

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

IN RE THE APPLICATION OF:

EDWARD DANIEL GOLUB



License Pending

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2011-034-LC
Enf. Case No. 2730

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, April 19, 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 (9:07) A. M., April 19, 2011 and adjourned at 10:16 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.

Edward Daniel Golub, Applicant, *pro se*.

By the Presiding Officer:

Pursuant to an April 5, 2011 "*Notice of Conversion to Formal Proceeding and Notice of Hearing*" a hearing was conducted on April 19, 2011 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. Edward Daniel Golub, Applicant, [REDACTED].
2. Eddie Golub, (no address given), Father of Applicant.

For the Department:

1. 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 and 2**, consisting of 27 type written or printed pages, being copies of court dockets from the South Salt Lake Justice Court and 3rd District Court, Salt Lake County, Utah. (SEE file).

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

The Applicant offered the following exhibits:

1. **Applicant's Exhibit No. 1 through 4**, consisting of 6 type written or printed pages, being copies of a court docket from the 3rd District Court, Salt Lake County, Utah and 3 letters of recommendation regarding the Applicant. (SEE file).

Additionally the Presiding Officer took judicial notice of the files and records of the Department particularly the Applicant's September 21, 2010 application; the Department's October 11, 2010 denial letter and Applicant's October 15, 2010 request for hearing, as well as FBI and UCBI summaries resultant from fingerprints of Applicant and September 27, 2010 fax explanation from Applicant.

(No objection being made all of which 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:

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, Edward Daniel Golub:

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 21, 2010 filed his application with the Department for issuance of a “*Resident Producer Individual License*”. (SEE Administrative file.)

4. The Department on or about October 11, 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 October 15, 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 an April 5, 2011 “*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 April 19, 2011 at 9:00 A. M. Mountain Time.

Operative Facts
(Paragraphs 8 -9)

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

9. The Applicant has plead guilty originally to theft, a 2nd degree felony and burglary, a 3rd degree felony, which through the convolutions of the criminal justice system and apparently good legal counsel were plead down on “402 motions” to two (2) class “B” misdemeanors and eventually on February 10, 2011 dismissed.

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 October 11, 2010 letter of denial of the Applicant's September 21, 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 October 11, 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. While the record would appear that the Applicant has maintained a clean record

since his last offense¹ in July 2007 it is the proximity of the final closure of the court proceedings that gives the Presiding Officer the most concern. The offense was originally for theft, a 2nd degree felony and burglary, a 3rd degree felony, which through the convolutions of the criminal justice system and apparently good legal counsel were plead down on “402 motions” to two (2) class “B” misdemeanors and eventually on February 10, 2011 dismissed. (SEE State’s Exhibit No. 1.)

5. Putting aside the Applicant’s past problems the Applicant through the “402” process was apparently extensively involved in the probation process, including it seems the Mental Health Court, as well as self-admitted drug issues. The Applicant’s successful compliance and completion speaks well of his earnestness. The Applicant’ tendered letters of recommendation speak highly of him and his recent accomplishments. All and all the Applicant comes highly directed and motivated. The Applicant’s father for whom the Applicant would apparently be employed testified generally as what controls might be applied to guarantee success of the Applicant.

6. Notwithstanding all of the above it is the passage of time that to the Presiding Officer’s mind that bespeaks the level of comfort the Department would seem to desire and need. Based on the Presiding Officer having heard similar matters in his twelve (12) years and reviewing past circumstances the standard is generally that of five (5) years of a clean record. The earliest that approval would seem to be appropriate would be five (5) years from the original offense date of July 2007 or approximately July 2012. While admittedly a close case based on the specific factual circumstances past precedent and policy would dictate non-approval.

¹ The Applicant had an apparently earlier December 2000 Disorderly Conduct, Class “C” Misdemeanor, matter which was closed as of May 2001 or almost 10 years ago. The Presiding Officer puts no import to this matter in his decision. (SEE State’s Exhibit No. 2.)

7. a. 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.

b. Additionally, it would appear notwithstanding the Applicant has arguably “turned himself around”, obtained or has a solid offer of employment as well as being involved in volunteer work, which is commendable, such which while in some eyes may appear to have a track record does not equate to sufficient weight to overcome the relatively recent (2007) criminal circumstances.²

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 September 21, 2010 application was properly denied based on the record before the Department.

² Gratuitously and anticipatorily the Presiding Officer if presented with comparable facts on or after July 2012 would reverse and grant one in Applicant' position licensure with certain terms and conditions such as “mentoring” and oversight by a(ny) prospective employer and a 12 months probation.;

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

CONCLUSIONS OF LAW

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

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

3. The Department’s “*letter of denial*” under date of October 11, 2010 should be affirmed.

4. The Applicant’s September 21, 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 October 11, 2010 is **affirmed**;
and
2. The Applicant's September 21, 2010 application for licensure as a "Resident
Producer Individual" is **denied**.

DATED and ENTERED this 25th day of April, 2011.

**NEAL T. GOOCH,
INSURANCE COMMISSIONER**



Mark E. Kleinfeld

**MARK E. KLEINFELD
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.

Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(R590-160 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.
