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**FILED**

**AUG 13 2009**

**Department of Insurance  
State of Idaho**

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:	)	
	)	Docket No. 18-2544-09
ROBERT F. TURNER,	)	
	)	HEARING OFFICER'S FINDINGS
	)	OF FACT, CONCLUSIONS OF LAW
	)	AND PRELIMINARY ORDER
_____	)	

This matter came on for an evidentiary hearing on July 20, 2009, at 1:30 p.m. Mitchell Toryanski, Deputy Attorney General, appeared on behalf of the Department of Insurance. Robert Turner appeared in person representing himself.

### FINDINGS OF FACT

1. On April 20, 2009, Robert Turner submitted an on-line application to the Department of Insurance for a "Resident Producer" Insurance License. A question on the third page of the application states:

Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime? "Crime" includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving

drinking under the influence (DUI) or driving while intoxicated (DWI), during without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by verdict or a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.

In answer to that question, Mr. Turner answered "no". If the applicant answered "yes", the applicant was required to provide a written statement explaining the circumstances of each incident, together with a certified copy of the charging document and a certified copy of the resolution of the charges or final judgment.

2. Pursuant to the standard application process, Mr. Turner also submitted fingerprints to allow the Department to run a criminal check.

3. On May 1, 2009, the Department sent a letter to Mr. Turner advising him that he had incorrectly answered "no" to the question of whether he had been convicted of a crime. A copy of the FBI fingerprint report was provided to Mr. Turner and he was given an opportunity to explain the discrepancy.

4. In response to the Department's letter, Mr. Turner stated he had just received a Mortgage Loan Originator license in January through the Department of Finance and assumed the Department of Insurance application was the same as the Department of Finance application so he did not pay attention to the questions. He further stated he thought he only had to disclose felonies and thought he only had to disclose crimes occurring in Idaho.

5. By letter dated May 21, 2009, Jim Genetti, the Bureau Chief of Consumer Services, for the Department of Insurance sent Mr. Turner a letter denying Mr. Turner's application for a resident producer license. The letter notes that Mr. Turner was found guilty of insufficient funds checks in the State of California in 1988 and a current warrant was outstanding. In addition, Mr. Turner was charged with battery in the State of California in 1989 and also had a current warrant outstanding on that charge. In 1993, Mr. Turner was found guilty of domestic assault in the State of Idaho. He was sentenced to 90 days jail suspended, payment of fine and costs, referred to anger class and 12 months standard probation. In addition in 1988, in the City of San Francisco, Mr. Turner was charged with Use of an Access Card with Intent to Defraud, Defrauding an Innkeeper, and Grand Theft Dog For Sale or Research. The Department advised Mr. Turner they were denying his application based upon Idaho Code §41-1016(1)(a) which allows the Department to deny an application when an applicant provides incorrect, misleading, incomplete or materially untrue information in the license application.

7. Pursuant to Idaho Code §41-232A, Mr. Turner requested a hearing in a letter dated May 27, 2009, and again attempted to explain his incorrect answer. He alleges he did not intentionally supply false information and did not intend or try to hide anything in his past. He further contends he was under stress and depressed because he was having difficulty finding a job. He again noted he assumed the Department of Insurance application was the same as the

Department of Finance application and he assumed it only meant conviction of a felony in the last ten (10) years.

8. As Exhibit 3, Mr. Turner submitted the disclosure statement and questions from the Department of Finance application. Contrary to Mr. Turner's arguments, the Department of Finance application did not restrict information on criminal convictions to only those occurring in the past ten (10) years. That ten (10) year time restriction only applied to information on bankruptcies. Further, the Department of Finance application was not limited to criminal disclosures related only to felonies. Paragraphs (D) and (E) were related to felonies; however, Paragraph (F) on the Department of Finance application did require disclosure of misdemeanors involving financial services, fraud, false statements, theft or wrongful taking of property, forgery, etc. Some of the crimes for which Mr. Turner was convicted in California should have been disclosed in the Department of Finance application.

9. The evidence establishes Mr. Turner did provide incorrect, misleading, incomplete and materially untrue information in his license application.

10. The fact that Mr. Turner failed to adequately read the application does not provide a defense.


### **CONCLUSIONS OF LAW**

11. Pursuant to Idaho Code §41-1016(1)(a), the Department of Insurance has the authority and grounds to refuse to issue Mr. Turner's application.

## PRELIMINARY ORDER

Based upon the foregoing, IT IS HEREBY ORDERED That the denial of the application of Mr. Turner by the Department of Insurance for a Resident Producers license is UPHELD and AFFIRMED.

DATED This 12<sup>th</sup> day of August, 2009.

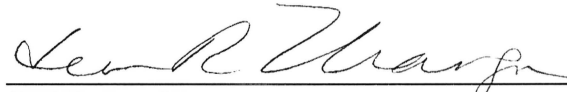
  
JEAN R. URANGA  
Hearing Officer

## CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 15<sup>th</sup> day of August, 2009, I served true and correct copies of the foregoing HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY ORDER by depositing copies thereof in the United States mail, postage prepaid, in envelopes addressed to:

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698 Eagle Hills Way  
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