

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

IN RE THE APPLICATION OF:

FRANKLIN RAYBURN  
4110 South 3340 East  
Salt Lake City, UT 84124

License Pending

**ORDER ON HEARING**  
(Formal Hearing)

DOCKET No. 2010-027-LC  
Enf. Case No. 2492

**Mark E. Kleinfield,**  
Presiding Officer

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**STATEMENT OF THE CASE**

**THIS MATTER** concerning whether the Applicant's application for a Resident Producer Individual license should be approved came on to be heard before the Commissioner of the Utah State Insurance Department ("*Department*") on Tuesday, March 9, 2010 at 9:00 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, Utah State Office Building, Room 3110, Salt Lake City, Utah 84114, having been convened at the designated time of 9:00 (9:33) A. M., March 9, 2010 and adjourned at 9:44 A. M. on said same day.

**Appearances:**

M. Gale Lemmon, Utah Assistant Attorney General, Attorney for Utah State Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

No one appeared on behalf of the Applicant Franklin Rayburn<sup>1</sup>

**By the Presiding Officer:**

Pursuant to an October 13, 2008 "*Notice of Conversion to Formal Proceeding and Notice of Hearing*" a hearing was conducted on November 12, 2008 in the above-entitled proceeding. **The Applicant failed to appear 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(s) in this case is (are):

- a. Was Applicant's application for issuance of a Resident Producer Individual 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 also Paragraph 2 under *DISCUSSION-ANALYSIS*.)

2. The "*burden of proof*" or "*burden of going forward*" in this case 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

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<sup>1</sup> The Presiding Officer waited for 33 minutes. No contact apparently having been made by the Applicant to either counsel for the Department or the Court.

issues of fact is to be proven by a “*preponderance of the evidence*”.

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The Department waived an opening statement.

Thereafter, evidence was pro-offered and received.

### **SUMMARY OF THE EVIDENCE**

#### **Witnesses:**

For the Applicant:

No witnesses.

For the Department:

No formal witnesses

(The Complainant through counsel was permitted to pro-offer the Department’s case)

#### **Exhibits:**

The Department offered the following exhibits:

1. **State's Exhibit No.s 1 through 4**, consisting of seventeen (17) type written or printed pages, being copies of four(4) specific court proceedings concerning the Applicant. (SEE file).

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

The Applicant offered the following exhibits:

No formal exhibits were presented by the Applicant.

Additionally the Presiding Officer took judicial notice of the files and records of the Department particularly the Applicant’s July 10, 2009 application; the Department’s August 6, 2009 denial letter and Applicant’s August 14, 2009 request for hearing.

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:**

### *Preliminary-Procedural Facts*

(Paragraphs 1-7)

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, Franklin Rayburn:

a. is a resident of the State of Utah and at the time of his application maintained a residence address of 4110 South 3340 East, Salt Lake City, Utah 84121;

and

b. has/is not presently nor previously been licensed by the Department to conduct or be engaged in any capacity in the insurance business in the State of Utah.

3. The Applicant on or about July 10, 2009 filed his application with the Department for issuance of a “*Resident Producer Individual License*”. (SEE Administrative file.)

4. The Department on or about August 6, 2009 in writing denied Applicant's application for “one or more of the following reasons:

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

UCA Section 31A-23a-111-5(b)(ix) – providing information in the license application that is incorrect, incomplete, or materially untrue.”

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.

6. The Applicant under date of August 14, 2009, filed his “*request for hearing*” with the Department. (SEE Administrative file.)

7. That based on the preliminary facts as set forth in Paragraphs 1 through 6, immediately above, through means of an February 18, 2010 “*Notice of Conversion to Formal Proceedings and Notice of Hearing*”, mailed to the Applicant at his referenced address on February 18, 2010, this present formal hearing was set for March 9, 2010 at 9:00 A. M. Mountain Time.

*Operative Facts*  
(Paragraphs 8 -9)

8. The Applicant is a resident of the State of Utah.

9. The Applicant:

a. has been convicted or plead guilty to several traffic misdemeanors.

b. failed to fully disclose such on his July 10, 2009 application.

**DISCUSSION-ANALYSIS**  
(Paragraphs 1-8)

1.a. The Applicant by his failure to appear “concur” with the department’s proffer 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 August 6, 2009 letter of denial of the Applicant's July 10, 2009 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 August 6, 2009 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 his default is entered accordingly.

5. a. Without belaboring Applicant’s history it is the Applicant’s failure to fully disclose at the time of his filing of his application and his failure to appear at the instant hearing, which he requested, which shows his 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.*<sup>2</sup>

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 July 10, 2009 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

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<sup>2</sup> Applicant failed to disclose his numerous all be they traffic convictions such as driving on suspension, speeding, etc. notwithstanding the application directly asked and the applicant answered “no” or “none”. SEE file as to specific violations.

ii. **Present** sufficient evidence that would justify the reversal of such denial.

c. This the Applicant by his failure to appear and prosecute his case has failed to do.

d. The Applicant's July 10, 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 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 August 6, 2009 should be affirmed.

5. The Applicant's July 10, 2009 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 August 6, 2009 is **affirmed**;  
and
2. The Applicant's July 10, 2009 application for licensure as a "Resident Producer Individual" is **denied**.

**DATED and ENTERED** this 28 day of March, 2010.

**NEAL T. GOOCH,  
ACTING 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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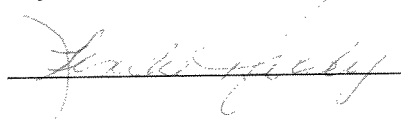
**CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_ day of March, 2010 a true and correct copy of the above and foregoing ***ORDER ON HEARING (Formal Hearing)*** was sent first class mail, postage prepaid to the following:

Franklin Rayburn  
Applicant  
4110 South 3340 East  
Salt Lake City, Utah 84124

and a true and correct copy hand-delivered to the following:

M. Gale Lemmon  
Assistant Attorney General  
State of Utah  
Attorney for Complainant  
Utah Insurance Department  
State Office Building, Room 3110  
Salt Lake City, Utah 84114



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