

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

IN RE THE APPLICATION OF:

HEATHER M. BARTON
[REDACTED]

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2010-155-LC
Enf. Case No. 2717

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, October 20, 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., October 20, 2010 and adjourned at 10:04 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.

Heather M. Barton, Applicant, [REDACTED], pro se.

By the Presiding Officer:

Pursuant to an October 27, 2010 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on October 20, 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*".

The Department gave a brief opening statement. The Applicant first reserved then combined her opening statement with her 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. Heather M. Barton, Applicant, [REDACTED].

Both of whom were sworn and testified.

Exhibits:

The Department offered the following exhibits:

1. **Department's Exhibit No.s 1 through 4**, SEE file.

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

The Applicant offered the following exhibits:

1. **Applicant's Exhibit No.s 1 through 3**, SEE file.

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

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, Heather M. Barton:

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

and

b. has not apparently previously been nor is 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 August 3, 2010 filed her application with the Department for issuance of a "*Resident Producer Indv.*" license. There was a "Y"(es0 answer referencing taxes owed question. (SEE Administrative File.)

4. On August 9, 2010 the Department requested of Applicant “an explanation for your YES answer” as to question dealing with taxes.

5. On August 12, 2010 the Applicant provided further information to the Department referencing her yes answer regarding taxes.

6. The Department on or about August 12, 2010 in writing denied Applicant's “application for a Utah resident producer individual license dated August 3, 2010” for the following reasons:

UCA Section 31A-23a-111-5(b)(xxii) – failure to pay state income tax, or comply with an administrative or court order of state income tax. (SEE Administrative File.)

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

8. The Applicant under date of August 23, 2010, filed her “*request for hearing*” with the Department on August 24, 2010. (SEE Administrative File.)

9. That based on the preliminary facts as set forth in paragraphs 1 through 8, immediately above, through means of an September 27, 2010 “Notice of Conversion to Formal Proceeding and Notice of Hearing”, mailed to the Respondent at her referenced business address this present hearing was set for October 20, 2010 at 9:00 A. M..

DISCUSSION-ANALYSIS

1. a. Both the Applicant and the Department in large measure concurred with the above referenced facts in substance and 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. Applicant freely acknowledges her taxes issues with both the federal IRS and the State of Utah.

3. The Applicant absent the circumstances set forth in Paragraph 2, immediately above, does not appear to have had any issues that would disqualify her from being granted a license.

4. Applicant freely noticed on her application the tax issues and responded to the Department’s request for further information. The Applicant was frank and open and after request at the hearing supplied timely to the Department a “Payroll Deduction Agreement” for IRS and an “Irrevocable Wage Assignment” for the State of Utah. (SEE Administrative file).

6. The Hearing Officer based on the whole record before him believes giving the Applicant the benefit of her sincerity is in the best interests of justice. The Hearing Officer feels the Applicant 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 Department's "letter of denial" under date of August 12, 2010 should while sustained be modified.

2. The Applicant's August 3, 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 12, 2010 is **sustained**;

and

2. The Applicant's August 3, 2010 application for licensure as a resident "Producer" is **granted conditionally** on the following terms and conditions:

a. The Applicant's providing the Department with a signed copy of a "Payroll Deduction Agreement" with the IRS and an "Irrevocable Wage Assignment" for the State of Utah Tax Commission and or other relevant documentation;

b. The Applicant complying with such tax agreements;

c. The Applicant having no further comparable tax circumstances; and

d. The Applicant placed on a twelve (12) months term of probation with a review set for October 20, 2011.

DATED and ENTERED this 30 day of November, 2010.

**NEAL T. GOOCH,
INSURANCE COMMISSIONER**



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ADMINISTRATIVE LAW JUDGE and
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.

ADMINIL.Barton.I/A.dec.11-xx-10