

JUN 4 1997

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY EA

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4 In the Matter of:) Docket No. 97A-074-INS
5 CHARLES W. O'HARA) **ORDER**
6 Petitioner.)
7 _____)

8 On May 23, 1997, the Office of Administrative Hearings, through Administrative Law
9 Judge Lewis D. Kowal, submitted "Recommended Decision of Administrative Law Judge"
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 and enters
12 the following order:

- 13 1. The recommended findings of fact are adopted.
14 2. Recommended conclusions of law ¶¶ 1, 2, and 4 are adopted.
15 3. Recommended conclusion of law ¶ 3 stated in part:

16 Mr. O'Hara's above-mentioned felony conviction constitutes a record of
17 dishonesty on the part of Mr. O'Hara in business or financial matters within the
18 meaning of A.R.S. §20-290(B)(2)

19 This portion of conclusion of law ¶3 is adopted. All other portions of recommended conclusion of law ¶3
20 are rejected.

21 The notice of hearing issued to Mr. O'Hara provided the notice mandated by law and also
22 provided Mr. O'Hara with a clear description of the law and facts to be addressed during the hearing to
23 be held in this matter. Under A.R.S. §41-1092.05(B), the Department had the obligation to serve a

1 notice of hearing on Mr. O'Hara that complied with the provisions of A.R.S. §41-1061(B). This statute
2 requires that a notice of hearing include:

- 3 • A statement of the time, place and nature of the hearing.
- 4 • A statement of the legal authority and jurisdiction under which the hearing is to be held.
- 5 • A reference to the particular sections of the statutes and rules involved.
- 6 • A short and plain statement of the matters asserted.

7 The Department met these obligations, and therefore, the Director may consider A.R.S. §20-290(B)(2)
8 as an additional basis upon which to refuse the application submitted by Mr. O'Hara for an insurance
9 broker's license.


10 4. The application for a property and casualty insurance broker's license submitted by
11 Charles W. O'Hara to the Arizona Department of Insurance on February 12, 1997, is denied.

12 NOTIFICATION OF RIGHTS

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

16 The final decision of the Director may be appealed to the Superior Court of Maricopa
17 County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office
18 of Administrative Hearings of the appeal within ten days after filing the complaint commencing the
19 appeal, pursuant to A.R.S. §41-1092.10.

20 DATED this 3 day of June, 1997

21
22 
23 John A. Greene
Director of Insurance

1 A copy of the foregoing mailed
this 4 day of June, 1997

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

10 Office of Administrative Hearings
11 1700 W. Washington, Suite 602
12 Phoenix, AZ 85007

13 Michael J. De La Cruz
14 Assistant Attorney General
15 1275 W. Washington
16 Phoenix, AZ 85007

17 Charles W. O'Hara, Jr.
18 3005 Maverick Drive
19 Lake Havasu City, AZ 86404

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2 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**
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4 In the Matter of:

5 CHARLES W. O'HARA

6 Petitioner

97A-074-INS

RECOMMENDED DECISION

OF ADMINISTRATIVE

LAW JUDGE

9
10 HEARING: May 16, 1997

11 APPEARANCES: The Petitioner did not appear at the hearing; Assistant
12 Attorney General Michael J. De La Cruz appeared on behalf of the Arizona Department
of Insurance

13 ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal
14

15 **FINDINGS OF FACT**

- 16
- 17 1. On February 12, 1997, Petitioner Charles O'Hara ("Mr. O'Hara") filed an application
18 for a property and casualty insurance broker's license (the "Application") with the
19 Arizona Department of Insurance (the "Department").
 - 20 2. In the Application, Mr. O'Hara disclosed that he had been convicted of a felony.
 - 21 3. On April 9, 1986, Mr. O'Hara entered into a plea agreement in State of Arizona v.
22 Charles O'Hara, Jr., Mohave County Superior Court, Case No. CR-7763("Case No.
23 CR-7763"), wherein Mr. O'Hara pleaded No Contest to one count, Theft, a Class 3
24 Felony, for knowingly obtaining, without authority, the sum of \$10,000.00 from
25 another by means of material misrepresentation with intent to deprive victim of such
26 property, in violation of A.R.S. §§13-1802, 13-701 and 13-801.
 - 27 4. On May 9, 1986, the Court entered a Judgment in Case No. CR-7763, convicting
28 Mr. O'Hara of one count, Theft, a Class 3 Felony, in violation of A.R.S. §§13-1802,
29 13-701 and 13-801.
30

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1700 West Washington, Suite 602
Phoenix, Arizona 85007
(602) 542-9826

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- 2 5. Upon application by Mr. O'Hara, on January 8, 1997, the Court entered an Order
- 3 Restoring Civil Rights, Withdrawing Guilty Plea or Vacating Conviction and
- 4 Dismissing the Information or Indictment in Case No. CR-7763.
- 5 6. On February 26, 1997, the Department notified Mr. O'Hara in writing of its denial of
- 6 the Application pursuant to A.R.S. §20-290 (B)(6).
- 7 7. On March 31, 1997, the Department received Mr. O'Hara's request for hearing on
- 8 the Department's denial of the Application.
- 9 8. At the hearing of this matter, the Department presented evidence supporting its
- 10 denial of the Application.
- 11 9. Mr. O'Hara did not present any evidence in support of the Application and did not
- 12 present evidence that he has the requisite qualification to be issued a property and
- 13 casualty insurance broker's license.
- 14

15 **CONCLUSIONS OF LAW**

- 16 1. Mr. O'Hara has a record of conviction by final judgment of a felony involving moral
- 17 turpitude within the meaning of A.R.S. §20-290(B)(6).
- 18 2. The Director of the Department (the "Director") has discretionary authority to refuse
- 19 to issue Mr. O'Hara an insurance broker's license pursuant to A.R.S. 20-290(B)(6).
- 20 3. Although Mr. O'Hara's above-mentioned felony conviction constitutes a record of
- 21 dishonesty on the part of Mr. O'Hara in business or financial matters within the
- 22 meaning of A.R.S. §20-290 (B)(2), the Department did not deny the Application on
- 23 that basis. Therefore, the Director may not consider A.R.S. §20-290(B)(2) as a
- 24 grounds for refusing Mr. O'Hara an insurance broker's license.
- 25 4. Mr. O'Hara failed to sustain his burden of proof and the preponderance of the
- 26 evidence presented was in support of the Department's denial of the Application.

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RECOMMENDED ORDER

Based on the above, the Administrative Law Judge recommends that the application for a property and casualty insurance broker's license Mr. O'Hara submitted to the Arizona Department of Insurance on February 12, 1997, be denied.

Done this day, May 23, 1997.



Lewis D. Kowal
Administrative Law Judge

Original transmitted by mail this
27 day of May, 1997, to:

Mr. John A. Greene, Director
Department of Insurance
2910 North 44th Street, #210
Phoenix, AZ 85018-7256

ATTN: Curvey Burton

By 