

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

**COMPLAINANT:**

UTAH INSURANCE DEPARTMENT

**RESPONDENT:**

MICHAEL JAMES NICOLAIDES  
[REDACTED]

**ORDER ON HEARING**  
(Formal Hearing)

DOCKET No. 2015-093-LC  
Enf. Case No. 3651

Mark E. Kleinfield,  
Presiding Officer

License Pending

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**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, September 17, 2015 at 9:00 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 9:00 (9:05) A. M., September 17, 2015 and adjourned at 9:55 A. M. on said same day.

**Appearances:**

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

Michael James Nicolaides, Applicant, [REDACTED]  
[REDACTED] pro se.

**By the Presiding Officer:**

Pursuant to an August 19, 2015 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on September 17, 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.

**SUMMARY OF THE EVIDENCE**

**Witnesses:**

**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:

Michael James Nicolaidis, Applicant.

Sam Pappas.<sup>1</sup>

All of whom were sworn and testified.

**Exhibits:**

The Department offered the following exhibits:

Seven (7) exhibits, SEE file.

(Also taken administrative notice of as part of the Producer Licensing files were the Applicant's July 25, 2015 application (Exhibit No. 1); FBI records check, UCBI records check (Exhibit No. 6), a the Department's August 3, 2015 letter of denial (Exhibit No. 2) and the Applicant's request for hearing.

The Applicant offered the following exhibits:

None.

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

Argument followed.

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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.

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<sup>1</sup> Mr. Pappas is a licensed attorney in the State of Utah. He is NOT appearing as counsel in the present matter, but as a witness as to the Applicant's character. Mr. Pappas having represented the Applicant in previously prior criminal matters.

2. The Applicant, Michael James Nicolaides:

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 July 25, 2015 filed his application with the Department for issuance of a “*Resident Producer Indv.*” license. (SEE Administrative File.)

4. The Department on or about August 3, 2015 in writing denied Applicant's “application for a Utah resident producer individual license dated July 25, 2015” for the following reasons:

“UCA 31A-23a-107 - Failure to meet the character requirements for licensing due to theft conviction.

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 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 August 19, 2015 “Notice of Conversion to Formal Proceeding and Notice of Hearing”, mailed to the Respondent at his referenced business address this present hearing was set for September 17, 2015 at 9:00 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 his misdemeanor conviction(s) in the State of Utah.

b. The incident(s) can be attributed to a large extent having been at their core as a result of “youth and immaturity” (Applicant’s date of birth is October 4, 1992) at the times in question.

c.. From a review of the dockets in the three (3) matters all fines and fees and obligations to the respective courts appear to have been met. Either the incidents themselves and or case closures are all over eighteen (18) months past.

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 appear to be minor. While not minimizing any of the circumstances the Hearing Officer feels the Applicant will comport his 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 his sincerity and for want of a better phrase his youth 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 August 3, 2015 should while sustained be modified.

2. The Applicant’s July 25, 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 August 3, 2015 is **sustained**;

and

2. The Applicant's July 25, 2015 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 any prospective employer approved by the Department;

and

ii. The Applicant being placed on an eighteen (18) months term of probation during which he may only be employed by any prospective 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 eighteen (18) month probation to commence upon the filings as required by subparagraph 2a, above.

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DATED and ENTERED this 5 day of October, 2015.

**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.

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