

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

IN RE THE APPLICATION OF:

AUBREY LYNN LARSEN

2388 East Riley Drive
Eagle Mountain, UT 84005

License Pending

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2011-198-LC
Enf. Case No. 2879

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 18, 2011 at 10:30 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 10:30 (10:40) A. M., October 18, 2011 and adjourned at 11:19 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.

Aubrey Lynn Larsen, Applicant, *pro se*.

By the Presiding Officer:

Pursuant to an September 15, 2011 "*Notice of Conversion to Formal Proceeding and Notice of Hearing*" and a October 7, 2011 "*Notice of Continuance of Hearing*" a hearing was conducted on October 18, 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*".

Both parties waived an opening statement.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Applicant:

1. Aubrey Lynn Larsen, Applicant, 2388 East Riley Drive, Eagle Mountain, Utah 84005.

For the Department:

1. Randall Overstreet, Director, 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:

No formal exhibits were presented.

The Applicant offered the following exhibits:

No formal exhibits were presented.

The Presiding Officer took judicial notice of the files and records of the Department particularly the Applicant's April 18, 2011 application, an FBI summary, a May 2, 2011 email explanation from Applicant, the Department's May 3, 2011 denial letter and Applicant's May 4, 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, Aubrey Lynn Larsen:

a. is a resident of the State of Utah and maintains a present residence of 2388 East Riley Drive, Eagle Mountain, Utah 84005; 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 April 18, 2011 filed her application with the Department for issuance of a “*Resident Producer Individual License*”. (**SEE** Administrative file.)

4. The Department on or about May 3, 2011 in writing denied Applicant's application for “one or more of the following reasons:

“UCA 31A-23a-111(5)(b)(ix) - Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

UCA 31A-23a-105(1)(b)(vi) - Committing an act that is a ground for denial.

UCA 31A-23a-105(2)(b) & (c) - Failure to report at the time of filing the license application a criminal prosecution that had been taken against you.

UCA 31A-23a-107 - Failure to meet the character requirements for licensing.”

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 May 4, 2011 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 September 15, 2011 “*Notice of Conversion to Formal Proceedings and Notice of Hearing*”, *sua sponte*, and a October 7, 2011 “*Notice of Continuance of Hearing*” both mailed to the Applicant at her referenced address this present formal hearing was set for October 18, 2011 at 10:30 A. M. Mountain Time.

Operative Facts
(Paragraphs 8 -9)

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

9. Between 1995 and 2002 the Applicant plead guilty and or was convicted of several theft, fraud and forgery charges, including some originally charges as felonies and amended down to misdemeanors.

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 May 3, 2011 letter of denial of the Applicant's April 18, 2011 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 May 3, 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. While the record would appear that the Applicant has maintained a clean record since her last offense in August 2002 it is the nature of and the repetitiveness and escalation of the arrests and court proceedings that gives the Presiding Officer the most concern. The original offense was in July 1995 for Theft, followed by indecent exposure (July 1996), assault (January 1998), forgery (May 2000) and fraud (August 2002).

5. Putting aside whether one offense or multiple offenses it is the Applicant’s failure to initially disclose any of them on her April 18, 2011 Application that gives one pause and

concern. Additionally basically all of the offenses, save one, are in the area of truth and dishonesty --- namely theft , fraud and forgery ---- in regards to others property.

6. a. While the passage of time may appear to assuage the circumstances to some extent such does not bespeak the level of comfort the Department would seem to desire and need.

b. Additionally Applicant in her May 2, 2011 explanation as she did at the hearing sought to minimize her past history as youthful indiscretion. Arguably all have had stumbles during their youth. Applicant's last offense took place in 2002 when she was 28 years old, not a teenager.

c. Based on the Presiding Officer having heard similar matters in his twelve (12) years and while one could attempt to argue a close case based on passage of time and some specific factual circumstances past precedent and policy would dictate non-approval.

7. 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.

8. The Department in licensing the Applicant or any individual in comparable circumstances to the Applicant would be breaching its responsibilities to the public.

9. 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 April 18, 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:

CONCLUSIONS OF LAW

1. The Applicant does not meet the character qualifications for licensing outlined in Section 31A-23a-107, UCA, 1953, as amended, as well as being in contravention of Sections 31A-23a-111(5)(b)(ix), UCA, 1953, 31A-23a-105(1)(b)(vi), UCA, 1953, and 31A-23a-105(2)(b) & (c), UCA, 1953.

2. The issuance of a “*Resident Producer Individual*” license would be in contravention of the intent and purpose of Sections 31A-23a-107, Sections 31A-23a-111(5)(b)(ix), 31A-23a-105(1)(b)(vi) and 31A-23a-105(2)(b) & (c), UCA, 1953 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 May 3, 2011 should be affirmed.

4. The Applicant's April 18, 2011 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:

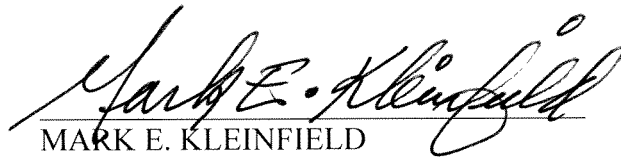
ORDER

WHEREFORE, IT IS ORDERED that:

1. The Department's "letter of denial" under date of May 3, 2010 is **affirmed**;
and
2. The Applicant's April 18, 2011 application for licensure as a "Resident Producer Individual" is **denied**.

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

**NEAL T. GOOCH,
INSURANCE COMMISSIONER**



MARK E. KLEINFELD
ADMINISTRATIVE LAW JUDGE and
PRESIDING OFFICER
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, Utah 84114
Telephone: (801) 537-9246
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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.

CERTIFICATE OF MAILING

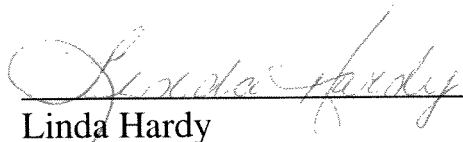
I do hereby certify that on this date I mailed, by regular mail, postage prepaid a true and correct copy of the attached:

NOTICE OF
HEARING ON OBJECTION TO LIFTING
OF ORDER OF SUSPENSION

To the following:

Aubrey Lynn Larsen
2388 East Riley Drive
Eagle Mountain, UT 84005

DATED this 24th day of October, 2011



Linda Hardy

Utah Department of Insurance
State Office Building, Room 3110
Salt Lake City, UT 84114-6901