

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

IN RE THE APPLICATION OF:

DANIEL W. GRIGGS

500 South Oak Lane
Alpine, UT 84004

License Pending

ORDER ON HEARING

(Formal Hearing)

DOCKET No. 2014-073-LC

Enf. Case No. 3509

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, October 15, 2014 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 3112, Salt Lake City, Utah 84114, having been convened at the designated time of 1:30 (1:38) P. M., October 15, 2014 and adjourned at 2:35 P. M. on said same day.

Appearances:

Gary D. Josephson, Assistant Attorney General, State of Utah, Heber Wells State Office Building, Salt Lake City, Utah 84114. (Also present with Mr. Josephson was Jeff Brambell, Law Clerk).

Daniel W. Griggs, Applicant, *pro se*. (Also present with Mr. Griggs was his wife, Kristine Griggs).

By the Presiding Officer:

Pursuant to an September 29, 2014 "*Notice of Conversion to Formal Proceeding and Notice of Hearing*" a hearing was conducted on October 15, 2014 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 presented a brief opening statement. The Applicant presented an opening statement.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Applicant:

Daniel W. Griggs, Applicant.

For the Department:

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 through 4**, consisting of the Applicant's May 1, 2014 Application, the Department's May 27, 2014 Letter of Denial, the Utah "court exchange" records regarding three (3) civil judgment(s) in asundry Utah courts referencing the Applicant as Defendant and a May 15, 2014 fax from the Applicant to the Department regarding (4) federal tax liens against the Applicant. (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 1, 2014 application; the Department's May 27, 2014 denial letter.

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, Daniel W. Griggs:

a. is a resident of the State of Utah and maintains a present residence of 500 South Oak Lane, Alpine, Utah 84004; and

b. apparently was previously been 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, although no specific detail was advanced by either the Department and or the Applicant.

3. The Applicant on or about May 1, 2014 filed his application with the Department for issuance of a “*Resident Producer Individual License*”. (SEE Administrative file.)

4. The Department on or about May 27, 2014 in writing denied Applicant's application for the following reasons:

UCA 31A-23a-111(5)(b)(iv) – failure to pay final judgment rendered against you in this state.

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 apparently timely filed his “*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 September 29, 2014 “*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 October 15, 2014 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 three (3) outstanding civil judgments totaling in excess of \$15,000.00; and
- b. has four (4) outstanding federal tax liens totaling in excess of \$43,000.00 for the years 2001, 2002, 2003 and 2004.

DISCUSSION-ANALYSIS
(Paragraphs 1-7)

1.a. Both the Applicant and the Department in large measure while advocating 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 May 27, 2014 letter of denial of the Applicant's May 1, 2014 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 27, 2014 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-111, Utah Code Ann., reads in part as follows:

“31A-23a-111. Revocation, suspension, surrender, lapsing, limiting, or otherwise terminating a license --- Rulemaking for renewal or reinstatement.

(1)

(5)(a)

(b) The commissioner may take an action described in Subsection (5)(a) [revocation, suspension, limit in whole or part a license] if the commissioner finds that the licensee [applicant]:

(i)

(iv) fails to pay a final judgment rendered against the person in this state within 60 days after the day on which the judgment became final;

(xxii) fails to:

(A) Pay state income tax;

4. a. The record of the Applicant shows no overt wrongful let alone criminal acts in his personal or business background; and quite frankly the Applicant presents himself as a genuinely sincere and admirable individual.

b. He has three (3) outstanding civil judgments ranging from 2007 to as recently April 2010 (\$2,506.33) in amounts varying from \$1,670.65 (November 6, 2007) to \$10,959.34 (October 17, 2008) totaling \$15,136.2.

c.i. He has four (4) outstanding federal tax liens for the years 2001 (\$14,550.51), 2002 (\$9,627.94), 2003 (\$11,530.32) and 2004 (\$7,576.95) totaling \$43,285.72; and

ii. By inference and admission at hearing by the Applicant himself more than likely outstanding Utah state income tax obligations of an undetermined amount.

d. While such does not bespeak of lack of character and competence *per se* such gives rise to the general thought: “can an individual direct and give guidance to another as to major decision making, i. e. insurance choices, if they cannot quite frankly keep ones’ own house in a reasonable semblance of order?”

e. The Applicant while openly acknowledging his past attempts to minimize the same and present such circumstances as largely bad business choices and arguing to some extent being misguided by others. And while the Presiding Officer does not dispute the sincerity of such a plea it is the lack of a realistic track record of time in distancing oneself from such past history that is present. Applicant’s most recent outstanding civil judgment was assessed in April 2010. Customarily at a minimal a five (5) year period between **full satisfaction** of civil judgment obligations and filing of ones’ application is the starting point as a rule of thumb. In both instances Applicant falls short. *None* of the judgments have been satisfied let alone five (5) years having pasted since their satisfaction. (Subsection 31A-23a-111(5)(b)(iv)).

f. Like-wise while not an absolute bar the Applicant’s outstanding federal tax obligations give the Hearing Officer concern as well as the inferred state tax obligation (which are a more specific statutory impediment as per Subsection 31A-23-111(5)(b)(xxii)(A)).

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 ----- ***responsibility and meeting ones’ individual obligations*** that is at issue.

b. The characteristics of responsibility and trustworthiness are **the** prime character qualifications of Sections 31A-23a-107 and 31A-23a-111, 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 them.

6. It is to be noted that while the Commissioner's power to limit a licensee (applicant) is referenced as "*may*" in Section 31A-23a-111 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 or modification of such denial.

c. This the Applicant has failed to do.

d. The Applicant's May 1, 2014 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 set forth in Section 31A-23a-111, 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-111, UCA , which based on “Conclusions of Law” No. 1, 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 May 27, 2014 should be affirmed.
4. The Applicant's May 1, 2014 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 27, 2014 is **affirmed**;
and
2. The Applicant’s May 1, 2014 application for licensure as a “*Resident Producer Individual*” is **denied**.

DATED and ENTERED this 20th day of October, 2014.

**TODD E. KISER,
INSURANCE COMMISSIONER**



MARK E. KLEINFELD
ADMINISTRATIVE LAW JUDGE and
PRESIDING OFFICER
Utah Insurance Department
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Salt Lake City, Utah 84114
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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.Griggs.I/A.dec.10-xx-14

CERTIFICATE OF MAILING

The undersigned certifies on this date, a true and correct copy of the forgoing ORDER ON HEARING mailed, postage prepaid, to the following:

Daniel W. Griggs
500 S. Oak Lane
Alpine, UT 84004

DATED this 20th day of October, 2014



LINDA HARDY
UTAH INSURANCE DEPARTMENT
STATE OFFICE BUILDING, ROOM 3110
SALT LAKE CITY, UT 84114-6901