

MAY 13 1997

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY Kathy

In the Matter of:)	Docket No. 97A-055-INS
)	
CARMELO PAGLIARELLO, dba)	ORDER
GARCIA'S BAIL BONDS,)	
)	
Applicant.)	
_____)	

On April 30, 1997, the Office of Administrative Hearings, through Administrative Law Judge Kip M. Micuda, 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. Carmelo Pagliarello's application for an individual insurance license, submitted to the Department on November 19, 1996 is denied.


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 13 day of May, 1997

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6 
7 John A. Greene
Director of Insurance


8 A copy of the foregoing mailed
9 this 13th day of May, 1997

10 Charles R. Cohen, Deputy Director
11 Catherine O'Neil, Assistant Director
12 John Gagne, Assistant Director
13 Maureen Catalioto, Supervisor
14 Department of Insurance
15 2910 N. 44th Street, Suite 210
16 Phoenix, AZ 85018

17 Gerrie L. Marks
18 Assistant Attorney General
19 1275 W. Washington
20 Phoenix, AZ 85007

21 Kip Micuda
22 Administrative Law Judge
23 Office of Administrative Hearings
1700 W. Washington, Suite 602
Phoenix, AZ 85007

Thomas A. Thinnes, P.A.
1005 North Second Street
Phoenix, AZ 85004
Attorney for Applicant



1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 **CARMELO PAGLIARELLO, dba**
GARCIA'S BAIL BONDS,

97A-055-INS

4 Applicant.

5 **RECOMMENDED DECISION**
6 **OF ADMINISTRATIVE**
7 **LAW JUDGE**

8 **HEARING:** April 14, 1997.

9
10 **APPEARANCES:** Thomas A. Thines appeared representing Carmelo
11 **Pagliarello, Applicant. Gerrie L. Marks, Assistant Attorney General, appeared**
12 **representing the Arizona Department of Insurance.**

13 **ADMINISTRATIVE LAW JUDGE:** Kip M. Micuda

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16 The hearing in this matter was held for the purpose of determining whether the
17 **Arizona Department of Insurance’s (the “Department”) refusal to issue Applicant a bail**
18 **bond agent license is justified. Evidence and testimony were presented and, based**
19 **upon the entire record, the following Findings of Fact, Conclusions of Law, and**
20 **Recommended Decision are made:**

21
22 **FINDINGS OF FACT**

23 1. On November 19, 1996, Carmelo Pagliarello, Applicant, submitted to the
24 **Department an Application for an Individual Insurance License; that is, an application**
25 **for a bail bond agent license. (Department’s Exhibit A).**

26
27 2. Applicant disclosed in the application that his previous license as a bail
28 **bond agent was revoked on July 13, 1995. (Department’s Exhibits A and B).**

29 3. The record evidences that Applicant’s license was revoked, in part,
30 **because of the record of his 1992 conviction for solicitation to possess marijuana for**

1 sale, a felony conviction of moral turpitude; a record of dishonesty on the part of
2 Applicant in business or financial matters; and a material misrepresentation in his 1992
3 and 1994 renewal applications, in that he failed to disclose both the existence of
4 criminal proceedings pending against him and the fact of his conviction. (Department's
5 Exhibit 4).

6 4. Applicant requested a rehearing on the revocation, which was denied on
7 August 15, 1995. (Department's Exhibit 5).

8 5. Applicant refrained from obtaining an appellate decision respecting the
9 license revocation.

10 6. On January 21, 1997, the Department denied Applicant's application for
11 an insurance license. Rather than ground its denial generally in either A.R.S. §§20-290
12 or 20-321, the Department grounded its denial in §20-290(B)(5), specifically.
13 (Department's Exhibit 10).

14 7. Applicant filed a timely request for hearing. (Department's Exhibit 11).

15 8. On March 17, 1997, the Department filed the Notice of Hearing, citing the
16 following as grounds to deny Applicant's application: A.R.S. §§20-290(B)(1), 20-
17 290(B)(2), 20-290(B)(5), 20-290(B)(6), and 20-321(A)(9).

18 9. During the hearing in this matter, Applicant presented on order of the
19 Superior Court vacating the judgment of guilt for his conviction for solicitation to
20 possess marijuana for sale, dismissing the charge against him, and restoring his civil
21 rights. (Department's Exhibit 9). The order was entered on October 13, 1994, prior to
22 the Department's revocation of Applicant's bail bond agent license in July 1995.
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24 10. Applicant also introduced testimony, as well as letters from a number of
25 individuals, vouching for his character. (Applicant's Exhibits A-G).

26 11. The evidence demonstrates that the Department's revocation of
27 Applicant's bail bond agent license in July 1995 has never been vacated, reversed, or
28 modified.
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APPLICABLE LAW

A.R.S. §20-290(B)(2) states that the Director may refuse to accept any application or issue any license if he finds, for example, the following:

1. Material misrepresentation or fraud in the application for, or attempt to obtain, any insurance license.
2. A record of dishonesty on the part of the applicant in business or financial matters.
- XXX
5. A record of suspension or revocation of an insurance license in any jurisdiction.
6. A record of conviction by final judgment of a felony involving moral turpitude.

A.R.S. §20-321(A)(9) adds:

No bail bond agent may:

9. Employ or assist in the employment of any person who has been convicted of theft or of any felony.

A.R.S. §20-321(B) follows with an explanation of "employment," which includes owning, operating, or controlling a business dealing bail bonds.

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CONCLUSIONS OF LAW

1. This matter is within the jurisdiction of the Director of the Arizona Department of Insurance pursuant to A.R.S. §20-161.
2. Applicant has the burden of demonstrating by a preponderance of the evidence that the Department's decision denying him a license is unjustified and that the Director should exercise his discretion in favor of issuing Applicant a bail bond agent license.
3. The scope of these proceedings is the basis for the Department's denial of Applicant's application for a bail bond agent license. In its letter of January 21, 1997, to Applicant, the Department specifically stated that it denied Applicant's application pursuant to A.R.S. §20-290(B)(5), the existence of a record of revocation. However, the Department added additional reasons for the denial in the Notice of Hearing.

1 Applicant challenges the Department's assertion of these other charges.

2 Due process requires that a state agency notify an applicant, in a refusal-to-
3 license case, of the basis for the denial of the application and of certain rights of appeal.

4 The Department's letter in this matter serves the tenets of due process by notifying
5 Applicant of the specific basis for the application denial, as well as of his rights of
6 appeal; that is, the letter serves the basic function of "notice" to Applicant in the due
7 process sense. Applicant relied on this letter in contemplating and, ultimately,
8 requesting a hearing. Accordingly, the scope of these proceedings is the basis of the
9 Department's denial as specifically stated in its letter of January 21, 1997, the existence
10 of a record of revocation.

11 Furthermore, the additional charges the Department cites in the Notice of
12 Hearing are factually and substantively the same as those relied upon by the
13 Department in revoking Applicant's license, the only difference being that the added
14 charges here are in the context of a license denial rather than a license revocation.
15 While the Department could certainly cite these grounds if based upon facts not before
16 litigated, the additional allegations cited here were litigated previously and, thus, are
17 collateral estoppel, if not res judicata, on the instant proceedings.

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19 4. The essence of Applicant's appeal is that the Maricopa County Superior
20 Court vacated the judgment, and dismissed the charges, concerning his felony
21 conviction, the basis for the Department's 1995 revocation of his bail bond license.
22 Thus, Applicant argues that he no longer has a felony conviction--and, for technical
23 purposes, never did--and that the 1995 license revocation is somehow critically
24 undermined and should be disregarded by this Judge. For several reasons, Applicant's
25 contention fails.

26 First, Applicant had an opportunity to challenge the license revocation in 1995
27 via an appeal, but failed to pursue and conclude such an appeal. This point is
28 reinforced by the fact that Applicant obtained the order vacating the judgment of guilt for
29 his offense on October 13, 1994, nine months before the Department actually revoked
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1 his license. This matter is not a case in which the applicant could not challenge a
2 revocation relying upon an order vacating the judgment of guilt, because such order
3 was obtained after the time to appeal the revocation had run; Applicant should have
4 presented the order as the basis for an appeal of the revocation.

5 Second, Applicant's reliance upon the Superior Court's order is misplaced.
6 Applicant fails to demonstrate that the vacate order has the effect of either absolving an
7 applicant of responsibility to disclose a prior felony conviction to the Department or
8 precluding the Department from considering a prior conviction in determining whether to
9 grant or deny a license, whether to renew a license, or whether to revoke a license.
10 Indeed, this Judge's independent research indicates that the law in this State generally
11 supports the notion that an applicant must disclose a prior felony conviction, even if the
12 judgment of guilt is later vacated or the conviction expunged. See Att. Gen. Opin. Nos.
13 183-042 and 78-181. Similarly, an agency may generally consider an expunged
14 conviction in determining whether to grant or deny a license, whether to renew a
15 license, or whether to revoke a license. Id.

17 Finally, even accepting Applicant's contention that the record of his conviction is
18 now removed or destroyed, the license revocation still has a basis in fact and law:
19 Applicant misrepresented in his 1992 renewal application that criminal, civil,
20 administrative, or other judicial or quasi-judicial charges or proceedings were not
21 pending against him at the time of his license renewal. The removal of the conviction
22 does not affect the consequences of Applicant's failure to disclose the proceedings
23 pending against him at the time. Thus, the license revocation has a basis in A.R.S.
24 §§20-316(A)(2) and 20-316(A)(3), irrespective of the existence of a record of
25 Applicant's prior felony conviction.

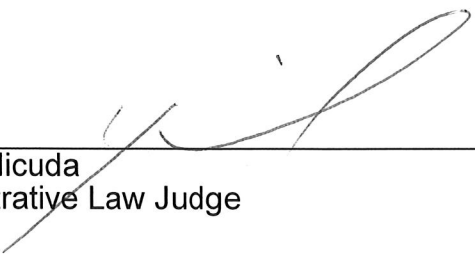
27 **RECOMMENDED ORDER**

28 In view of the foregoing, it is recommended that Carmelo Pagliarello's
29 Application for an Individual Insurance License, submitted to the Department on
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November 19, 1996, be denied.

Done this day, April 30, 1997.



Kip M. Micuda
Administrative Law Judge

Original transmitted by mail this
1 day of May, 1997, to:

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

By Chris Crawford Thomison