

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

IN RE THE APPLICATION OF:

HAILI CRANDALL
1961 North 85 West
Orem Park, UT 84057

License Pending

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2009-010-LC
Enf. Case No. 2327

Mark E. Kleinfield,
Presiding Officer

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 Wednesday, February 18, 2009 at 2:00 o'clock P. 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 2:00 (2:35) P. M., February 18, 2009 and adjourned at 2:47 P. 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.

No one appeared on behalf of the Applicant Haili Crandall¹

By the Presiding Officer:

Pursuant to a January 27, 2009 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on February 18, 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 Applicant.

¹ The Presiding Officer waited for 35 minutes. No contact apparently having been made by the Applicant to either counsel for the Department or the Court.

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.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Department:

The following witnesses were present but based on the Applicant’s failure to appear the Department was permitted to present its case through pro-offer by legal counsel.

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:

None.

Exhibits:

The Department offered the following exhibits:

While the Department tendered the following items already part of the Administrative file:

1. Copy of Applicant's August 21, 2008 application.
2. FBI Criminal history of Applicant.
3. UCBI Criminal history of Applicant.
4. December 2, 2008 letter of denial from Department to Applicant.
5. Applicant's December 12, 2008 request for hearing.

SEE file.

Additionally the Department offered the following formal exhibits:

1. **State's Exhibit No.s 1 through 3**, consisting of nine (9) type written or printed pages, being copies of a specific 3rd District Court criminal proceeding and two (2) specific 4th District Court criminal proceedings, concerning the Applicant. (SEE file).

Which were accepted and entered of record.

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, Haili Crandall:

a. is a resident of the State of Utah and maintains a present residence of 1961 North 85 West, Orem, Utah 84057;
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 21, 2008 filed her application with the Department for issuance of a resident “*Producer*” license.

4. The Department on or about December 2, 2008 in writing denied Applicant’s “application for a Utah resident producer individual license dated _____” 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 her 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 December 12, 2008 filed her “*request for hearing*” with the Department on December 16, 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 January 27, 2009 “Notice of Conversion to Formal Proceeding and Notice of Hearing”, mailed to the Applicant at his referenced residence address on January 27, 2009, this present hearing was set for February 18, 2009 at 2:00 P. M..

DISCUSSION-ANALYSIS

1.a. The Applicant by her failure to appear “concur” with the department’s pro-offer and characterization or interpretation and import of the above referenced operative facts and 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 December 2, 2008 letter of denial of the Applicant's August 21, 2008 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 September 9, 2008 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 Applicant failed to appear and her default is entered accordingly.

5. a. Without belaboring Applicant’s criminal history it is the Applicant’s failure to fully disclose at the time of her filing of her application and her failure to appear at the instant hearing, which she requested, which shows her lack of responsibility 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. and the very recent August 21, 2008 application **failure to disclose.**

6. The Department in issuing a license to the Applicant or any individual in comparable circumstances to the Applicant would be breaching its responsibilities to the public.

7. a. The Presiding Officer having heard the pro-offer of the Department and reviewed the documentary evidence cannot but only take as true the allegations as presented.

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 by her failure to appear and prosecute her case has failed to do.
- d. The Applicant's August 21, 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 Applicant does not meet the character qualifications for licensing outlined in Section 31A-23a-107, UCA, 1953, as amended.
- 2. 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.1, immediately above, the Department in the practice of good public policy and the protection of the public welfare cannot at this time do.
- 3. The Department’s “*letter of denial*” under date of December 2, 2008 should be affirmed.
- 5. The Applicant's August 21, 2008 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:

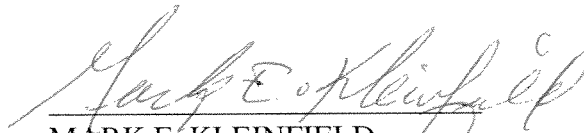
ORDER

WHEREFORE, IT IS ORDERED that:

1. The Department's "letter of denial" under date of December 2, 2008 is **sustained**;
and
2. The Applicant's August 21, 2008 application for licensure as a resident "Producer" is **denied**.

DATED and ENTERED this 29 day of February, 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: 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.

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:

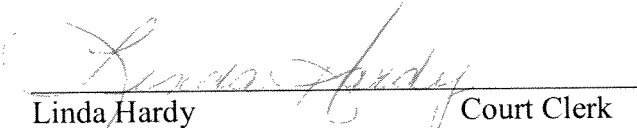
ORDER ON HEARING

License Denied

To the following:

Haili Crandall
1961 North 85 West
Orem, UT 84057

DATED this 24th day of February, 2009.


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