

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

IN RE THE APPLICATION OF:

ADHIS G. RUIZ



License Pending

AMENDED

ORDER ON HEARING

(Formal Hearing)

DOCKET No. 2013-021-LC

Enf. Case No. 3239

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 Wednesday, March 13, 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, Utah State Office Building, Room 3112, Salt Lake City, Utah 84114, having been convened at the designated time of 9:00 (9:18) A. M., March 13, 2013 and adjourned at 10:37 A. M. on said same day.

Appearances:

M. Gale Lemmon, Assistant Attorney General, State of Utah, Heber Wells State Office Building, Room 3110, Salt Lake City, Utah 84114.

Adhis G. Ruiz, Applicant, *pro se*. (Ms. Ruiz was assisted by Ramon Herrera).

By the Presiding Officer:

Pursuant to an February 26, 2013 "*Notice of Conversion to Formal Proceeding and Notice of Hearing*" a hearing was conducted on March 13, 2013 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*".

The Department waived an opening statement. The Applicant first reserved then waived an opening statement.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Applicant:

1. Adhis G. Ruiz, Applicant.

For the Department:

1. Kris Redmond, Insurance Specialist, Producer Licensing Division, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.
2. Randall Overstreet, Director, Producer Licensing Division, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

All of whom were sworn and testified.

Exhibits:

The Department offered the following exhibits:

1. **State's Exhibit No. 1**, consisting of four (4) type written or printed pages, being copies of 4th District Court, Utah County, Utah dockets referencing Utah state tax liens against Applicant and former spouse.

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

The Applicant offered the following exhibits:

No formal exhibits were presented by the Applicant. (A latter filed letter from a apparent counselor to Applicant re "duress" in signing IRS documents. Based on objection of the Department's legal counsel this "exhibit" was not admitted nor considered by the Presiding Officer).

Additionally the Presiding Officer took administrative and judicial notice of the files and records of the Department particularly the Applicant's October 29, 2012 application; the Department's November 5, 2012 denial letter and Applicant's November 15, 2012 request for hearing as well as Applicant's October 30, 2012 letter of explanation and attachments (Permanent Resident Card, Decree of Divorce and IRS "innocent spouse" filings).

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, Adhis G. Ruiz:

a. is a resident of the State of Utah and maintains a present residence of

; 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 October 29, 2012 filed her application with the Department for issuance of a “*Resident Producer Individual License*”. (SEE Administrative file.)

4. The Department on or about November 5, 2012 in writing denied Applicant's application for “one or more of the following reasons:

UCA Section 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 the right to an “*informal hearing*” if a timely request is made in writing within fifteen (15) days.

6. The Applicant under date of November 15, 2012 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 February 26, 2013 “*Notice of Conversion to Formal Proceedings and Notice of Hearing*”, *sua sponte*, mailed to the Applicant at his referenced address this present formal hearing was set for March 13, 2013 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 several substantial state income tax levies as indicated by State Exhibit No. 1 that are outstanding

DISCUSSION-ANALYSIS
(Paragraphs 1-6)

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 November 5, 2012 letter of denial of the Applicant's October 29, 2012 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 November 5, 2012 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-111, Utah Code Ann., reads in part as follows:

“31A-23a-111(5)(b)(xxii). Revocation, suspension, surrender; lapsing, limiting, or otherwise terminating a license – Rulemaking for renewal or reinstatement.

(5)(b) The commissioner may take an action described in Subsection (5)(a) if the commissioner finds that the licensee:

(xxii) fails to:

(a) pay state income tax; or

(b) comply with an administrative or court order directing the payment of state income tax;.

4. While the record would appear that the Applicant does not have any criminal background nor outstanding civil judgments her tax obligations to both the IRS and Utah State Tax Commission are in a word “substantial”. Such apparently being the result of a multi-level marketing business conducted by her and her ex-husband during their marriage. The parties are now divorced. The decree referencing that the ex-husband to take of such tax obligations. Additionally application(s) for “innocent spouse relief” has been made to IRS (and the State of Utah?). Such presently being in process.

The Applicant makes her ex-husband out as the “bad” guy. Which he may well be. The Applicant stating she knew little if anything about what was going on in the business. Her stance being that she signed the IRS and state tax returns without real knowledge and or understanding and or under duress.

Such may or may not be true.

Yet the Applicant apparently gained took the benefits and advantages of the income from the business. She took advantage and enjoyed the benefits that the business bought.

In reviewing the decree quite frankly she in large measure received a sizeable settlement in property and alimony AND additionally her part of the business also being purchased by the ex-husband.

Applicant references that the ex-husband may well not be living up to the decree and thus Applicant’s need to obtain employment and the desire to gain the present applied for insurance license.

All is well and good and speaks admirably of the Applicant wanting to establish a career, yet the Department in applying the present standards must be even-handed. In comparable situations the license has been denied.

Such must be the case here also.

The Applicant received the benefits of the business and must take on the burdens --- the tax implications. Such as per Section 31A-23a-111(5)(b)(xxii) requires by its application to the present factual scenario affirmation of the November 5, 2012 denial.

Such does not maintain future denial if circumstances might change. For example the tax situation is resolved via payment and or the granting of “innocent spouse relief”. With future applications then judged on their existing merits. The present application must be denied though.

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

6. 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 October 29, 2012 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 qualifications for licensing outlined in Section 31A-23a-111(5)(b)(xxii), UCA, 1953, as amended.
2. The Applicant having outstanding state tax obligations (as well as federal) does not qualify for issuance of a producer license as applied for in her October 29, 2012 application.
3. The issuance of a “*Resident Producer Individual*” license would be in contravention of the intent and purpose of Section 31A-23a-111(5)(b)(xxii), UCA , which based on “Conclusions of Law” No.s 1 and 2, immediately above, the Department in the practice of good public policy and the protection of the public welfare cannot at this time do.
4. The Department’s “*letter of denial*” under date of November 5, 2012 should be affirmed.
5. The Applicant's October 29, 2012 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 November 5, 2012 is **affirmed**;
and
2. The Applicant's October 29, 2012 application for licensure as a "Resident Producer Individual" is **denied**.

DATED and ENTERED this 2nd day of April, 2013.

**TODD E. KISER,
INSURANCE COMMISSIONER**



A handwritten signature in cursive script, reading "Mark E. Kleinfeld". The signature is written in black ink and is positioned above a horizontal line.

**MARK E. KLEINFELD
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.

ADMINH.AMENDED.Ruiz.FormalI/A.dec.04-xx-13