

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

IN RE THE APPLICATION OF:

STEPHEN WESLEY OLIVER
1428 Fairway Lane
Farmington, UT 84025

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2008-166-LC
Enf. Case No. 2319

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 Thursday, January 15, 2009 at 10:00 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 10:00 (10:19) A. M., January 15, 2009 and adjourned at 10:53 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.

Stephen Wesley Oliver, Applicant, 1428 Fairway Lane, Farmington, Utah 84025, pro se.

By the Presiding Officer:

Pursuant to a December 30, 2008 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on January 15, 2009 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 Respondent.

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 Chytraus, 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. Stephen Wesley Oliver, Applicant.

All of whom were sworn and testified.

Exhibits:

The Department offered the following exhibits¹:

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 9, 2008 application.
2. Criminal history of Applicant.
3. Letter of explanation from Applicant.
4. Emails and affidavits from/to Applicant from Department/Applicant.
5. Faxed document from Applicant to Department.
6. October 2, 2008 letter of denial from Department to Applicant.
7. Applicant's October 12, 2008 request for hearing.

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:

¹ State Exhibit No. 1. 2nd District Court, Davis County, Utah eviction judgment.

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, Stephen Wesley Oliver:

a. is a resident of the State of Utah and maintains a present residence of 1428 Fairway Lane, Farmington, Utah 84025

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 25, 2008 filed his application with the Department for issuance of a resident “*Producer*” license.

4. The Department on or about November 6, 2008 in writing denied Applicant's “application for a Utah resident producer individual license dated September 25, 2008” for the following reasons:

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

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 November 19, 2008 filed his “*request for hearing*” with the Department on November 20, 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 30, 2008 “Notice of Conversion to Formal Proceeding and Notice of Hearing”, mailed to the Applicant at his referenced business address on December 30, 2008, this present hearing was set for January 15, 2009 at 10:00 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 at the hearing openly acknowledged his criminal convictions; and

b. Applicant having been convicted of a number of felonies from 2005 and 2007 with such being recently reduced to Class "A" misdemeanors as per "402 motions" (September 22, 2008). Such offenses including forgery and theft.

3. The Applicant also has at least one (1) outstanding civil judgment growing out of an eviction in 2006.

4. a. The Applicant reasonably disclosed the criminal circumstances on his application and supplied copies of the "402" reductions.

b. The Applicant presented at the hearing that he was unaware of the outstanding civil judgment.

5. The Hearing Officer feels the failure to initially fully disclose such criminal matter and that Applicant was only released less than three (3) months prior to making his application bespeaks of a gross judgment as well as character issues.

6. a. The Applicant at the hearing seemed sincere as well as frank by his statement of "*I hope to get a better understanding of what I need to do*" by coming to today's hearing. .

b. The Hearing Officer had an opportunity to observe the Applicant. The Applicant appears more than of average intelligence. Applicant as stated is to the Hearing Officer's mind sincere that he has turned his life around and that he has a real sense of direction.

c. Unfortunately a "track record" has not been established for a sufficient amount of time under the present circumstances. Such typically needing to be at least (5) years from the last offense date obligation such as payment of fine, end of probation, if any, etc. have passed. The "402" reductions were just three (3) days prior to the Applicant's making and filing of his September 25, 2008 application with the Department.

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 September 25, 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 November 6, 2008 should be sustained.

2. The Applicant's September 25, 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 November 6, 2008 is **sustained**; and

2. The Applicant's September 25, 2008 application for licensure as a resident "*Producer*" is **denied**.

DATED and ENTERED this ____ day of January, 2009.

**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
Telephone: (801) 537-9246
Facsimile: (801) 538-3829
Email: MKleinfield@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.Oliver.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:

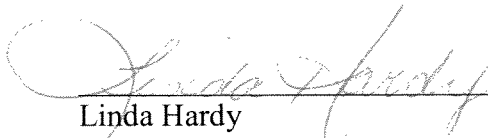
ORDER ON HEARING

License Denied

To the following:

Stephen Wesley Oliver
1428 Fairway Lane
Farmington, UT 84025

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