

SEP 25 2019

STATE OF ARIZONA DEPT OF INSURANCE
DEPARTMENT OF INSURANCE BY MEK 9/25/19

In the Matter of:

ZRIHEN, DANIEL CHAIM

No. 19A-094-INS

Petitioner.

ORDER

On September 5, 2019, the Office of Administrative Hearings, through Administrative Law Judge Antara Nath Rivera, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Interim Director") on September 17, 2019, a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The Director adopts the Recommended Findings of Fact.
2. The Director adopts Conclusions of Law paragraphs 1 through 6, and 8.
3. The Director modifies paragraph 7 to replace references to "real estate" with "insurance." Paragraph 7 shall read: "Appellant's testimony did not overcome the greater weight of the evidence in the record to compel the Department to issue him **an insurance adjuster** license. More was needed to assure and balance the Department's need to regulate applicants with an applicant's desire to better themselves through the pursuit of professional success in the **insurance** field."
4. The Director adopts the Recommended Order.

1 **COPY** of the foregoing delivered, same date, to:

2 Mary Kosinski, Regulatory Legal Affairs Officer
3 Catherine O'Neil, Consumer Legal Affairs Officer
4 Steven Fromholtz, Assistant Director – Consumer Protection Division
5 Aqueelah Currie, Licensing Supervisor
6 Sharyn Kerr, Consumer Protection Division
7 Arizona Department of Insurance
8 100 North 15th Ave., Suite 102
9 Phoenix, Arizona 85007-2624

6 **COPY** sent same date via electronic mail to:

7 Daniel Zrihen
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9 Petitioner

10 Felicia DelSol
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12 Office of Administrative Hearings

12 Susan Hack
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19 Francine Martinez

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SEP 17 2019

DEPT. OF INSURANCE
BY: MEK

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

ZRIHEN, DANIEL CHAIM
Appellant

No. 19A-094-INS

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING: August 26, 2019

APPEARANCES: Daniel Chaim Zrihen appeared on his own behalf. The Arizona Department of Insurance was represented by Assistant Attorney General Deian Ousounov.

ADMINISTRATIVE LAW JUDGE: Antara Nath Rivera

FINDINGS OF FACT

1. On or about May 5, 2019, Daniel Chaim Zrihen (Appellant) submitted an application to the Arizona Department of Insurance (Department). Appellant answered "Yes" to Question 2 of the Background section which, as pertinent to this matter, asks in part, "[h]ave you ever been named or involved as a party in an administrative proceeding, including FINRA sanction or arbitration proceeding regarding any professional or occupational license or regulation?"

2. As a result of the background investigation, the Department discovered, that, on or about August 18, 2016, the Arizona Registrar of Contractors (ROC) revoked the dual residential and small commercial contracting license issued to ROI Improvements, LLC (ROI). Appellant was manager, and member, of ROI from May 2013 to August 16, 2016.

3. On or about June 5, 2019, the Department notified Appellant that his license application was denied.

4. On or about June 28, 2019, Appellant filed a timely appeal of the denial of his application.

5. On or about July 16, 2019, the Department issued a Notice of Hearing to Appellant setting this matter for hearing at 1:00 p.m. on August 26, 2019.

1 6. Aqueelah Currie (Ms. Currie), Licensing Supervisor, testified that when an
2 applicant had administrative actions against him, the Department investigated the
3 nature of the action to determine how much money was involved, the nature of the
4 breach of contract and trust, and the extent an applicant's actions would hurt the public.

5 7. Ms. Currie testified that Appellant was truthful and answered "Yes" to
6 Question #2. She stated that the Department learned that Appellant's ROC license was
7 revoked because he had 37 pending cases and one open case. She stated that,
8 multiple default judgments, totaling \$215,000.00, were entered against ROI. Ms. Currie
9 stated that while ROI paid off \$200,000.00 there remained a balance of \$15,000.00 that
10 was owed to remaining customers.

11 8. The Department reached out to Appellant to address this issue, however,
12 Appellant never responded. Ms. Currie opined that the fact that Appellant did not
13 respond was a concern because the Department would not be able to regulate
14 Appellant.

15 9. Additionally, Ms. Currie stated that the default judgments were entered as
16 recently as 2017. She opined that the length of time that expired was not long enough
17 to be considered as mitigation. The fact that there was a large portion of the public that
18 suffered financially, because of Appellant's actions, the Department appropriately
19 denied Appellant's license to protect the public from such financial loss.

20 10. At hearing, Appellant put on one witness, Leeann Cannon (Ms. Cannon),
21 who testified that she was ROI's Certified Public Accountant (CPA). She did not provide
22 any dates of her employment with ROI. Ms. Cannon testified that she observed
23 unusually large amounts of money were taken out of ROI's account after she started.
24 She testified that Tim Stapp (Mr. Stapp), co-owner of ROI, took money from ROI, never
25 documented what he took, and left ROI without returning the money. Ms. Cannon did
26 not state how she knew that it was Mr. Stapp who took the money. She stated that she
27 alerted Appellant immediately. She stated that Appellant put \$50,000.00 of his own
28 money into ROI's account to help the customers Mr. Stapp defrauded.

29 11. Appellant testified on his own behalf and stated that he had no knowledge
30 of Mr. Stapp's actions until Ms. Cannon informed him of the lack of funds. He stated

1 that he was young when he started the contracting business with Mr. Stapp. Appellant
2 testified that he thought the amounts Mr. Stapp withdrew were normal because he was
3 not familiar with the construction business.

4 12. Appellant stated that, in the end of 2014, he realized the extent of the
5 damages caused by Mr. Stapp. He testified that his first goal was to help the
6 customers. Appellant stated that initially, there were 1000 customers who were affected
7 by Mr. Stapp's deception. He testified that he brought that number down to 37 but was
8 forced to file for bankruptcy, as a result of trying to financially help those customers.

9 13. Appellant opined that he never meant to defraud his customers. While he
10 acknowledged ROI's wrongdoings, he did not take the responsibility because it was Mr.
11 Stapp's fault. Appellant also stated that the United States Trustee did not find any
12 wrong doing by Appellant.

13 CONCLUSIONS OF LAW

14 1. Appellant bears the burden of persuasion. See ARIZ. REV. STAT. § 41-
15 1092.07(G)(1).

16 2. The standard of proof on all issues in this matter is that of a
17 preponderance of the evidence. ARIZ. ADMIN. CODE R2-19-119.

18 3. A preponderance of the evidence is:

19 The greater weight of the evidence, not necessarily
20 established by the greater number of witnesses testifying to a
21 fact but by evidence that has the most convincing force;
22 superior evidentiary weight that, though not sufficient to free
23 the mind wholly from all reasonable doubt, is still sufficient to
incline a fair and impartial mind to one side of the issue rather
than the other.

24 BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

25 4. The judgment against Appellant showed that he engaged in conduct that
26 included financial irresponsibility in the conduct of business in this state or elsewhere.
27 Consequently, the Department's Director has discretion to deny Appellant's application
28 based on ARIZ. REV. STAT. § 20-295(A)(8).
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Keith A. Schraad, Director
Arizona Department of Insurance