

2018 OCT 25 AM 10:33 BEFORE THE INSURANCE COMMISSIONER
OF THE
ADMINISTRATIVE HEARINGS OFFICE COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
Application of Fernando Arturo Suarez	:	Pursuant to the Violent Crime Control
Requesting Written Consent to Engage in the	:	and Law Enforcement Act of 1994,
Business of Insurance	:	18 U.S.C. § 1033
	:	
	:	
	:	
	:	Docket No. CW18-10-002

CONSENT ORDER

AND NOW, this 25th day of October, 2018, this Order is hereby
issued by the Insurance Department of the Commonwealth of Pennsylvania pursuant to
the statutes cited above and in disposition of the matter captioned above.

1. To the extent applicable, Applicant hereby waives all rights to a formal
administrative hearing in this matter, and agrees that this Consent Order, and the
Findings of Fact and Conclusions of Law contained herein, shall have the full force and
effect of an Order duly entered in accordance with the adjudicatory procedures set forth
in the Administrative Agency Law, supra, or other applicable law.

FINDINGS OF FACT

2. The Insurance Department finds true and correct each of the following

Findings of Fact:

- (a) Applicant is Fernando Arturo Suarez, and maintains his address at 5553 Rising Sun Avenue, Philadelphia, PA 19120.
- (b) Applicant does not possess a license to transact insurance as a producer in this Commonwealth.
- (c) Applicant, on September 16, 1996, was convicted of one count of felony money laundering under 18 U.S.C. § 1956(a)(1)(B)(i) and one count of felony conspiracy under 18 U.S.C. § 371.
- (d) Applicant, on September 27, 2016 and on October 25, 2017, submitted applications to the Pennsylvania Insurance Department for written consent to engage in the business of insurance pursuant to 18 U.S.C. § 1033(e)(2).
- (e) One November 23, 2016 and November 22, 2017 the Department denied Applicant's above applications to engage in the business of insurance pursuant to 18 U.S.C. § 1033(e)(2).

- (f) Applicant, on November 22, 2017, requested a hearing appealing the above denials of his applications to engage in the business of insurance pursuant to 18 U.S.C. § 1033(e)(2).
- (g) A full administrative hearing was held on January 18, 2018 and on September 27, 2018 the Insurance Commissioner issued an Adjudication and Order reversing the decisions of the Office of Market Regulation, Bureau of Licensing & Enforcement of the Department dated November 23, 2016 and November 22, 2017 denying written consent and licensure to Applicant; and ordered the Department to grant his application for written consent to engage in the business of insurance subject to any other conditions the Department deems appropriate.
- (h) A full and complete copy of the Insurance Commissioner's September 27, 2018 Adjudication and Order is attached hereto, made a part hereof and marked Exhibit "A".
- (i) The activities in which Applicant desires to engage constitute the business of insurance within the meaning of 18 U.S.C. § 1033(e)(1)(A) and (f).

CONCLUSIONS OF LAW

3. In accordance with the above Findings of Fact and applicable provisions of law, the Insurance Department concludes and finds the following Conclusions of Law:

- (a) 18 U.S.C. § 1033(e)(2) provides that persons convicted of a felony involving dishonesty or a breach of trust may not engage in the business of insurance or participate in such business unless such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to 18 U.S.C. § 1033(e)(2).
- (b) On September 16, 1996, Applicant was convicted of one count of felony money laundering under 18 U.S.C. § 1956(a)(1)(B)(i) and one count of felony conspiracy under 18 U.S.C. § 371.
- (c) The Insurance Commissioner's September 27, 2018 Adjudication and Order (Exhibit "A") ordered the Department to grant written consent to engage in the business of insurance subject to any other conditions the Department deems appropriate, which conditions are contained herein.

ORDER

4. Accordingly, the Deputy Insurance Commissioner orders and Applicant consents to the following:

- (a) Consistent with the Insurance Commissioner's September 27, 2018 Order, Applicant is granted the consent to engage in the business of insurance subject to the conditions of this Order.
- (b) Applicant shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
- (c) Applicant shall further comply with all Pennsylvania insurance laws and regulations.
- (d) Applicant shall engage in the business of insurance in a manner that is not reasonably likely to cause harm to the public, policyholders or the industry.

5. The term of this Order shall remain in place for a period of five years and thereafter, unless and until the Department or the Commissioner terminates the Order. Nothing in this Order shall preclude the Department, the Deputy Commissioner or the Commissioner, in their sole discretion, from decreasing or lessening the restrictions contained in this Order in whole or in part while it is in effect. Any such lessening of the restrictions contained in this Order shall be made in writing by the Department, the Deputy Commissioner or the Commissioner in accordance with the procedures set

forth in paragraph 14 of this Order. Further, Applicant shall not apply nor otherwise seek to reduce or remove the restrictions contained in this Order for a period of at least five years.

6. Following the five-year period referenced in paragraph 5, above, this Order shall continue unless and until the Department affirmatively terminates it. Nothing in this Order shall be construed as conferring upon Applicant any property right or interest as a result of receiving this conditional consent to engage in the business of insurance in accordance with the terms of this Order. Applicant expressly waives any right to assert that he is entitled to a hearing on the termination of this Order following the expiration of the five-year period referenced in paragraph 5. Should the Insurance Department or the Commissioner, terminate this Order after the five year period referenced in paragraph 5, above, Applicant may file a new application for a written consent as set forth in paragraph 4(b), above, to engage in the business of insurance under 18 U.S.C. § 1033(e)(2).

7. The Department's conditional consent permitting Applicant to engage in the business of insurance, and Applicant's existing licenses, may be immediately suspended upon notice by the Department following its investigation and determination that Applicant has failed to adhere to any condition set forth in this Order or has violated an insurance statute or regulation.

8. Applicant shall have no right to prior notice of such a suspension, but will be entitled to a hearing upon written request received by the Department no later than thirty (30) days from the date the Department mailed to Applicant by certified mail, return receipt requested, notification of such suspension, which hearing shall be held within sixty (60) days of the Department's receipt of Applicant's written request for a hearing.

9. At a hearing referred to in paragraph 8 above, Applicant shall have the burden of demonstrating that he is worthy of an insurance license and a conditional consent to engage in the business of insurance. In the event Applicant's conditional consent, and licenses are suspended pursuant to paragraph 8 above, and Applicant either fails to request a hearing within 30 days or at the hearing fails to demonstrate that he is worthy of a license, Applicant's suspended conditional consent, and licenses shall be revoked.

10. In the event the Insurance Department find that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein, the Department may pursue any and all legal remedies available, including but not limited to the following: the Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provisions of law; or, if applicable, the Department may enforce the provisions of this Order in any other court of law or equity having jurisdiction.

11. Alternatively, in the event the Insurance Department finds there has been a breach of any of the provisions of this Order, the Department may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

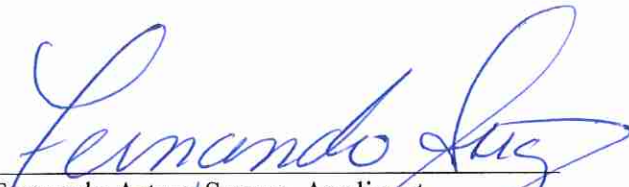
12. In any such enforcement proceeding, Applicant may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

13. Applicant hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

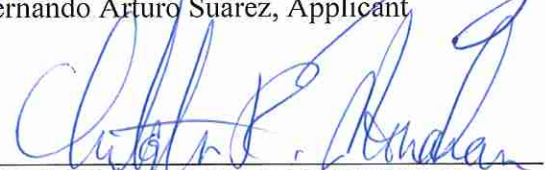
14. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

15. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegate is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or duly authorized delegate.

BY:



Fernando Arturo Suarez, Applicant



COMMONWEALTH OF PENNSYLVANIA
By: CHRISTOPHER R. MONAHAN
Deputy Insurance Commissioner

Appendix A

RECEIVED
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BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: Appeal of:
Fernando Arturo Suarez
5553 Rising Sun Avenue
Philadelphia, PA 19120

v.

COMMONWEALTH OF
PENNSYLVANIA INSURANCE
DEPARTMENT

: Pursuant to Article VI-A of The
: Insurance Department Act, Act of
: May 17, 1921, P.L. 789, No. 285
: added by the Act of December 6,
: 2002, P.L. 1183, No. 147 § 2 (40
: P.S. §§ 310.1-310.99a)

:
:
:
:
: Docket No. AG16-12-015

ADJUDICATION AND ORDER

AND NOW, this 27th day of September, 2018, Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner"), makes the following Adjudication and Order.

HISTORY

In this adjudication, the Commissioner must decide whether Fernando Arturo Suarez ("the applicant" or "appellant") is entitled to a written consent to engage in the business of insurance. On November 23, 2016 and October 25, 2017, the Pennsylvania Insurance Department, Bureau of Licensing and Enforcement, ("the Department") effectively denied Mr. Suarez's application for a producer license by denying his applications for written consent to engage in the business of insurance pursuant to 18 U.S.C. § 1033(e)(2).¹ The applicant, on December 8, 2016 and November 22, 2017,

¹ Federal law prohibits any individual who has been convicted of a criminal felony involving dishonesty or a
DATE MAILED: September 27, 2018

appealed the Department's denials and requested a formal administrative hearing.

On December 15, 2016, Mr. Suarez's initial appeal was referred to the Administrative Hearings Office and counsel for the Department entered his appearance the following day. On December 20, 2016, a presiding officer was appointed and issued an order scheduling a prehearing telephone conference for February 1, 2017. On January 5, 2017, the Department filed a motion to dismiss the applicant's appeal on the basis that his request for hearing was untimely. On January 25, 2017, counsel for Mr. Suarez filed an answer to the motion. He asserted that his request should be considered timely or that the brief delay should be excused because he did not receive the November 23, 2016 denial letter until "on or about December 6, 2016." On January 27, 2017, the Presiding Officer denied the motion to dismiss.

A prehearing telephone conference took place on February 1, 2017 as scheduled and the Presiding Officer issued an order that same date setting out deadlines for prehearing submissions and scheduling a hearing for May 17, 2017. The Presiding Officer granted numerous joint requests for extensions of time as the parties attempted to find an amicable resolution.

On October 17, 2017, counsel for Mr. Suarez informed the Presiding Officer that Mr. Suarez had filed a second application for written consent and, together with Department counsel, requested a telephone conference to address logistical issues. On October 18, 2017 the Presiding Officer granted the request and scheduled a telephone conference for October 20, 2017. Following the telephone conference, the parties filed a joint comprehensive stipulation of facts and documents. On November 22, 2017, the Department issued its second denial letter and Mr. Suarez filed his second request for hearing.

breach of trust from engaging in the business of insurance without the written consent of the Department. 18 P.S. § 1033(e).

On November 29, 2017, another telephone conference was held and on November 30, 2017, the Presiding Officer issued an order consolidating both of Mr. Suarez's requests for hearing. The Order also set a deadline for the parties to file an optional supplemental stipulation of facts and required the parties simultaneously to file prehearing statements. On December 8, 2017, counsel for Mr. Suarez sought permission for an extension of time to file an expert report. By order on December 13, 2017, after considering the request and the Department's response, the Presiding Officer granted the extension, set a deadline of December 28, 2017 for prehearing statements and rescheduled the hearing for January 18, 2018.

On December 28, 2017, Mr. Suarez filed his prehearing statement and on January 5, 2018, the Department filed its pre-hearing statement (captioned "Supplemental Stipulation of Facts"). Thereafter, on January 9, 2018, the Department filed a motion in limine requesting that Suarez be precluded from presenting the testimony of certain witnesses. On January 9, 2018, Suarez filed a motion to strike the Insurance Department's untimely supplemental stipulation of facts and on January 10, 2018, the Department filed its answer to Suarez's motion to strike. On January 10, 2018, the Department filed its motion to accept and retitle its January 5, 2018 filing.

Subsequently, on January 12, 2018, Suarez filed a supplement to its prehearing statement identifying the character witnesses he intended to call during the hearing. On January 17, 2018, Suarez filed both an answer in opposition to the Insurance Department's motion to accept and retitle its January 5, 2018 filing and an answer in opposition to Insurance Department's motion in limine. By an order on January 17, 2018, the Presiding Officer denied the Department's motion in limine and Suarez's motion to strike. She also granted the Department's motion to accept and retitle the January 5, 2018 filing.

The hearing was held as rescheduled on January 18, 2018. At the beginning of the hearing, the jointly executed stipulation of facts and documents was admitted into evidence. The applicant testified in his own behalf and also presented the testimony of a resident licensed insurance producer, an expert real estate attorney/broker, a prospective employer and his pastor. The Department presented no witnesses. Following receipt of the hearing transcript, a briefing schedule was established. Both parties filed briefs as scheduled and this case now is ready for adjudication.

FINDINGS OF FACT

1. Appellant is the owner of Fernando A. Suarez & Co., Inc. and maintains a business address at 5553 Rising Sun Avenue, Philadelphia, Pennsylvania, 19120 [JS ¶ 7; N.T. 29].

2. Fernando A. Suarez and Co., Inc. is a business engaged in accounting, payroll services, income tax preparation, small business financial education and business improvement that caters to a Hispanic target market. [JS ¶ 8].

3. Appellant and his affiliated business entities also are engaged in real estate property development and transactions. [JS ¶ 9].

4. On September 16, 1996, appellant was convicted of one count of felony money laundering under 18 U.S.C § 1956(a)(1)(B)(i) and one count of felony conspiracy under 18 U.S.C. § 371. [JS ¶ 2; Exhibit 1].

5. The convictions stemmed from the appellant's knowing concealment of drug trafficking money by investing it in residential real estate through the preparation of false mortgage applications to purchase such real estate. [JS Exhibit 2].

6. Appellant procured title searches, title transfers and title insurance for the properties at issue after the real estate was already procured for cash from the drug trafficking proceeds, and appellant falsified the titles to the properties by naming other persons as the owners to conceal the identity of the true owners. [*Id.*].

7. Appellant took title to real estate in order to conceal the drug trafficking proceeds. [*Id.*].

8. In exchange for such activity, appellant received loans so that he could

invest in real estate himself, and he agreed to provide false information to federal authorities in order to hide the real estate arrangement. [*Id.*].

9. On October 24, 2001, the Department issued to the appellant an individual residential property and casualty producers license No. 304709 which appellant surrendered on August 31, 2012. [N.T. 39; JS Appellant's Exhibit 2].

10. When applying for and renewing his property and casualty license with the Department, the appellant informed the Department of his criminal conviction. [N.T. 39-40].

11. Appellant currently does not possess an insurance producer license in Pennsylvania. [N.T. 40].

12. On September 27, 2016, the Department received an Application for Written Consent to Engage in the Business of Insurance Pursuant to 18 U.S.C. §§ 1033 and 1034 ("Application") from appellant, and in that Application, appellant certified that all of the statements in the Application, and the documents appended thereto, were true and correct and complete. [JS ¶ 5; Exhibit 2].

13. During the course of reviewing appellant's Application, the Department discovered through a search of publicly available records numerous property transactions in and around the City of Philadelphia linked to appellant and his various associated businesses. [JS ¶ 10; JS Exhibit 3].

14. In the documents included in the Joint Stipulation at Department Exhibit 3, there are no crimes associated with any of the numerous property transactions involving appellant and/or any of his related business entities. [JS ¶ 12].

15. The Department's form of Application for Section 1033 Waiver does not

require appellant to disclose/list any of the information contained in Department Exhibit 3. [JS ¶ 13].

16. During the course of reviewing appellant's Application, the Department discovered through a search of publicly available records numerous business entities associated with appellant. [JS ¶ 14; Exhibit 4].

17. The Department's form of Application for Section 1033 Waiver does not require appellant to disclose/list any of the business entities associated with the appellant and contained in Department Exhibit 4. [JS ¶ 15].

18. By letter dated November 23, 2016, and based on the information contained in appellant's Application, the Department denied appellant's Application "... on the Department's determination that you are not worthy to receive an insurance producer license due your two (2) felony count [*sic*] for Conspiracy to Launder Money and two (2) felony count [*sic*] for Money Laundering." [JS ¶ 16; Exhibit 5].²

19. Appellant appealed the Insurance Department's determination, giving rise to this proceeding. [JS ¶ 17].

20. A meeting was convened with the appellant in May of 2017 for the appellant to answer certain questions the Insurance Department had with respect to the documents identified during the course of its search of public records. [JS ¶ 18].

21. The May 3, 2017 meeting was held at the Insurance Department and attended by Mr. Suarez and counsel (as well as Deputy Insurance Commissioner Christopher Monahan, Brad Harker, Esquire, and John Lacek, IV, Esquire), at which time a thorough review and discussion was held regarding all of the publicly available records

² The parties agree that the reference to "two (2)" is a typographical error because Mr. Suarez was convicted of only one (1) felony count of Conspiracy to Launder Money and one (1) felony count of Money Laundering.

identified by the Department, covering numerous property transactions in and around the City of Philadelphia linked to Mr. Suarez and/or to his various associated businesses, and Mr. Suarez provided full and complete answers and supporting documentation with respect to all of those questions. [JS ¶ 19; Appellant's Exhibit 1].

22. The Insurance Department also agreed that appellant would be permitted to file a new Application for Written Consent to Engage in the Business of Insurance Pursuant to 18 U.S.C. §§ 1033 and 1034 with the Insurance Department after the May 3, 2017 meeting that took place, and appellant did so on or about October 25, 2017. [JS ¶ 20; Appellant's Exhibit 2].

23. On November 22, 2017, the Department again denied the appellant's Application and the appellant appealed the decision the same date. [Docket Exhibits 30 and 31].

24. During the hearing held in this case, Jeffrey A. Beer, Esquire was qualified and testified as an expert in real estate transactions and real estate law. [N.T. 113-182].

25. Mr. Beer reviewed the public records documents included in the Joint Stipulation Exhibit 3, as well as information from the multiple listing service and interviewed the appellant. [N.T. 124-126].

26. After his review, Mr. Beer produced a report in which he concluded within a reasonable degree of professional certainty that the real estate transactions were:

- a. Entered into by the Seller(s) and Buyer(s) in a fair and legitimate way in that they were arms length transactions;
- b. Undertaken by the Seller(s) and the Buyer(s) with no hidden terms or special arrangements between themselves, or their agents, including Mr. Suarez; nor were there any special arrangements such as additional payment(s) of money, kickbacks, gifts, etc.

- c. And are properly documented and recorded in the Philadelphia or Montgomery county Recorder of Deeds Offices;
- d. And are consistent with 1000's of similar real estate transactions I have been involved in;
- e. And are not in violation of any Local, State or Federal Law, including but not limited to Conspiracy to Launder Money (18 U.S.C. § 371) and Money Laundering (18 U.S.C. § 1956(a)(1)(B)(i)).

[Exhibit S2]

27. This report corroborated the parties' stipulation that the appellant's real estate transactions were not indicative of any criminal activities.

28. The Pennsylvania Real Estate Commission reinstated the appellant's real estate salesperson license in January 2009. [Exhibit S1].

29. Should any of the foregoing factual findings be deemed conclusions of law, the ones so found are incorporated therein.

30. Additional factual findings in the Discussion section of this adjudication are incorporated herein.

DISCUSSION

This case decides only whether the Pennsylvania Insurance Department properly denied an application by Fernando Arturo Suarez to obtain written consent to engage in the business of insurance under 18 U.S.C. § 1033. The Department denied Mr. Suarez's two applications for that consent, and by implication denied his pending application for a producer license. Both the Department's November 23, 2016 and November 22, 2017 denial letters stated that the Department's decision not to grant a consent was based on its determination that the applicant "was not worthy to receive an insurance producer license" because of his "two (2) felony counts for conspiracy to launder money and two (2) felony counts for money laundering."³

18 U.S.C. § 1033 contains no guidance concerning the proper standard for reviewing the Department's decision to deny an application for written consent. However, in this case, the Department's denial letter informed the applicant that he could request a "formal administrative hearing" rather than a "review" of the denial. [Exhibit D6]. The initial order issued in this case informed the parties that the proceedings would be governed by the formal due process hearing procedures of the Administrative Agency Law,⁴ General Rules of Administrative Practice and Procedure ("GRAPP"),⁵ and the Department's Special Rules of Administrative Practice and Procedure.⁶ In other words, the parties were afforded a formal *de novo* hearing process from the time of the Department's denial letter through the time for briefing following the hearing. Neither party objected to proceeding in this fashion and the merits of the applications for written

³ This reference to two counts for conspiracy to launder money and two felony counts for money laundering appear to be a typographical error because the criminal dockets show only one (1) conviction for each count.

⁴ 2 Pa.C.S. §§ 501–508, 561–588 and 701–704.

⁵ 1 Pa. Code Chapters 31, 33 and 35.

⁶ 31 Pa. Code Chapter 56.

consent will be evaluated *de novo*.⁷

Applying the *de novo* standard to the facts and arguments in the present case makes little difference given the substantive legal standard applied to the application. In denying Mr. Suarez's application for consent, the Department applied the same standard that is applicable for licensure: worthiness to engage in the business of insurance. [Exhibits JS5 and Docket Exhibit 3]. The letters explaining the denial of a written waiver state that his request was denied for the reason that Mr. Suarez is "not worthy to receive an insurance producer license due to [his] . . . felony counts for conspiracy to launder money and . . . money laundering." [Exhibit JS5 and Docket Exhibit 30].

The applicant bears the burden of establishing his worthiness given past felony convictions whether applying for consent or applying for an insurance producer license. Although the present appeal is from a denial of a waiver, the question in the present case is whether, given the convictions and other relevant circumstances, Mr. Suarez currently is worthy to obtain the necessary consent to engage in the insurance profession. Consistent with the Department's stated reasons for its decision, this question will be evaluated with reference to the statutory standards relevant to licensure.

The Insurance Department is required to review each application for a license and shall issue a license if statutory criteria are met. Act of May 17, 1921, P.L. 789 art. VI-A *as amended*, 40 P.S. § 310.6(a). One of those criteria is that the applicant has not

⁷ These proceedings are conducted with formal hearing procedures and *de novo* review based on the circumstances of this case. However, an applicant for Section 1033 written consent may not have an automatic right to such procedures. Even for an existing licensee with a qualifying felony conviction, it is the federal statute which prohibits engaging in the business of insurance rather than the Department. An applicant for waiver of the federal statute's effect does not have a right to particular procedures in a review of the Department's denial. *See In re Coates*, AG03-07-005 (2004); *In re McGarry*, AG04-09-010 (2006). The fact that Mr. Suarez received greater due process than required in his case does not mean that future reviews necessarily will apply the same procedures and standard.

committed any act which is prohibited under the Act. 40 P.S. § 310.6(a)(2). In addition, the applicant must satisfy the Insurance Department that he is worthy of licensure. 40 P.S. § 310.6(a)(6); *Slanina v. Sheppard*, 366 A.2d 963 (Pa. Cmwlth. 1976).

In determining current worthiness of an applicant, the statutory and regulatory standards provide guidance but do not constitute the definitive listing of factors or activities to be considered in that determination. See *Termini v. Department of Ins.*, 612 A.2d 1094 (Pa. Cmwlth. 1992) (dual exclusive employment activity demonstrating dishonesty). The ultimate question is whether the applicant is worthy of licensure. *Stone and Edwards Ins. Agency, Inc. v. Department of Ins.*, 636 A.2d 293 (Pa. Cmwlth. 1994), *aff'd* 648 A.2d 304 (Pa. 1994). Unlike for revocation of an existing license, a license applicant bears the burden of establishing his worthiness to receive the license. See *Dillinger v. Commonwealth, Ins. Dept.*, 364 A.2d 757 (Pa. Cmwlth. 1976).

In order to be worthy of licensure, individuals are required to act with diligence and care toward the public they serve, and the Insurance Department Act allows for denial, suspension or revocation of a license or refusal to renew the license for unworthiness. *Jones v. Foster*, 611 A.2d 332 (Pa. Cmwlth. 1992); *Termini, supra*.

Certain specific standards for worthiness are set forth by statute. Among other things, an applicant for a producer license shall not:

(14) Commit a felony or its equivalent.

...
(20) Demonstrate a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure.

40 P.S. § 310.11 (14) and (20).⁸ These are the standards by which Mr. Suarez's request for written consent will be examined.

Mr. Suarez testified and admitted the criminal activity leading to his convictions as he had acknowledged throughout these proceedings. [JS ¶¶ 5-6, N.T. 32, 34, 41, 45-46; Brief pp. 16-17]. From 1989 through 1992 Mr. Suarez assisted a known drug dealer to conceal his income through various real estate transactions. [JS Exhibit 1]. After conviction in 1996, he completed serving the resultant prison sentence. [JS Exhibits 1 and 2]. The Court deviated from the sentence guideline because it found Mr. Suarez "to be a minor participant." [*Id.*]. Mr. Suarez also made full payment of all fines and costs and successfully completed his probation. [JS Appellant's Exhibit 2]. The Court returned his passport in 2002. [JS Exhibit 1]. During his testimony at hearing, Mr. Suarez confessed the "pain" caused by his actions and that it is a "constant reminder" that will keep him from doing anything like it again. [N.T. 34]. He has had no contact with the individual involved in the money laundering activity. [N.T. 44].

During his incarceration, Mr. Suarez "took advantage of everything that was available." [N.T. 32]. He attached copies of numerous certificates evidencing his completion of a wide variety of classes including, among others, "The American Civil War," "Owning and Operating a Small Business," "Writing Business Plans," "Calisthenics," "Forestry Production," "ACE Instructors," and "Principles of Insurance." [JS Appellant's Exhibit 2, Tab 5].

Currently, Mr. Suarez is the CEO of Fernando Suarez Business Advisors located

⁸ Section 1033 requires written consent if the felony involves dishonesty or a breach of trust. 18 U.S.C. § 1033(e)(1)(A). Conspiracy to launder money and money laundering are considered crimes of dishonesty or breach of trust in the model of the National Association of Insurance Commissioners. There is no dispute in the present case that Mr. Suarez's convictions are subject to Section 1033, and the applicant makes no argument to the contrary.

in Philadelphia. [N.T. 33]. He employs 15 people and provides various types of licensure services, accounting, payroll services, and tax services. [N.T. 33-34]. He has obtained all the necessary licenses to provide the business services offered by his company. [N.T. 33]. Mr. Suarez was born in Columbia but is a naturalized citizen of the United States where he has lived since infancy. [N.T. 35]. As someone fluent in both Spanish and English he concentrates his efforts on providing services to the Hispanic community in Philadelphia. [N.T. 35-36]. If licensed to become an insurance producer he will continue working with that community. [N.T. 35]. He described his company as a "bridge" into a community that has a "huge need" for insurance services. [N.T. 35].

In 2001 Mr. Suarez was approved for a property and casualty insurance producer license which he renewed one time before allowing it to lapse in 2012. [N.T. 39-40; JS Appellant's Exhibit 2, Tab 2]. In his application for the license Mr. Suarez had informed the Department of his criminal record. [*Id.*]. His real estate license also had been reinstated after a hearing, but he voluntarily surrendered it in 2010 when he had no need for it. [N.T. 41-42; JS Appellant's Exhibit 2, Tab 2]. He currently holds a tax preparation license. [N.T. 47]. He is audited every three or four years and has remained in compliance. [N.T. 49]. The record reveals no consumer or other types of complaints against Mr. Suarez in any of these licensed activities since his conviction.

Jonathan Lavin, a senior national sales director for Primerica Financial Services testified on behalf of Mr. Suarez. [N.T. 52]. He has been employed by Primerica for more than 30 years. [N.T. 54]. He became acquainted with Mr. Suarez through one of his business associates and has known him for approximately two years. [N.T. 54]. After several conversations, Mr. Suarez completed an application to work for Primerica. [N.T. 55]. The application included documentation about the felony conviction in Mr. Suarez's history. [*Id.*]. Primerica always denies applications from individuals with a felony

conviction and it did so in this case. [N.T. 56]. \

After such a denial, the application is then reviewed by a committee at Primerica [N.T. 59-60]. After reviewing Mr. Suarez's application, the committee decided to approve Mr. Suarez's application for employment with the company. [N.T. 60]. The committee factored in the length of time since the crimes, Mr. Suarez's clean record since that time and the recommendation of Mr. Lavin. [N.T. 59-60]. The company has entered into agreements with Mr. Suarez that will permit him to be employed by Primerica if he receives his insurance producer license. [N.T. 61-62].

Mr. Lavin described Mr. Suarez as an "honest, trustworthy" individual who keeps his word and who is well respected in the Philadelphia Hispanic community. [N.T. 62]. He observed that Mr. Suarez is very involved in the community and his reputation is "impeccable." [N.T. 63]. Mr. Lavin has "never heard one negative thing ever said about him." [Id.]. Primerica is a publicly traded company so Mr. Lavin tries to learn everything he can about potential employees. [N.T. 63]. Mr. Lavin is willing to sponsor, train and supervise Mr. Suarez. [N.T. 64]. He expressed his belief that Mr. Suarez was fully rehabilitated and based this opinion on his observations of the way that Mr. Suarez worked. [N.T. 65-66]. He also opined that the company's level of supervision ensures that life insurance producers are truthful in their business. [N.T. 66].

Mr. Lavin is interested in hiring Mr. Suarez because of his bilingual ability to connect with the underserved Hispanic community in Philadelphia. [N.T. 67-68]. He described Mr. Suarez further as "smart, he's articulate, he's a communicator, he's bilingual, he's successful . . . he's got a great reputation with the Hispanic community . . . I believe that people would benefit greatly by being in his presence and learning what he could help them to learn." [N.T. 68]. Mr. Suarez has taken the appropriate pre-licensing

class, passed the life insurance examination and has been approved for employment with Primerica but is waiting for the consent from the Department. [N.T. 78-79].

Mr. Lavin has "zero problem" with the 1996 crime for which Mr. Suarez served time. [N.T. 69]. Although he did not know Mr. Suarez in 1996, he believed his experience of 25 years made it possible for him to determine that Mr. Suarez was rehabilitated. [N.T. 73]. Additionally, he reviewed the criminal documents concerning the charges, and the releases, the dates of the activity, the length of time that has passed and that Mr. Suarez had "no further legal problems since that time." [N.T. 75].

He acknowledged that his own business will benefit from the success of Mr. Suarez. [N.T. 71-72]. However, it also is his job to make certain that agents write "good quality business" and to make certain that his "agents are doing an honest honorable job." [N.T. 84]. As a result, his own financial incentive is not to hire anyone who would jeopardize his own business reputation or that of his company because "that would be ridiculous." [N.T. 87].

A licensed insurance producer, Leonard Garza, from Cheltenham, also testified on behalf of Mr. Suarez. [N.T. 88-89]. Mr. Garza is a Pennsylvania insurance licensed producer with an agency that employs eleven people. [N.T. 92]. He has known Mr. Suarez approximately fifteen years since one of his agents began providing insurance for several of Mr. Suarez's properties. [N.T. 89]. The men currently see each other regularly at soccer pick-up games. [*Id.*]. Mr. Garza also provides business insurance to Mr. Suarez for both his business, home and investment properties. [N.T. 90, 97].

Mr. Garza described Mr. Suarez as a man of "exemplary" character and an "A plus" reputation in the community. He believes it "would be a disservice if he wasn't in

the insurance business because of his reputation and his ability to communicate with the Hispanic community in Philadelphia." [N.T. 91-92]. Mr. Garza described himself as someone concerned about his own reputation who would not associate "with somebody with a bad reputation." [N.T. 92-93]. Mr. Suarez told him about his criminal conviction. [N.T. 95]. He has also read through the criminal records and found them consistent with what Mr. Suarez told him. [*Id.*].

Additionally, Angel Correa, pastor of the House of Glory, testified that he has known Mr. Suarez approximately six years. [N.T. 100]. He met Mr. Suarez through his work with young people in Philadelphia. [*Id.*]. He first learned about Mr. Suarez's criminal background several years ago when Mr. Suarez told him about the reasons for his jail term and fine. [N.T. 102-103]. During the years of his acquaintance, Mr. Suarez has become involved with several religious community groups, creating "awesome" relationships with the pastors and leaders. [N.T. 103-104]. He described Mr. Suarez as a man of such integrity that he is asking him to speak to groups of young people about how to merge their spiritual and business lives. [N.T. 108].

Jeffrey Allan Beer, a real estate broker and attorney, was qualified as an expert in real estate and real estate law. [N.T. 122]. Both his reports and testimony confirmed the parties' stipulated agreement that the real estate documents included transactions which did not include anything unusual or unlawful. [N.T. 130; Exhibit S2]. Mr. Beer based his opinion on an examination of the real estate documents attached to the Joint Stipulation and about which the Department had expressed concern. [N.T. 124-125]. He also conducted additional research after determining that the documents taken from the public record were incomplete. [N.T. 126-127]. He also obtained information from Mr. Suarez and from the Multiple Listing Service. [*Id.*].

In both his report and testimony, Mr. Beer addressed the Department's concerns about Mr. Suarez's real estate activities. The Department asked questions about transfers of property for nominal amounts and Mr. Beer explained that titles to real estate properties frequently are transferred for nominal sums. [N.T. 164]. Such transactions happen "thousands of times a year." [Id.]. He also addressed the Department's questions about the differences between some property sale prices and the assessed value. Mr. Beer explained that in many cases, the assessed value of a property has little relationship to the sales or purchase price. [N.T. 143-146, 148-149]. He noted that none of his real estate agents use the assessed value of a property to ascertain a selling price. [N.T. 149]. He explained that the difference between the assessed value and the sales price commonly show a "wide disparity." [N.T. 151]. Finally, Mr. Beers addressed the Department's questions about mortgages that exceeded the sales prices and explained that buyers many times borrow more than the value of the property to use money for improving a property or for other reasons. [N.T. 153, 170, 182]. It is "not an unusual thing." [N.T. 170]. In short, he found nothing questionable in the real estate documents presented to him by the Department.

Mr. Suarez asks that his request for consent be granted on the basis of his reputation in the business he has rebuilt since his conviction, his community involvement and his church related activities. His witnesses reinforced the positive reputation enjoyed by Mr. Suarez in the Philadelphia Hispanic community as well as the strong ties Mr. Suarez shares with local business leaders, his church and his clients. Both Mr. Suarez and his witnesses addressed the criminal conviction which occurred more than 20 years ago and how much he has accomplished since that time. Mr. Suarez said he would not allow "anything close" to that type of crime "enter into my brain, into my thoughts, into my habits." [N.T. 34].

Even though the Department presented no witnesses to rebut the positive evidence presented at the hearing, it argues that the nature of Mr. Suarez's crime alone, no matter the age of the convictions, makes him an unfit candidate for a waiver. The Department points to the elements of money laundering and conspiracy to commit money laundering which involves a knowing involvement in financial transactions with the goal of concealing proceeds from illegal activity. 18 U.S.C. § 1956(a)(1)(B)(i). In this case, Mr. Suarez was convicted of concealing proceeds from the sale of illegal drugs through real estate transactions. As a result, the Department argues that it properly denied Mr. Suarez's application of a written consent to engage in the business of insurance because it involves financial transactions.

The Department also contends that the nature of the applicant's money laundering convictions is so serious that it may not be appropriate to grant consent "under any circumstance." [Dept. Brief p. 12 note 3]. The Department asserts that the crime involved the business of insurance, thus adding to the severity of the activity. In essence, the Department seeks a life-long ban from the business of insurance when the crime involves money laundering in real estate transactions involving title insurance. The Department asserts that its concerns remain valid because public records show that Mr. Suarez and some of his clients or acquaintances have been involved in multiple and questionable real estate deals since his convictions. As a result, the Department argues that Mr. Suarez continues to pose a danger.

However, the parties have stipulated that no crimes are associated with any of the numerous property transactions involving appellant and/or any of his related business entities. Furthermore, the parties have agreed that, during a May 3, 2017 meeting with Mr. Suarez and Department personnel, including counsel, Mr. Suarez provided full and complete answers and supporting documentation with respect to all questions concerning

Mr. Suarez's real estate concerns. [JS ¶ 19; Appellant Exhibit 1].⁹ Nevertheless, the Department emphasizes that these transactions demonstrate that Mr. Suarez may have opportunities to commit a crime while entrusted with consumers' financial and personal information and property. Finally, the Department disputes that its decisions to grant consent in other cases apply to this case because none of the other applicants who have been given consent to engage in the business of insurance were involved in money laundering.

While recognizing the egregious nature of Mr. Suarez's criminal conduct, the evidence in this case also includes significant mitigating circumstances. Mr. Suarez's criminal behavior occurred over 20 years ago when he was in his 30s and held a real estate license. Although real estate transactions tangentially involved title insurance, his activities did not harm any insurance consumers. He long ago has completed serving his time, paying all his fines and maintaining a clean record since that time. He testified sincerely and credibly that he can be trusted and would serve insurance consumers honestly. His witnesses, which included his pastor and another insurance producer in good standing with the Department, spoke credibly of Mr. Suarez's reputation for honesty and integrity as a businessman in the Philadelphia Hispanic community.

A high level Primerica agent in good standing with the Department is willing to hire Mr. Suarez after learning to know him, meeting his employees and conducting a thorough investigation of his history. An expert real estate broker/attorney found nothing untoward in the real estate documents obtained by the Department. Mr. Suarez testified convincingly that, since his release from incarceration, he has not associated with the individual for whom he conducted criminal transactions.

⁹ Curiously, despite these stipulations, the Department spent most of its brief detailing supposed remaining questions about the transactions. Considering the stipulated facts, these questions and arguments have been considered but given little weight in this adjudication.

As the Department correctly states, the felonies for which Mr. Suarez was convicted are extremely serious by definition. His crimes are compounded because they involved very significant financial fraud. In addition to considering an applicant's or licensee's circumstances, the Insurance Department has the responsibility to protect the public and also to maintain the appearance of worthiness among insurance producers. See *Romano v. Pennsylvania Ins. Comm'r*, 404 A.2d 758, 759-60 and n. 2 (1978); *In re Friedman*, 457 A.2d 983, 988 (Pa. Cmwlth. 1983); *In re Gottfried*, SC98-06-009 (1999). Committing a felony or its equivalent specifically is prohibited for license applicants and licensees. Mr. Suarez's money laundering and criminal conspiracy convictions have the potential to damage the appearance of worthiness among insurance producers.

Recognizing the Department's paramount concern being protection of consumers, the nature of the applicant's convictions and conduct weigh against worthiness to engage in the business of insurance. However, Mr. Suarez's mitigating circumstances are substantial, including that he was not acting as an insurance producer at the time of his activities, that no direct consumer harm resulted from his actions, that 22 years have passed since the convictions, without any further criminal activity, and that he currently holds positions of trust in various community and church related positions. He has paid all fines and costs and owes no further payments for any reason.

Furthermore, Mr. Suarez has been licensed by several authorities, including the Pennsylvania Insurance Department between 2001 and 2012, with no evidence of financial or other wrongdoing while using those licenses. The real estate crimes do not suggest that any insurance consumers will be harmed going forward. While the Department questions the real estate transactions in recent years, the absence of any suggestion of illicit or dishonest activity in those transactions, demonstrates worthiness

rather than unworthiness. The highly visible nature of Mr. Suarez's business and numerous positions of trust in his community, as well as approvals by licensing authorities, including the Department, mitigate in favor of a consent waiver. In short, Mr. Suarez appears worthy of consent to engage in the business of insurance at this time.

Accordingly, Mr. Suarez's September 27, 2016 and October 25, 2017 applications for written consent to engage in the business of insurance will be granted subject to any other conditions the Department deems appropriate.¹⁰

¹⁰ This adjudication and order is limited to the question of whether Fernando Suarez is worthy of and entitled to consent to engage in the business of insurance, 18 U.S.C. § 1033. It does not and is not intended to address the worthiness of Mr. Suarez relative to any application for licensure which Mr. Suarez may make.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the parties and subject matter of these proceedings.
2. 18 U.S.C. § 1033 prohibits an individual from engaging in the business of insurance without prior consent of the Insurance Commissioner ("Commissioner") if the individual has been convicted of a felony involving dishonesty or a breach of trust.
3. The legal standard for an application for written consent is the same as for licensure: worthiness to engage in the business of insurance.
4. Section 606-A of the Insurance Department Act prohibits the issuance of an insurance producer license except to an applicant possessing the general fitness, competence and reliability to be worthy of the license.
5. The burden of establishing worthiness for licensure is upon the applicant.
6. The convictions based on the activities described in Exhibit S1 constitute felonies involving a breach of trust or dishonesty.
7. In order to be worthy of licensure, agents are required to act with diligence and care toward the public they serve, and the Insurance Department Act allows for denial, suspension or revocation of a license or refusal to renew the license for unworthiness.
8. In addition to considering an applicant's or licensee's circumstances, the Insurance Department has the responsibility to protect the public and also to maintain the

appearance of worthiness among insurance producers.

9. An applicant's clean record during the twenty-two years since his conviction evidence that he has been reformed.

10. Fernando Arturo Suarez has met his burden of establishing that he currently is worthy of the written consent of the Pennsylvania Insurance Department to engage in the business of insurance.

11. Additional conclusions of law set forth in the Discussion section of this adjudication are incorporated herein.

12. If any of the foregoing conclusions of law are deemed to be findings of fact, then they are incorporated therein by reference.

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: Appeal of:
Fernando Arturo Suarez
5553 Rising Sun Avenue
Philadelphia, PA 19120

v.

COMMONWEALTH OF
PENNSYLVANIA INSURANCE
DEPARTMENT

: Pursuant to Article VI-A of The
: Insurance Department Act, Act of May
: 17, 1921, P.L. 789, No. 285 *added by*
: the Act of December 6, 2002, P.L. 1183,
: No. 147 § 2 (40 P.S. §§ 310.1-310.99a)

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: Docket No. AG16-12-015

ORDER

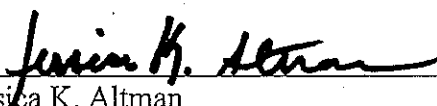
AND NOW, for the foregoing reasons, the decisions of the Office of Market Regulation, Bureau of Licensing & Enforcement of the Pennsylvania Insurance Department dated November 23, 2016 and October 25, 2017 denying written consent and licensure to Fernando Arturo Suarez are **REVERSED**. Mr. Suarez's applications for written consent to engage in the business of insurance will be granted subject to any other conditions the Department deems appropriate. This order is effective immediately.


JESSICA K. ALTMAN
Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: The Act of April 9, 1929, P.L. 177, No. 175, known as The
Administrative Code of 1929

AND NOW, this 28th day of March, 2018, Christopher R. Monahan,
Deputy Insurance Commissioner, is hereby designated as the Commissioner's duly
authorized representative for purposes of entering in and executing Consent Orders. This
delegation of authority shall continue in effect until otherwise terminated by a later Order
of the Insurance Commissioner.



Jessica K. Altman
Insurance Commissioner

