

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

RESPONDENT:

RICHARD P. ATKIN
944 East Olympus Ridge Cove, Apt. M306
Salt Lake City, Utah 84117
License No. 330913

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2010-074-LC
Enf. Case No. 2556

Mark E. Kleinfield,
Presiding Officer

STATEMENT OF THE CASE

THIS MATTER concerning whether the Respondent has violated the Utah Insurance Code or attendant rules as regards his acquisition of an individual resident producer license came on to be heard before the Commissioner of the Utah State Insurance Department (“Department”) on Tuesday, June 29, 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 located at the Utah State Office Building, Room 3112, Salt Lake City, Utah 84114, having been convened at the designated time of 9:00 (9:19) A. M., June 29, 2010 and adjourned at 10:24 A. M. on said same day.

Appearances:

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

Richard T. Atkin, Licensee, pro se.

By the Presiding Officer:

Pursuant to a June 15, 2010 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on June 29, 2010 in the above-entitled proceeding. The Licensee 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 Licensee's resident producer's license improperly obtained?

b. Has the Department presented sufficient evidence to show that the Department's issuance of Licensee's resident producer license was fraudulently obtained?

c. Has the Department presented sufficient evidence to show a violation of U. C. A. 31A-23a-105(2) and 31A-2-202(6) 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 Department.

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*".

The Department gave a brief opening statement. The Licensee first reserved an opening statement then combined such with his case in chief testimony.

Thereafter, evidence was offered and received.

Witnesses: SUMMARY OF THE EVIDENCE

For the Complainant Department:

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

For the Respondent:

1. Richard P. Atkin, Licensee.

Both of whom were sworn and testified.

Exhibits:

The Complainant Department offered the following exhibits:

No formal exhibits were introduced. The Presiding Officer took judicial notice of the Department's files including the Licensee's original September 16, 2009 application; an October 7, 2009 UCBI Criminal History Record; an October 16, 2009 "supplemental" letter from the Licensee and October 31, 2009 response from the Licensee to Sandra Holliday, UID Investigator.

The Applicant offered the following exhibits:

No exhibits were presented by the Applicant.

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 Licensee, Richard P. Atkin:

a. is a resident of the State of Utah and maintains a present residence of 944 East Olympus Ridge Cove, Apt. M306, Salt Lake City, Utah 84117;

and

b. had not previously been licensed by the Department as a resident "Producer" to conduct or be engaged in the insurance business in the State of Utah until his initial issuance of a license on or about November 2, 2009.

3. a. The Licensee on or about September 16, 2009 filed his application with the Department for issuance of a "*Resident Producer Indv.*" license. (SEE Administrative File.)

b. The department on or about November 2, 2009 issued the Licensee License No. 330913.

4. The Department on or about May 18, 2010 issued an Informal Adjudicative Proceeding and Order alleging the Licensee violated U. C. A. 31A-23a-105(2) and 31A-2-202(6) by submitting false information on his original September 16, 2009 license application.

(SEE Administrative File.)

5. That included in said Informal Adjudicative Proceeding 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 June 3, 2010, filed his “*request for hearing*” with the Department on June 7, 2010. (SEE Administrative File.)

7. That based on the preliminary facts as set forth in paragraphs 1 through 6, immediately above, through means of an June 15, 2010 “Notice of Conversion to Formal Proceeding and Notice of Hearing”, mailed to the Respondent at his referenced business address on August 21, 2008, this present hearing was set for June 29, 2010 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. a. Applicant freely acknowledges his answering “NO” on his original September 16, 2009 application as to criminal actions or offenses.

b. Such apparently being misdemeanors although some reference narcotic and or other drug offenses. All of the circumstances appear to have grown out of a June 20, 2009 arrest and “pending” and unresolved¹ at the time of the filing of Licensee’s original September 16, 2009 application.

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

¹ The record does not reflect if even at the time of hearing whether they were resolved, but does reference such were in “Orientation” in Drug Court. The Presiding Officer hopes that such are or will be resolved appropriately in the Drug Court for the best interests of the Licensee, his family and society in general.

4. Applicant represents he “misread” the questions set forth in the application. The Department points out that the questions are very clear to understand. The Hearing Officer would generally concur yet an argument of confusion can be made if the questions are read “hurriedly”. This is an argument the Hearing Officer has heard numerous times before notwithstanding the Licensee was apparently sincere and forthright in his presentation.

5. The Hearing Officer based on the whole record before him believes giving the Licensee the benefit of his sincerity and for want of a better phrase his youth is in the best interests of justice. As such the Presiding Officer is not directing the Department to institute revocation or suspension proceedings as regards the Licensee’s license as may well have been appropriate rather than the present asked for forfeiture and probationary term. The Hearing Officer feels the Licensee will not abuse that benefit and belief.

BASED ON THE ABOVE AND FOREGOING FINDINGS OF FACT and discussion-analysis the Presiding Officer enters the following:

CONCLUSIONS OF LAW

1. The Licensee violated U. C. A. 31A-23a-105(2) and 31A-2-202(6) by failing to disclose then pending criminal proceedings on his September 16, 2009 application.

2. The Licensee’s November 2, 2009 license should be placed on probation with a monetary forfeiture assessed.

AND BASED ON THE ABOVE AND FOREGOING CONCLUSIONS OF LAW

the Presiding Officer enters the following:

ORDER

WHEREFORE, IT IS ORDERED that:

1. The Licensee shall pay an administrative forfeiture in the amount of \$750.00 within sixty (60) days of the entry of this Order.²

² The 60 day time frame is less than suggested by Counsel for the Department, but in light of the extended time in issuing the present Order it is noted the Licensee had “a heads up” and should have been anticipating the approximate forfeiture and preparing for such.

2. The Licensee's license is placed on a twelve (12) months term of probation during which he shall have no further violations of the Utah Insurance Code or Rule or other Order of the Commissioner; and during the period of probation the Licensee shall not commit any criminal acts, other than minor traffic violations.

DATED and ENTERED this 29 day of November, 2010.

**NEAL T. GOOCH,
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.Atkin.Formal..dec.11-xx-10



Insurance Department

State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

NEAL T. GOOCH
Commissioner

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:

Richard P. Atkin
944 East Olympus Ridge Cove, Apt. M306
Salt Lake City, UT 84117

DATED this 1st day of December, 2010

A handwritten signature in cursive script, appearing to read "Linda Hardy", written over a horizontal line.

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