

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

IN RE THE APPLICATION OF:

MODIBO DIALLO  
775 North 235 East  
Orem, UT 84057

**ORDER ON HEARING**  
(Formal Hearing)

DOCKET No. 2009-065-LC  
Enf. Case No. 2393

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 Tuesday, June 2, 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 9:00 (9:17) A. M., June 2, 2009 and adjourned at 10:14 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.

Modibo Diallo, Applicant, 775 North 235 East, Orem, Utah 84057, pro se.

**By the Presiding Officer:**

Pursuant to a May 11, 2009 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on June 2, 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. 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. Modibo Diallo, Applicant.

All of whom were sworn and testified.

**Exhibits:**

The Department offered the following exhibits:

The Department presented the following items already part of the Administrative file:

1. Copy of Applicant's February 3, 2009 application.
2. February 17, 2009 fax and attachments from Applicant to Department regarding "court papers".
3. Utah Criminal History Record (03/04/2009) and FBI report (02/12/2009) regarding Applicant
4. March 10, 2009 letter of denial from Department to Applicant.
5. Applicant's March 16, 2009 request for hearing (received March 17, 2009).

SEE file.

The Department also offered the following formal exhibits:

1. State's Exhibit No. 1 being three (3) pages of typewritten or printed materials dated March 18, 2009 being a copy of the docket in a certain criminal proceeding in the 4<sup>th</sup> District Court, Orem, Utah County, Utah regarding the Applicant.

The Applicant offered the following exhibits:

1. Applicant's Exhibit No. 1 being one (1) page of typewritten or printed material being a March 5, 2009 letter from Timothy L. Taylor, Chief Deputy Utah County (Utah) Attorney regarding the Applicant.

(All of which without objection by either party were accepted and entered of record).

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, Modibo Diallo:

a. is a resident of the State of Utah and maintains a present residence of 775 North 235 East, 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 February 3, 2009 filed his application with the Department for issuance of a resident “*Producer*” license.

4. The Department on or about March 10, 2009 in writing denied Applicant's “application for a resident individual producer license in Utah dated [December 12, 2008]” for the following reasons:

“Failure to meet the character requirements for licensing pursuant to 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 March 16, 2009 filed his “*request for hearing*” with the Department on March 17, 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 May 11, 2009 “Notice of Conversion to Formal Proceeding and Notice of Hearing”, mailed to the Applicant at his referenced residence address on May 11, 2009, this present hearing was set for June 2, 2009 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. Applicant somewhat begrudgingly acknowledged his arrest (02/14/2008) and conviction(s) (04/14/2008) for retail theft and arrest (01/01/2007) and plea in abeyance (02/07/2007) for simple assault (domestic violence); with an additional felony arrest (12/26/2006) for burglary with prosecution declined by the Utah County Attorney's Office.

3. The Applicant absent the circumstances set forth in Paragraph 2, immediately above, does not appear to have any other criminal record.

4. Applicant disclosed such on his application and attendant later attachments. Such convictions also being confirmed also as a result of the mandatory fingerprint and FBI/BCI inquiry.

5. a. The Applicant feigns innocence and attempts to shift responsibility that it was another party's fault or I was in the "wrong place at the wrong time" in each instance and "I only plead guilty (or in abeyance) to get it over with".<sup>1</sup>

b. The Hearing Officer had an opportunity to observe the Applicant. The Applicant appears reasonably intelligent. Why one would plead in abeyance as to the simple assault and still plead innocence even after conviction by a bench trial as regards the retail theft always troubles a judge or hearing officer.

c. Another concern is that the Applicant just completed his obligation to the State of Utah on the retail theft conviction by getting his "release" from supervision by the District Court on April 14, 2009 AFTER his filing his application.

d. Also while prosecution was declined by the Utah County Attorney's Office there is a felony arrest present albeit growing out of a 2006 incident.

e. Applicant's recent history (the last 4 years) seems to reflect an ongoing disrespect for the rule of law and lack of responsibility or owning up to one's actions.

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<sup>1</sup> From the record and testimony though it appears the Applicant took the retail theft matter after conviction all the way to an initial filing in the Utah Court of Appeals before withdrawing such.

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

b. A sufficient track record of trustworthiness in positions of the same has not been shown. At a minimum it would seem that at least five (5) years of such prior to applying would seem in order and in line with past similar cases.

7. a. The Presiding Officer while having heard the witnesses and reviewed the documentary evidence cannot peer into the future 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 February 3, 2009 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 March 10, 2009 should be sustained.

2. The Applicant's February 3, 2009 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 March 10, 2009 is **sustained**;

and

2. The Applicant's February 3, 2009 application for licensure as a resident "Producer" is **denied**.

**DATED and ENTERED** this 16<sup>th</sup> day of June, 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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## **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:

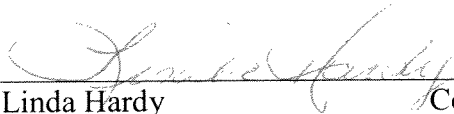
ORDER ON HEARING

LICENSE DENIED

To the following:

Modibo Diallo  
775 North 235 East  
Orem, UT 84057

DATED this 15<sup>th</sup> day of June, 2009.

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