

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

IN RE THE APPLICATION OF:

KURT H. JOHANSSON
209 West 900 South
Orem, UT 84058

License Pending

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2013-022-LC
Enf. Case No. 3245

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, April 2, 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 (9:23) A. M., April 2, 2013 and adjourned at 9:32 A. M. on said same day.

Appearances:

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

Kurt H. Johansson, Applicant, failed to appear.

By the Presiding Officer:

Pursuant to a March 14, 2013 "*Notice of Conversion to Formal Proceeding and Notice of Hearing*" a hearing was conducted on April 2, 2013 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(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.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Applicant:

None.

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.

The above witnesses testimony was permitted to be pro-offered by counsel for the Department.

Exhibits:

The Department offered the following exhibits:

1. **State's Exhibit No. 1**, consisting of two (2) type written or printed pages, being copies of Utah State Tax Commission August 22, 2011 tax lien in amount of \$815.78 levied against Applicant.

1. **State's Exhibit No. 2**, consisting of two (2) type written or printed pages, being copies of Utah State Tax Commission September 17, 2012 tax lien in amount of \$325.51 levied against Applicant.

(No objection being made which was accepted and entered.)

The Applicant offered the following exhibits:

None.

Additionally the Presiding Officer took judicial notice of the files and records of the Department particularly the Applicant's November 3, 2012 application; the Department's

November 20, 2012 denial letter and Applicant's November 29, 2012 email request for hearing plus Applicant's November 7, 2012 letter of explanation.

Counsel for the Department mad a brief closing Argument.

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, Kurt H. Johansson:

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

209 West 900 South, Orem, Utah 84058; and

b. has not previously been nor is presently licensed as a Resident Producer 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 November 3, 2012 filed his application with the Department for issuance of a "*Resident Producer Individual License*". (**SEE** Administrative file.)

4. The Department on or about November 20, 2012 in writing denied Applicant's application for “one or more of the following reasons:

UCA Section 31A-23a-111(5)(b)(xvi & xvii) – Insurance license was revoked in Idaho due to demonstrating incompetence, untrustworthiness or financial responsibility in the conduct of business in that state; and

UCA 31A-23a-111(5)(b)(xxii) – Failure to pay Utah state income tax, or comply with an administrative 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 29, 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 a March 14, 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 April 2, 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. was revoked by the Idaho Department of Insurance on August 12, 2008 for violations of withholding clients monies, conversion and (attempted) forgery of client signatures, amongst other “cardinal” offenses; and

b. has two (2) outstanding Utah state income tax liens or orders in the amount of \$815.78 (08/22/11) and \$352.51 (09/17/12) both issued by the 4th District Court, Provo, Utah County, State of Utah.

DISCUSSION-ANALYSIS

(Paragraphs 1-7)

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 20, 2012 letter of denial of the Applicant's November 3, 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 20, 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”):

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 no criminal convictions it is the revocation by the Idaho Department of Insurance for violations of “cardinal” offenses by an insurance agent that quite frankly shocks the Presiding Officer. The Applicant converted funds and withheld monies due to his clients. The Applicant in at least one instance attempting to forge a signature. Quite frankly the sheer gall of the Applicant in even applying is “outstanding” and bespeaks of his lack of character and competence. Applicant further aggravates the circumstances by not appearing.

5. a. Without belaboring Applicant’s history it is a basic pre-requisite to work in any capacity in any profession or occupation or business venture, especially the insurance business ----- *the ability to tell the truth and be honest* that is at issue

b. 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.

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

7. 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 November 3, 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 character qualifications for licensing outlined in Section 31A-23a-107, UCA, 1953, as amended.

2. The issuance of a "*Resident Producer Individual*" license would be in contravention of the intent and purpose of Section 31A-23a-107, 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.

3. The Department's "*letter of denial*" under date of November 20, 2012 should be affirmed.

4. The Applicant's November 3, 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:

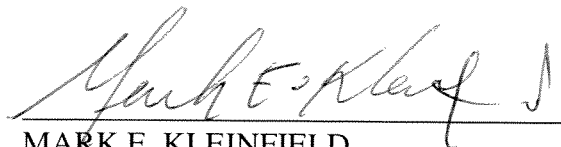
ORDER

WHEREFORE, IT IS ORDERED that:

1. The Department's "letter of denial" under date of November 20, 2012 is **affirmed**;
and
2. The Applicant's November 3, 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**



**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
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.Johansson..I/A.dec.04-xx-13

CERTIFICATE OF MAILING

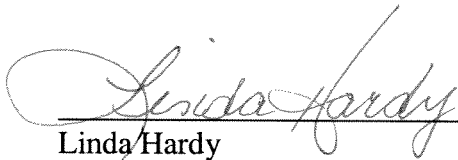
I do hereby certify that on this date I mailed, by regular mail, postage prepaid a true and correct copy of the attached:

ORDER ON HEARING

To the following:

KURT H. JOHANSSON
209 West 900 South
Orem, UT 84058

DATED this 3Rd day of April, 2013

A handwritten signature in cursive script, reading "Linda Hardy", is written over a horizontal line.

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