

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

IN RE THE APPLICATION OF:

RESPONDENT:

MONIQUE D. MONDRAGON
[REDACTED]

License Pending

ORDER ON HEARING
(Formal Hearing)

Docket # 2015-057 LC
Enf. Case No. 3617

Mark E. Kleinfield,
Presiding Officer

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 Tuesday, May 26, 2015 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 located at the Utah State Office Building, Alta Conference Room, Salt Lake City, Utah 84114, having been convened at the designated time of 1:00 (1:11) P. M., May 26, 2015 and adjourned at 1:58 A. M. on said same day.

Appearances:

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

Monique D. Mandragon, Applicant, [REDACTED]
[REDACTED] pro se.

By the Presiding Officer:

Pursuant to a May 12, 2015 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on May 26, 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 her opening statement with her 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:

Monique D. Mondragon, Applicant.

Nathan Trujillo.

Susan Bastidas, Representative of prospective employer PRIMERICA.

All of whom were sworn and testified.

Exhibits:

The Department offered the following exhibits:

Eight (8) exhibits, SEE file.¹

(Also taken administrative notice of as part of the Producer Licensing files were the Applicant's April 9, 2015 application; FBI records check, UCBI records check, a the Department's April 21, 2015 letter of denial and the Applicant's May 5, 2015 request for hearing.

(No objection being made which exhibits were accepted and entered.)

The Applicant offered the following exhibits:

None.

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:

¹ Department Exhibit No.8 while admitted and entered appears to be a juvenile matter although filed in the West Valley Justice Court when the Applicant was 10 or 11 years old and the Hearing Officer in large measure does not give any great weight to the same in and of itself although it was an apparent retail theft matter like later offenses. SEE Exhibit No. 4.

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, Monique D. Mondragon:

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 April 9, 2015 filed her application with the Department for issuance of a “*Resident Producer Indv.*” license. (SEE Administrative File.)

4. The Department on or about April 21, 2015 in writing denied Applicant's “application for a Utah resident producer individual license dated April 9, 2015” 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 her right to an “*informal hearing*” if a timely request is made in writing within fifteen (15) days. (SEE Administrative File.)

6. The Applicant filed her “*request for hearing*” with the Department on May 5, 2015. (SEE Administrative File.)

7. That based on the preliminary facts as set forth in paragraphs 1 through 6, immediately above, through means of a May 12, 2015 “Notice of Conversion to Formal Proceeding and Notice of Hearing”, mailed to the Respondent at her referenced business address, this present hearing was set for May 26, 2015 at 1:00 P. 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) are argued by the Applicant as having been as of the result of bad influences by a former acquaintance and his family and also attributed to a large extent as a result of Applicant's youthfulness. The present Hearing Officer in contemplating the granting of a conditional license does not minimize the criminal proceedings. The primary court case(s) closed in March 2011 (Exhibit No. 6) and September 2011 (Exhibit No. 7) deal with Attempted Theft by Receiving Stolen Property and Attempted Obstructing Justice, both 3rd degree Felonies which were both amended to Class "A" Misdemeanor prior to resolution by dismissal without prejudice.

c. Another matter dealt with a September 2011 Class "B" Misdemeanor "unlawful for minor to consume alcoholic product" charge which Applicant plead straight up to and a \$190.00 fine assessed and paid.

d.i. It is the remaining charge in Exhibit No. 4, a December 6, 2013 Class "B" Misdemeanor "Retail Theft" charge which at this point gives the Hearing Officer the most problematic weighing. The Applicant entered a plea in abeyance on December 20, 2013. A plea in abeyance fee of \$634.23 was assessed. The court docket appears to show a couple of extensions for payment being granted and the Hearing Officer cannot quite in his mind confirm the matter has been closed by the court.

ii. Also this December 2013 offense is less than two (2) years ago and clearly less than five (5) years ago which is the typical standard that has been utilized in the past as to entertaining the granting of probation. And although arguable that a retail theft may be non-tangential to an Applicant's ability to perform in the insurance-financial world such gives concern. Especially in light of Applicant's approximate at age 10 or 11 initial contacts with the justice system SEE footnote 1, *supra*.

e. All of the above having been said and done to continue to penalize Applicant more than three (3) years after her satisfactory resolution with the Court of the more major issues (March and September 2011 as per Exhibit No.s 6 and 7) would seem to be an arguable injustice. The Applicant's offenses in large measure were dismissed and Applicant has moved on in her life.²

² The Hearing Officer puts a substantial "*amount of stock*" in the presentation of Ms. Bastidas (PRIMERICA) and her confidence in the Applicant's abilities and change of direction 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. a. The matters of past criminal involvement which clearly cannot be called minor can arguably be called somewhat of an aberration and more than likely (if not guaranteed)³ not to be repeated.

b. 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 apparent sincerity and support from friends and employer and for want of a better phrase her *naivete* and youth is in the best interests of justice. The Hearing Officer feels the Applicant will not abuse that benefit and belief.⁴

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 April 21, 2015 should while sustained be modified.

2. The Applicant's April 9, 2015 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 April 21, 2015 is **sustained**;

and

³ Although as all present at the hearing would undoubtedly acknowledge nothing can or is guaranteed in life whether in the business world, personal life or otherwise.

⁴ Should the Department be made aware of a re-occurrence of such *naivete* in **any** manner, shape or form the herein granted probationary license to be revoked immediately forthwith.

2. The Applicant's April 9, 2015 application for licensure as a resident "Producer" is **granted conditionally** on the following terms and conditions:

a. The Applicant providing written documentation of complete satisfaction and release from the court as to her plea in abeyance to Retail Theft in the Salt Lake City Justice Court as shown in Exhibit No. 4; and

b.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 present prospective employer (PRIMERICA) approved by the Department;

and

ii. The Applicant being placed on an eighteen (18) 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.

c. Such license to issue and the eighteen (18) months probation with the Applicant to have no violations of the insurance laws of the State of Utah during her probation and to commence upon both filings as required by subparagraph 2a and b, above.

DATED and ENTERED this 20 day of May, 2015.

**TODD E. KISER,
INSURANCE COMMISSIONER**



A handwritten signature in black ink that reads "Mark E. Kleinfeld".

**MARK E. KLEINFELD
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.
