

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

IN RE THE APPLICATION OF:

CARRIE GUYMON
4030 South 1515 West, Apt. 5D
Salt Lake City, UT 84123

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2010-030-LC
Enf. Case No. 2510

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 Monday, March 8, 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 (10:44) A. M., March 8, 2010 and adjourned at 11:17 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.

Carrie Guymon, Applicant, 4030 South 1515 West, Apt. 5d, Salt Lake City, Utah 84123, pro se.

By the Presiding Officer:

Pursuant to an February 18, 2010 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on March 8, 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 combing such with her testimony.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Department:

1. Randy Overstreet, Director, Producer Licensing Division, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

For the Applicant:

1. Carrie Ann Guymon, Applicant.

Both 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 August 4, 2009 application.
2. UCI Criminal history of Applicant.
3. FBI Criminal history of Applicant.
4. Explanation from Applicant (August 24, 2009)
5. August 26, 2009 letter of denial from Department to Applicant.
6. Applicant's September 9, 2009 request for hearing.

The Department also offered six (6) exhibits concerning criminal and civil court proceedings concerning the Applicant which were accepted and entered into the record without objection. (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, Carrie Ann Guymon:

a. is a resident of the State of Utah and maintains a present residence of 4030 South 1515 West, Apt. 5D, Salt Lake City, Utah 84123;

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 August 4, 2009 filed her application with the Department for issuance of a resident “*Producer*” license.

4. The Department on or about August 26, 2009 in writing denied Applicant's “application for a Utah resident producer individual license dated August 4, 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

“ Failure to pay a final judgment rendered against you in this state pursuant to Utah Code Annotated (UCA) Section 31A-23a-111(5)(b)(iv).

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 September 9, 2009 filed her “*request for hearing*” with the Department on September 1[?], 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 8, 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. a. Applicant openly acknowledged her past difficulties both criminally and civilly in the State of Utah;

b. Applicant plead guilty or no contest in the 2001 to 2005 timeframe to 5 misdemeanor offenses ranging from class “C” child abuse to no proof of insurance.

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

4. Applicant made and initial disclosure in her August 4, 2009 application and a more detailed follow-up explanation letter of August 24, 2009.

5. The Applicant additionally has an apparent outstanding civil judgment in the amount of approximately \$1,000.00 plus to state debt collection for outstanding fines.

5. The Hearing Officer feels while occurring less than ten (10) years ago these offenses were absent the 2001 child abuse charge somewhat inconsequential. The Applicant was frank, open and what one clearly would label “repentant” of her past. Apparent past difficulties have been acknowledged and worked on by the Applicant and the Hearing Officer recognizes that the Applicant in a phrase would appear to be a “changed person”.

6. The Applicant deserves an opportunity to further prove herself. Based on such the Applicant should it is felt be granted a license under certain conditions.

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 done so.

d. The Applicant's August 4, 2009 application should be granted conditionally.

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 26, 2009 should be modified.

2. The Applicant's August 4, 2009 application for licensure as a resident “*Producer*” should be conditionally granted on the following terms and conditions:

a. Applicant be placed on probation for 24 months;

b. Applicant have no violations of the Utah Insurance Code and attendant administrative rules during such period of time;

- c. Applicant have no criminal convictions during such period of time;
- d. Applicant make contact with State Office of Debt Collection and resolve such outstanding amount and evidence such contact and any agreement entered into with that office by filing a copy of any written agreement;
- e. Applicant's employer in the insurance industry acknowledge in writing on its letterhead that it is aware of such probationary status and will be responsible for oversight of the Applicant; and should the Applicant change employment in the insurance industry that all future employees do likewise during such probationary period.

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

ORDER

WHEREFORE, IT IS ORDERED that:

1. The Department's "*letter of denial*" under date of August 26, 2009 is **modified**;
and
2. The Applicant's August 4, 2009 application for licensure as a resident "*Producer*" is conditionally granted on the following terms and conditions:
 - f. Applicant be placed on probation for 24 months;
 - g. Applicant have no violations of the Utah Insurance Code and attendant administrative rules during such period of time;
 - h. Applicant have no criminal convictions during such period of time;
 - i. Applicant make contact with State Office of Debt Collection and resolve such outstanding amount and evidence such contact and any agreement entered into with that office by filing a copy of any written agreement;
 - j. Applicant's employer in the insurance industry acknowledge in writing on its letterhead that it is aware of such probationary status and will be responsible for oversight of the Applicant; and should the Applicant change employment in the insurance industry that all future employees do likewise during such probationary period.

DATED and ENTERED this 28 day of March, 2010.

**NEAL T. GOOCH,
ACTING INSURANCE COMMISSIONER**





MARK E. KLEINFELD
ADMINISTRATIVE LAW JUDGE and
PRESIDING OFFICER
Utah Insurance Department
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Salt Lake City, Utah 84114
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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.Guymon-IA.Formal.dec.03-25-10

CERTIFICATE OF MAILING

I hereby certify that on the ____ 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:

Carrie Guymon
Applicant
4030 South 1515 West, Apt. 5D
Salt Lake City, Utah 84123

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


