

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

IN RE THE APPLICATION OF:

HEIDI LEFFLER
5251 West Blue Bonnet Circle
West Jordan, UT 84084

ORDER ON HEARING

(Formal Hearing)

DOCKET No. 2010-026-LC
Enf. Case No. 2493

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 Tuesday, March 9, 2010 at 10:30 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 3112, Salt Lake City, Utah 84114, having been convened at the designated time of 10:30 (10:38) A. M., March 9, 2010 and adjourned at 11:21 A. M. on said same day.

Appearances:

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

Heidi Leffler, Applicant, 5251 West Blue Bonnet Circle, West Jordan, Utah 84084, pro se.

By the Presiding Officer:

Pursuant to a February 18, 2010 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on March 9, 2010 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 than 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.
2. Randy Overstreet, Director, Producer Licensing Division, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

For the Applicant:

1. Heidi Leffler, 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 June 10, 2009 application.
2. UCI Criminal history of Applicant .
3. FBI Criminal history og Applicant.
4. Applicant's July 23, 2009 letter of explanation.
5. August 10, 2009 letter of denial from Department to Applicant.
6. Applicant's August 11, 2009 request for hearing.

The Department also offered the following four (4) exhibits which were accepted and entered into the record without objection dealing with two (2) criminal proceedings and two (2) civil actions concerning the Applicant. (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, Heidi Leffler:

a. is a resident of the State of Utah and maintains a present residence of 521 West Blue Bonnet Circle, West Jordan, Utah 84084;

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 June 10, 2009 filed her application with the Department for issuance of a resident “*Producer*” license.

4. The Department on or about August 10, 2009 in writing denied Applicant's “application for a Utah resident producer individual license dated June 10, 2009” for the following reasons:

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

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 her 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 August 11, 2009 filed her “*request for hearing*” with the Department on August 12, 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 February 18, 2010 “Notice of Conversion to Formal Proceeding and Notice of Hearing”, mailed to the Applicant at her referenced business address on February 18, 2010, this present hearing was set for March 9, 2010 at 10:30 A. 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. Applicant somewhat begrudgingly acknowledged her convictions and civil collection problems (with at least one judgment still outstanding) in the State of Utah;

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

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

5. The Applicant stating “she misread the question” regarding criminal convictions.

5. The Hearing Officer feels while occurring more than six (6) years ago the Applicant’s failure to recall or disclose one particular conviction (theft) bespeaks of a character issue.

6. The Applicant feigns confusion and or attempted to shift responsibility. That “everyone” was doing it or “it was no big deal (having film developed at her employer’s photo part of the grocery business store were she worked) and “that she never got the film anyway”. The Hearing Officer had an opportunity to observe the Applicant. The Applicant appears reasonably intelligent.

7. The Hearing Officer has heard the “I misread the question” presentation many times before. 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 arguably minor to some the Department in licensing the Applicant or any individual in comparable circumstances to the Applicant would be breaching its responsibilities to the public. Also the Applicant's apparent outstanding civil judgment (not disclosed) is an absolute bar to licensing at the present time.

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 June 10, 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 August 10, 2009 should be sustained.

2. The Applicant's June 10, 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

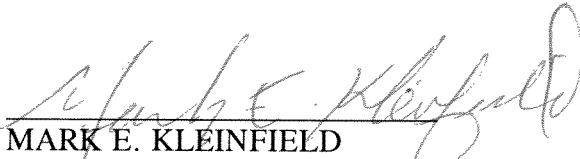
WHEREFORE, IT IS ORDERED that:

1. The Department's "letter of denial" under date of August 10, 2009 is **sustained**;
and
2. The Applicant's June 10, 2009 application for licensure as a resident "Producer" is **denied**.

DATED and ENTERED this 23 day of March, 2010.

**NEAL T. GOOCH,
ACTING 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
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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.

CERTIFICATE OF MAILING

I hereby certify that on the 29 day of March, 2010 a true and correct copy of the above and foregoing **ORDER ON HEARING (Formal Hearing)** was sent certified mail, return receipt requested, and first class mail, both postage prepaid to the following:

Heidi Leffler
Applicant
5251 West Blue Bonnet Circle
West Jordan, Utah 84084

and a true and correct copy hand-delivered to the following:

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

