

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

**IN RE THE APPLICATION OF:**

NICOLE ANNE ESPLIN  
8645 South Royal Crest Drive  
West Jordan, UT 84088

**RECOMMENDED ORDER**

**ON HEARING**  
(Formal Hearing)

and

**ORDER ON HEARING**  
(Formal Hearing)

DOCKET No. 2009-039-LC  
Enf. Case No. 2368

Mark E. Kleinfield,  
Presiding Officer

License Pending

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**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, April 20, 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 (10:16) A. M., April 20, 2009 and adjourned at 10:53 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.

Nicole Anne Esplin, Applicant, 8645 South Royal Crest Drive, West Jordan, Utah 84088 pro se.

**By the Presiding Officer:**

Pursuant to a March 18, 2009 Notice of Conversion to Formal Proceeding and Notice of Hearing and an April 1, 2009 Notice of Continuance of Hearing a Formal Hearing was conducted on April 20, 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*".

Both parties waived an opening statement.

Thereafter, evidence was offered and received.

**SUMMARY OF THE EVIDENCE**

**Witnesses:**

For the Department:

1. Julie 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. Nicole Anne Esplin, 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 15, 2008 application.
2. January 27, 2009 letter of denial from Department to Applicant.
3. Applicant's February 3, 2009 request for hearing.

**SEE** file.

Additionally the Department presented the following formal exhibits:

1. State's Exhibit No. 1, consisting of three (3) typewritten or printed pages, being a copy of a January 13, 2009 Utah Criminal Bureau of Investigation report regarding the Applicant.
2. State's Exhibit No. 2, consisting of three (3) typewritten or printed pages, being a copy of a January 13, 2009 FBI report regarding the Applicant.
3. State's Exhibit No. 3, consisting of six (6) typewritten or printed pages, being a copy of a West Jordan (Utah) Justice Court docket/case number 981300495, printed on January 27, 2009 concerning the Applicant regarding theft by deception class B misdemeanor, issue bad check class B misdemeanor and false information to government agencies class B misdemeanor, convictions in May 1998.
4. State's Exhibit No. 4, consisting of two (2) typewritten or printed pages, being a copy of a 3<sup>rd</sup> District Court, Salt Lake County, Utah/ West Jordan docket/case number 995117049, printed on January 27, 2009 concerning the Applicant regarding a civil suit against the Applicant by Bonneville Collection wherein judgment was entered on December 23, 2002 in the amount of \$1,015.33 against the Applicant.

The Applicant offered the following exhibits:

1. Applicant's Exhibit No. 1 being a one (1) page typed letter dated UNDATED being a District Court Statewide Case Search concerning the Applicant,

2 through 7. Applicant's Exhibit No.s 2 through 7, each being one (1) page typed letter(s) of recommendations with various dates from various people who know and or have worked with the Applicant. **SEE** file.

8. Applicant's Exhibit No. 8, being a one (1) page typewritten or printed page being an apparent Certificate of Expungement Eligibility from the State of Utah Department of Public Safety dated March 19, 2009 regarding the Applicant as regards a May 4, 1999 (sic) arrest concerning theft by deception, bad check-false statement charges out of the West Jordan (Utah) Justice Court.

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

Argument followed.

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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, Nicole Anne Esplin:

a. is a resident of the State of Utah and maintains a present residence of 8645 South Royal Crest Drive, West Jordan, Utah 84088;

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 15, 2008 filed her application with the Department for issuance of a resident "*Producer*" title-escrow license.

4. The Department on or about January 27 2009 in writing denied Applicant's "application for a Utah resident producer individual license dated December 15, 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 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 February 3, 2009 filed her “*request for hearing*” with the Department on February 3, 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 March 18, 2009 “Notice of Conversion to Formal Proceeding and Notice of Hearing” and an April 1, 2009 “Notice of Continuance of Hearing”, both mailed to the Applicant at her referenced business address on February 12, 2009, this present hearing was set for April 20, 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 her previous criminal conviction(s);

b. Applicant being convicted of a 3 class B misdemeanors in May 1998;

c. Such being over ten (10) years such in an of themselves do not give the Presiding Officer substantial concern (although they dealt with bad check(s) and theft by deception as well as false information to a police agency). **It is the fact that the Applicant failed to disclose them on her application that gives the greatest concern.** The Applicant arguably sincerely references she either misread the question or forgot about them or was at a “difficult stage of her life”. The Presiding Officer has heard such tact numerous times before. One does not “forget” such what would be a extensive encounter with law enforcement.

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. Such equating to 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.

4. State's Exhibit No. 4 shows an "outstanding" civil judgment although such was discharged via a July 2003 bankruptcy.

5. The failure to fully pay outstanding civil judgments is typically a prohibition to licensure. While technically not outstanding based on the bankruptcy such gives the Presiding Officer concerns. Such creating again a "the heck with the law attitude" or personal responsibility.

6. The Hearing Officer had an opportunity to observe the Applicant. The Applicant appears more than of average intelligence and by her testimony is presently engaged in clerical assistance to a title company. Such being reflected by a number of the personal references via Applicant's Exhibit No.s 2 through 7. Her reason for wanting to go into title insurance being to remain progress in an industry she enjoys and does well in. Such being very commendable and worthy.

7. 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 15, 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 recommends the following:

**CONCLUSIONS OF LAW**

1. The Department's "letter of denial" under date of January 27, 2009 should be sustained.

2. The Applicant's December 15, 2008 application for licensure as a resident "Producer" title-escrow should be denied.

**AND BASED ON THE ABOVE AND FOREGOING CONCLUSIONS OF LAW**

the Presiding Officer recommends the entry of the following:

**RECOMMENDED ORDER**

**WHEREFORE, IT IS ORDERED that:**

1. The Department's "letter of denial" under date of January 27, 2009 is **sustained**;

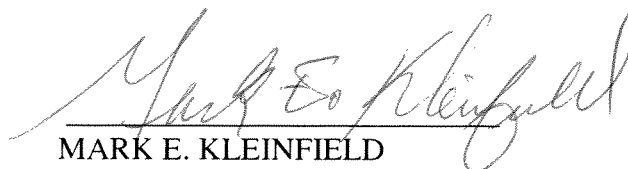
and

2. The Applicant's December 15, 2008 application for licensure as a resident "Producer" title-escrow is **denied**.

**DATED and ENTERED** this 11 day of May, 2009.

**D. KENT MICHIE,  
INSURANCE COMMISSIONER**





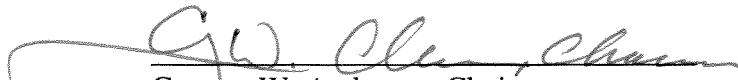
MARK E. KLEINFELD  
ADMINISTRATIVE LAW JUDGE and  
PRESIDING OFFICER  
Utah Insurance Department  
State Office Building, Room 3110  
Salt Lake City, Utah 84114  
Telephone: (801) 537-9246  
Facsimile: (801) 538-3829  
Email: MKleinfeld@utah.gov

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**ORDER**

BY a vote of 5, in favor of the recommendation, to 0, against the recommendation, taken in open meeting on this date, the Utah Title and Escrow Commission hereby enters the Order recommended above by its designated Presiding Officer herein above.

DATED this 11 day of May, 2009.

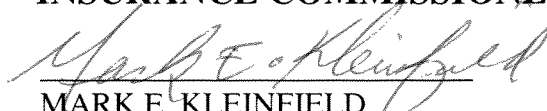
  
Canyon W. Anderson, Chairman  
Utah Title and Escrow Commission

**CONCURRENCE WITH COMMISSION ENTERED ORDER**

ON behalf of the Commissioner of the Utah Insurance Department I hereby concur with the Order entered by the Utah Title and Escrow Commission in the above matter.

DATED this 11 day of May, 2009.

**D. KENT MICHIE,  
INSURANCE COMMISSIONER**

  
MARK E. KLEINFELD  
Administrative Law Judge

**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.

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CERTIFICATE OF MAILING

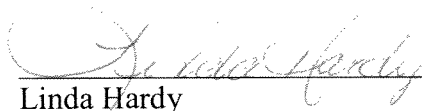
I do hereby certify that on this date I mailed, by regular mail, postage prepaid a true and correct copy of the attached:

ORDER ON HEARING

To the following:

Nicole Anne Esplin  
8645 South Royal Crest Drive  
West Jordan, UT 84088

DATED this 11<sup>th</sup> day of May, 2009.

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