

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

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

RESPONDENT:

BART BRIMLEY

3723 North 2800 East
Layton, UT 84040
License No. 297802

TRUEPOINTE INSURANCE

1558 North Woodland Park Dr., #400
Layton, UT 84041
License No. 297802

AMENDED ORDER ON HEARING

(Formal Hearing)

DOCKET No. 2013-018-PC
E-Case No. 3234

Mark E. Kleinfield,
Presiding Officer

STATEMENT OF THE CASE

THIS MATTER concerning whether Respondents' should be assessed administrative forfeitures and or other relief ordered came on to be heard before the Commissioner of the Utah Insurance Department ("*Department*") on Tuesday, April 23rd, 2013 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 located at the Utah State Office Building, Room 3110, Salt Lake City, Utah 84114, having been convened at the designated time of 9:00 (9:03) A. M., April 23, 2013 and adjourned at 10:52 A. M. on said same day.

Appearances:

M. Gale Lemmon, Assistant Attorney General, State of Utah, *Attorney for Complainant*, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

Bart Brimley, *pro se*.

By the Presiding Officer:

Pursuant to a April 1, 2013 *Pre-Hearing Conference Order* a hearing was conducted on April 23, 2013 in the above-entitled proceeding. The Respondent 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): Should Respondents be ordered to cease and desist in utilizing the name TruePointe Insurance or any other name other than the name under which Respondent Brimley is licensed and should Respondents be assessed an administrative forfeiture for alleged violations of Section 31A-23a-103(1)(a) and (c) and or Administrative Rule R590-154-5, 6 or 7?

(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 Complainant-Department.

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 presented opening statements (Vince Rampton for Respondent).

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Complainant Department:

1. Kris Benevidez, *Licensing Specialist*, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

2. Bill Stimpson, *Market Conduct Examiner*, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

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

For the Respondent:

1. Bart Brimley, Respondent, 3723 North 2800 East, Layton, Utah 84040.

All of whom were sworn and testified.

Exhibits:

The Complainant Department offered the following exhibits:

Exhibit No. "1" through "5".

(No objection being made all of which were admitted and entered.)

The Respondent offered the following exhibits:

Exhibit No. "1" through "3".

(No objection being made all of which were admitted and entered.)

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 Respondent Bart Brimley, is:

- a. licensed Utah insurance Producer under the Utah Insurance Code holding License No. 297802, and
- b. has a business (home) address of 3723 North 2800 East, Layton, Utah 84040.

3. The Respondent, *TruePointe Insurance.*, is:

- a. an apparent undesignated Utah entity maintained by Respondent Brimley and a non-licensed entity under the Utah Insurance Code; and
- b. maintains a business address of 1558 North Woodland Park Drive, #400, Layton, Utah 84041.

4. a. The Department on or about February 26, 2013 filed its “*Complaint*” and issued a “*Notice of Formal Adjudicative Proceeding and Pre-Hearing Conference*”, being Docket No. 2013-018-LC, to the Respondent. A copy of said Notice and attached “*Complaint*” of even date being mailed to the Respondents at their referenced home and or business addresses on or about February 26, 2013.

b. As part of such Notice a Pre-Hearing Conference was scheduled for April 1, 2013 at 9:30 A. M..

5. The Respondents filed their “*answer*” on March 25, 2013.

6. A Pre-Hearing Conference was held on April 1, 2013.

7. That based on the preliminary facts as set forth in paragraphs 1 through 6, immediately above a formal hearing was scheduled for April 23, 2013 at 9:00 A. M..

Operative Facts

(Paragraphs 8 -11)

8. Respondent Brimley markets insurance and utilizes the name TruePointe Insurance.

9. TruePointe Insurance is a non-licensed entity.

109. The Department over the past several months prior to its February 26, 2013 filing made numerous attempts to assist Respondent Brimley as to licensing the name TruePointe Insurance or cease utilizing such name

11. Respondent Brimley putting the best light on the facts either neglected or never got around to licensing the name or in the worst light thumbed his nose at the Department and more or less said in a play on the Leonardo DiCaprior film “(Catch) Stop me if you can”.

DISCUSSION-ANALYSIS

(Paragraphs 1 -4)

1. a. Both the Respondents and the Department in large measure while advocating **clearly** different characterizations or interpretations of the above referenced operative facts in substance concurred as to the basic core *chronological* 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 Respondents actions in utilizing the name TruePointe Insurance without being licensed under such name is in violation of Utah law?

b. Whether if so shown what is the appropriate penalty or sanction to be imposed for such violation(s)?; and

c. Whether as per Utah Administrative Code Rule, R590-160-5(10) as to each of the above and foregoing “issue(s)” or “question(s)” to be answered the “*standard of proof*” as to issues of fact have been proven by a “*preponderance of the evidence*”?

3. Applicable Pertinent Statutes and Administrative Rules are as follows (although others may be otherwise specifically cited within the body of this “*Order on Hearing*”):

SEE Section 31A-23a-103(1)(a) and (c) and Administrative Rule R590-154-5, 6 or 7.

4. Without any attempt to hide the fact(s) Respondent Brimley acknowledged he has (is) utilizing the name TruePointe Insurance without being licensed under such name.

Respondent Brimley in his presentation made some convoluted effort to justify such utilization.

Without extensive elaboration, it is clear such is in violation of Utah law and the Presiding Officer at the conclusion of the hearing ordered Respondents' to immediately cease and desist such utilization. The Presiding Officer at this point, understands that the Respondents have made application and or have received appropriate licensure.

BASED ON THE ABOVE AND FOREGOING FINDINGS OF FACT and discussion-analysis the Presiding Officer enters the following:

CONCLUSIONS OF LAW

1. The Respondent's actions are in violation of Section 31A-23a-103(1)(a) and (c) and or Administrative Rule R590-154-5, 6 or 7.

2. The Respondents should be ordered to cease and desist utilizing the name TruePointe Insurance or any other name other than the name under which Respondent Brimley is licensed.

AND BASED ON THE ABOVE AND FOREGOING CONCLUSIONS OF LAW the Presiding Officer enters the following:

ORDER

WHEREFORE, IT IS ORDERED that:

1. The Respondents' are ordered to cease and desist utilizing the name TruePointe Insurance or any other name other than the name under which Respondent Brimley is licensed.

2. The Respondents are jointly assessed an administrative forfeiture of \$2,000 with one-half (1/2) or \$1,000.00 stayed pending successful completion of 12 months probation by Respondent Brimley as to no other similar or like violations, with the remaining one-half (1/2) or \$1,000.00 to be paid within 30 days of entry of the present order.

DATED and ENTERED this 30th day of July, 2013.

**TODD E. KISER,
INSURANCE COMMISSIONER**



MARK E. KLEINFELD, J. D.
ADMINISTRATIVE LAW JUDGE and
PRESIDING OFFICER
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, Utah 84114
Telephone: (801) 537-9246
Facsimile: (801) 538-3829
Email: MKleinfeld@utah.gov

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.Brimley/Truepointe.Formal.dec.07-30-13(AMENDED)

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:

AMENDED ORDER ON HEARING

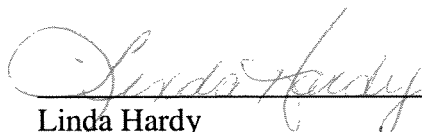
To the following:

Bart Brimley
3723 N 2800 E
Layton, UT 84040

&

Truepointe Insurance
1558 N Woodland Park Dr., #400
Layton, UT

DATED this 30th day of July, 2013



Linda Hardy
Utah Department of Insurance
State Office Building, Room 3110
Salt Lake City, UT 84114-6901
801-538-3860

UTAH
Invoice - Original

Printed Date: July 12, 2013
Invoice Date: July 12, 2013
Balance Due: \$1,000.00
Due Date: August 16, 2013
Invoice ID: 642301
Payor ID: 1372281

BRIMLEY BART
1558 N WOODLAND PARK DR 400
LAYTON UT 84041

Item Description	Amount
7/12/2013 Monetary Penalty Individual E-case 3234 Docket 2013-018 PC	\$1,000.00
Payments Received	
	<hr/>
	Original Amount Due
	\$1,000.00
	<hr/>
	Balance Due

UTAH
Invoice - Original

Invoice Date: July 12, 2013
Balance Due: \$1,000.00
Due Date: August 16, 2013
Invoice ID: 642301
Payor ID: 1372281
Payor Name: Brimley, Bart

Make checks payable to: Utah Insurance Department

Send payment to:

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