

STATE OF ARIZONA
Department of Insurance and Financial Institutions
FILED December 26, 2023 by AS

STATE OF ARIZONA

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

In the Matter of:

ANDREA MARTINEZ

Petitioner

No. 23A-064-INS

ORDER

On December 5, 2023, the Office of Administrative Hearings, through Administrative Law Judge Brian Dell Vecchio, issued an Administrative Law Judge Decision (“Recommended Decision”). The Arizona Department of Insurance and Financial Institutions’ (“Department”) Executive Deputy Director (“EDD”) received the Recommended Decision on the same date, a copy of which is attached and incorporated by reference. Petitioner failed to accept the Recommended Decision within ten days of receipt. Therefore, the EDD has reviewed the Recommended Decision and enters the following:

1. The Department ADOPTS the Findings of Fact,
2. The Department ADOPTS the Conclusions of Law,
3. The Department ADOPTS the Recommended Order, and
4. The Department ORDERS that the Department’s denial of Andrea Martinez’s insurance producer license application is affirmed.

NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes (“A.R.S.”) § 41-1092.09, Petitioner may request a rehearing or review with respect to this Order by filing a written motion with the Department within 30 days after the date of this Order, setting forth the basis for relief under Arizona Administrative Code R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to the Superior Court.

1 Petitioner may appeal the final decision of the Department to the Superior Court of
2 Maricopa County for judicial review, pursuant to A.R.S. § 20-166. A party filing an appeal
3 must notify the Office of Administrative Hearings of the appeal within ten days after filing the
4 complaint commencing the appeal, pursuant A.R.S. § 12-904(B).

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DATED and EFFECTIVE this 26th day of December, 2023.

Barbara D. Richardson

Barbara D. Richardson
Cabinet Executive Officer
Executive Deputy Director
Arizona Department of Insurance and Financial Institutions

1 **ORIGINAL** of the foregoing filed electronically
this 27th day of December, 2023, to:

2 Brian Del Vecchio, Administrative Law Judge
3 <https://portal.azoah.com/submission>
4 Office of Administrative Hearings

5 **COPY** of the foregoing delivered the same date, to:

6 Deian Ousounov, Assistant Director
7 Ana Starcevic, Paralegal Project Specialist
8 Steven Fromholtz, Licensing Division Manager
9 Linda Lutz, Legal Assistant
10 Aqueelah Currie, Licensing Supervisor
11 Arizona Department of Insurance and Financial Institutions
12 100 North 15th Avenue, Suite 261
13 Phoenix, Arizona 85007

14 **COPY** mailed the same date by U.S First Class and
15 Certified Mail, Return Receipt Requested, to:

16 Andrea Martinez
17 P.O. Box 285
18 Stanfield, AZ 85172
19 *Petitioner* 9489 0090 0027 6486 6590 59

20 Andrea Martinez
21 781 N. Amarillo Valley Rd.
22 Maricopa, AZ 85139
23 *Petitioner* 9489 0090 0027 6486 6590 42

24 **COPY** sent via electronic mail the same date, to:

25 Andrea Martinez
26 Aisandrea83@gmail.com
Petitioner

Raya Gardner, Assistant Attorney General
Raya.Gardner@azag.gov
AdminLaw@azag.gov
Attorney for the Department

Ana Starcevic

STATE OF ARIZONA
Department of Insurance and Financial Institutions
RECEIVED December 5, 2023 by AS

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of:

No. 23A-064-INS

ANDREA MARTINEZ

ADMINISTRATIVE LAW JUDGE
DECISION

Petitioner

HEARING: November 15, 2023

APPEARANCES: Andrea Martinez appeared on her own behalf. Raya Gardner, Esq., Assistant Attorney General represented the Arizona Department of Insurance and Financial Institutions.

ADMINISTRATIVE LAW JUDGE: Brian Del Vecchio

EXHIBITS ADMITTED INTO EVIDENCE: Arizona Department of Insurance and Financial Institutions exhibits 1 through 6 and the hearing file.

FINDINGS OF FACT

1. On or about August 26, 2010, Andrea Martinez (Petitioner) was indicted on five (5) counts of felony child molestation and sexual conduct with a minor in Pinal County Superior Court.¹

2. On or about October 22, 2010, Petitioner entered into a plea agreement wherein she plead guilty to one (1) count of molestation of a child, a class two (2) felony², and two (2) counts of attempted molestation of a child, the classification of these counts was not evidenced.³ Petitioner was sentenced on count 1 to incarceration in the Arizona Department of Corrections for ten (10) years.⁴ Petitioner was sentenced on counts 2 and 3 to lifetime supervised probation under the supervision of the Adult Probation Department. Upon commencement of her supervised probation, Petitioner was ordered to comply with special conditions of probation, including, but not limited to, registration as a sex offender.⁵

¹ See Department's exhibit 3.

² See Department's exhibit 4.

³ *Id.*, see also Ms. Currie's testimony at 12:22 to 14:15, see also Hearing File Notice of Hearing at 5.

⁴ See Department's exhibit 4 see also Ms. Currie's testimony at 12:22 to 14:15.

⁵ See Department's exhibit 4, see also Hearing File Notice of Hearing.

Office of Administrative Hearings
1740 West Adams Street, Lower Level
Phoenix, Arizona 85007
(602) 542-9826

1 3. On August 15, 2023, Petitioner applied for an Arizona resident insurance
2 producer license through the National Insurance Producer Registry.⁶ In the application,
3 under Background Questions, Petitioner answered “Yes” to Question 1B, which asked,
4 “Have you ever been convicted of a felony, had a judgment withheld or deferred, or are
5 you currently charged with committing a felony?” Petitioner disclosed the details of her
6 plea agreement.

7 4. On September 13, 2023, Arizona Department of Insurance and Financial
8 Institutions (Department) sent Petitioner a letter denying her application for an Arizona
9 resident insurance producer license, pursuant to A.R.S. § 20-295(A)(6), because she had
10 been convicted of a felony.⁷

11 5. On September 14, 2023, Petitioner submitted an appeal to the Department.⁸

12 6. On October 11, 2023, a Notice of Hearing was sent to Petitioner’s address
13 of record informing her of the hearing scheduled for November 15, 2023, at the Office of
14 Administrative Hearings.⁹

15 7. At hearing, Petitioner appeared on her own behalf and called Eric Rivera
16 and Janie Rivera Brown as witnesses. The Department’s exhibits 1 through 6 were
17 admitted and Aqueelah Currie appeared as a witness for the Department.

18 *Aqueelah Currie’s testimony*

19 8. Aqueelah Currie, Insurance and Appraiser Licensing Supervisor at the
20 Department, was tasked with reviewing, approving, or denying applications with a criminal
21 background history. The process involved reviewing the statement by an applicant, nature
22 of the conviction, length of time since conviction, age of applicant at the time of conviction,
23 and any supplemental materials. Once the review process was completed Ms. Currie
24 would accept, deny, or submit the application to committee for further review.¹⁰

25 9. Ms. Currie reviewed Petitioner’s application, disclosure statement,
26 indictment, and sentencing documents.¹¹

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28 ⁶ See Department’s exhibit 1, see also Hearing File Notice of Hearing.

29 ⁷ See Department’s exhibit 5.

30 ⁸ See Department’s exhibit 6.

⁹ See Hearing File Notice of Hearing.

¹⁰ See Ms. Currie’s testimony at 3:00 to 4:53.

¹¹ Id. at 5:00 to 6:15.

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10. The Department has a duty to protect the public by issuing licenses only to responsible individuals and denying licenses to individuals who pose a risk or threat to the public. Once a license is issued, the Department does not have the ability to monitor each license holder; if Petitioner were granted a license, the Department would be unable to monitor Petitioner’s activities.¹² The Department is limited in its authority to grant provisional, probationary, or restricted licenses; it can only grant licenses or deny applications.¹³

11. When she reviewed Petitioner’s sentencing documents, Ms. Currie noted the special condition of probation which restricted Petitioner from using computers.¹⁴ The job of an insurance agent would be severely hampered if they are unable to use a computer. Even if an employer were to place restrictions upon Petitioner, the Department would be unable to monitor those restrictions. Once a license is granted to an individual and they leave the employer who placed the restrictions, the Department would not have the ability to ensure the next employer adhered to the same restrictions.¹⁵

12. The duties of a licensed insurance agent potentially include visiting clients in their homes with their children. At the time of her conviction, Petitioner was a teacher, entrusted with the protection of children. Petitioner breached that trust when she committed her crimes. Ms. Currie determined such a breach of trust while in a position of authority and responsibility posed a risk to the public. The potential risk during in-home visits created by Petitioner’s breach was too great.¹⁶

13. After her review, Ms. Currie denied Petitioner’s application; due to the nature of the conviction, she did not feel the need to submit the application to committee for further review.¹⁷

Andrea Martinez Testimony

14. Petitioner testified that prior to her conviction she was a middle school teacher. She served ten (10) years in prison and was released on June 28, 2020, and has been on probation since. Although, Petitioner is on lifetime probation, she has the

¹² *Id.* at 16:09 to 17:29.
¹³ *Id.* at 17:48 to 18:21.
¹⁴ *Id.* at 13:45 to 13:55, *see also id.* at 28:36 to 30:05.
¹⁵ *Id.* at 18:32 to 19:35.
¹⁶ *Id.* at 20:04 to 20:30.
¹⁷ *Id.* at 5:00 to 5:25.

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ability to petition the courts in the future to be released upon a showing of good behavior. Since leaving prison, Petitioner attended court-imposed therapy one appointment every other week and, even though she completed the required number of therapy visits, she planned to continue. Without minimizing the seriousness of her conviction, Petitioner testified that she was not convicted of larceny, embezzlement, or other financial type crimes.¹⁸ Regarding her probation restriction of computer usage, she has since earned the right to computers, at work, home and on her smart phone.¹⁹ Petitioner testified the job she expects to undertake at her current employer, if granted a license, would not require her to go door to door, rather she would be required to sell over the internet and phone only.²⁰

15. Petitioner also read into the record a letter from her current probation officer. The officer acknowledged that, while he has only known Petitioner a short while, Petitioner has kept up with her probation requirements. This included, but was not limited to, attending therapy and complying with any requirements made by the probation officer. Petitioner may be limited from certain activities due to the terms of her probation; however, Petitioner does have the ability to request permission to engage in some restricted activities for work purposes only.²¹

Mr. Rivera and Ms. Rivera Brown's Testimony

16. Both of Petitioner's witnesses affirmed the character of Petitioner. They are jointly the employer of Petitioner and believed she was deserving of a second chance.

CONCLUSIONS OF LAW

1. The Director of the Department has referred this case for hearing to this Tribunal pursuant to A.R.S. § 20-2537(H) and A.R.S. § 41-1092.02.

2. Pursuant to A.R.S. Title 32, Chapter 20, the Department has the authority and duty to regulate all persons engaged in the business of, or acting in the capacity of, a real estate broker or salesperson, and to enforce all statutes, rules, and regulations relating to real estate.²²

¹⁸ See Ms. Martinez's testimony at 32:00 to 33:20.
¹⁹ *Id.* at 34:50 to 35:03.
²⁰ *Id.* at 35:05 to 36:13.
²¹ *Id.* at 40:21 to 41:48.
²² See A.R.S. §§ 20-281 to 20-302.

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3. Petitioner bears the burden of proof to establish that the Department improperly denied her application for an Arizona resident insurance producer license.²³

4. The standard of proof on all issues is by a preponderance of the evidence.²⁴

5. A “preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not.”²⁵ It is “[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.”²⁶

6. A.R.S. § 20-295(A)(6) provides that “[t]he director may deny, suspend for not more than twelve months, revoke or refuse to renew an insurance producer’s license . . . or any combination of actions for . . . [h]aving been convicted of a felony.”

7. The preponderance of the evidence established that, Petitioner’s progress is commendable, however, due to the plain language of the statute and the nature of her crimes the Department properly exercised its discretion in denying her a license. Petitioner plead guilty to the molestation of a child which is a class two felony. No evidence was presented to determine the classification of the attempted child molestation conviction. Because Complainant was convicted of a class two felony, the Department met their statutory burden to exercise discretion in granting or denying a license pursuant to A.R.S. § 20-295(A)(6). At the time of her crimes, Petitioner was a middle school teacher, a position in which the public entrusted her with authority over their children, and she breached that trust. The practicalities of being a licensed insurance agent would necessarily pose an unacceptable risk to the public. Thus, Petitioner’s application was properly denied.

ORDER

IT IS ORDERED that the Department’s Director’s denial of Petitioner’s application in this matter is upheld.

IT IS FURTHER ORDERED that Petitioner’s appeal is dismissed.

²³ See A.R.S. § 41-1092.07(G).
²⁴ See A.A.C. R2-19-119.
²⁵ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).
²⁶ BLACK’S LAW DICTIONARY 1182 (6th ed. 1990).

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Pursuant to A.R.S. § 41-1092.08(l), the licensee may accept the Administrative Law Judge Decision by advising the Office of Administrative Hearings in writing not more than ten (10) days after receiving the decision. If the licensee accepts the Administrative Law Judge Decision, the decision shall be certified as the final decision by the Office of Administrative Hearings.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order will be forty (40) days from the date of that certification.

Done this day, December 5, 2023.

/s/ Brian Del Vecchio
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile to:

Barbara D. Richardson,
Department of Insurance and Financial Institutions - Insurance

Andrea Martinez
aisandrea83@gmail.com

Raya Gardner
Office of the Attorney General
raya.gardner@azag.gov

By: OAH Staff