

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

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

RESPONDENT:

KAYLENE MICHELLE BOWMAN
[REDACTED]

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2015-06-PC
Enf. Case No. 3570

Mark E. Kleinfield,
Presiding Officer

License Pending

STATEMENT OF THE CASE

THIS MATTER concerning whether the Respondent's application for an individual resident producer license should be denied came on to be heard before the Commissioner of the Utah State Insurance Department ("Department") on Thursday, February 5, 2015 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 located at the Utah State Office Building, Room 3112, Salt Lake City, Utah 84114, having been convened at the designated time of 10:00 (10:11) A. M., February 5, 2015 and adjourned at 10:38 A. M. on said same day.

Appearances:

Gary D. Josephson, Assistant Attorney General Attorney for Utah State Insurance Department, Salt Lake City, Utah 84114.

Kaylene Michelle Bowman, Applicant, [REDACTED]
[REDACTED], pro se.

By the Presiding Officer:

Pursuant to a January 20, 2015 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on February 5, 2015 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 in the present matter is:

a. Was Applicant's application for a resident producer's 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 Paragraph 2 under *DISCUSSION-ANALYSIS.*)

2. The "*burden of proof*" or "*burden of going forward*" 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 as to both matters is to be proven by a "*preponderance of the evidence*".

The Department gave a brief opening statement. The Applicant first reserved then combined his opening statement with his testimony.

Thereafter, evidence was offered and received.

Witnesses:

SUMMARY OF THE EVIDENCE

For the Complainant Department:

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

For the Respondent:

Kaylene Michelle Bowman, Applicant.

Both of whom were sworn and testified.

Exhibits:

The Department offered the following exhibits:

Three (3) exhibits, SEE file.

(Also taken administrative notice of as part of the Producer Licensing files were the Applicant's December 15, 2014 application; FBI records check, UCBI records check, a the Department's December 31, 2014 letter of denial and the Applicant's request for hearing.

The Applicant offered the following exhibits:

Two (2) exhibits, including a letter of recommendation from Brendan Nissen, Probation Officer. SEE file.

(No objection being made all of both parties which exhibits were accepted and entered.)

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:

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, Kaylene Michelle Bowman:

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 as a resident “Producer” to conduct or be engaged in the insurance business in the State of Utah.

3. The Applicant on or about December 15, 2014 filed her application with the Department for issuance of a “*Resident Producer Indv.*” license. (SEE Administrative File.)

4. The Department on or about December 15, 2014 in writing denied Applicant's “application for a Utah resident producer individual license dated December 15, 2014” for the following reasons:

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

UCA Section 31A-23a-111-5(b)(i) – unqualified for a license.”

(SEE Administrative File.)

5. That included in said denial were instructions informing Applicant of his right to an “*informal hearing*” if a timely request is made in writing within fifteen (15) days. (SEE Administrative File.)

6. The Applicant 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 January 20, 2015 “Notice of Conversion to Formal Proceeding and Notice of Hearing”, mailed to the Respondent at her referenced business address on January 20, 2015, this present hearing was set for February 5, 2015 at 10:00 A. M..

DISCUSSION-ANALYSIS

1. a. Both the Applicant and the Department in large measure while advocating somewhat different characterization or interpretation of the above referenced 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. a. Applicant freely acknowledges her conviction(s) in the State of Utah.

b. The incident(s) can be attributed to a large extent having been as a result of very unfortunate and horrific domestic circumstance involving Applicant and her children being more of the victims than Applicant as a perpetrator. The Salt Lake County Third District Court proceeding in June 2011 (February 2011 incident) and the sentence speaks for itself. The present Hearing Officer in granting a conditional license does not minimize the criminal felony proceedings. The court case closed in February 2012. While less than five (5) years ago such clearly was and is non-tangential to Applicant's ability to perform in the insurance-financial world.

c. To continue to penalize Applicant more than three (3) years after her satisfactory resolution with the Court would be an injustice in its self. The Applicant's offenses while clearly not dismissed by the Court were granted "402" motion reductions and Applicant has moved on in her life.

3. The Applicant absent the circumstances set forth in Paragraph 2, immediately above, does not appear to have had any other criminal record.

4. The matters of past criminal involvement while clearly cannot be called minor can be called an aberration and more than likely (if not guaranteed) not to be ever repeated. Again while not minimizing the same Hearing Officer feels the Applicant will comport her future actions in a sensible and directed manner very carefully from now on.

5. The Hearing Officer based on the whole record before him believes giving the Applicant the benefit of her sincerity and for want of a better phrase her protectiveness of her family is in the best interests of justice. The Hearing Officer feels the Applicant will not abuse that benefit and belief.

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

CONCLUSIONS OF LAW

1. The Department's "*letter of denial*" under date of December 31, 2014 should while sustained be modified.

2. The Applicant's December 15, 2014 application for licensure as a "*Resident Producer Indv.*" should be granted conditionally.

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 December 3`, 2014 is **sustained**;

and

2. The Applicant's December 15, 2014 application for licensure as a resident "*Producer*" is **granted conditionally** on the following terms and conditions:

a.i. The Applicant's filing of a signed acknowledgment, acceptance and agreement to comply with the terms and conditions of the present order by an appropriate official of her prospective employer approved by the Department;

and

ii. The Applicant being placed on a twenty-four (24) months term of probation during which she may only be employed by the referenced prospective company-employer; with any other employment in the insurance industry in Utah to be approved by the Department in advance via a similar signed acknowledgment by any prospective future employer.

b. Such license to issue and the twenty-four (24) month probation to commence upon the filings as required by subparagraph 2a, above.

DATED and ENTERED this 29 day of February, 2015.

**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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