

SEP 9 1997

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

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In the Matter of:)	Docket No. 97A-124-INS
)	
JOHN PATRICK JOHNSTON, JR.,)	ORDER
)	
Respondent.)	
_____)		

On August 28, 1997, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, submitted "Recommended Decision of Administrative Law Judge" ("Recommended Decision"), a copy of which is attached and incorporated by this reference. Pursuant to A.R.S. § 41-1092.08(B), the Director of the Arizona Department of Insurance declines to review the Recommended Decision. Therefore, pursuant to A.R.S. § 41-1092.08(D)(1), the Recommended Decision is the final administrative decision.

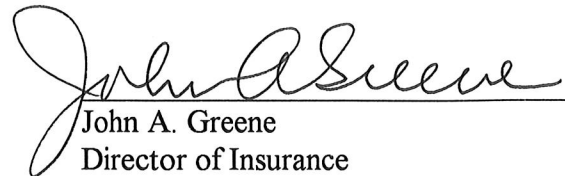
NOTIFICATION OF RIGHTS

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 September, 1997

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6 
7 John A. Greene
8 Director of Insurance

9 A copy of the foregoing mailed
10 this 9th day of September, 1997

11 Charles R. Cohen, Deputy Director
12 Catherine O'Neil, Assistant Director
13 Scott Greenberg, Business Administrator
14 John Gagne, Assistant Director
15 Bonnie Carrillo, Investigator
16 Maureen Catalioto, Supervisor
17 Department of Insurance
18 2910 N. 44th Street, Suite 210
19 Phoenix, AZ 85018

20 Office of Administrative Hearing
21 1700 W. Washington, Suite 602
22 Phoenix, AZ 85007

23 Shelby L. Cuevas
Assistant Attorney General
1275 West Washington, Room 259
Phoenix, AZ 85007

John Patrick Johnston, Jr.
243 N. Fraser Drive, West
Mesa, AZ 85203

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

97A-124-INS

JOHN PATRICK JOHNSTON, JR.,
Respondent.

RECOMMENDED DECISION
OF ADMINISTRATIVE
LAW JUDGE

HEARING: August 14, 1997

APPEARANCES: John Patrick Johnston, Jr. on his own behalf; Assistant
Attorney General Shelby Cuevas on behalf of the Arizona Department of Insurance

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

Based on the entire record of this matter, the following recommended Findings of
Fact, Conclusions of Law and Recommended Order are made:

FINDINGS OF FACT

1. On April 30, 1997, John Patrick Johnston, Jr. ("Mr. Johnston") submitted an
application for an individual life and disability insurance agent license (the "Application")
with the Arizona Department of Insurance ("Department").

2. On May 23, 1997, the Department denied the Application pursuant to A.R.S.
§20-290(B)(4) and (5) on the basis that Mr. Johnston's prior conduct under an
insurance license shows him to be incompetent or a source of injury and loss to the
public and constitutes a record of revocation of any insurance license.

3. On June 18, 1997, Mr. Johnston filed a timely request for a hearing with the
Department.

4. On February 18, 1994, the Director of the Department ("Director") entered an
Order In the Matter of John Patrick Johnston, Jr., Docket No. 7790 ("Order") revoking
Mr. Johnston's Arizona insurance licenses.

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

1 5. In the Order, the Director found Mr. Johnston's conduct which was the basis
2 for the underlying Complaint and Notice of Hearing in Docket No. 7790, constituted a
3 conduct of affairs showing Mr. Johnston to be incompetent under an insurance license
4 in violation of A.R.S. §20-316(A)(7). The Director also found that Mr. Johnston
5 hadprocured surety bonds from an entity not authorized to transact the business of
6 insurance in Arizona in violation of A.R.S.§ 20-401.01.

7 6. At the hearing of this matter, Mr. Johnston testified that since the revocation
8 of his insurance license in 1994, he has worked in his wife's insurance agency
9 performing customer service, handling bank deposits, preparing paperwork and quotes,
10 performing property inspections and taking photographs.

11 7. Mr. Johnston testified that since the 1994 revocation of his insurance
12 licenses, he has become more knowledgeable and more experienced in the insurance
13 industry. From 1994 through the present, Mr. Johnston has attended and participated
14 in meetings of insurance agents sponsored by a voluntary association of insurance
15 agents for Farmers Insurance. Further, Mr. Johnston attends meetings sponsored by
16 Allan Beazer, a district manager for Farmers Insurance. However, those meetings deal
17 with marketing and product information rather than insurance industry issues.

18 8. As a result of Mr. Johnston's prior conduct as determined in Docket No. 7790,
19 the City of Prescott sustained damages of approximately \$500,000.00.

20 9. At the hearing of this matter, Mr. Johnston testified that even though the
21 Order in Docket No. 7790 states that further proceedings will be held before the
22 Department to determine the amount of restitution to be paid to the City of Prescott, no
23 further hearings were held. Mr. Johnston has not made any restitution payment to the
24 City of Prescott and has not been involved in any claim or litigation for collection by the
25 City of Prescott.

26 10. Mr. Johnston contended that due to the passage of time, his continued
27 involvement and commitment to the insurance industry and his high scores on the
28 insurance licensing examination, he should be given another opportunity to hold an
29 insurance agent license. If the Application is granted, Mr. Johnston maintained that he
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1 would work at his wife's agency, he would not deal with construction or surety bonds
2 and he would only deal with insurers authorized to transact insurance in the State of
3 Arizona.

4 11. Mr. Johnston submitted letters of character in support of the Application.
5 However, the individuals who authored those letters, were not present at the hearing
6 and were not subject to cross-examination by the Department's counsel nor could those
7 individuals be observed by the Administrative Law Judge. Under the circumstances,
8 those letters were given little weight.

9 12. Mr. Johnston's technical knowledge alone is not a sufficient showing that he
10 possesses the requisite qualifications for licensure, particularly when he has had an
11 insurance license revoked. Other than than Mr. Johnston's testimony, the insurance
12 agent examination scores and the above-mentioned letters of character, there was no
13 credible corroborating evidence presented to show that Mr. Johnston possesses the
14 requisite qualifications to be issued an insurance agent license.

15 **CONCLUSIONS OF LAW**
16

17 1. Mr. Johnston's conduct as set forth above in the Findings of Fact constitutes
18 a record of conduct under an insurance license showing Mr. Johnston to be
19 incompetent or a source of injury and loss to, or repeated complaints by, the public or
20 any insurer within the meaning of A.R.S. §20-290 (B)(4).

21 2. Mr. Johnston's conduct as set forth above in the Findings of Fact, constitutes
22 a record of revocation of any insurance license in any jurisdiction within the meaning of
23 A.R.S. §20-290(B)(5).

24 3. The Director of the Department has the authority to refuse to issue Mr.
25 Johnston an insurance license based upon the above, pursuant to A.R.S. §§20-
26 290(B)(4) and (B)(5).
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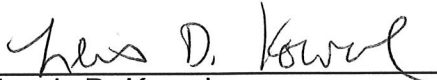
28 4. Mr. Johnston has not sustained his burden of proof in showing that the
29 Application should be granted.
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RECOMMENDED ORDER

Based on the above, the Administrative Law Judge recommends that the application John Patrick Johnston, Jr. submitted to the Department on April 30, 1997, for an individual life and disability insurance agent license be denied.

Done this day, August 28, 1997.



Lewis D. Kowal
Administrative Law Judge

Original transmitted by mail this
28 day of AUGUST, 1997, to:

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

By 