

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

IN RE THE APPLICATION OF:

DON ALTON MATHEWS, II
11455 South 3420 West
South Jordan, UT 84095

License Pending

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2010-152 -LC
Enf. Case No. 2708

Mark E. Kleinfield,
Presiding Officer

STATEMENT OF THE CASE

THIS MATTER concerning whether the Applicant should be issued a Resident Producer Individual license came on to be heard before the Commissioner of the Utah State Insurance Department (“*Department*”) on Tuesday, November 2, 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, Utah State Office Building, Room 3112, Salt Lake City, Utah 84114, having been convened at the designated time of 10:30 (10:54) A. M., November 2, 2010 and adjourned at 11:38 A. M. on said same day.

Appearances:

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

Don Alton Mathews, II , Applicant, *pro se*.

By the Presiding Officer:

Pursuant to a October 20, 2010 "*Notice of Conversion to Formal Proceeding and Notice of Hearing*" a hearing was conducted on November 2, 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(s) in this case is (are):

a. Was Applicant's application for a Resident Producer Individual 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** 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 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 is to be proven by a "*preponderance of the evidence*".

The Department waived an opening statement. The Applicant first reserved then waived an opening statement.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Applicant:

1. Don Alton Mathews, II, Applicant.

For the Department:

1. Kris Redmond, Insurance Specialist, Producer Licensing Division, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.
2. Randall Overstreet, Director, Producer Licensing Division, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

All of whom were sworn and testified.

Exhibits:

The Department offered the following exhibits:

1. **State's Exhibit No.s 1 through 3.** (SEE file).

(No objection being made all of which were accepted and entered.)

The Applicant offered the following exhibits:

1. **Applicant's Exhibit No. 1.** (Filed after the hearing, permitted as record was allowed to remain open). (SEE file).

(No objection being made all which was accepted and entered.)

Additionally the Presiding Officer took judicial notice of the files and records of the Department particularly the Applicant's June 10, 2010 application; the Department's July 14, 2010 denial letter and Applicant's July 26, 2010 request for hearing.

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 Applicant, Don Alton Mathews, II:
 - a. is a resident of the State of Utah and maintains a present residence of 11455 South 3420 West, South Jordan, Utah 84095; and
 - b. has not previously been nor is presently licensed by the Department to conduct or be engaged in any capacity in the insurance business in the State of Utah.
3. The Applicant on or about June 10, 2010 filed his application with the Department for issuance of a “*Resident Producer Individual License*”. (SEE Administrative file.)
4. The Department on or about July 14, 2010 in writing denied Applicant's application for “one or more of the following reasons:

“Failure to meet the character requirements for licensing pursuant to UCA 31A-23a-107;

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

6. The Applicant under date of July 26, 2010 filed a “*request for hearing*” with the Department. (SEE Administrative file.)

7. That based on the preliminary facts as set forth in Paragraphs 1 through 6, immediately above, through means of a September 27, 2010 and later continuances “*Notice of Conversion to Formal Proceedings and Notice of Hearing*”, *sua sponte*, mailed to the Applicant at his referenced address this present formal hearing was set for November 2, 2010 at 10:30 A. M. Mountain Time.

Operative Facts
(Paragraphs 8 -9)

8. The Applicant is a resident of the State of Utah.

9. The Applicant:

a. was convicted of simple assault, a class “B” misdemeanor in 1997; this case is resolved and closed; the Applicant failed to disclose this on his June 10, 2010 application; with such being discovered by BCI/FBI and court docket checks by the Department.

b. has apparently been sued civilly in two (2) matters growing out of a construction company he is a partner/owner; one of these suits was resolved via mutual dismissal (SEE Applicant Exhibit No. 1); the other matter appears to be set for trial sometime in January 2011; the Applicant failed to disclose these on his June 10, 2010 application; with such being discovered by BCI/FBI and court docket checks by the Department and

c. apparently voluntarily surrendered or did not contest the revocation of his Utah Real Estate Agent's License, License No. 5487874-SA00 sometime in 2007 (SEE UNSIGNED copy supplied by Applicant); the Applicant disclosed this on his June 10, 2010 application..

DISCUSSION-ANALYSIS

(Paragraphs 1-8)

1.a. Both the Applicant and the Department in large measure while advocating **clearly** different characterizations or interpretations and import 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 Applicant has presented sufficient evidence to show that the Department's July 14, 2010 letter of denial of the Applicant's June 10, 2010 application for licensure as a "*Resident Producer Individual*" was not justified on the record?";

b. "Whether the Applicant has presented sufficient evidence that would justify the reversal of such July 14, 2010 denial?"; and

c. "Whether as per U. A. C. Rule, R590-160-5(10) as to each of the above and foregoing "issues" or "questions" the Applicant has so shown such evidence by a "*preponderance of the evidence*" sufficient to carry Applicant's burden of proof?"

3. Primary Applicable Pertinent Statutes, Administrative Rules and Precedent are as

follows (although others may be otherwise specifically cited within the body of this

“Order on Hearing”):

a. Section 31A-23a-107, Utah Code Ann., reads as follows:

“31A-23a-107. Character requirements.

Each applicant for a license under this chapter shall show to the commissioner that:

(1) the applicant has the intent in good faith, to engage in the type of business that the license applied for would permit;

(2) if a natural person, the applicant is competent and trustworthy; or, if the applicant is an agency, all the partners, directors, or principal officers or persons having comparable powers are trustworthy, and that it will transact business in such a way that all acts that may only be performed by a licensed producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary are performed exclusively by natural persons who are licensed under this chapter to transact that type of business and designated on the agency's license;

(3) the applicant intends to comply with Section 31A-23a-502; and

(4) if a natural person, the applicant is at least 18 years of age.”

4. The Presiding Officer takes little stock in the Applicant’s 1997 or over 13 year old class “B” simple assault misdemeanor While the record would appear that the Applicant has maintained a clean record. The Applicant failed to show this on his application although such may be understandable it being of such an aged circumstance.

5. The failure to disclose relatively large sum civil litigation is of more concern although as shown one matter has been resolved. The remaining matter is set for trial in January 2011. Forgetfulness as to a 13 year simple assault is one thing, but recent as well as ongoing litigation is another. Notwithstanding such is not per se of a major concern to the Presiding Officer.

6. a. It is the voluntary surrender or rather non-contesting revocation of the Applicant’s real estate agent license that gives the greatest concern¹. Acknowledging the

¹ The cats revolving around an apparent artifice or device of “trolling” for buyers of real estate lots where the herein Applicant paid unlicensed parties “finders fees”. SEE STIPULATION before the Utah State Real Estate Division in UID administrative file.

Applicant disclosed such and supplied an (Unsigned) copy of the 2007 surrender it is the Applicant's attempt to minimize the underlying circumstances that is most disconcerting. The Applicant's attitude or approach of minimizing and or blame-shifting revolving around a basic pre-requisite to work in any capacity in any profession or occupation or business venture, especially the insurance business ----- *the ability to tell the truth and be honest.*

b. The characteristic of trustworthiness is **the** prime character qualification of Section 31A-23a-107, U. C. A., for all other characteristics requisite to engage in the insurance industry for the protection of the public interest of necessity flow from it.

7. The Department in licensing the Applicant or any individual in comparable circumstances to the Applicant would be breaching its responsibilities to the public.

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, 2010 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. a. The Applicant's apparent part in questionable practices as a real estate agent as set forth in his voluntary surrender or non-contesting of the revocation of his real estate license cumulatively indicates a lack of respect for the rule of law and thereby a lack of being "*trustworthy*" as required by the character qualifications of Section 31A-23a-107, UCA, 1953, as amended.

2. The Applicant does not meet the character qualifications for licensing outlined in Section 31A-23a-107, UCA, 1953, as amended.

3. The issuance of a "*Resident Producer Individual*" license would be in contravention of the intent and purpose of Section 31A-23a-107, UCA , which based on "Conclusions of Law" No.s 1 and 2, immediately above, the Department in the practice of good public policy and the protection of the public welfare cannot at this time do.

4. The Department's "*letter of denial*" under date of July 14, 2010 should be affirmed.

5. The Applicant's June 10, 2010 application for licensure as a "*Resident Producer Individual*" 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 July 14, 2010 is **affirmed**;
- and
2. The Applicant's June 10, 2010 application for licensure as a "*Resident Producer Individual*" is **denied**.

DATED and ENTERED this 6 day of December, 2010.

**NEAL T. GOOCH,
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.



Insurance Department

State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

NEAL T. GOOCH
Commissioner

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 HEARING

To the following:

Don Alton Mathews, II
11455 South 3420 West
South Jordan, UT 84065

DATED this 8th day of December, 2010

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