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STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

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In the Matter of ) Docket No. 95-180  
)  
DARNELL EDWARD MICKEL, ) ORDER  
)  
Applicant. )  
\_\_\_\_\_ )

On October 26, 1995, a hearing took place in the above-captioned matter. Assistant Attorney General Michael J. De La Cruz appeared on behalf of the Arizona Department of Insurance ("Department"). Darnell Edward Mickel ("Mr. Mickel") appeared unrepresented by counsel.

Based upon the entire record in this matter, including all pleadings, motions, testimony, and exhibits admitted during the hearing of this matter, Administrative Law Judge Lewis D. Kowal has prepared the following Findings of Fact, Conclusions of Law, and Order for consideration and approval by the Director of the Arizona Department of Insurance (the "Director"). The Director adopts and enters the following Findings of Fact, Conclusions of Law and enters the following Order:

FINDINGS OF FACT

1. On August 24, 1994, Mr. Mickel submitted an application for an individual resident disability insurance agent license (the "1994 Application").
2. On August 24, 1994, the Department issued Mr. Mickel a conditional resident disability insurance agent license (license number 25755) in connection with the 1994 Application and Mr. Mickel's execution of an Agreement for Conditional License.

1           3. Mr. Mickel answered "No" to Question F(3) of the  
2 1994 Application which asks "Have you ever been arrested,  
3 questioned, served a criminal summons, taken into custody,  
4 charged with, tried for, or ever been the subject of an  
5 investigation concerning the violation of any felony or  
6 misdemeanor, or are any charges now pending against you?".

7           4. On January 9, 1995, Mr. Mickel submitted a renewal  
8 application for the resident disability insurance agent license.  
9 The renewal application did not contain the question found in  
10 F(3) of the 1994 Application. The license was renewed.

11           5. Mr. Mickel failed to disclose on the 1994  
12 Application that on or about August 31, 1977 he was arrested,  
13 taken into custody and charged with burglary by the Omaha Police  
14 Department of the State of Nebraska. Mr. Mickel also failed to  
15 disclose that on or about July 10, 1988, he was arrested, taken  
16 into custody or charged with theft by receiving stolen property  
17 by the Omaha Police Department of the State of Nebraska.

18           6. On July 27, 1995, the Department revoked the  
19 conditional license that was issued to Mr. Mickel and denied the  
20 1994 Application based on Mr. Mickel's material misrepresentation  
21 of his criminal background on the 1994 Application as described  
22 above.

23           7. On August 3, 1995, Mr. Mickel filed with the  
24 Department a timely request for hearing.

25           8. The above-referenced criminal charges were  
26 subsequently dismissed. Mr. Mickel credibly testified that as a  
27 result of statements made by the Judge who dismissed the charges  
28 and the Public Defender who represented him in the 1977 charge,

1 Mr. Mickel thought that his criminal record was clean. Mr.  
2 Mickel further credibly testified that because the charges were  
3 dismissed he believed that neither the arrests nor the criminal  
4 charges needed to be disclosed on the 1994 Application.

5 9. At the hearing, Mr. Mickel credibly testified that  
6 he did not intend to misrepresent or commit fraud by failing to  
7 disclose the arrests and charges that were dismissed. Mr. Mickel  
8 also credibly testified that, at that time, he believed that if  
9 he were mistaken as to whether that information needed to be  
10 disclosed upon further inquiry by the Department, he would  
11 provide that information.

12 10. Mr. Mickel's uncontroverted testimony was that to  
13 his knowledge, except for a criminal charge as a juvenile, he has  
14 never had a criminal violation or any complaints filed with the  
15 Arizona Department of Insurance.

16 11. The Department sent Mr. Mickel a letter dated  
17 January 17, 1995 which requested that Mr. Mickel provide the  
18 Department with information and documents regarding the August  
19 31, 1987 and September 16, 1987 burglary charges and a July 10,  
20 1988 theft charge. Mr. Mickel provided the Department with  
21 certified copies of the Information and Order of Dismissal  
22 regarding the charge of burglary filed October 1, 1987 and the  
23 charge of theft by receiving stolen property filed July 21,  
24 1988. As to the other burglary charge, Mr. Mickel credibly  
25 testified that he contacted the District Court of Douglas County,  
26 State of Nebraska to obtain court documents and was informed that  
27 none existed. There was no evidence presented to contradict Mr.  
28

1 Mickel's testimony as it relates to the existence of court  
2 documents pertaining to the criminal charges.

3 12. Mr. Mickel admitted that he may have made a  
4 mistake on the 1994 Applications by not disclosing the above-  
5 mentioned criminal charges and arrests relating to those charges  
6 and he regrets having done so. Mr. Mickel acknowledged the  
7 gravity of not properly answering questions on an insurance  
8 application.

9 CONCLUSIONS OF LAW


10 1. The Director has jurisdiction over this matter  
11 pursuant to A.R.S. 20-161.

12 2. Mr. Mickel has demonstrated that the failure to  
13 answer question E(3) on the 1994 Application was not done with  
14 the intent to materially misrepresent or commit fraud within the  
15 meaning of A.R.S. §20-290(B)(1). Mr. Mickel has met his burden  
16 of proof and shown that he possesses the requisite qualifications  
17 to be licensed by the Department as an individual resident  
18 disability agent.

19 ORDER

20 IT IS ORDERED that an individual resident disability  
21 agent license be issued to Darnell Edward Mickel.

22 EFFECTIVE this 17th day of November, 1995.

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25 CHRIS HERSTAM  
26 Director of Insurance

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LEWIS D. KOWAL  
Chief Administrative Law Judge

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NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Administrative Law Division within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R4-14-114(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.

COPY of the foregoing mailed/delivered this 17th day of November, 1995, to:

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Gregory Y. Harris, Executive Assistant Director  
Maureen Catalioto, Supervisor, Licensing  
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