

OCT 29 1998

DEPT. OF INSURANCE  
BY Kate

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of: )  
 )  
RODNEY FRANKLIN CAIN )  
 )  
Petitioner. )

Docket No. 98A-134-INS

**ORDER**

On October 27, 1998, the Office of Administrative Hearings, through Administrative Law Judge Robert I. Worth, issued a Decision and Recommended Order ("Recommended Order"), a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Order and enters the following Order:

1. The recommended Findings of Fact and Conclusions of Law are adopted.
2. The Petitioner's license application is denied.

NOTIFICATION OF RIGHTS

Pursuant to A.R.S. § 41-1092.09, the aggrieved party may request a rehearing with respect to this Order by filing a written motion with the Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis for relief under 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. §§ 12-904 and 20-166. A party filing an appeal must

1 notify the Office of Administrative Hearings of the appeal within ten days after filing the complaint  
2 commencing the appeal, pursuant to A.R.S. § 12-904(B).

3 DATED this 28<sup>th</sup> of October, 1998

4 

5 \_\_\_\_\_  
6 Charles R. Cohen  
7 Acting Director of Insurance

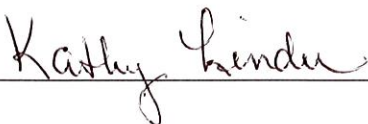
8 A copy of the foregoing mailed  
9 this 29 day of October, 1998

10 Sara M. Begley, Acting Deputy Director  
11 Vista T. Brown, Executive Assistant  
12 Gerrie L. Marks, Executive Assistant  
13 John Gagne, Assistant Director  
14 Catherine O'Neil, Legal Affairs Officer  
15 Scott Greenberg, Business Administrator  
16 Department of Insurance  
17 2910 N. 44th Street, Suite 210  
18 Phoenix, AZ 85018

19 Michael J. De La Cruz  
20 Assistant Attorney General  
21 1275 W. Washington  
22 Phoenix, AZ 85007

23 Office of Administrative Hearings  
1700 W. Washington, Suite 602  
Phoenix, AZ 85007

Rodney Franklin Cain  
17425 N. 19th Avenue, #1218  
Phoenix, AZ 85023

21   
22 \_\_\_\_\_

1  
2 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

3  
4 **In the matter of:**

**Docket No. 98A-134-INS**

5 **RODNEY FRANKLIN CAIN,**

**DECISION AND RECOMMENDED ORDER**

6 **Petitioner.**

7  
8 **HEARING:** October 16, 1998.

9 **APPEARANCES:** Petitioner, Rodney Franklin Cain, appeared in is own behalf.

10  
11 The Arizona Department of Insurance (herein called the  
12 "Department") was represented by Assistant Attorney  
13 General, Michael J. De La Cruz, Esq.

14 **ADMINISTRATIVE LAW JUDGE:** Robert. I. Worth

15  
16 Evidence and testimony were presented, and based upon the entire case record,  
17 the following Findings of Fact, Conclusions of Law and Recommended Order have  
18 been prepared and are hereby submitted by the Administrative Law Judge for review,  
19 consideration, approval and adoption by the Director of the Department (herein called  
20 the "Director").

21 **FINDINGS OF FACT**

22 1. On or about November 14, 1997, the above-named Petitioner filed a formal  
23 written application for an insurance adjuster's license which was subsequently  
24 submitted to the Department in January, 1998. The Department's application form  
25 required answers by an applicant to various questions about the individual and his or  
26 her past history.

27 2. The Department issued a conditional license to Petitioner on January 8, 1998  
28 pending the completion of a criminal background check. By a letter notification dated  
29 July 13, 1998, the Department revoked the conditional license and also denied the  
30 underlying application for licensure. The instant hearing was convened following the

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

1 filing of a timely request by Rodney Franklin Cain who is, in effect, contesting the  
2 Department's denial action.

3  
4 3. Notwithstanding the clarity of the express wording on the application form, Mr.  
5 Cain did not insert any answer to a question as to whether or not he had ever been  
6 convicted of a felony. Additionally, he did insert a negative answer to another series of  
7 questions as to whether he ever had a judgment made against him in a criminal  
8 proceeding based upon misappropriation or conversion of monies, upon dishonesty in  
9 business or financial matters, or upon fraud or misrepresentation.

10 4. It was not disputed that Petitioner had been convicted of a felony by judgment  
11 of a United States District Court in Missouri entered on October 3, 1986. The conviction  
12 was for the offense of devising and intending to devise a scheme to defraud a credit  
13 union, as well as twenty-one of its individual members, and of obtaining money by  
14 means of false pretenses, representations and promises. The underlying conduct, in  
15 the nature of mail fraud, took place from February, 1985 through December, 1985 when  
16 Petitioner was 22 years of age. It is found and determined that the crime or crimes for  
17 which Petitioner was charged and convicted involved a high degree of moral turpitude.

18 5. The sentence imposed by the Court included a period of two years  
19 imprisonment plus a period of probation for five years. In addition, Petitioner was  
20 ordered during his probation period to pay restitution in an aggregate sum of  
21 \$16,412.00 and also to pay designated fines and assessments in the combined amount  
22 of \$2,050.00.

23 6. Mr. Cain was released from prison after having served only ten months of his  
24 two-year sentence, and began his five-year probation approximately in August, 1987.  
25 During the periods of his incarceration and his probation, Mr. Cain had been remitting  
26 payments of the restitution, fines, and assessments imposed as part of his sentence.  
27 The individual payments ranged from \$75.00 to \$100.00 each month. Upon the  
28 conclusion of his probation period, assertedly following advice from his Probation  
29 Officer, further monthly payments were discontinued. At most, according to a  
30

1 reasonable mathematical calculation based on the evidence at the hearing, the total  
2 payments transmitted by Petitioner for the 70-month combined periods of incarceration  
3 plus probation constituted substantially less than one-half of the aggregate amount of  
4 restitution, fines, and assessments imposed by the Court's judgment.

5  
6 7. Apart from the above-described criminal conduct, resulting in a felony  
7 conviction over twelve years ago, Petitioner has not thereafter become involved with  
8 any other instance of misconduct or misbehavior, criminal or civil. He has married and  
9 presently has two minor children.

10 8. Mr. Cain has worked as an insurance claims adjuster both in Missouri and in  
11 Arizona. His last such position was with Republic Western for whom he worked, first as  
12 a temporary full-time employee and later, after he was issued the conditional license by  
13 the Department, as a permanent full-time employee. The duration of time that he was  
14 performing the functions of an insurance claims adjuster was from November, 1996  
15 through August, 1998. It is found that, apart from a statutorily allowable maximum time  
16 period of six months for training, all remaining work time until the issuance of the  
17 conditional license in January, 1998, a period in excess of seven months (May, 1997  
18 through December, 1997) plus his last month of work after the revocation of the  
19 conditional license was without any required license and, therefore, was impermissible.

20 9. Reasons given at the hearing by Mr. Cain for not affirmatively disclosing his  
21 prior felony conviction and for not ceasing his claims adjuster work after he was notified  
22 that his conditional license was revoked are determined to be rather weak and non-  
23 persuasive, therefore not presenting any valid excuse or even constituting a mitigating  
24 circumstance. On the contrary, he was shown to have effectively ignored the question  
25 on the application form, to have ignored the statutory prohibition against doing  
26 insurance adjuster work without a license and also to have ignored the impact of the  
27 letter revoking his conditional license.

28 10. The commendable progress at work and as a family man on the part of Mr.  
29 Cain since the criminal activity and the felony conviction, his youthful age at the time  
30

1 and the duration of time that has elapsed have all been considered and evaluated.  
2 However, these factors must nevertheless be balanced against the seriousness of the  
3 admitted offense and, of perhaps greater significance, the engaging in unlicensed  
4 activity and the failure to disclose his criminal history on the license application  
5 submitted.

6  
7 **CONCLUSIONS OF LAW**

8 1. The director has jurisdiction over this matter pursuant to the provisions of  
9 A.R.S. §§ 20-161 and 20-290.

10  
11 2. The evidence of record adequately established that Respondent has been  
12 convicted of a felony for an offense involving a high degree of moral turpitude, and  
13 consequently, under the express provisions of A.R.S. §20-290(B)(6), the Director is  
14 empowered to deny the application for licensure based upon the felony conviction  
15 which also constitutes a record of dishonesty in business or financial matters as set  
16 forth in A.R.S. §20-290(B)(2).

17 3. The express provisions of A.R.S. §20-312A set forth a maximum period of six  
18 months during which an individual may receive training prior to obtaining a license.  
19 Petitioner not only continued to function as a claims adjuster beyond the allowable time  
20 period but also failed to even file an application for the required license until eight more  
21 months had elapsed. Such unlicensed activity on the part of Petitioner was also  
22 violative of the provisions of A.R.S. §20-107(A).

23 4. The serious nature of the offense committed considered together with  
24 Petitioner's failure to affirmatively disclose the prior misconduct on his license  
25 application, as well as his having admittedly engaged in the business of an insurance  
26 claims adjuster without any license for a prolonged time span far in excess of an  
27 allowable training period, considered in combination, serve to support the Department's  
28 position in concluding that he is unfit to be granted a license at the present time. In any  
29 event, it is concluded that Petitioner has not sustained his burden of proof, imposed  
30

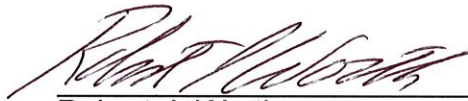
1 pursuant to the provisions of A.R.S. §41-1065, so as to adequately demonstrate his  
2 entitlement to be granted the license sought herein. A denial of the license application  
3 is appropriate and fully warranted in this case.  
4

5 **RECOMMENDED ORDER**

6  
7 In view of the foregoing, it is recommended that the Director enter his Order that  
8 affirms the Department's prior denial of the pending license application submitted by  
9 Petitioner, Rodney Franklin Cain.

10 Dated: October 27, 1998.

11  
12 OFFICE OF ADMINISTRATIVE HEARINGS

13 

14 Robert. I. Worth  
15 Administrative Law Judge  
16  
17  
18  
19  
20  
21

22 Original transmitted on October 26, 1998

23  
24 by: Jerry Muncie, to:  
25

26 Charles R. Cohen, Acting Director,  
27 Arizona Department of Insurance  
28 2910 North 44th Street (Suite 210)  
Phoenix, AZ 85018

29 ATTN: Curvey Burton  
30