

AUG 13 1993

STATE OF ARIZONA

DEPARTMENT OF INSURANCE DEPARTMENT OF INSURANCE
By

In the Matter of) Docket No. 8035
)
DANA LEE PEARSON,) ORDER
)
 Petitioner.)
_____)

On July 27, 1993, a hearing was held in the above-captioned matter. Petitioner was present in person and through counsel, Joe M. Romley, Esq. The Arizona Department of Insurance ("Department") was represented by Gerrie Switzer, Esq., Assistant Attorney General.

Based upon the evidence and arguments presented at hearing, we find as follows:

FINDINGS OF FACT

1. Notice of this hearing was mailed to Petitioner at his address of last record.
2. In the course of the hearing, Petitioner stipulated to the truth and accuracy of the facts alleged in the Notice of Hearing issued on March 16, 1993.
3. On or about December 21, 1992, Petitioner submitted an application for a life and disability insurance agent's license to the Department. In the application Petitioner disclosed that he had previously held a property and casualty license issued by the Department. The previous license was originally suspended by Order entered August 20, 1984. The license was suspended because Petitioner failed to disclose a

1 felony conviction for forgery¹ in his renewal application
2 dated January 13, 1984 and because Petitioner forged a signature
3 in order to cash a check.²

4 3. Based on the documents submitted in evidence and
5 the uncontradicted testimony of Petitioner, it is found that in
6 1982 Petitioner's father filed an application to insure jewelry
7 inherited from Petitioner's grandparents. The jewelry had been
8 appraised by his grandparents and was in their name.

9 Petitioner, at the request of this father, whited out the
10 grandparents name on the appraisal report and made copies for
11 his father. Thereafter Petitioner's father filed a false
12 insurance claim on the jewelry. Petitioner did not know his
13 father intended to file the false claim. Petitioner received a
14 one year suspended sentence and paid a \$500.00 fine.

15 4. Petitioner also disclosed in his license
16 application that his previous Arizona license was revoked on
17 June 18, 1985, subsequent to the suspension because he continued
18 to transact insurance business as an agent despite the fact that
19 his license was suspended. In fact during his suspension
20 Petitioner wrote fifty-four policies of new business with

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23 ¹In or about July, 1983, Petitioner was convicted of
24 forgery in State v. Dana Lee Pearson, in the Court of Common
25 Pleas, Franklin County, Ohio, No. 82CR-11-3918. The record of
26 conviction was expunged on June 13, 1991, No. EXP-08-150.

27 ²Petitioner had also failed to disclose a misdemeanor
28 conviction from 1975. The Department's 1984 Suspension Order
did not find the non-disclosure of the misdemeanor material.
Therefore, the misdemeanor will not be considered in arriving at
the final decision in this matter.

1 Mid-America Insurance Company and subsequently collected
2 premiums and commissions from the sales. Further Petitioner
3 rewrote nine policies or renewals during his suspension.

4 Petitioner had no explanation for his conduct in
5 selling policies while his license was suspended which resulted
6 in the 1985 order revoking his insurance license.

7 5. On or about December 1986, Petitioner was
8 convicted for Presentment of False Instrument for Filing
9 in State v. Dana L. Pearson, Maricopa County Superior Court,
10 No. CR159924. On April 27, 1989, an Order Vacating Judgment of
11 Guilt, Dismissing Charges, and Restoring Civil Rights was
12 entered in No. CR159924. Based on documentary evidence admitted
13 in evidence and Petitioner's uncontroverted testimony it is
14 found that Petitioner failed to disclose the Ohio felony
15 conviction in connection with the filing of Articles of
16 Incorporation with the Arizona Corporation Commission.
17 Petitioner did not read the disclosure statement on the
18 documentation, which was prepared by an attorney and his
19 partner.

20 6. By letter dated January 15, 1993, the Department
21 denied Petitioner's application pursuant to A.R.S. §20-290(B).

22 7. By letter dated January 28, 1993 and received at
23 the Department on January 28, 1993, Petitioner timely requested
24 a hearing to contest the denial.

25 8. Petitioner has worked for six years as finance
26 director at Culiver Pontiac/GMC and as leasing manager at Midway
27 Chevrolet for the past two years. No evidence was presented to
28 show that Petitioner has engaged in any misconduct since his

1 felony conviction in 1986. Petitioner wants an insurance
2 license so that he can legally offer credit life policies to his
3 customers. Presently the customers are being offered the
4 policies by four other licensed agents on the premises.
5 Petitioner has been trained on the credit life product.

6 9. Petitioner presented character testimony from Tom
7 Irvin, President of Midway Chevrolet and Petitioner's employer
8 for the past two years. Mr. Irvin testified that Petitioner
9 performed his job in a professional manner and that he had
10 received no complaints regarding Petitioner's honesty and
11 integrity.

12 10. Petitioner submitted three character letters also
13 indicating that Petitioner was a man of honesty and integrity.
14 The letters were given little weight since the writers were
15 unavailable for cross-examination. The letters were considered
16 as corroborating evidence of Petitioner's and Mr. Irvin's
17 testimony.

18 CONCLUSIONS OF LAW

19 1. The Director has jurisdiction in this matter
20 pursuant to A.R.S. §20-142.

21 2. Notice of this hearing was proper pursuant to
22 A.R.S. §§20-163 and 41-1061.

23 3. Petitioner's actions during 1984 and 1985 as
24 discussed in finding of fact no. 4 reflect a record of conduct
25 under an insurance license issued in this state and elsewhere
26 which show him to be incompetent or a source of injury and loss
27 to, or repeated complaint by, the public or any insurer within
28 the meaning of A.R.S. §20-290(B)(4).

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4. The 1984 and 1985 orders of the Director suspending and revoking Petitioner's license each constitute a record of suspension and revocation of an insurance license, within the meaning of A.R.S. §20-290(B)(5).

5. It is within the Director's discretion to grant Petitioner's application for an insurance agent's license based upon the facts and testimony presented pursuant to A.R.S. §20-290.

6. We find that Petitioner is credible and recognizes his misconduct. Petitioner has made great efforts in the last six years to clean his record, establish a new career, and build his business reputation for honesty and integrity.

NOW, THEREFORE, IT IS ORDERED that

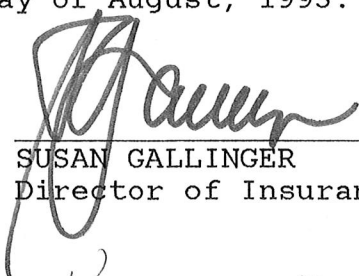
1. Petitioner's application for an insurance agent's license is granted, and Petitioner shall be issued an insurance agent's license.

2. The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Hearing Officer within 30 days of the date of this Order,

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1 setting forth the basis for such relief pursuant to A.A.C.
2 R4-14-114(B).

3 DATED this 13th day of August, 1993.

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5 _____
6 SUSAN GALLINGER
7 Director of Insurance

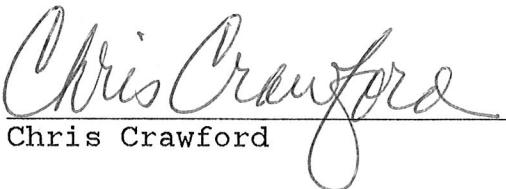
8 
9 _____
10 KATRINA ROGERS
11 Chief Hearing Officer

12 COPY of the foregoing mailed/delivered
13 this 13th day of August, 1993, to:

14 Gerrie Switzer, Esq.
15 Assistant Attorney General
16 1275 W. Washington
17 Phoenix, Arizona 85007

18 Charles R. Cohen, Acting Deputy Director
19 Jay Rubin, Assistant Director
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29 
30 _____
31 Chris Crawford