

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

IN RE THE APPLICATION OF:

ESMERALDA JANETTE BARRERA



License Pending

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2011-155-LC
Enf. Case No. 2811

Mark E. Kleinfield,
Presiding Officer

STATEMENT OF THE CASE

THIS MATTER concerning whether the Applicant's application for a Resident Customer Service Representative license should be approved came on to be heard before the Commissioner of the Utah State Insurance Department ("*Department*") on Tuesday, August 9, 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 3110, Salt Lake City, Utah 84114, having been convened at the designated time of 9:00 (10:00) A. M., August 9, 2011 and adjourned at 10:41 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.

Applicant Esmeralda Janette Barrera, *pro se*.¹

¹ The Applicant prior to the 9:00 AM commencement time contacted the Department that she had inadvertently gone to the wrong address and would arrive at approximately 10:00 AM..

By the Presiding Officer:

Pursuant to a July 20, 2011 "*Notice of Conversion to Formal Proceeding and Notice of Hearing*" a hearing was conducted on August 9, 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 issuance of 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 combined her opening statement with her testimony.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Applicant:

Esmeralda Janette Barrera, Applicant.

For the Department:

Randall Overstreet, Director, Producer Licensing Division, Utah Insurance Department, State Office Building, #3110, Salt Lake City, Utah 84114.

Exhibits:

The Department offered the following exhibits:

State's Exhibit No. 1, being a copy of four (4) pages of the docket of a certain proceeding in the West Valley Justice Court, Salt Lake County, State of Utah, wherein the Applicant was the Defendant. SEE FILE.

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 January 11, 2011 application; an FBI criminal report; a Utah Criminal Bureau Investigation report; the Department's February 28, 2011 denial letter and Applicant's March 7, 2011 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, Esmeralda Janette Barrera:

a. is a resident of the State of Utah and at the time of her application maintained a residence address of [REDACTED];

and

b. has/is not presently nor previously been 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 January 11, 2011 filed her application with the Department for issuance of a “*Resident Customer Service Representative License*”. (SEE Administrative file.)

4. The Department on or about February 28, 2011 in writing denied Applicant's application for “one or more of the following reasons:

“Failure to meet the character requirements for licensing pursuant to in UCA 31A-23a-107;

5. 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.

6. The Applicant under date of March 14, 2011 filed her “*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 July 20, 2011 “*Notice of Conversion to Formal Proceedings and Notice of Hearing*”, mailed to the Applicant at his referenced address this present formal hearing was set for August 9, 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:

- a. has been convicted or plead guilty in abeyance to retail theft in Utah in 2009.
- b. failed to fully disclose such on her January 11, 2011 application.

DISCUSSION-ANALYSIS

(Paragraphs 1-8)

1.a. The Applicant by his failure to appear “concur” with the department’s pro-offer and characterization or interpretation and import of the above referenced operative facts and 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 February 28, 2011 denial of the Applicant's January 11, 2011 application for licensure as a “*Resident Customer Service Representative*” was not justified on the record?”;

b. “Whether the Applicant has presented sufficient evidence that would justify the reversal of such February 28, 2011 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 Applicant was relatively frank during her testimony although as to inquiry about her present working circumstances he was very circumspect which gives the Presiding Officer concerns.

5. a. It is Applicant’s failure to fully disclose at the time of her filing of her application which shows her lack of responsibility revolving around 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. and the very recent January 11, 2011 application **failure to fully disclose.**²

6. The Department in issuing a license to the Applicant or any individual in comparable circumstances to the Applicant would be breaching its responsibilities to the public.

7. a. The Presiding Officer having heard the pro-offer of the Department and reviewed the documentary evidence cannot but only take as true the allegations as presented.

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.

d. The Applicant's January 11, 2011 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:

² While Applicant acknowledged "Yes" as to a criminal conviction(s) she did not fully disclose the details on her application. A retail theft in August 2009 was revealed via Utah BCI. In review of the docket the Presiding Officer observes that Applicant's obligation to the Court which was a plea in abeyance which Applicant abrogated was not fully complied with until January 18, 2011 or a week **AFTER** her Application with the Department.

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 license would be in contravention of the intent and purpose of Section 31A-23a-107, UCA , which based on “Conclusions of Law” No.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 February 28, 2011 should be affirmed.

5. The Applicant's January 11, 2011 application for licensure as a “*Resident Customer Service Representativel*” 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 February 28, 2011 is **affirmed**;
and

2. The Applicant’s January 11, 2011 application for licensure as a “*Resident Customer Service Representativel*” is **denied**.

DATED and ENTERED this 30th day of August, 2011.

**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.

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