moving to  
9 Phoenix, any records or documents associated with these matters. The documents  
10 were actually in the possession of his former wife, who assisted him in providing copies  
11 to the Department. His former wife had stored these documents for safekeeping.

12 19. Mr. Collins, in fact, was at this time under the belief he had been convicted of  
13 a felony, namely, the charge associated with his actions toward one of the arresting  
14 police officers.

15 20. After the Department began the inquiries which led to this hearing and Mr.  
16 Collins responded to these inquiries, Mr. Collins learned (1) he had not been convicted  
17 of a felony in 1991, (2) the report of the Phoenix Police Department was a local report  
18 and did not include national data, and (3) his attorney informed him that what he had  
19 stated in 1991 was that the misdemeanor convictions would, after five years, "drop off"  
20 from Mr. Collins' *driving* record and not his criminal record.

#### 21 **CONCLUSIONS OF LAW**

22 1. Pursuant to A.R.S. §§ 20-142 and 20-161, the Director is authorized to enter an  
23 appropriate order in this matter.

24 2. Mr. Collins' failure to answer Question 1 and Question 3, of Section F, which he  
25 filed, was a material misrepresentation within the meaning of A.R.S. § 20-290(B)(1).

26 3. Mr. Collins correctly answered Question 2, of Section F, of both applications, as  
27 there is no evidence showing he has ever been convicted of a felony offense.

28 4. The evidence presented at the hearing does not support a finding or conclusion  
29 that Mr. Collins willfully or intentionally misrepresented his answers to Questions 1 and 3,  
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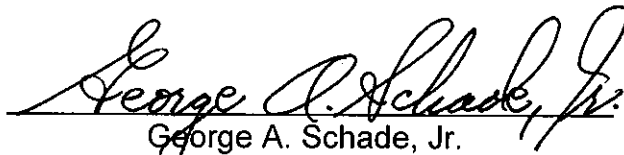
1 of Section F, of both applications. His answers were due to unclear or misunderstood  
2 legal advice and lack of the correct records and documents to answer these questions.  
3 Moreover, Mr. Collins made a reasonable effort to obtain the needed information prior to  
4 answering the questions, when he obtained a copy of a local police report, but did not  
5 know that this report would not contain information from other states.

6 5. The totality of the evidence does not support a finding or conclusion that  
7 grounds exist, pursuant to A.R.S. § 20-290(B)(1), for the Director to refuse to issue to Mr.  
8 Collins either of the licenses for which Mr. Collins has applied.

9 **RECOMMENDED ORDER**

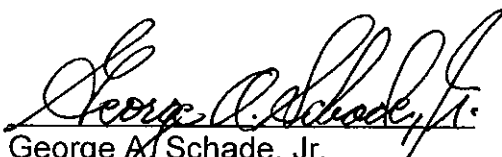
10 It is recommended that the Director approve Mr. Collins' Applications for Individual  
11 Life and Disability Insurance Agent License (filed on July 9, 1996) and Individual Property  
12 and Casualty Insurance Agent License (filed on July 29, 1996).

13 SUBMITTED this 25th day of February, 1997.

14  
15   
16 George A. Schade, Jr.  
17 Administrative Law Judge  
18

19  
20 The original Recommended Decision  
21 was mailed on February 25, 1997,  
22 for distribution to the parties, to:

23 John A. Greene  
24 Director  
25 Arizona Department of Insurance  
26 2910 North 44th Street, Suite 210  
27 Phoenix, Arizona 85018

28   
29 George A. Schade, Jr.  
30