

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

IN RE THE APPLICATION OF:

BENJAMIN TAYLOR



License Pending

**ORDER ON HEARING**

(Formal Hearing)

DOCKET No. 2010-093 -LC  
Enf. Case No. 2560

**Mark E. Kleinfield,**  
Presiding Officer

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**STATEMENT OF THE CASE**

**THIS MATTER** concerning whether the Applicant should be issued a Resident Producer Individual license came on to be heard before the Commissioner of the Utah State Insurance Department (“*Department*”) on Wednesday, January 5, 2011 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 3112, Salt Lake City, Utah 84114, having been convened at the designated time of 9:00 (9:08) A. M., January 5, 2011 and adjourned at 10:18 A. M. on said same day.

**Appearances:**

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

Benjamin Taylor, Applicant, *pro se*.

**By the Presiding Officer:**

Pursuant to a November 30, 2010 "*Notice of Initial Application Hearing*" a hearing was conducted on November 2, 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(s) in this case is (are):

a. Was Applicant's application for 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 issues of fact is to be proven by a "*preponderance of the evidence*".

The Department waived an opening statement. The Applicant first reserved then presented a brief opening statement.

Thereafter, evidence was offered and received.

## SUMMARY OF THE EVIDENCE

### Witnesses:

For the Applicant:

1. Benjamin Taylor, Applicant.

For the Department:

1. Kris Redmond, Insurance 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.

All of whom were sworn and testified.

### Exhibits:

The Department offered the following exhibits:

1. **State's Exhibit No. 2.** (SEE file).

(No objection being made which was accepted and entered.)<sup>1</sup>

The Applicant offered the following exhibits:

No formal exhibits were offered by the Applicant.

Additionally the Presiding Officer took judicial notice of the files and records of the Department particularly the Applicant's September 23, 2009 application, including an initial fax-letter of explanation (UNDATED) as to a "Yes" answer and a 2nd fax-letter of explanation (October 28, 2009; the Department's November 2, 2009 denial letter and Applicant's November (3)4, 2010 request for hearing.

Argument followed.

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<sup>1</sup> State's Exhibit No. 1 was moved, objected to by the Applicant and withdrawn by the Department.

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, Benjamin Taylor:

a. is a resident of the State of Utah and maintains a present residence of [REDACTED]

[REDACTED]; and

b. has not previously been nor is presently 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 September 23, 2009 filed his application with the Department for issuance of a “*Resident Producer Individual License*”. (SEE Administrative file.)

4. The Department on or about November 2, 2009 2010 in writing denied Applicant's application for “one or more of the following reasons:

“Failure to meet the character requirements for licensing pursuant to UCA 31A-23a-107.”

5. That included in said denial were instructions informing Applicant of the right to an “*informal hearing*” if a timely request is made in writing within fifteen (15) days.

6. The Applicant under date of November 3, 2009 filed a “*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 initial June 29, 2010 “*Notice of Conversion to Formal Proceedings and Notice of Hearing*”, *sua sponte*, and later continuances mailed to the Applicant at his referenced address this present formal hearing was held on January 5, 2011 at 9:00 A. M. Mountain Time.<sup>2</sup>

*Operative Facts*  
(Paragraphs 8 -9)

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

9. The Applicant:

a. has been sued civilly in the 3<sup>rd</sup> District Court, Salt Lake County, Utah and had a Utah State Tax Commission lien in the amount of \$1,969.54 entered against him (and spouse) on December 22, 2008, which has not been released although an apparent payment schedule has been entered into (SEE Applicant Exhibit No. 2 as to judgment entered); and

b. agreed to have revoked his Principal Lending Manager mortgage license revoked and did not contest the revocation as per a certain Stipulation & Order entered on November 5, 2008<sup>3</sup> (SEE copy supplied by Applicant as attachment to fax-letter of

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<sup>2</sup> This matter was originally set for and a perfunctory abbreviated hearing was held on July 13, 2010. At that time during the proceedings and receipt of evidence the Presiding Officer declared a perceived conflict and the hearing was adjourned. Based on a November 30, 2010 Notice of Initial Application Hearing specifically referencing the perceived conflict the matter was reset for January 5, 2011. The Applicant at that time on the record waived any perceived conflict and the hearing (re)commenced anew with all previous testimony and evidence from the initial July 13, 2010 hearing stricken.

<sup>3</sup> The terms of the Stipulation & Order being that the herein Applicant be revoked for a 2 year term from November 8, 2008 through November 7, 2010 AND pay a \$5,000.00 fine within 30 days of the November 8, 2008 Order.

explanation UNDATED to original September 23, 2009 application to Department); the Applicant referenced this on his September 23, 2009 application..

## **DISCUSSION-ANALYSIS**

(Paragraphs 1-7)

1.a. Both the Applicant and the Department in large measure while advocating different characterizations, emphasis or interpretations and import of the above referenced operative 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. The question(s) presented is:

a. “Whether the Applicant has presented sufficient evidence to show that the Department’s November 2, 2009 letter of denial of the Applicant's September 23, 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 November 2, 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”):

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 Presiding Officer while taking notice of the Utah State Tax Commission lien does note that an apparent payment agreement is in place with as testified by the Applicant about \$1,100.00 to \$1,200.00 still owing. This does not cause great concern but does bespeak to Applicant’s personal as well as business acumen in financial matters.

5. a.i. It is the “voluntary surrender” or rather non-contesting revocation of the Applicant’s Principal Lending Manager mortgage license that gives great concern<sup>4</sup>.

ii. Acknowledging the Applicant disclosed such and supplied a copy of the 2008 surrender it is the Applicant’s attempt to minimize the underlying circumstances that is most disconcerting. The Applicant’s attitude or approach of minimizing and or blame-shifting 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.*

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<sup>4</sup> The case growing out of fraudulent loan applications dealing with (non) “Owner-occupied” real properties in a timeframe (2206-2008) when the “greed of the boom times” overtook many apparently including the present Applicant to stretch and bend, if not outright break the rules..

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.

c. It is noted that the 2 year term of revocation of the herein Applicant's Principal Lending Manager mortgage license has run. The \$5,000.00 fine nor any part of it though apparently has not been paid. Absent payment of the fine the herein Applicant could apparently reapply and be granted his Principal Lending Manager mortgage license.<sup>5</sup>

6. The Department in licensing 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 witnesses and reviewed the documentary evidence 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 September 23, 2009 application was properly denied based on the record before the Department.

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<sup>5</sup> The Applicant made much ado at the January 5, 2011 hearing that he needed to be making a living and thus the reason for his present insurance license application.



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

**CONCLUSIONS OF LAW**

1. The Applicant's apparent part in questionable practices as a mortgage licensee as resulting in his voluntary surrender or non-contesting of the revocation of his mortgage license and his revocation having occurred just barely over two (2) years ago indicates a lack of respect for the rule of law and thereby a lack of being "*trustworthy*" as required by the character qualifications of Section 31A-23a-107, UCA, 1953, as amended.

2. The Applicant does not meet the character qualifications for licensing outlined in Section 31A-23a-107, UCA, 1953, as amended.

3. 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.s 1 and 2, immediately above, the Department in the practice of good public policy and the protection of the public welfare cannot at this time do.

4. The Department's "*letter of denial*" under date of November 2, 2009 should be affirmed.

5. The Applicant's September 23, 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 November 2, 2009 is **affirmed**;
- and
2. The Applicant's September 23, 2009 application for licensure as a "Resident Producer Individual" is **denied**.

**DATED and ENTERED** this 11 day of January, 2011.

**NEAL T. GOOCH,  
INSURANCE COMMISSIONER**



A handwritten signature in cursive script, reading "Mark E. Kleinfeld".

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  
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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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