

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

IN RE THE APPLICATION OF:

MATTHEW J. BISHOP
372 South 780 West
Lehi, UT 84043

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2008-150-LC
Enf. Case No. 2441

Mark E. Kleinfield,
Presiding Officer

License Pending

STATEMENT OF THE CASE

THIS MATTER concerning whether the Applicant's application for an individual resident producer license should be denied came on to be heard before the Commissioner of the Utah State Insurance Department ("Department") on Thursday, October 29, 2009 at 1:00 o'clock P. 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 3112, Salt Lake City, Utah 84114, having been convened at the designated time of 1:00 (1:13) P. M., October 28, 2009 and adjourned at 1:43 P. M. on said same day.

Appearances:

M. Gale Lemmon, Enforcement Counsel, Attorney for Utah State Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

Brian Gabriel Krupa, Applicant, 735 Aspen Drive, Summit Park, Utah 84098, pro se.

By the Presiding Officer:

Pursuant to an October 7, 2009 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on October 29, 2009 in the above-entitled proceeding. The Applicant 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 R590-160-6.

ISSUE, BURDEN and "STANDARD OF PROOF"

1. The basic issue in the present matter is:

- a. Was Applicant's application for a resident producer's license improperly denied?
- b. Has the Applicant presented sufficient evidence to show that the Department's denial was not justified on the record?
- c. Has the Applicant presented sufficient evidence that would justify the reversal of such denial? (**SEE** Paragraph 2 under *DISCUSSION-ANALYSIS*.)

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

3. As per Utah Administrative Code Rule, R590-160-5(10) as to the above and foregoing "issue(s)" or "question(s)" to be answered the "*standard of proof*" as to issues of fact as to both matters is to be proven by a "*preponderance of the evidence*".

Complainant waived an opening statement. Applicant reserved then waived an opening statement combined with his testimony.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Department:

1. Julie Ann Chytraus, Licensing Specialist, Producer Licensing Division, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

For the Applicant:

1. Matthew J. Bishop, Applicant.

All of whom were sworn and testified.

Exhibits:

The Department offered the following exhibits:

The Department tendered the following items already part of the Administrative file:

1. Copy of Applicant's May 5, 2009 application.
2. UCI Criminal history of Applicant A (received May 13, 2009).
3. FBI Criminal history of Applicant (received May 11, 2009).
4. June 2, 2009 letter of denial from Department to Applicant.
5. Applicant's June 17, 2009 request for hearing.

The Department also offered the following two (2) exhibits which were accepted and entered into the record without objection:

1. State's Exhibit No. 1, being five (5) pages of typed written or printed materials being a copy of the "docket" in a certain case in the 4th District Court, Provo, Utah County, Utah, Case No. 031404530, State of Utah vs. Matthew J. Bishop, 3rd Degree Felony (Theft) amended to Class "A" Misdemeanor, plea of "Guilty" (January 13, 2004).

2. State's Exhibit No. 2, being two (2) pages of typed written or printed materials being a copy of the "docket" in a certain case in the 4th District Court, Provo, Utah County, Utah, Case No. 031100875, State of Utah vs. Matthew J. Bishop, Theft, dismissed (July 7, 2004).

SEE file.

The Applicant offered the following exhibits:

None.

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:

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 Applicant, Matthew J. Bishop:

a. is a resident of the State of Utah and maintains a present residence of 372 South 780 West, Lehi, Utah 84043;

and

b. has not previously been nor is presently licensed by the Department as a resident “Producer” to conduct or be engaged in the insurance business in the State of Utah.

3. The Applicant on or about May 5, 2009 filed his application with the Department for issuance of a resident “*Producer*” license.

4. The Department on or about June 2, 2009 in writing denied Applicant's “application for a Utah resident producer individual license dated May 5, 2009” for the following reasons:

“Failure to meet the character requirements for licensing as outlined in Utah Code Annotated (UCA) Section 31A-23a-107;

UCA 31A-23a-104 – committed an act that is a ground for denial, suspension, or revocation as set forth in UCA Section 31A-23q-111; and

UCA 31A-23a-111(5)(b)(ix) – provided information in the license application that is incorrect, misleading, incomplete, or materially untrue.”

5. That included in said denial were instructions informing Applicant of his right to an “*informal hearing*” if a timely request is made in writing within fifteen (15) days.

(SEE Administrative File.)

6. The Applicant under date of June 17, 2009 filed his “*request for hearing*” with the Department on June 17, 2009. (SEE Administrative File.)

7. That based on the preliminary facts as set forth in paragraphs 1 through 6, immediately above, through means of a October 7, 2009 "Notice of Conversion to Formal Proceeding and Notice of Hearing", mailed to the Applicant at his referenced business address on October 7, 2009, this present hearing was set for October 29, 2009 at 1:00 P. M..

DISCUSSION-ANALYSIS

1. a. Both the Applicant and the Department in large measure while advocating somewhat different characterization or interpretation of the above referenced 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. a. Applicant somewhat begrudgingly acknowledged his conviction in the State of Utah;

b. Applicant being convicted of misdemeanor theft amended from felony theft in Utah County, Utah on January 13, 2004;

3. The Applicant absent the circumstances set forth in Paragraph 2, immediately above, does not appear to have any other criminal record.

4. Applicant failed to disclose such circumstances on his application. Such convictions being discovered as a result of the mandatory fingerprint and FBI/BCI inquiry.

5. The Applicant stating "he misread the question" regarding criminal convictions.

5. The Hearing Officer feels while occurring more than ten (10) years ago the Applicant's failure to recall or disclose one conviction (Washington) that was less than seven (7) months prior to another conviction (Utah) which he failed to fully detail bespeaks of a character issue and bluntly is *incredulous*.

6. The Applicant feigns confusion and attempts to shift responsibility. The Hearing Officer had an opportunity to observe the Applicant. The Applicant appears reasonably intelligent.

7. a. The Hearing Officer has heard the "I misread the question" presentation many times before. The Applicant also referenced he was going through the expungement process. The Applicant also referenced that the crime occurred when the Applicant was a youth, etc. The Hearing Officer has also heard such approaches many times before. While arguably a scenario that presents itself as understandable in some the Department in licensing the Applicant or any individual in comparable circumstances to the Applicant would be breaching its responsibilities to the public.

b. The “rule of law” in dealing with other’s property is a central or a “linchpin” to the profession of insurance. The Applicant’s disregard of such, especially in the dealing with other’s property gives great concern to the Hearing Officer as it did to the Department. The crime at issue in the vernacular was “horse stealing” as the Applicant took another person’s two (2) horses and ran them through the auction and sold them as his own.

8. a. The Presiding Officer while having heard the witnesses and reviewed the documentary evidence cannot peer into the heart, mind and conscience of any witness to assist him or her in making the most appropriate decision. The Presiding Officer can only look at and weigh the **present** evidence before him.

b. Here in the **present** instance the burden is/was on the Applicant to:

i. **Present** sufficient evidence to show that the Department's denial was not justified on the record; and

ii. **Present** sufficient evidence that would justify the reversal of such denial.

c. This the Applicant has failed to do.

d. The Applicant's May 5, 2009 application was properly denied based on the record before the Department.

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

CONCLUSIONS OF LAW

1. The Department’s “*letter of denial*” under date of June 2, 2009 should be sustained.

2. The Applicant's May 5, 2009 application for licensure as a resident “*Producer*” should be denied.

AND BASED ON THE ABOVE AND FOREGOING CONCLUSIONS OF LAW

the Presiding Officer enters the following:

ORDER

WHEREFORE, IT IS ORDERED that:

1. The Department’s “*letter of denial*” under date of June 2, 2009 is **sustained**;
and

2. The Applicant's May 5, 2009 application for licensure as a resident "Producer" is denied.

DATED and ENTERED this 11th day of November, 2009.

**D. KENT MICHIE,
INSURANCE COMMISSIONER**



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 R590-160-8.

Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(R590-160-8 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.

ADMINH.Bishop.Formal.dec.11-11-09

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:

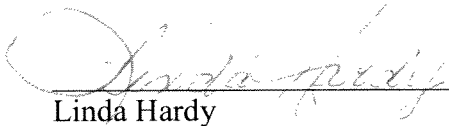
ORDER RE:
MOTION HEARING

License Denied

To the following:

Matthew Bishop
372 South 780 West
Lehi, UT 84043

DATED this 10th day of November 2009.



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