

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

IN RE THE APPLICATION OF:

ERIC COLTER CANNON


License Pending

ORDER ON HEARING

(Formal Hearing)

DOCKET No. 2010-154-LC
Enf. Case No. 2716

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 19, 2010 at 9:30 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 9:30 (9:37) A. M., October 19, 2010 and adjourned at 10:17 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.

Eric Colter Cannon, Applicant, *pro se*.

By the Presiding Officer:

Pursuant to a September 27, 2010 "*Notice of Conversion to Formal Proceeding and Notice of Hearing*" a hearing was conducted on October 19, 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. Eric Colter Cannon, 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.

Both of whom were sworn and testified.

Exhibits:

The Department offered the following exhibits:

1. **State's Exhibit No.s 1 through 4.** (SEE file).

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

The Applicant offered the following exhibits:

1. **Applicant's Exhibit No. 1.** (SEE file).

(No objection being made which was accepted and entered.)

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 27, 2010 application; the Department's August 17, 2010 denial letter and Applicant's August 19, 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, Eric Colter Cannon:

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 July 27, 2010 filed his application with the Department for issuance of a “*Resident Producer Individual License*”. (SEE Administrative file.)

4. The Department on or about August 17, 2010 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 the right to an “*informal hearing*” if a timely request is made in writing within fifteen (15) days.

6. The Applicant under date of August 19, 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 27, 2010 “*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 19, 2010 at 9:30 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 arrested, convicted or plead guilty to numerous misdemeanors in the 2001 to 2002 timeframe involving DUI, obstruction of justice and criminal trespass/damage;

b. failed to initially disclose his previous criminal activity on his July 22, 2009 application; with the Applicant answering “No” to the pertinent criminal questions and such being discovered by BCI/FBI and court docket checks by the Department; although the Applicant disclose on August 16, 2010.

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 August 17, 2010 letter of denial of the Applicant’s July 27, 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 August 17, 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. 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 record would appear that the Applicant has maintained a clean record since his last offense in 2002 (although there was reference to a later DUI that was apparently dismissed).

5. Putting aside the Applicant's past problems it is (was) the Applicant's failure to initially disclose his past on his July 22, 2010 application that is most disconcerting. Applicant did not attempt to minimize such as an “oversight” or “mistake”, but acknowledged his misstatement and remedied it prior to the August 17, 2010 denial letter issuing.

6. a. Without belaboring Applicant's history it is the Applicant's attitude which appears positive and the support of his employer that gives the most determinative factor in the present case.

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 would appear the Applicant has arguably “turned himself around”, obtained or has solid offers of employment.

7. The Department in licensing the Applicant or any individual in comparable circumstances to the Applicant would be fulfilling 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 in some sense accomplished.

d. The Applicant's July 22, 2010 application while properly denied based on the record before the Department should be conditionally granted.

e. The Presiding Officer feels the Applicant will not breach the trust placed in him.

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 August 17, 2010 should while sustained be modified.

2. The Applicant's July 22, 2010 application for licensure as a "*Resident Producer Indv.*" should be granted conditionally.

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 17, 2010 is **sustained**;
and
2. The Applicant's July 22, 2010 application for licensure as a resident "Producer" is **granted conditionally** on the following terms and conditions:
 - a. The Applicant placed on a twelve (12) months term of probation with a review set for December 6, 2011;
 - b. The Applicant's present employer and all future employers in the insurance industry in writing acknowledge the Applicant probationary status and agree to verse the Applicant during the term of the same.

DATED and ENTERED this 6 day of December, 2010.

**NEAL T. GOOCH,
INSURANCE COMMISSIONER**



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PRESIDING OFFICER
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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.
