

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

IN RE THE APPLICATION OF:

MANDI DAWN AVILA



License Pending

ORDER ON HEARING

(Formal Hearing)

DOCKET No. 2013-080-LC
Enf. Case No. 3326

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 Monday, July 29, 2013 at 1:30 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 3110, Salt Lake City, Utah 84114, having been convened at the designated time of 1:30 (1:45) P. M., June 18, 2013 and adjourned at 2:56 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.

Mandi Dawn Avila, Applicant, *pro se*.

By the Presiding Officer:

Pursuant to a July 3, 2013 "*Notice of Conversion to Formal Proceeding and Notice of Hearing*" a hearing was conducted on July 29, 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. Mandi Dawn Law, Applicant.

For the Department:

1. Kris Benevidez, Resident Licensing 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.s 1, 2, 3, 4 and 5. (SEE file).

(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 May 6, 2013 application, a May 10, 2013 Utah BCI background check, the Applicant's May 29 (30), 2013 explanation documents, the Department's May 30, 2013 letter of denial and Applicant's June 13, 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, Mandi Dawn Avila:

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

[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 May 6, 2013 filed her application with the Department for issuance of a “*Resident Producer Individual License*”. (SEE Administrative file.)

4. The Department on or about May 30, 2013 in writing denied Applicant's application for “one or more of the following reasons:

“UCA 31A-23a-107 - failure to meet the character requirements for licensing.”

“UCA 31A-23a-111(5)(b)(ix) - providing incorrect, misleading, incomplete, or materially untrue information in the license application.”

“UCA 31A-23a-111(5)(b)(v) - unqualified for license..”

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 June 13, 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 July 3, 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 held on July 29, 2013 at 1:30 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 over the approximate last 2 ½ years (December 22, 2011 through April 8, 2013) received at least four (4) traffic citations including “Operating a Motor Vehicle Without Insurance”, “No Valid License”, “Speeding: 34 MPH in a 25 MPH Zone” and “Head Lamp Violation”; and

b. one (1) criminal conviction (plea in abeyance) for “Retail Theft” for which Applicant is presently on probation through May 24, 2014

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 May 30, 2013 letter of denial of the Applicant's May 6, 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 May 30, 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.a. The Applicant while admitting and acknowledging her difficulties presented at hearing an underlying attitude or approach of minimizing and or blame-shifting which revolves around 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.*

b. While acknowledging that 4 of 5 of Applicant's recent contacts with the law appear on their face to be minor traffic violations it is the closeness in proximity and the nature of the same that give the Presiding Officer concern. The emphasis being on the "No" in "No Valid License" and "No Insurance" and the "No" resolution of the obligations to the respective courts in a timely manner and putting the same off again and again. Also the most recent criminal matter, while a Class "B" misdemeanor comes in relative close proximity (March 26, 2013 offense date and May 24, 2013 plea date) to the present May 6, 2013 application date. Additionally Applicant's obligation to the criminal court on the retail theft will not be complete until May 24, 2014 and then dismissed.

c. While the Applicant presented an empathetic posture in her plight and desire to better herself and her family it is the lack of any real time or track record after that desire that is the most concern. The Department has not in the fifteen (15) plus years the Presiding Officer has served and heard comparable cases to the preset Applicant approved the licensure of an individual who IS or was presently then on probation. As a rule of thumb at least five (5) years AFTER successful probation for major (felony) offenses and it would seem for lesser (misdemeanor) offenses at least three (3) years AFTER successful completion before the Department would entertain or issue a license.

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 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 failed to do.

d. The Applicant's May 6, 2013 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's actions indicates a lack of respect for the rule of law and thereby a lack of being "*trustworthy*" as required by the character qualifications of Section 31A-23a-107, UCA, 1953, as amended.

2. The Applicant does not meet 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 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.

4. The Department's "letter of denial" under date of May 30, 2013 should be affirmed.

5. The Applicant's May 6, 2013 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

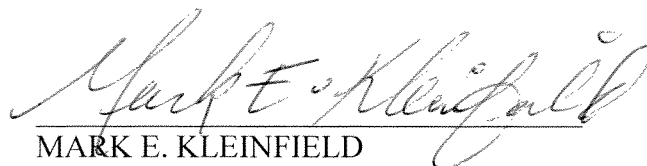
WHEREFORE, IT IS ORDERED that:

1. The Department's "letter of denial" under date of May 30, 2013 is **affirmed**; and
2. The Applicant's May 6, 2013 application for licensure as a "Resident

Producer Individual" is **denied**.

DATED and ENTERED this 1st day of August, 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.
