MIKE KREIDLER
STATE INSURANCE COMMISSIONER

DECLARATION OF MAILING
I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to the parties listed below
DATED this 9th day of January 2006 at Tumwater, Washington.
Signed: Wendy Galloway

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

STATE OF WASHINGTON

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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:	)	NO. D05-344
	)	
MICHAEL E. LEROUX,	)	FINDINGS OF FACTS, CONCLUSIONS
	)	OF LAW, AND FINAL ORDER
Licensee.	)	ON HEARING
	)	

TO: Michael E. Leroux
523 S. 34th Street
Tacoma, Washington 98418

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection
Carol Sureau, Deputy Commissioner, Legal Affairs
Andrea Philhower, OIC Staff Attorney, Legal Affairs
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Pursuant to RCW 34.04.090, 34.04.120, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Insurance Commissioner for the state of Washington (OIC) on September 14, 2005, in Tumwater, Washington. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The OIC appeared pro se, by and through OIC Staff Attorney Andrea Philhower. Michael E. Leroux appeared pro se.

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that,

pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General in the United States mail. If a party chooses to file a petition in the Superior Court, he or she may, but is not required to, first file a request for reconsideration. For further information or to obtain copies of the applicable statutes, the parties may contact the administrative assistant to the undersigned.

NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance Commissioner's (Commissioner) Order Revoking License, No. D05-344, entered by the Commissioner on July 1, 2005, should be confirmed, set aside or modified. Said Order Revoking License revokes the insurance agent's license of Michael E. Leroux (Licensee) based upon the facts alleged therein. The Licensee requested this hearing to contest this Order Revoking License.

FINDINGS OF FACTS

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. Further, it is reasonable that the deadline for entry of this Order was extended for a short period based upon good cause shown as permitted by RCW 34.05.461(8)(a).

2. The Licensee is a resident of Tacoma, Washington, and is approximately 34 years of age.

3. On or about January 12, 2005, the Licensee submitted an application for a life and disability, property and casualty insurance agent's license to the Commissioner, for licensure as an insurance agent in the state of Washington. [Ex. 3.]

4. On January 19, 2005, based on the information contained in the afore-referenced application, the Licensee was issued an insurance agent's license to conduct life and disability, property and casualty insurance in Washington State.

5. Subsequently, the fingerprint report from the Federal Bureau of Investigation was received by the Commissioner and indicated that on October 21, 1993, the Licensee was arrested and charged with robbery, and that he was later convicted of this charge and sentenced to three years in prison. [Ex. 2.]

6. On March 10, 2005, in response to the information received from the Federal Bureau of Investigation [Ex. 2], the Commissioner contacted the Licensee regarding this information. [Ex. 5.] The Licensee responded to the Commissioner that he had, in fact, been convicted of this charge, served three years in prison pursuant to the conviction and was later paroled to the state of Tennessee. [Ex. 6.]

7. In fact, the Licensee was charged with felony robbery which arose from events which occurred on October 21, 1993, when he was 22 years of age. He was convicted of this charge and, pursuant to the conviction, served three years in prison. [Testimony of Licensee; Ex. 6.]

8. The Licensee was later paroled to the state of Tennessee. Once his parole tenure was complete, he understood that this crime was to be expunged from his permanent record. He has received no communication of any kind from the criminal authorities and has been cleared to work in various capacities which required criminal checks since that time e.g. church, working with children, registration to vote. [Testimony of Licensee; Ex. 6.]

9. On April 7, 2005, the Commissioner requested that the Licensee provide letters of support and character, and, in particular, requesting a letter from his employer(s) attesting to the fact that the employer(s) was aware of his felony conviction. [Ex. 7.]

10. In response, the Licensee obtained letters from his former employers since the incident in question and forwarded them to the Commissioner. Specifically, the Licensee worked for Dr. Andrew J. Sarnat, in George and in Tacoma, Washington, from June 1996 to December 2004. He first began as a handyman and then became the manager of 25 rental properties, with responsibility for collecting and depositing rental income amounting to hundreds of thousands of dollars over the years. Dr. Sarnat also entrusted the Licensee with a charge account and allowed him to supervise their construction crew and pay their contractors. The Licensee also kept keys to all of the properties, including Dr. Sarnat's personal residence. The Licensee proved himself trustworthy in these activities, was a tireless worker and was professional in his conduct and demeanor. Finally, before starting to work for Dr. Sarnat, the Licensee made Dr. Sarnat aware of his prior conviction of a crime. [Ex. 11, letter from Dr. Sarnat to Commissioner and notes from Commissioner's interview with Sarnat.]

11. The Licensee worked for Appalachian Forest Products from 1998 to 1999. Gerald R. Lang was the Licensee's sales manager there. The Licensee was responsible for collecting and depositing money from his own sales, which averaged between $100,000 and $200,000 monthly. There were no discrepancies in any of his transactions and the Licensee was the most conscientious worker Mr. Lang has ever had. His morals and ethics were above reproach. The Licensee proved himself to be a man of character and integrity in his work there. [Ex. 12,

undated letter from Gerald R. Lang and notes from Commissioner's interview with Gerald R. Lang.] Mr. Lang recommends the Licensee as a man of character and integrity and would recommend him for any job or career. Mr. Lang was aware of the Licensee's prior conviction of robbery and that he would rehire him today. [Ex. 12.]

12. The Licensee made his prior employers aware of his conviction for this crime prior to his being hired by them. [Testimony of Licensee; Exs. 11 and 12.] At the time the Licensee was hired by AAA Washington's Insurance Agency, since seven years had passed since his felony conviction, as above, he believed that the felony had been expunged from his record and that he had no felonies to report on his application for an insurance agent's license. [Testimony of Licensee.] In response to the inquiries of the Commissioner, however, on or about April 2005, he advised his immediate supervisor at his current employer, AAA of Washington's Insurance Agency, Cathy Morris, of his past felony conviction. Ms. Morris responded that she did not have authority to write a letter of reference to the Commissioner and that she was concerned that, although most carriers would allow his continued appointment as an insurance agent, even if one objected then he would be unacceptable as an agent there. For this reason, the Licensee and Ms. Morris discussed the matter and agreed on a voluntary termination of the Licensee's employment there. [Testimony of Licensee.]

13. At the time the Licensee worked for AAA of Washington's Insurance Agency in Washington State, Douglas A. Pennington, FLMI, AAI, AIRC, AIAA, was his Training and Development Manager as well as the AAA of Washington's Insurance Agency's broker. Mr. Pennington was part of the hiring team that chose to hire him, and he provided him with post licensing training and oversaw his early development as an insurance agent. At this time Mr. Pennington has known the Licensee for some time and that the Licensee has proved himself to Mr. Pennington to be an exceptional individual of great character and ethics who he believes is and will continue to be a credit to the insurance industry. He performed his duties expertly and managed to balance his receipts perfectly every day. It is Mr. Pennington's firm belief that the wrong which the Licensee was involved during his youth have been outgrown and he trusts the Licensee completely. He gives no stronger recommendation than the one he gives to the Licensee. [Ex. 13, June 17, 2005 letter from Pennington, notes from Commissioner's interview with Pennington.]

14. The Licensee did enter a false statement on his insurance agent's license application in Washington. However, it is credible that the Licensee did, in fact, believe that said felony was expunged from his record after seven years, particularly based upon uncontroverted testimony from employers and from the Licensee that the Licensee had in fact disclosed the felony in employment and other situations for the seven years after he was convicted of that felony. In addition, the fact that he has received exceptional recommendations from those prior employers during those seven years, and the fact that the Licensee has not been involved in any either previous or subsequent crimes or questionable behavior, all combine to indicate significant mitigating circumstances in this situation. Considering these facts, the Licensee's conviction of the subject felony in 1993, at the age of 22, does not demonstrate him to be untrustworthy or incompetent to maintain an insurance agent's license at this time.

15. Based upon the above Findings of Facts, there has been insufficient evidence to show that the Licensee has shown himself to be, and has therefore here not been deemed to be, untrustworthy or a source of injury or loss to the public and unqualified to be an insurance agent in the state of Washington.

16. Due to the above findings of facts, to the effect that the penalty of revocation against the Licensee includes substantial mitigating circumstances found above, and due to the additional fact that the Licensee has already been actually revoked for the past nearly six months for this violation, it is reasonable at this time that the Commissioner's Order Revoking License, No. D05-344, should be set aside.

17. Cheryl Penn, an investigator with the Office of the Insurance Commissioner, appeared as the sole witness on behalf of the Commissioner. Ms. Penn's testimony was detailed, clear and credible, and exhibited no apparent biases.

18. Michael E. Leroux, the Licensee, appeared as the sole witness on his behalf. Mr. Leroux presented his testimony in a detailed, clear and credible manner, and exhibited no apparent biases.

19. Based upon the activities of the Licensee as set forth in the facts found herein, it is here found that the Insurance Commissioner's Order Revoking License, No. D05-344, entered July 1, 2005, should be set aside.

20. The undersigned recognizes recent case law which draws into question the proper standard of proof to be applied in administrative cases involving some types of professional licenses, and recognizes that such cases involving insurance agents' licenses have not been addressed. In recognition of the question that this recent case law raises, however, the undersigned has applied both the "clear cogent and convincing" standard of proof and the "preponderance of the evidence" standard of proof, and finds the above facts under application of either the lower or the higher standard of proof.

CONCLUSIONS OF LAW

1. Pursuant to the Findings of Facts above relative to his activities in completing his application to become licensed as an insurance agent in the state of Washington, and in particular the mitigating circumstances surrounding this activity, it is hereby concluded that it has not been shown that the Licensee's conviction by final judgment of a felony should result in revocation of his license pursuant to RCW 48.17.530(1)(g), RCW 48.17.540(1) or RCW 48.17.530(1)(a).

2. Pursuant to the Findings of Facts above relative to his activities in completing his application to become licensed as an insurance agent in the state of Washington, and in particular the mitigating circumstances surrounding this activity, it is hereby concluded that in completing his application to become licensed as an insurance agent in the state of Washington, the Licensee did

not demonstrate himself to be untrustworthy, or imcompetent, or otherwise unqualified to be an insurance agent in the state of Washington as contemplated by RCW 48.17.070.

3. Pursuant to the Findings of Facts above relative to his activities in completing his application to become licensed as an insurance agent in the state of Washington, and in particular the mitigating circumstances surrounding this activity, it is hereby concluded that there has been insufficient proof that the Licensee obtained his license through willful misrepresentation or fraud as contemplated by RCW 48.17.530(1)(c), and it is hereby concluded that there has been insufficient proof that the Licensee willfully misrepresented any fact required to be disclosed in his application as contemplated by RCW 48.17.090(2).

4. Pursuant to the Findings of Facts above relative to his activities in completing his application to become licensed as an insurance agent in the state of Washington, it is hereby concluded that the Licensee has not demonstrated himself to be, nor has he been found herein to be, incompetent, or untrustworthy, or a source of injury and loss to the public as contemplated by RCW 48.17.530(1)(h).

5. Based upon the Findings of Facts herein, and Conclusions of Law directly above, it is hereby concluded that the Insurance Commissioner's Order Revoking License, No. D05-344, entered against Michael E. Leroux on July 1, 2005, should be set aside.

ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law, to the effect that there are sufficient mitigating circumstances which have lead to the conclusion that the insurance agent's license of the Licensee should not be revoked pursuant to the statutes identified above, and that the Licensee has not shown himself to be incompetent, or untrustworthy, or a source of injury and loss to the public or not qualified to be an insurance agent as contemplated by RCW 48.17.070 and RCW 48.17.530(1)(h),

IT IS HEREBY ORDERED that the Commissioner's Order Revoking License, No. D05-344 entered July 1, 2005, is set aside.

This Order is entered pursuant to RCW 34.05, Title 48 RCW and regulations applicable thereto.

This Order is entered at Tumwater, Washington, this 9th day of January, 2006.

PATRICIA D. PETERSEN
PRESIDING OFFICER