

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

IN RE THE APPLICATION OF:

MARTIN EDGAR MALZAHN



License Pending

DEFAULT

and

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2012-026-LC
Enf. Case No. 3064

Mark E. Kleinfield,
Presiding Officer

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 Thursday, March 15, 2012 at 1:30 o'clock A. P. 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 1:30 (2:13) P. M., March 15, 2012 and adjourned at 2:26 P. M. on said same day.

Appearances: ~

M. Gale Lemmon, Enforcement Counsel, Attorney for Utah State Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

Neither the Applicant nor anyone on his behalf appeared.

By the Presiding Officer:

Pursuant to a February 14, 2012¹ Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on March 15, 2012 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 customer service representative'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*".

Both parties waived an opening statement.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Department:

¹ The body of the notice shows a date of March 14, 2012 as when it was signed by the Presiding Officer although the mailing certificate shows February 15, 2012. The caption and mailing addresses comport to the mailing address show on Department records. The notice was not returned and the reasonable inference is that the Applicant did received the notice in a timely manner.

1. Randy Overstreet, Director, Producer Licensing Division, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114 was present although he did not testify as Counsel for the Department was permitted to pro-offer..

For the Applicant:

None.

Exhibits:

The Department offered the following exhibits:

Prior to testimony the Department tendered the following items already part of the Administrative file:

1. Copy of Applicant's November 7, 2011 application.
2. November 17, 2011 letter of explanation from Applicant.
3. November 17, 2011 letter of denial from Department to Applicant.
4. Applicant's November 22, 2011 request for hearing.

SEE file.

Additionally the Department presented the following formal exhibits:

1. State's Exhibit No. 1, being Court exchange/dockets regarding a state tax lien levied against the Applicant. SEE FILE.

2. State's Exhibit No. 2, being Court exchange/dockets regarding a civil judgment against the Applicant. SEE FILE.

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

The Applicant offered the following exhibits:

None.

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, Martin Edgar Malzahn:

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

b. has not been previously licensed by the Department in any licensed category to conduct or be engaged in the insurance business in the State of Utah.

3. The Applicant on or about November 7, 2011 filed his application with the Department for reinstatement and issuance of a resident “*Producer*” license.

4. The Department on or about November 17, 2011 in writing denied Applicant's application for reinstatement and issuance of a Utah resident customer service representative individual license dated November 70, 2011 for the following reasons:

UCA 31A-23a-111(5)(b)(iv) – failure to pay a final judgment rendered against you in this state;

UCA 31A-23a-111(5)(b)(xxii) – Failure to pay state income tax, or comply with an administrative or court order directing payment of state income tax.

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

6. The Applicant under date of November 22, 2011 filed his “*request for hearing*” with the Department on November 22, 2011. (SEE Administrative File.)

7. That based on the preliminary facts as set forth in paragraphs 1 through 6, immediately above, through means of a February 14, 2012 “*Notice of Conversion to Formal Proceeding and Notice of Hearing*”², mailed to the Applicant at his referenced

² SEE footnote 1, supra.

address on February 15, 2012, this present hearing was set for March 15, 2012 at 1:30 P. M..

DISCUSSION-ANALYSIS

1. a. By the Applicant's non-appearance and the entry of his **DEFAULT** thereon the Applicant "concur" with the Department's characterization or interpretation of the above referenced 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. a. Applicant has an outstanding state income tax lien and outstanding civil judgment against him as shown by State Exhibit No. 1 and 2; and

b. While Applicant referenced such in his Application such are statutory impediments that cannot be broached or ignored.c. the Applicant failed to disclose such on her August 30, 2011 application, although she filed a later October 20, 2011 abbreviated letter of explanation.

3. The Presiding Officer accepted the Department's pro-offer and reviewed the documentary evidence. The Presiding Officer can only look at and weigh the **present** evidence before him. In such weighing the Applicant is found wanting.

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 fully do.

d. The Applicant's November 7, 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 having failed to appear his **DEFAULT** should be entered.

2. The Department's "*letter of denial*" under date of November 17, 2011 should be sustained.

3. The Applicant's November 7, 2011 application for licensure as a resident "Producer" 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. Applicant failed to appear and his DEFAULT is entered accordingly.
2. The Department's "letter of denial" under date of November 17, 2011 is **sustained**; and
3. The Applicant's November 7, 2011 application for a resident "Producer Representative" individual license is **denied**.

DATED and ENTERED this 20th day of March, 2012.

**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.
