

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

IN RE THE APPLICATION OF:

CHRISTOPHER M. FACER

5908 Blake Drive
Taylorsville, UT 84129

License Pending

ORDER ON HEARING

(Formal Hearing)

DOCKET No. 2014-112-LC
Enf. Case No. 3546

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, December 17, 2014 at 10:00 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 10:00 (10:17) A. M., December 17, 2014 and adjourned at 10:31 A. M. on said same day.

Appearances:

Perri Ann Babalis, Assistant Attorney General, State of Utah, Heber Wells State Office Building, Salt Lake City, Utah 84114.

Christopher M. Facer, Applicant, *pro se*, did not appear.

By the Presiding Officer:

Pursuant to a November 25, 2014 "*Amended Notice of Conversion to Formal Proceeding and Notice of Hearing*", a hearing was conducted on December 17, 2014 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 offered a brief opening statement.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Applicant:

None

For the Department:

None

Both of whom were sworn and testified.

Exhibits:

The Department offered the following exhibits:

1. **State's Exhibit(s)**, consisting of the Applicant's September 23, 2014 Application, the Department's October 10, 2014 Letter of Denial, the Applicant's October 21, 2014 Request for Hearing, Utah Bureau of Criminal Investigation ("BCI") Report and Utah Court Exchange record. (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.

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, Christopher M. Facer:
 - a. is a resident of the State of Utah and maintains a present residence of
5908 Blake Drive, Taylorsville, Utah 84129; 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 September 23, 2014 filed his application with the Department for issuance of a “*Resident Producer Individual License*”. (SEE Administrative file.)
4. The Department on or about October 10, 2014 in writing denied Applicant's application for “one or more of the following reasons”:
 - UCA Section 31A-23a-105(2)(b) & (c) - failure to report at the time of filing the license application a criminal prosecution against you;
 - UCA 31A-23a-111(5)(b)(ix) - providing incorrect, misleading, incomplete, or materially untrue information in the license application;
 - UCA Section 31A-23a-107 - failure to meet the character requirements for licensing; and
 - UCA 31A-23a-111(5)(b)(i) - 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 filed a timely “*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 November 25, 2014 “*Amended 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 December 17, 2014 at 10:00 A. M. Mountain Time.

Operative Facts
(Paragraphs 8 -9)

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

9. The Applicant entered a “plea in abeyance of guilty” to a Class “B” Misdemeanor, “retail theft” on February 24, 2014, which was eventually dismissed without prejudice on July 15, 2014. (SEE FILE)

DISCUSSION-ANALYSIS
(Paragraphs 1-9)

1.a. The Applicant by voluntarily absenting himself acquiesced and concurred with the Department’s pro-offered characterizations or interpretations and import of the above referenced operative facts, 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 October 10, 2014 letter of denial of the Applicant's September 23, 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 October 10, 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-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 record would appear that the Applicant has no other criminal convictions other than the current 2014 Class “B” misdemeanor “retail theft” conviction.

5.a. Of greatest impact though is the Applicant’s initial failure to disclose such background and pending matter(s). Such gives the Presiding Officer as it did when the state legislature enacted binding direction via legislation and as it would any person deep concern.

6. What the Presiding Officer is faced with though even with a degree of empathy with the Applicant is the seemingly **absolute** direction from the state legislature that an individual with such a current conviction, albeit eventually dismissed via a plea in abeyance no matter how reasonably explained and for whatever reason cannot be issued a state sanctioned insurance license of any nature

7. a. Without belaboring Applicant’s present circumstances it is a basic pre-requisite to work in any capacity in any profession or occupation or business venture, especially the insurance business that the characteristic of trustworthiness becomes **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.

b. Such is not to say the present Applicant presents himself as not trustworthy. Far from it. The Applicant freely and fully owned up to his past and current difficulties. It is by legislative *fiat* in the present instance that handcuffs the Presiding Officer from doing anything but affirming the Department’s October 10, 2014 denial.

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

9. 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 July 31, 2014 application was properly denied based on the record before the Department as well as the present direction from the state legislature..

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

CONCLUSIONS OF LAW

1. a. The Applicant having a recently resolved criminal proceeding wherein he plead “Guilty” on February 24, 2014 to “retail theft”, a Class “B” misdemeanor in the Salt Lake County (Utah) Justice Court obligation(s), which was ultimately dismissed without prejudice via a plea in abeyance, creates a **rebuttable** presumption as to Applicant’s inability to meet the character qualification requirement of UCA Section 31A-23a-107.

b. The Applicant while attempting to explain such “guilty” plea in his October 21, 2014 request for hearing did not appear at the December 17, 2014 hearing and accordingly did not rebut such presumption.

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 October 10, 2014 should be affirmed.

5. The Applicant's September 23, 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 October 10, 2014 is **affirmed**; and

2. The Applicant’s September 23, 2014 application for licensure as a “*Resident Producer Individual*” is **denied**.

DATED and ENTERED this 18 day of December, 2014.

**TODD E. KISER,
INSURANCE COMMISSIONER**



MARK E. KLEINFELD
ADMINISTRATIVE LAW JUDGE
and
PRESIDING OFFICER
Utah Insurance Department
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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.

CERTIFICATE OF MAILING

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

Christopher M. Facer
5908 Blake Drive
Taylorsville, UT 84129

DATED this 18th day of December, 2014

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

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