

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

IN RE THE APPLICATION OF:

ROBERT P. LOVELESS



License Pending

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2010- 134-LC
Enf. Case No. 2660

Mark E. Kleinfield,
Presiding Officer

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 Tuesday, October 26, 2010 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, Utah State Office Building, Room 3112, Salt Lake City, Utah 84114, having been convened at the designated time of 10:00 (10:10) A. M., October 26, 2010 and adjourned at 10:46 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.

Robert P. Loveless, Applicant, *pro se*.

By the Presiding Officer:

Pursuant to a September 14, 2010 and later continuances "*Notice of Conversion to Formal Proceeding and Notice of Hearing*" a hearing was conducted on October 26, 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 waived an opening statement.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Applicant:

1. Robert P. Loveless, 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.s 1 through 5.** (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 February 23, 2010 application; the Department's March 10, 2010 denial letter and Applicant's March 23, 2010 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, Robert P. Loveless:

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 February 23, 2010 filed his application with the Department for issuance of a “*Resident Producer Individual License*”. (SEE Administrative file.)

4. The Department on or about March 10, 2010 in writing denied Applicant's application for “one or more of the following reasons:

UCA 31A-23a-111-5(b)(iv) – Failure to pay a final judgment rendered against you in this state.

UCA 31A-23a-111-5(b)(xxii) – Failure to pay state income tax.

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 March 23, 2010 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 a September 14, 2010 and later continuances “*Notice of Conversion to Formal Proceedings and Notice of Hearing*”, *sua sponte*, mailed to the Applicant at his referenced address this present formal hearing was set for October 26, 2010 at 10:00 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 several federal and Utah tax liens (apparently for 2006 and 2007) and civil judgments totaling approximately \$135,000.00+ in outstanding amounts.

b. belatedly (March 2, 2010) detailed his federal and Utah tax liens on his February 23, 2010 application; but not his civil judgments issues; such civil judgments being discovered by court docket checks by the Department.

DISCUSSION-ANALYSIS

(Paragraphs 1-8)

1.a. Both the Applicant and the Department in large measure while advocating **clearly** different characterizations 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 March 10, 2010 letter of denial of the Applicant's February 23, 2010 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 March 10, 2010 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. The Commissioner may deny a license application when an applicant based on Section 31A-23a-111(5)(b)(iv), Utah Code Ann.:

“31A-23a-111.

(5)(b)(iv) fails to pay a final judgment rendered against the person in this state within 60 days after the day on which the judgment became final;”

4. While empathy can be extended to the Applicant based on the present economic state of both the State of Utah and the United States as a whole some judgments have remained unpaid for what would appear to be 3+ years. Such arguably being before the onset of the economic travails the country finds itself in although the Applicant’s had an apparent earlier onset.

5. While the Commissioner's authority is not mandatory the age and large amount of the outstanding debt makes the denial of the Applicant's license necessary when looking at the business acumen of the Applicant. The business of insurance is one of trust and the Applicant's inability to manage his own business affairs raises serious concerns as to assisting others in theirs in the area of insurance.

6. Additionally 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.

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

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 February 23, 2010 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's failure to pay judgments rendered against him within 60 days as per Section 31A-23a-111(5)(b)(iv), UCA,1953, as amended 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 March 10, 2010 should be affirmed.

5. The Applicant's February 23, 2010 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:

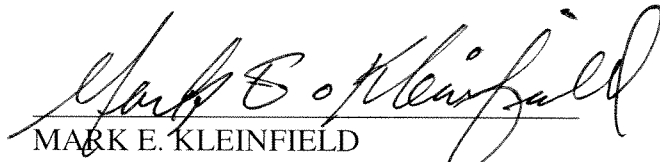
ORDER

WHEREFORE, IT IS ORDERED that:

1. The Department's "*letter of denial*" under date of March 10, 2010 is **affirmed**;
- and
2. The Applicant's February 23, 2010 application for licensure as a "*Resident Producer Individual*" is **denied**.

DATED and ENTERED this 6 day of December, 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.
