BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF UTAH

IN RE THE APPLICATION OF:

GINNY L. WANLASS

[redacted]

[redacted]

License Pending

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 201-063-LC
Enf. Case No. 3311

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, June 18, 2013 at 1:00 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, Utah State Office Building, Room 3112, Salt Lake City, Utah 84114, having been convened at the designated time of 1:00 (1:12) P. M., June 18, 2013 and adjourned at 1:51 P. M. on said same day.

Appearances:

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

Ginny L. Wanlass, Applicant, *pro se*.

By the Presiding Officer:

Pursuant to a May 9, 2013 *"Notice of Continuance of Hearing"* a hearing was conducted on June 18, 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. Ginny L. Wanlass, Applicant.

For the Department:

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

Both of whom were sworn and testified.

Exhibits:

The Department offered the following exhibits:

1. State's Exhibit No.s 1 and 2. (SEE file).

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

The Applicant offered the following exhibits:

1. Applicant's Exhibit No.s 1 and 2. (SEE file).

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

Additionally the Presiding Officer took judicial notice of the files and records of the Department particularly the Applicant's April 5, 2013 application, the Department's April 23, 2013 letter of denial and Applicant's April 26, 2013 request for hearing.

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, Ginny L. Wanlass:

a. is a resident of the State of Utah and maintains a present residence of [redacted]; 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 April 5, 2013 filed her application with the Department for issuance of a *"Resident Producer Individual License"*. (**SEE** Administrative file.)

4. The Department on or about April 23, 2013 in writing denied Applicant's application for "one or more of the following reasons:

" UCA 31A-23a-111(5)(b)(iv) - failure to final judgments 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 the right to an *"informal hearing"* if a timely request is made in writing within fifteen (15) days.

6. The Applicant under date of April 26, 2013 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 initial May 9, 2013 *"Notice of Conversion to Formal Proceedings and Notice of Hearing"*, *sua sponte*, mailed to the Applicant at her referenced address this present formal hearing was held on June 18, 2013 at 1:00 P. M. Mountain Time.

Operative Facts
(Paragraphs 8 -9)

8. The Applicant is a resident of the State of Utah.

9. The Applicant:

a. has an outstanding Utah State Tax Commission lien of approximately $1,800.00 entered as of October 19, 2009.

b. has an outstanding civil small claims court judgment of approximately $1,000.00, including costs entered as of March 26, 2013..

DISCUSSION-ANALYSIS
(Paragraphs 1-7)

1.a. Both the Applicant and the Department in large measure while advocating different characterizations, emphasis 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 April 23, 2013 letter of denial of the Applicant's April 5, 2013 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 April 23, 2013 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. The Applicant failed to disclose on her application as regards either the tax or small claims judgments and claimed being unaware of either. While a common response at hearing the Presiding Officer upon inquiry is inclined to believe the Applicant. The small claims judgment was a default judgment (which while such may not be at this time be subject to collateral attack in the present proceeding) presents some equitable questions. The state tax lien appears to have been addressed by the Applicant by her entering into a May 16, 2013 payment agreement. The Applicant's attitude or approach in addressing

both situations without minimizing and or blame-shifting is admirable and not the norm of what is typically seen. The Applicant while acknowledging her present difficulties does meet the 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.***

5. 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 not be breaching its responsibilities to the public.

7. a. The Presiding Officer having heard the witnesses and reviewed the documentary evidence 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 done.

d. The Applicant's April 5, 2013 application was inappropriately denied based on the record now before the Department.

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

CONCLUSIONS OF LAW

1. The Applicant's past difficulties while just recently being addressed are being addressed responsibly by the Applicant and indicate respect for the rule of law and thereby shows the Applicant being "*trustworthy*" as required by the character qualifications of Section 31A-23a-107, UCA,1953, as amended.

2. The Applicant meets the character qualifications for licensing outlined in Section 31A-23a-107, UCA, 1953, as amended.

3. The issuance of a *"Resident Producer Individual"* license would not 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 should at this time do.

4. The Department's *"letter of denial"* under date of April 23, 2013 should be modified.

5. The Applicant's April 5, 2013 application for licensure as a *"Resident Producer Individual"* should be granted, subject to certain terms and conditions.

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 April 23, 2013 is **modified**; and

2. The Applicant's April 5, 2013 application for licensure as a *"Resident Producer Individual"* is **granted**, subject to the Applicant fully complying with her payment agreement with the Utah State Tax Commission and resolution of the outstanding small claims judgment by satisfaction of said default judgment or setting aside of the present default judgment and trial on the merits and if a judgment being entered against the Applicant on the merits the satisfaction of said judgment, both to be accomplished on or before December 31, 2014, with a probation of such issued *"Resident Producer Individual"* to be for a term of eighteen (18) months.

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DATED and ENTERED this 11 day of July, 2013.

TODD E. KISER,
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.

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