

AUG 18 1998

DEPT. OF INSURANCE  
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STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

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In the Matter of: ) Docket No. 98A-046-INS  
)  
BARRY CARTER, ) **ORDER**  
)  
Petitioner. )  
\_\_\_\_\_ )


On August 13, 1998, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, submitted a Recommended Order Denying Rehearing ("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:

Petitioner's motion for rehearing or reconsideration is denied.

NOTIFICATION OF RIGHTS

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 Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal, pursuant to A.R.S. § 41-1092.10.

DATED this 18<sup>th</sup> of August, 1998

  
\_\_\_\_\_  
John A. Greene  
Director of Insurance

1 A copy of the foregoing mailed  
this 18 day of August, 1998

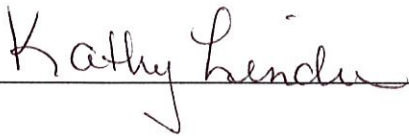
2 Charles R. Cohen, Deputy Director  
3 John Gagne, Assistant Director  
4 Catherine O'Neil, Assistant Director  
5 Scott Greenberg, Business Administrator  
6 Maureen Catalioto, Supervisor  
7 Department of Insurance  
8 2910 N. 44th Street, Suite 210  
9 Phoenix, AZ 85018

10 Office of Administrative Hearings  
11 1700 W. Washington, Suite 602  
12 Phoenix, AZ 85007

13 Roger T. Martindale  
14 Assistant Attorney General  
15 1275 W. Washington, Suite 602  
16 Phoenix, AZ 85007

17 Barry Carter  
18 9426 E. Jenan Drive  
19 Scottsdale, AZ 85260

20 Merrick B. Firestone, Esq.  
21 649 North Second Avenue  
22 Phoenix, AZ 85003

23  \_\_\_\_\_

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2  
3 In the Matter of:

No. 98A-046-INS

4 **BARRY CARTER,**

**RECOMMENDED ORDER  
DENYING REHEARING**

5 Petitioner.  
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9 On July 31, 1998, counsel for Petitioner filed a Request for Rehearing and  
10 Review wherein it was asserted that the Order denying Petitioner's license application  
11 was premised on an improper judgment. Petitioner asserts accident or surprise, error in  
12 the admission or rejection of evidence, or errors of law and no evidence of wrongful  
13 intent as additional grounds for a rehearing or review. On August 12, 1998, counsel for  
14 the Arizona Department of Insurance ("Department") filed a Response to the Request  
15 for Rehearing or Review wherein the Department asserted that Petitioner is improperly  
16 attacking the judgment issued in Walsh v. Carter, Maricopa Superior Court Case No.  
17 CV93-20265, and that Petitioner has failed to set forth an adequate basis for a  
18 rehearing or reconsideration of this matter.

19 Upon a review of the record, including the above-mentioned documents, it is  
20 determined that Petitioner has failed to set forth sufficient grounds to warrant a  
21 rehearing or reconsideration of this matter. While Petitioner attempts to attack the  
22 above-mentioned judgment in its request, Petitioner fails to realize that during the  
23 hearing of this matter, Petitioner represented that the judgment was a final judgment.  
24 As such, this tribunal is bound by that judgment and this tribunal is not the appropriate  
25 forum in which to collaterally attack that judgment. Further, Petitioner's reliance on  
26 letters of character and his failure to bring witnesses to the hearing does not fall within  
27 the grounds asserted by Petitioner under A.A.C. R20-6-114(B). All other grounds  
28 asserted by Petitioner were considered by the Administrative Law Judge and  
29 determined to be without merit.  
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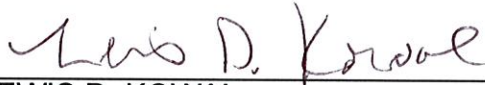
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1 Based on the above, it is recommended that Petitioner's Motion for Rehearing or  
2 Reconsideration be denied.

3 Done this day, August 13, 1998.

4 

5 \_\_\_\_\_  
6 LEWIS D. KOWAL  
7 Administrative Law Judge

8 Original transmitted by mail this  
9 14 day of August, 1998, to:

10 John A. Greene, Director  
11 Department of Insurance  
12 Attention: Curvey Burton  
13 2910 North 44th Street, Ste. 210  
14 Phoenix, AZ 85018

15 By

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