

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

IN RE THE APPLICATION OF:

RANDY A. MONDRAGON
646 Sunset Crest Way
Draper, UT 84020

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2010-035-LC
Enf. Case No. 2532

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 Wednesday, March 10, 2010 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 (11:11) A. M., March 10, 2010 and adjourned at 12:13 P. M. on said same day.

Appearances:

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

Randy A. Mondragon, Applicant, 646 Sunset Crest Way, Draper Utah 84020, pro se.

By the Presiding Officer:

Pursuant to an February 25, 2010 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on March 10, 2010 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 gave a brief opening statement.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Department:

1. Kris Redmond, Licensing Specialist, Producer Licensing Division, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

2. Randy Overstreet, Director, Producer Licensing Division, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

For the Applicant:

1. Randy Mondragon, Applicant.

All of whom were sworn and testified.

Exhibits:

The Department offered the following exhibits:

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

1. Copy of Applicant's July 6, 2009 application.
2. UCI Criminal history of Applicant.
3. FBI Criminal history of Applicant.
4. Previous license history.
5. October 6, 2009 letter of denial from Department to Applicant.
5. Applicant's October 7, 2009 request for hearing.

The Department also offered eight (8) exhibits which were accepted and entered into the record without objection dealing with the Applicant's criminal history before various Utah courts. (SEE file).

The Applicant offered the following exhibits:

Respondent's Exhibit No.s 1 – 5, being five (5) letters of recommendation/reference which were accepted and entered without objection. (SEE File).

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, Randy Mondragon:

a. is a resident of the State of Utah and maintains a present residence of 646 Sunset Crest Way, Draper, Utah 84020;

and

b. while previously having been licensed allowed such license to lapse without reinstatement and is now not 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 July 6, 2009 filed his application with the Department for issuance of a resident “*Producer*” license.

4. The Department on or about October 6, 2009 in writing denied Applicant's “application for a Utah resident producer individual license dated July 6, 2009” for the following reasons:

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

UCA 31A-23a-111(5)(b)(ix) – provided information in the license application that is incorrect, misleading, 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.

(SEE Administrative File.)

6. The Applicant under date of October 7, 2009 filed his “*request for hearing*” with the Department on October 8, 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 25, 2010 “Notice of Conversion to Formal Proceeding and Notice of Hearing”, mailed to the Applicant at his referenced

business address on February 25, 2010, this present hearing was set for March 10, 2010 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 somewhat begrudgingly acknowledged his convictions in the State of Utah;

b. Applicant having a criminal history from 1988 (class "B" misdemeanor: retail theft) through as recent as May 2009 (class "B" misdemeanor: harassment) with assorted while not major crimes asundry offenses such as supplying alcohol to minors, no fishing stamps, DUI (reduced to alcohol related reckless driving).;

3. The Applicant as stated in Paragraph 2, immediately above, having a criminal offense or plea as recently as May 2009.

4. Applicant apparently failed to disclose such circumstances on his application. Such convictions being discovered as a result of the mandatory fingerprint and FBI/BCI inquiry.

5. The Applicant stating "he misread the question" regarding criminal convictions.

5. The Hearing Officer feels the failure to fully detail bespeaks of a character issue.

6. The Applicant feigns confusion and attempts to shift responsibility. The Hearing Officer had an opportunity to observe the Applicant. The Applicant appears reasonably intelligent.

7. a. The Hearing Officer has heard the "I misread the question" presentation many times before. The Applicant also referenced that most of the crimes were when he was a youth or before turning his life around, etc. The Hearing Officer has also heard such approaches many times before. While arguably a scenario that presents itself as understandable to some the Department in licensing the Applicant or any individual in comparable circumstances to the Applicant would be breaching its responsibilities to the public.

b. The “rule of law” in dealing with other’s property is a central or a “linchpin” to the profession of insurance. The Applicant’s disregard of such gives great concern to the Hearing Officer as it did to the Department. The latest crime, harassment, was as recent as May 2009.

8. a. The Presiding Officer while having heard the witnesses and reviewed the documentary evidence cannot peer into the heart, mind and conscience of any witness 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 July 6, 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 October 6, 2009 should be sustained.

2. The Applicant's July 6, 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 October 6, 2009 is **sustained**;
and
2. The Applicant's July 6, 2009 application for licensure as a resident "Producer" 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

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 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 certified mail, return receipt requested, and first class mail, both postage prepaid to the following:

Randy A. Mondragon
Applicant
646 Sunset Crest Way
Draper, Utah 84020

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

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


