

MAR 2 1998

DEPT. OF INSURANCE  
BY Kath

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

In the Matter of:	)	Docket No. 97A-238-INS
	)	
NANCY LEE MALLGRAF,	)	<b>ORDER</b>
	)	
Petitioner.	)	
_____	)	

On February 23, 1998, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal submitted Recommended Decision of Administrative Law Judge ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Decision and enters the following order:

1. The recommended findings of fact and conclusions of law are adopted.
2. Nancy Lee Mallgraf's application for a life and disability insurance agent's license submitted to the Department on October 3, 1997 is granted.

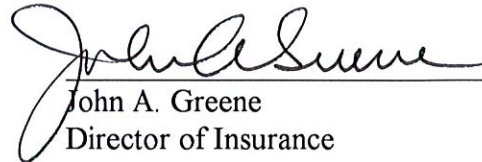
NOTIFICATION OF RIGHTS

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

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 2 day of March, 1998

4  
5  
6   
7 John A. Greene  
8 Director of Insurance

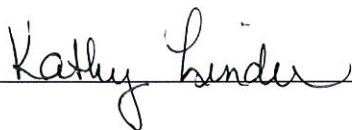
9 A copy of the foregoing mailed  
10 this 2 day of March, 1998

11 Charles R. Cohen, Deputy Director  
12 Gregory Y. Harris, Executive Assistant Director  
13 Catherine O'Neil, Assistant Director  
14 John Gagne, Assistant Director  
15 Scott Greenberg, Business Administrator  
16 Maureen Catalioto, Supervisor  
17 Arizona Department of Insurance  
18 2910 N. 44th Street, Suite 210  
19 Phoenix, AZ 85018

20 Office of Administrative Hearings  
21 1700 W. Washington, Suite 602  
22 Phoenix, AZ 85007

23 Michael J. De La Cruz  
Assistant Attorney General  
1275 W. Washington  
Phoenix, AZ 85007

Nancy Lee Mallgraf  
2708 N. 68th Street, #2502  
Scottsdale, AZ 85257





1 7. Ms. Mallgraf admitted that she had committed a criminal act by picking up a  
2 package for a friend knowing that the package contained a half ounce of cocaine. Ms.  
3 Mallgraf further admitted that, at that time, Ms. Mallgraf knew that her friend would pass  
4 the cocaine onto others thereby obtaining a financial benefit. Ms. Mallgraf testified that  
5 she does not now nor did she at the time of that incident use cocaine. Ms. Mallgraf did  
6 not receive any compensation for helping her friend.

7 8. According to Ms. Mallgraf, she became involved in the above illegal  
8 transaction because her friend was aware that Ms. Mallgraf knew how to contact the  
9 person who was the source for providing the cocaine. Ms. Mallgraf testified that this  
10 was a one time occurrence which was an aberration of her lifestyle and a big mistake  
11 for which she has already paid her debt to society.

12 9. The evidence established that Ms. Mallgraf successfully completed the  
13 terms of her probation and that her probation terminated in July, 1995.

14 10. Ms. Mallgraf has had no criminal convictions other than the above-  
15 mentioned criminal conviction.

16 11. Ms. Mallgraf affirmatively acknowledged the above-mentioned conviction  
17 but represented that she is single and has custody of her five year old son, that she is  
18 active in her church and that she teaches her son by living an exemplary life. Ms.  
19 Mallgraf has disassociated herself from her friend and her lifestyle does not involve  
20 drugs but involves being involved in church and community activities.

21 12. In mitigation, Ms. Mallgraf provided information concerning the events  
22 leading to the illegal transaction and testified as to her activities since the conviction.  
23 Ms. Mallgraf became involved in helping her friend because her friend was in bad  
24 financial condition. Ms. Mallgraf did not know the specifics or extent of her friend's  
25 involvement with cocaine. Once arrested, Ms. Mallgraf cooperated with the police and  
26 attempted, without success, to contact the person who provided her with the cocaine to  
27 arrange a drug transaction. Subsequently, Ms. Mallgraf entered into a plea agreement  
28 as set forth above Ms. Mallgraf regretted her actions which led to her arrest, admitted  
29 that she used poor judgment and that she is more careful with her life and decisions  
30 now, particularly since it also affects her five year old son.

13. Ms. Mallgraf testified that at the time of the illegal transaction, she was  
employed as a bookkeeper for an automobile body shop. During the time when the  
criminal charges were pending before the Court, Ms. Mallgraf became an independent  
contractor performing bookkeeping and accounting functions.

1 14. Ms. Mallgraf currently works as a bookkeeper on an independent contractor  
2 basis. Ms. Mallgraf also works part-time for the National Association of the Self-  
3 Employed where she arranges meeting between insurance agents for the association  
4 and prospective insureds.

5 15. Ms. Mallgraf demonstrated that she has paid her debt to society for the  
6 above-mentioned criminal conviction, has rehabilitated herself and become an active  
7 member of her community.

8 16. Ms. Mallgraf was a sincere and credible witness and the Department did  
9 not present credible evidence to refute Ms. Mallgraf's testimony as set forth above.

#### 10 CONCLUSIONS OF LAW

11 1. The Director of the Department ("Director") has jurisdiction over this matter  
12 pursuant to A.R.S. §20-161.

13 2. Ms. Mallgraf's criminal conviction as set froth above in the Findings of Fact  
14 constitutes a record of conviction by final judgment of a felony involving moral turpitude  
15 within the meaning of A.R.S. §20-290(B)(6).

16 3. Pursuant to A.R.S. §§20-290(B)(2) and 20-290(B)(6), the Director has  
17 discretionary authority to grant or deny the Application.

18 4. Notwithstanding the prior criminal conviction of Ms. Mallgraf, she sustained  
19 her burden of proving that she possesses the requisite qualifications to be licensed by  
20 the Department as a life and disability insurance agent.

#### 21 RECOMMENDED ORDER

22 Under the particular facts and circumstances of this case and the evidence  
23 presented, including but not limited to the duration of time that has elapsed since the  
24 criminal act occurred, the duration of time since probation was successfully completed,  
25 Ms. Mallgraf's remorse as to having committed the offense, Ms. Mallgraf's employment  
26 history and involvement in the community since the offense, the Administrative Law  
27 Judge recommends that Nancy Lee Mallgraf's application for a life and disability  
28 insurance agent's license submitted to the Department on October 3, 1997, be granted.

29 Done this day, February 23, 1998.

30 

LEWIS D. KOWAL  
Administrative Law Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

Original transmitted by mail this  
24 day of February, 1998, to:

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

By Chris Crawford Thomson