

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

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

RESPONDENT:

DEE L. MAGLEBY
180 Albion Village Way, #206
Sandy, Utah 84070

License No. 233678

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 200~~8~~-016-PC
Enf. Case No. 2113

Mark E. Kleinfield,
Presiding Officer

STATEMENT OF THE CASE

THIS MATTER concerning whether Respondent's title marketing representative's license should be revoked came onto be heard before the Commissioner of the Utah State Insurance Department ("Department") on Thursday, June 26, 2008 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 in Room 3112, State Office Building, located at the State Capitol Complex, Salt Lake City, Utah 84114, having been convened at the designated time of 9:00 (9:28) A. M., June 26, 2008 and adjourned at 10:10 A. M. on said same day.

Appearances:

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

Dee L. Magleby, Respondent, pro se, 180 Albion Village Way, #206, Sandy, Utah 840470.

By the Presiding Officer:

Pursuant to an April 8, 2008 Pre-Hearing Conference Order and continuances thereof a formal hearing was conducted on June 26, 2008 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 63-46b-6, 63-46b-7, 63-46b-8, 63-46b-9 and 63-46b-10 and Administrative Rule R590-160-6.

ISSUE, BURDEN and "STANDARD OF PROOF"

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

a. Should Respondent's title marketing representative's license be revoked?

(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 Complainant Department.

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 Complainant waived opening statement. The Respondent first reserved then waived opening statement.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Complainant Department:

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

For the Respondent:

1. Dee L. Magleby, Respondent, 180 Albion Village Way, #206, Sandy, Utah 84010.

Both of whom were sworn and testified.

Exhibits:

The Complainant Department offered the following exhibits:

1. **Complainant's Exhibit No. 1**, consisting of three (3) type written or printed pages, being a copy of Respondent's October 20, 2005 Application for a Title Marketing Representative license.

2. **Complainant's Exhibit No. 2**, consisting of six (6) type written or printed pages, being a copy of a UNDATED printout from INTEGRA SCAN showing criminal records or references regarding Dee L. Magleby (Respondent herein).

3. **Complainant's Exhibit No. 3**, consisting of two (2) type written or printed pages, being a copy of Court Docket, regarding Case No. C033285CR, in The Circuit Court of the State of Oregon for the County of Oregon, concerning Dee Magleby (Respondent herein).

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

The Respondent offered the following exhibits:

1. **Respondent's Exhibit No. 1**, consisting of three (3) pages of typed and or printed materials, being a copy of a May 1(2), 2008 "Order Setting Aside Conviction and Records of Arrest", regarding Case No. C033285CR, in The Circuit Court of the State of Oregon for the County of Oregon, concerning Dee Magleby (Respondent herein).

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

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- 6)

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, Dee L. Magleby:

a. is a resident of the State of Utah and maintains a present mailing address of 180 Albion Village Way, #206, Sandy, Utah 84070; and

b. is a licensed title marketing representative holding Utah Insurance Department License No. 233678.

3. The Department filed its Complaint on March 4, 2008 and a “Notice of Formal Adjudicative Proceeding and Pre-Hearing Conference”, being Docket No. 2008-016-LC/Enf.Case No. 2113 was issued on March 4, 2008 setting April 8, 2008 at 10:00 A. M. at the Department’s Offices as the time and place for a pre-hearing. A copy of said Notice being mailed to the Respondent or about March 4, 2008.

4. The Respondent filed his belated “response” or “answer” with the Department on April 18, 2008.

5. A May 13, 2008 Hearing date was set.

6. Prior to the scheduled May 13, 2008 hearing by mutual agreement the date was re-scheduled to June 26, 2008.

Operative Facts
(Paragraphs 7 -)

7. The Respondent, Dee L. Magleby, was licensed as a title marketing representative insurance agent in the State of Utah, License No. 233678, whose license expired for non-renewal October 31, 2007.

8. Respondent has a right to reinstate his license for one (1) year after lapse.

9. Respondent originally applied for a title marketing license by submitting his application to the Department on October 20, 2005.

10. In his license application Respondent answered “No” to Question No. 23.A> of the application which asks: “Have you ever been convicted of, or are you currently charged with committing a crime, whether or not adjudication has been withheld?”

11. At the time Respondent submitted his application he knew that he had been convicted in 2003 of one count of Theft 1, a felony, in Washington County, State of Oregon.

12. Respondent completed probation growing out of his Oregon conviction on or about September 29, 2005.

13. Respondent’s conviction was “expunged” on May 1(2), 2008.

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 actions are:

i. violative of Utah Code Ann. Section 31A-23a-111(5)(b)(i) as being unqualified for a license?”;

i. violative of Utah Code Ann. Section 31A-23a-111(b)(xi) as having obtained a license through misrepresentation or fraud?”;

i. violative of Utah Code Ann. Section 31A-23a-111(b)(xxiii) as having violated the federal Violent Crime Control and Law Enforcement Act of 1994?”;

i. violative of Utah Code Ann. Section 31A-23a-107(2) as being a breach of the character requirements to hold an insurance agent’s license?”; and

b. “If the Respondent has so violated said cited statutory sections is revocation of Respondent’s title insurance agent’s license pursuant to Utah Code Ann. Section 31A-23a-111(5)(b)(i) and (b)(ii)(A) the appropriate penalty and if not, what is the appropriate penalty to be imposed?”; and

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

a. Subsection 31A-23a-107 states:

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. (EMPHASIS ADDED.)

b. Subsection 31A-23a-111(5)(b)(i) and (b)(ii)(A) states:

31A-23a-111. Revocation, suspension, surrender, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal or reinstatement.

(5) (a) If the commissioner makes a finding under Subsection (5)(b), after an adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act, the commissioner may:

(i) revoke:

(A) a license; or

(B) a line of authority;

(ii) suspend for a specified period of 12 months or less:

(A) a license; or

(B) a line of authority; or

(iii) limit in whole or in part:

(A) a license; or

(B) a line of authority.

(b) The commissioner may take an action described in Subsection (5)(a) if the commissioner finds that the licensee:

(i) is unqualified for a license or line of authority under Sections 31A-23a-104 and 31A-23a-105;

(ii) has violated:

(A) an insurance statute;

4. The Respondent's actions and inactions are in violation of all of the cited statutory sections set forth in Paragraph 2, above.

5. Respondent's conviction was for theft and a felony. His working in the insurance industry is violative of the federal Violent Crime Control and Law Enforcement Act of 1994.

6. It is **abundantly** clear that Respondent's entry of a guilty plea in a criminal proceeding in the State of Oregon and his answer of "No" in Question No. 23. A. are diametrically in opposition. Respondent's rationalization that because he was applying for a Utah license he thought the question only dealt with Utah criminal convictions is tenuous at best and as counsel for the Department reference incredulous at worst.

7. The final question or issue to be addressed is whether or not the appropriate penalty is revocation or something lesser?

8. Respondent's record prior and post to the instant factual situation would appear to be relatively clean.

9. a. The criminal conviction, notwithstanding it being "expunged" bespeaks of untrustworthiness. The Respondent's conscious failure to disclose such speaks of untrustworthiness. Had such fraud conviction in any manner, such as a bad check or forgery case or similar, been on disclosed prior to her initial application it would seem probable his initial license would have been denied.

b. Based on the whole record it seems that the most appropriate penalty in protecting the public is revocation

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

CONCLUSIONS OF LAW

1. Respondent's actions are:

a. violative of Utah Code Ann. Section 31A-23a-111(5)(b)(i) as being unqualified for a license";

b. violative of Utah Code Ann. Section 31A-23a-111(b)(xi) as having obtained a license through misrepresentation or fraud";

c. violative of Utah Code Ann. Section 31A-23a-111(b)(xxiii) as having violated the federal Violent Crime Control and Law Enforcement Act of 1994"; and

d. violative of Utah Code Ann. Section 31A-23a-107(2) as being a breach of the character requirements to hold an insurance agent's license."

2. That the Department's Complaint asking for revocation of the Respondent's title marketing representative's license is sustained by a preponderance of the evidence.

3. Respondent's title marketing representative's license should be revoked pursuant to Utah Code Annotated § 31A-23a-111(5)(b)(i) and (b)(ii)(A).

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

ORDER


WHEREFORE, IT IS ORDERED that:

The Respondent's title marketing representative's license pursuant to Utah Code Annotated § 31A-23a-111(5)(b)(i) and (b)(ii)(A) is revoked effective upon entry of the present Order.

DATED and ENTERED this 30 day of June, 2008.

**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

Tel: (801) 537-9246/Fax: (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 63-46b-12 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 63-46b-14)

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 63-46b-16.

CERTIFICATE OF MAILING

I hereby certify that on the ____ day of June, 2008 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:

Dee L. Magleby
Respondent
180 Albion Village Way, #206
Sandy, Utah 84070

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