

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

IN RE THE APPLICATION OF:

COURTNEY P. KOEPP



License Pending

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2012-061-LC
Enf. Case No. 3106

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 Tuesday, April 17th, 2012 at 2:00 o'clock P. M. 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 2:00 (2:15) P. M., April 17th, 2012 and adjourned at 2:33 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.

By the Presiding Officer:

Pursuant to a March 28, 2012 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on April 17, 2012 in the above-entitled proceeding. The Applicant was not 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 producer'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*".

The Department waived an opening statement.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Department:

None.

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:

SEE file as to application, FBI, UCBI, denial letter and request for hearing.

Additionally the Department presented the following formal exhibits:

SEE file as to Exhibit Nos. 1 through 6 court records.

(No objection being made which exhibit was 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, Courtney P. Koepp:

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

b. has not previously been licensed by the Department as a resident “Producer” to conduct or be engaged in the insurance business in the State of Utah.

3. The Applicant on or about December 29, 2011 filed his application with the Department for issuance of a resident “*Producer*” license.

4. The Department on or about February 14, 2012 in writing denied Applicant's application issuance of a Utah resident producer individual license dated December 29, 2011 for the following reasons:

SEE file.

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 February 17, 2012 filed his “*request for hearing*” with the Department on February 22, 2012. (SEE Administrative File.)

7. That based on the preliminary facts as set forth in paragraphs 1 through 6, immediately above, through means of a March 28, 2012 “Notice of Conversion to Formal Proceeding and Notice of Hearing”, mailed to the Applicant at his referenced address on March 29,, 2012, this present hearing was set for April 17, 2012 at 2:00 P. M..

DISCUSSION-ANALYSIS

1. a. Both the Applicant and the Department in large measure while advocating somewhat different 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. The Applicant has a substantial criminal background centering around fraud such as bad checks(s) and unauthorized. credit card transactions.at the hearing openly acknowledged her previous criminal conviction(s);

b. Applicant after requesting the present hearing failed to appear.

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

b.The Presiding Officer can only look at and weigh the **present** evidence before him.

c. **In such weighing the Applicant is found wanting.**

d. 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.

e. This the Applicant has failed to fully do.

f. The Applicant's December 29, 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 Department's "*letter of denial*" under date of February 14, 2012 should be sustained.

2. The Applicant's December 29, 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. The Department's "*letter of denial*" under date of February 14, 2012 is **sustained**;

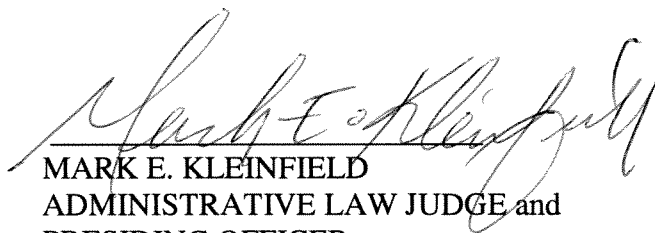
and

2. The Applicant's December 29, 2011 application for licensure as a resident "*Producer*" individual license is **denied**.

DATED and ENTERED this 5th day of June, 2012.

**NEAL T. GOOCH,
INSURANCE COMMISSIONER**





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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.

ADMINH.Koepp.Formal.dec.06-xx-12