

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

IN RE THE APPLICATION OF:

JORIE SCOTT LOOMIS
5235 South Glendon Way, #M2
Murray, UT 84123

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2009-014-LC
Enf. Case No. 2356

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 Tuesday, March 3, 2009 at 11:00 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 11:00 (11:16) A. M., March 3, 2009 and adjourned at 12:30 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.

Jorie Scott Loomis, Applicant, 5235 South Glendon Way, #M2, Murray, Utah 84123, pro se.

By the Presiding Officer:

Pursuant to a February 12, 2009 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on March 3, 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.

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. Jennifer Christian, 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.

3. Robert Herrera, Market Conduct Examiner, Market Conduct Division, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

For the Applicant:

1. Jorie Scott Loomis, Applicant.

All of whom were sworn and testified.

Exhibits:

The Department offered the following exhibits:

Prior to testimony the Department tendered the following items already part of the Administrative file:

1. Copy of Applicant's December 22, 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.

Additionally the Department presented the following formal exhibits:

1. State's Exhibit No. 1, consisting of six (6) typewritten or printed pages, being a copy of a West Jordan (Utah) Justice Court docket/case number 031301595, printed on February 11, 2009 concerning the Applicant regarding a retail theft (shoplifting) class B misdemeanor conviction in January 2004.

2. State's Exhibit No. 2, consisting of three (3) typewritten or printed pages, being a copy of a 3rd District Court, Salt Lake County, Utah/ West Jordan docket/case number 995117049, printed on January 20, 2009 concerning the Applicant regarding a operate unsafe vehicle class C misdemeanor, using plates registered to another vehicle class C misdemeanor and seat belt violation infraction convictions in February 2000.

3. State's Exhibit No. 3, consisting of eight (8) typewritten or printed pages, being a copy of a 3rd District Court, Salt Lake County, Utah/ West Jordan docket/case number 014903422, printed on January 20, 2009 concerning the Applicant regarding a civil action of Tiffany Rutherford vs. Josie Scott Jeffery Loomis resulting in a January 21, 2005 stipulated judgment against Applicant for \$2,074.64.

4. State's Exhibit No. 4, consisting of twelve (12) typewritten or printed pages, being a copy of a KSL Classified ad for services/insurance run on February 16, 2009, printed on February 18, 2009 referencing contacting a Jorie 801-878-6288.

The Applicant offered the following exhibits:

1. Applicant's Exhibit No. 1 being a one (1) page typed letter with one (1) page fax cover sheet from Scott S. Weight, Office of Recovery Services, dated March 3, 2009, regarding a \$0.00 balance as of 10/17/2007 and a balance of \$278.81 "as of this date". (NOTE: The presiding Officer left the record open to the close of business March 10, 2009 at 5:00 o'clock P. M. MT. This exhibit was faxed to counsel for the Department and placed in the record on March 3, 2009.

(No objection being made which exhibits were 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:

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, Josie Scott Loomis:

a. is a resident of the State of Utah and maintains a present residence of 5235 South Glendon Way, #M2, Murray, Utah 84123

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 December 22, 2008 filed his application with the Department for issuance of a resident "*Producer*" license.

4. The Department on or about January 8, 2009 in writing denied Applicant's "application for a Utah resident producer individual license dated December 12, 2008" (sic) 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 January 15, 2009 filed his "*request for hearing*" with the Department on January 20, 2009. (SEE Administrative File.)

7. That based on the preliminary facts as set forth in paragraphs 1 through 6, immediately above, through means of a February 12, 2009 "Notice of Conversion to Formal Proceeding and Notice of Hearing", mailed to the Applicant at his referenced business address on February 12, 2009, this present hearing was set for March 3, 2009 at 11:00 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 previous criminal conviction(s);

b. Applicant being convicted of a misdemeanor retail theft in January 2004 and three (3) traffic violations in February 2000; with

c. The Applicant representing that he has paid all his fines and met his obligations under the referenced circumstances;

3. a. The record before the Presiding Officer is somewhat unclear as to if the fines have been paid off, but even assuming such the dockets are clear that the Applicant had to be cited into the respective courts with Order to Show Cause Orders and or bench warrants.

b. The Applicant as to the retail theft despite his "owning up" to it by his plea in court tried to explain away his part in the circumstances. "I didn't know what was going on", etc. A lament the Presiding Officer has heard numerous times in the past.

c. A disregard of the law in the Presiding Officer's mind. The business of insurance is made up of a myriad of rules and regulations. One that must be followed and followed precisely. They cannot be picked and chosen from on one's whim.

4. State's Exhibit No. 3 shows an outstanding civil judgment apparently growing out of a paternity proceeding. The record does not show this as paid although the Applicant states it is and presents his Exhibit No. 1 from ORS as documenting such payment. The letter from ORS does not specifically show what this is about and or cross reference Tiffany Rutherford or anyone. Additionally it shows "Your past due balance as of this date [March 3, 2009] is \$278.81.

5. The failure to fully pay outstanding civil judgments is a prohibition to licensure. Such creating again a the heck with the law attitude.

6. Also of note is State's Exhibit No. 4 and the testimony of Market Conduct Investigator Herrera. It would appear while denied by the Applicant that Applicant was somewhat engaged in the insurance business prior to licensure application via the KSL ad. The "call me" ads seem to be a somewhat endemic phenomena on the rise in Utah and elsewhere. Such is being in the insurance business. Such creates again an impression of the heck with the law I'll do what I want.

7. The Hearing Officer had an opportunity to observe the Applicant. The Applicant appears more than of average intelligence and by his testimony is presently engaged in driving truck. His reason for wanting to go into insurance being to remain closer to home and raising his child. Such being very commendable and worthy.

8. a. Arguably a "close case" the Department in licensing the Applicant or any individual in comparable circumstances to the Applicant would though be breaching its responsibilities to the public. The Presiding Officer heard the witnesses and reviewed the documentary evidence. 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 fully do.

d. The Applicant's December 22, 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 January 8, 2009 should be sustained.

2. The Applicant's December 22, 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 January 8, 2009 is **sustained**;
and

2. The Applicant's December 22, 2008 application for licensure as a resident "*Producer*" is **denied**.

DATED and ENTERED this 7th day of May, 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.

ADMINH.Loomis.Formal.dec.05-04-09

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:

Jorie Scott Loomis
5235 South Glendon Way, #2
Murray, UT 84123

DATED this 4th day of May, 2009.


Linda Hardy Court Clerk

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