

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

IN RE THE APPLICATION OF:

BRIAN GABRIEL KRUPA
735 Aspen Drive
Summit Park, UT 84098

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2008-150-LC
Enf. Case No. 2286

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, December 22, 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 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 9:00 (9:14) A. M., December 22, 2008 and adjourned at 9:53 A. 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 December 1, 2008 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on December 22, 2008 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 gave a brief opening statement combined with his testimony.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Department:

1. Julie Ann Chytraus¹, Licensing 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.

For the Applicant:

1. Brian Gabriel Krupa, Applicant.

All of whom were sworn and testified.

Exhibits:

The Department offered the following exhibits:

While the Department did not tender any formal exhibits it did present the following items already part of the Administrative file:

1. Copy of Applicant's September 4, 2008 application.
2. Letter of explanation by Applicant.
3. Criminal history of Applicant.
4. 3rd District Court record (Utah).
5. October 2, 2008 letter of denial from Department to Applicant.
6. Applicant's October 11, 2008 request for hearing.

SEE file.

The Applicant offered the following exhibits:

None.

Argument followed.

¹ Ms. Chytraus also testified as a Department rebuttal witness.

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, Brian Gabriel Krupa:

a. is a resident of the State of Utah and maintains a present residence of 735 Aspen Drive, Summit Park, Utah 84098;

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 September 4, 2008 filed his application with the Department for issuance of a resident “*Producer*” license.

4. The Department on or about October 2, 2008 in writing denied Applicant's “application for a Utah resident producer individual license dated September 4, 2008” 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-105(2)(b) – failure to report criminal prosecution taken against you;
and

UCA 31A-23a-111(5)(b)(ix) – providing 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 October 11, 2008 filed his “*request for hearing*” with the Department on October 15, 2008. (SEE Administrative File.)

7. That based on the preliminary facts as set forth in paragraphs 1 through 6, immediately above, through means of a December 1, 2008 “Notice of Conversion to Formal Proceeding and Notice of Hearing”, mailed to the Applicant at his referenced business address on December 1, 2008, this present hearing was set for December 22, 2008 at 9:00 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 somewhat begrudgingly acknowledged his conviction in the State of Utah;

b. Applicant being convicted of misdemeanor unlawful purchase or possession of alcohol in Summit County, Utah on April 15, 1997 ;

c. Applicant was also convicted of misdemeanor theft on September 10, 1996 in Kent, Washington, although the Applicant testified at the present hearing he doesn't recall the circumstances in Washington .

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 Washington circumstances on his application nor detail the Utah details. Such convictions being discovered as a result of the mandatory fingerprint and FBI/BCI inquiry.

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 to communication problems with the Department. The Hearing Officer had an opportunity to observe the Applicant. The Applicant appears reasonably intelligent.

7. While arguably in some regards a “close call” 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 September 4, 2008 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 October 2, 2008 should be sustained.

2. The Applicant's September 4, 2008 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 October 2, 2008 is **sustained**;

and

2. The Applicant's September 4, 2008 application for licensure as a resident "Producer" is denied.

DATED and ENTERED this 22 day of January, 2009.

**D. KENT MICHIE,
INSURANCE COMMISSIONER**



A handwritten signature in cursive script, reading "Mark E. Kleinfeld".

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.Krupa.Formal.dec.01-xx-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:

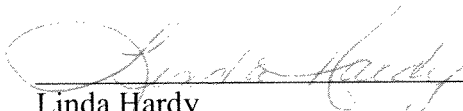
ORDER ON HEARING

License Denied

To the following:

Brian Gabriel Krupa
735 Aspen Drive
Summit Park, UT 84098

DATED this 22nd day of January, 2009.


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