

JUL 9 1997

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

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In the Matter of:)	Docket No. 97A-095-INS
)	
DAVID EDWARD PEARSALL)	ORDER
)	
Petitioner.)	
_____)	

On June 30, 1997, the Office of Administrative Hearings, through Administrative Law Judge Allen W. Reed, forwarded "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. The application for an individual life and disability agent license submitted to the Department by David Edward Pearsall 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 9 day of July, 1997

4
5 
6 John A. Greene
Director of Insurance

7 A copy of the foregoing mailed
8 this 9th day of July, 1997

9 Charles R. Cohen, Deputy Director
10 John Gagne, Assistant Director
11 Catherine O'Neil, Assistant Director
12 Scott Greenberg, Business Administrator
Maureen Catalioto, Supervisor
Department of Insurance
2910 N. 44th Street, Suite 210
Phoenix, AZ 85018

13 Office of Administrative Hearings
14 1700 W. Washington, Suite 602
Phoenix, AZ 85007

15 Michael J. De La Cruz
16 Assistant Attorney General
1275 W. Washington
Phoenix, AZ 85007

17 David Edward Pearsall
18 12222 Paradise Village Parkway South, #124A
19 Phoenix, AZ 85032

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

97A-095-INS

DAVID EDWARD PEARSALL,

Petitioner.

**RECOMMENDED DECISION
OF ADMINISTRATIVE
LAW JUDGE**

HEARING: June 18, 1997

APPEARANCES:

David Pearsall, Petitioner, in his own behalf

Michael De La Cruz, Assistant Attorney General, on behalf of the State

ADMINISTRATIVE LAW JUDGE: Allen W. Reed

FINDINGS OF FACT

1. On March 19, 1997, David Pearsall (Applicant) submitted his Application for an Individual Insurance License (life and disability) to the Arizona Department of Insurance (Department).

2. The Applicant responded "yes" to the question of whether he had ever been convicted of a felony. In an attached explanatory statement, he disclosed the reason for his guilty plea to Theft in California in February, 1991.

3. On April 4, 1997, the Department denied the application for the license citing A.R.S. §20-290(B)(6).

4. The following account of the events surrounding the felony conviction was presented by the Applicant and was not challenged or rebutted. In March, 1989, the Applicant and three associates formed a corporation in order to purchase and manage resort property in Fiji. The Applicant had a number of years of experience as a travel agent. One of the associates (Miller) was a citizen of Fiji. Another associate (Klopp) had deposited \$125,000.00 into a bank account (Account) which was controlled by still another associate (Knezovich). During the next eight or so months, approximately \$65,000.00 was transferred from the Account to the corporation and spent for a feasibility

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

1 study, attorney fees, deposits on property, travel and related costs. According to the
2 Applicant this money was expended with the verbal approval of Klopp who had initially
3 provided the money for the Account. The corporation was attempting to obtain financing
4 for their venture and the Applicant believed a 20 million dollar commitment was
5 forthcoming. In November, 1989, the anticipated commitment fell through. At about the
6 same time, the Applicant learned that Knezovich, who had control of the Account had
7 spent the remaining \$60,000.00 of the Account on personal expenses. The Applicant
8 disclosed this to Klopp who demanded that the money be returned. When the Applicant
9 was unable to do this, Klopp made a criminal complaint against the Applicant and
10 Knezovich. Initially the case was dismissed as a civil matter. Subsequently, it was filed
11 again as a criminal case and the Applicant was arrested and held in jail in lieu of
12 \$100,000.00 bond.

13 5. The Applicant remained in custody for approximately two weeks and was
14 unable to make bond. He was told that if convicted he faced a sentence of three to five
15 years. A plea was offered wherein the Applicant would be given a 30 day sentence plus
16 probation. An attorney friend advised the Applicant to accept the offer which he did in
17 order to get released from jail after an additional two weeks. After release the Applicant
18 completed his three years of probation and paid approximately \$30,000.00 in restitution to
19 Klopp.

20 6. Klopp also obtained a default judgment in a civil case filed against the
21 corporation. The Applicant was a named defendant in that case.

22 7. The Applicant had an insurance license and worked for the Prudential
23 Insurance Co. for four years in Minnesota (1972-76). For 20 years after that, the Applicant
24 was in the travel business as an owner of travel agencies, supervisor, instructor, tour
25 operator and other travel-related functions in Minnesota, Missouri and California. From
26 1996 to early 1997, the Applicant was engaged with sales for a health maintenance
27 organization (FHP Healthcare) which was subsequently bought by another company. The
28 Applicant had an insurance license (life and disability) in California from 1988-90. He had
29 obtained the license anticipating to work for All State Insurance but decided not to work
30 for them and did not use the license.

8. The Applicant moved to Phoenix in March of 1997, after visiting the area and
investigating possible employment opportunities. He is currently working for Celebrity
Prime Foods as a sales representative. If licensed he would be an agent for United
Benefit Life Insurance Company which is aware of the conviction.

CONCLUSIONS OF LAW

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2 1. The Director has jurisdiction of this matter under A.R.S. §20-161.

3 2. Under A.R.S. §20-290(B)(2) and (6), the Director may refuse to issue any
4 license for a record of dishonesty on the part of the Applicant in business or financial
5 matters or a record of conviction by final judgment of a felony involving moral turpitude.

6 3. The conviction sustained by the Applicant establishes a record which falls
7 within the above cited statutory classifications. The basis of the conviction is such that it
8 evidences dishonesty in business and financial affairs. As for moral turpitude, In Soetarto
9 v. Immigration & Naturalization Service, 516 F. 2nd 778 (1975), the U.S Court of Appeals
10 (7th Circuit) stated:

11 "Theft has always been held to involve moral turpitude, regardless
12 of the sentence imposed or the amount stolen."

13 4. The Applicant, who was the only witness in this case, presented his version
14 of the reason for the conviction. Although there was no evidence presented to
15 contradict this version, it does not require uncritical acceptance of the Applicant's
16 account. In view of the guilty plea by the Applicant, his testimony at the instant hearing
17 which essentially asserted his innocence, is not accepted. A plea of guilty to a felony is
18 a serious matter with lifelong consequences. Such a plea when made by an accused
19 who firmly believes in his innocence should require compelling circumstances for
20 making the plea. The facts that the Applicant had a relatively high bond, was in custody
21 for two weeks and faced with a possible prison term if convicted may be considered as
22 motives for entering the plea. However, these factors should not cause a person with a
23 clean record and complete belief in their innocence to plead to something they know is
24 false. Once the plea is made and becomes a final judgment, it cannot be lightly
25 disregarded.

26 5. A.R.S. §41-1065 provides in pertinent part that at hearings on the denial of
27 a license or permit:

28 "...At such hearing such applicant shall be the moving party
29 and have the burden of proof ."

30 6. It is concluded that the Applicant has presented insufficient evidence to
meet his burden in this case.

RECOMMENDATION

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2 Under the facts and circumstances of this case, the undersigned Administrative
3 Law Judge recommends that the application for an individual life and disability agent
4 license submitted to the Department by David Edward Pearsall be denied.

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6 Done this day, June 30, 1997.

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9 ALLEN W. REED
10 Administrative Law Judge

11
12 Original transmitted by mail this
13 30 day of June, 1997, to:

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

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18 By 
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