

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH**

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

RESPONDENT:

STAFFING AMERICA, INC.
4760 South Highland Drive
Salt Lake City, UT 84117
PEO Identification No. 158365

ORDER ON

ORDER TO SHOW CAUSE

DOCKET No. 2009-069-PC
Enf. Case No. 2431

Mark E. Kleinfield,
Presiding Officer

ORDER ON ORDER TO SHOW CAUSE

THIS MATTER CAME ON to be heard before the Commissioner of the Utah State Insurance Department ("Department") on Wednesday, November 18th, 2009 at 9:00 o'clock A. M. Mountain Time, with Mark E. Kleinfield, Administrative Law Judge, serving as designated Presiding Officer.

Said hearing being held at the Department's offices located at the Utah State Office Building, Room 3110, Salt Lake City, Utah 84114, having been convened at the designated time of 9:00 (9:07 A. M., November 18th, 2009 and adjourned at 9:22 A. M. on said same day.

Appearances:

M. Gale Lemmon, Assistant Attorney General, Attorney for Complainant, Utah State Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

Dan Roberts, Staffing America, Inc., 4760 South Highland Drive, Suite 202, Salt Lake City, Utah 84117.

By the Presiding Officer:

Pursuant to an October 29th, 2009 Notice of Order to Show Cause a hearing was conducted on November 18th, 2009 in the above-entitled proceeding. The Respondent was present at that time.

The hearing was convened and conducted as a **formal hearing** in accordance with Utah Code Ann. Sections 63G-4-204, 63G-4-205 63G-4-206, 63G-4-207 and 63G-4-208 and Administrative Rule R590-160.

ISSUE, BURDEN and "STANDARD OF PROOF"

1. The basic issue(s) in this case is (are):

a. The Respondent having been ordered to appear before the Commissioner or his designated representative on Wednesday, the 18th day of November, 2009, at the hour of 9:00 o'clock A. M., to show cause, any there may be, why Respondent's identification number to conduct a professional employment organization business in the State of Utah should not be immediately revoked for failure to obey an Order of the Commissioner under date of August 12th, 2009 and or the imposition of additional forfeitures for violation of that Order and whether an Order on such Order to Show Cause should or should not issue accordingly? (**SEE** also Paragraph 2 under DISCUSSION-ANALYSIS.)

2. The "*burden of proof*" or "*burden of going forward*" in this case as to the above issue(s) is on the Respondent.

3. As per Utah Administrative Code Rule, R590-160-5.J as to each of the above and foregoing "issue(s)" or "question(s)" to be answered the "*standard of proof*" as to issues of fact is to be proven by a "*preponderance of the evidence*".

Both parties presented opening statements.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Complainant Department:

The Department was permitted to pro-offer.

For the Respondent:

The Respondent was permitted to pro-offer.

Exhibits:

The Presiding Officer reviewed the file.

Argument followed.

The Presiding Officer being fully advised in the premises and taking administrative notice of the files and records of the Department, now enters his *Findings of Fact, Conclusions of Law, and Order*, on behalf of the Department:

FINDINGS OF FACT

I, find by a preponderance of the evidence, the following facts:

Preliminary-Procedural Facts

(Paragraphs 1-7)

1. The Utah Insurance Department (“Department”) is a governmental entity of the State of Utah. The Department as per Utah Code Ann. Section 31A-2-101 is empowered to administer the *Insurance Code*, Title 31A, Utah Code Ann., 1953, as amended.

2. The Respondent, Staffing America, Inc., is an apparent Utah corporation, domiciled in Utah and maintaining a present principal business address of 4760 South Highland Drive, Suite 202, Salt Lake City, Utah 84117, holding a Professional Employment Organization (“PEO”) Identification number of 158365.

3. The Department on or about June 2nd, 2009 issued a “Notice of Informal Adjudicative Proceeding and Order”, being Docket No. 2009-069-PC, to the Respondent, assessing a \$500.00 administrative forfeiture for failure to timely respond to an inquiry of the Commissioner under date of April 9th, 2009. A copy of said Notice and Order being mailed to the Respondent at its referenced business address on or about June 8th, 2009.

4. The Respondent timely filed its request for a hearing on June 18th, 2009; and said matter was converted to a formal hearing by Order entered and mailed to the Respondent under date of July 1st, 2009 setting said matter for hearing on July 21st, 2009 at 2:00 P. M.

5. Said matter was heard on July 21st, 2009 and an Order on Hearing under date of August 12th, 2009 was entered and mailed to Respondent assessing a \$500.00 forfeiture and ordering a timely response within ten (10) days as to the Commissioner’s original inquiry of April 9th, 2009.

6. The Respondent apparently made a begrudgingly response to the Commissioner’s original April 9th, 2009 inquiry but failed to pay the \$500.00 forfeiture until November 9th, 2009 or **more than** eleven (11) days after being served with the present Order To Show Cause.

7. That based on the preliminary facts as set forth in paragraphs 1 through 6, immediately above, through means of an October 20th, 2009 “Motion (for revocation) and an October 29th, 2009 Order To Show Cause”¹, mailed to the Respondent at its referenced business address on October 29th, 2009 this present hearing was set for November 18th, 2009 at 2:00 P.. M..

Operative Facts
(Paragraphs 8 and 9)

8. The Department proffered a receipt showing payment of The \$500.00 forfeiture on November 9th, 2009 or **more than** eleven (11) days after the issuance of the present Order To Show Cause and **more than eighty-nine (89) days after the August 12th, 2009 Order on Hearing.**²

9. The Respondent as it did in the original July 21st, 2009 hearing presented it was basically out of business and that the Respondent’s owner was detached from the business and that the present representative at the hearing, Mr. Dan Roberts, was basically the sole “employee” handling the paperwork.

¹ In accordance with Administrative Rule R590-160-4.D *sua sponte* the proceeding was converted from an informal to a formal proceeding.

² Arguably the question of whether Respondent would have ever paid absent the present Order To Show Cause is present and the answer would seem to be “No”.

DISCUSSION-ANALYSIS

1. a. Both the Respondent and the Department in large measure while advocating clearly different characterizations or interpretations of the above referenced operative facts in substance concurred as to the basic *chronology* and core facts.

b. The record now being complete sets forth competent and credible evidence for the entry of the following analysis.

2. The question(s) presented is:

a. “Whether the Respondent’s action are violative of the Presiding Officer’s original August 12th, 2009 Order on Hearing”; and

b. Whether as per Utah Administrative Code Rule, R590-160-5(10) as to each of the above and foregoing “issue(s)” or “question(s)” to be answered the “*standard of proof*” as to issues of fact have been proven by a “*preponderance of the evidence*”?³

3. Applicable Pertinent Statutes and Administrative Rules are as follows (although others may be otherwise specifically cited within the body of this “*Order on Hearing*”):

a. Subsection 31A-2-201(4)(a) states:

“(4)(a) The commissioner shall issue prohibitory, mandatory, and other orders necessary to secure compliance with this title. An order by the commissioner is not effective unless the order:

(i) is in writing; and

(ii) is signed by the commissioner or under the commissioner’s authority.”

b. Section 31A-1-102 states *in part*:

“The purpose of the Insurance Code are to:

(1) ensure the solidity of insurers doing business in Utah;

(2) ensure that policyholders, claimants, and insurers are treated fairly and equitably;

(3) ensure that Utah has an adequate and healthy insurance market, characterized by competitive conditions, the spirit of innovation, and the exercise of initiative;”

4. The Respondent’s actions or rather in-actions are in violation of the Presiding Officer’s original August 12th, 2009 Order on Hearing.

³ The burden in actuality being on the Respondent to show why is should not be revoked as the case file in large measure “speaks for itself” ---- the \$500.00 forfeiture was not timely paid.

5. The Department while being charged with treating all insurers even-handed and fairly is also charged with doing so equitably. (Section 31A-1-102(2)).

6. The Respondent at the July 21st, 2009 hearing presented it was/is **effectively** and **basically** out of business. Such is clearly accurate.

7. Just as *clearly accurate* is the ongoing lack of response to the Department by the Respondent. The present \$500.00 forfeiture only getting paid after issuance of the present Order To Show Cause.

8. Again the Respondent as it did at the July 21st, 2009 hearing presenting it is **basically** out of business.

9. Based on the facts the Department would in like cases revoke a Respondent's license and or identification number.

10. Respondent is by the present Order now **officially** out of business as a PEO.

BASED ON THE ABOVE AND FOREGOING FINDINGS OF FACT and discussion-analysis the Presiding Officer enters the following:

CONCLUSIONS OF LAW

1. The Respondent violated Utah Code Ann. Section 31A-4-113 and Administrative Rule R590-147-4 by failing to comply..... based on the requirements set forth in the Commissioner's Order under date of August 12th, 2009.

2. The Commissioner's Order under date of August 12th, 2009 was promulgated in accordance with Section 31A-2-201(4) and was an "order[s as] necessary to secure compliance with this title (Title 31A)."

3. The revocation of Respondent's PEO identification number is within the statutory authority of the Department to impose for a violation as herein proven by the Complainant Department.

AND BASED ON THE ABOVE AND FOREGOING CONCLUSIONS OF LAW the Presiding Officer enters the following:

ORDER

WHEREFORE, IT IS ORDERED that:

1. The Respondent's PEO Identification number of 158365 is hereby revoked upon entry of the present Order.

DATED and ENTERED this 5nd day of December, 2009.

**D. KENT MICHIE,
INSURANCE COMMISSIONER**



Mark E. Kleinfeld

**MARK E. KLEINFELD
ADMINISTRATIVE LAW JUDGE and
PRESIDING OFFICER**

Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, Utah 84114
Telephone: (801) 537-9246
Facsimile: (801) 538-3829
Email: MKleinfeld@utah.gov

ADMINISTRATIVE AGENCY REVIEW

Administrative Agency Review of this Order may be obtained by filing a Petition for Review with the Commissioner of the Utah Insurance Department within thirty (30) days of the date of entry of said Order consistent with Utah Code Ann. Section 63G-4-301 and Administrative Rule R590-160.

Failure to seek agency review shall be considered a failure to exhaust administrative remedies. (R590-160 and Section 63G-4-401)

JUDICIAL REVIEW

As an **“Formal Hearing”** after agency review judicial review of this Order may be obtained by filing a petition for such review consistent with Utah Code Ann. Section 63G-4-403.

CERTIFICATE OF MAILING

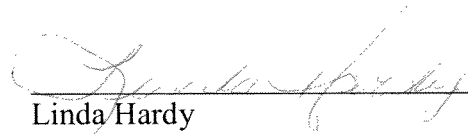
I do hereby certify that on this date I mailed, by regular mail, postage prepaid a true and correct copy of the attached:

ORDER ON ORDER TO SHOW CAUSE

To the following:

Staffing American, Inc.
4760 South Highland Drive
Salt Lake City, UT 84117

DATED this 3th day of December 2009.



Linda Hardy Court Clerk
Utah Department of Insurance
State Office Building, Room 3110
Salt Lake City, UT 84114-6901