

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

**IN RE THE REINSTATEMENT OF
THE LICENSE OF:**

DOUGLAS KYLE KLEVEN


License No. 208998 (Lapsed)

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2010-181-LC
Enf. Case No. 2752

Mark E. Kleinfield,
Presiding Officer

STATEMENT OF THE CASE

THIS MATTER concerning whether the Applicant's lapsed Resident Producer Individual license should be re-instated came on to be heard before the Commissioner of the Utah State Insurance Department ("*Department*") on Tuesday, January 11, 2011 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 (10:25) A. M., January 11, 2011 and adjourned at 11:08 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.

Douglas Kyle Kleven, Applicant, *pro se*.

By the Presiding Officer:

Pursuant to a December 21, 2010 "*Notice of Conversion to Formal Proceeding and Notice of Hearing*" a hearing was conducted on January 11, 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 re-instatement of his lapsed 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*".

Both the Department and Applicant waived opening statements.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Applicant:

1. Douglas Kyle Kleven, Applicant.

For the Department:

1. Joyce Maher, 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 and 2.** (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 October 13, 2010 re-instatement application; the Department's December 8, 2010 denial letter and Applicant's December 14, 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, Douglas Kyle Kleven:

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

b. was previously been licensed by the Department to conduct or be engaged in the insurance business in the State of Utah on July 30, 2003 being issued license number 208998, and which lapsed on July 30, 2010 based on Applicant’s failure to renew in a timely manner.

3. The Applicant on or about October 13, 2010 filed his application re-instatement with the Department for issuance of a “*Resident Producer Individual License*”. (SEE Administrative file.)

4. The Department on or about December 8, 2009 in writing denied Applicant's re-instatement application for “one or more of the following:

“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 December 14, 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 December 21, 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 January 11, 2011 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 plead guilty to an “INSURANCE VIOLATION Class B Misdemeanor Offense” on June 14, 2010 before the Provo City Justice Court. SEE State Exhibit No. 1.

DISCUSSION-ANALYSIS
(Paragraphs 1-8)

1.a. Both the Applicant and the Department concur as to the above referenced operative facts and the basic *chronology*.

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 December 8, 2010 letter of denial of the Applicant’s October 13, 2010

application for re-instatement of his license 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 December 8, 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 absent the referenced June 14, 2010 Provo City Justice Court maintained a clean record it is the proximity of less than 6 months prior to his application and the nature of such offense (Insurance Violation) that gives the Presiding Officer concern.

5. a. Without belaboring Applicant’s actions it is the simple fact that Applicant is still

on probation and will be until at least June 14, 2011. It would be a blatant breach of the Department's charge to protect the public in authorizing licensure or re-instatement of an individual presently on probation. The underlying facts and or interpretation of the incident that lead to the Applicant's criminal plea are not subject to attack or review in the present proceeding. The Applicant plead guilty. Consequences flow accordingly. Notwithstanding such plea was apparently a *plea in abeyance* that may well be expunged upon completion on or after June 14, 2011¹ such conviction involves 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.*

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.

6. The Department in re-instating the Applicant's or any individual's lapsed license in comparable circumstances to the Applicant would be breaching its responsibilities to the public.

7. 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.²

b. Here in the **present** instance the burden is/was on the Applicant to:

¹ What effect such "expungement" on or after June 11, 2011 may well have on any re-application for a "new" license can not be said. Such though would seem to be Applicant's only real recourse in light of his present outstanding conviction and probation.

² While the Presiding Officer may well and does empathize with Applicant's plight and equity might well speak to some accommodation the administrative process is one of law and not equity and the law when applied to the instant facts cannot "bend" so as to allow an accommodation.

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 October 13, 2010 application for re-instatement 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. Applicant's recent interaction with the judicial system 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 re-instatement 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 December 8, 2010 should be affirmed.

5. The Applicant's October 13, 2010 application for re-instatement of his license 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 December 8, 2010 is **affirmed**;
and

2. The Applicant's October 13, 2010 application for re-instatement of his license as a
"Resident Producer Individual" is **denied**.

DATED and ENTERED this 13 day of January, 2011.

**NEAL T. GOOCH,
INSURANCE COMMISSIONER**



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 R590-160-8.

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.
