
STATE OF UTAH
DEPARTMENT OF INSURANCE

UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

ELISE ANN MULLIGAN,
Insurance License Applicant,

Respondent.

ORDER

Docket No. 2017-015 LC

E. No. 3863

Administrative Law Judge
Lisa Watts Baskin

This matter came before the undersigned on June 28, 2017, for a license denial hearing. Ms. Elise Ann Mulligan, respondent, appeared *pro se*. Mr. Gary Josephson, Assistant Utah Attorney General, appeared for the Utah Insurance Department. The administrative hearing was held as a formal proceeding pursuant to the May 10, 2017 Order of Conversion to Formal Proceeding. The matter was recorded.

PROCEDURAL BACKGROUND

Respondent filed a timely written hearing request to challenge the Utah Insurance Commissioner's license denial for a resident producer individual license, which was denied pursuant to Utah Code Ann. Subsection 31A-23a-111(5)(b)(xxiii) (2014). The denial was dated

February 22, 2017. Respondent's request was filed timely on February 27, 2017. Both parties stipulated that discovery was not necessary because the matter is not an enforcement matter.

Both parties stipulated that documents or exhibits would be exchanged by either party within ten (10) days of the hearing which was provided in the Scheduling Order, dated May 31, 2017.

Based on the foregoing, on Complainant's exhibits and witness testimony, and on Respondent's testimony, the undersigned makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. On December 2, 2016, Respondent Elise Ann Mulligan, a resident of Utah, applied for a resident producer individual license. Complainant Ex. 1, Application.
2. Respondent's application was denied on February 22, 2017, based upon her plea of guilty to One Count of Possession of Stolen Mail, a violation of 18 U.S.C. § 1708, and a Class D Felony which she entered on April 28, 2009, under the name of Elise Ann Peterson. Complainant Ex. 5, Statement by Defendant In Advance of Plea of Guilty; Complainant Ex. 6, Judgment In A Criminal Case. Respondent was represented by criminal defense counsel.
3. On December 7, 2016, the department sent a letter of instructions to Ms. Mulligan, informing her that under federal law, she cannot engage in the business of insurance due to her felony conviction involving dishonesty and breach of trust, referencing the relevant federal statute. R. at 28:44-29:52; R. at 24:59-35:50; Testimony of Randy Overstreet, Director of Producer Licensing, Utah Insurance Department.

Pursuant to the letter's instructions, Respondent filed an application for written consent of the Utah Insurance Commissioner to engage in the business of insurance despite the federal prohibition. R. at 39:00 to 40:35, Testimony of Randy Overstreet.

4. On February 21, 2017, the department sent to Respondent a written denial executed by the insurance commissioner, denying respondent's request for written consent, along with a cover letter dated February 21, 2017. Complainant Ex. 3, In the Matter of the Application for Written Consent Under 18 U.S.C. §§ 1033 and 1034.
5. On February 22, 2017, the department sent to Respondent its Notice of Informal Agency Action and Order, denying her application for an insurance license. Complainant Ex. 2, Notice of Informal Agency Action and Order.
6. On February 27, 2017, Respondent filed a timely written request for an administrative hearing to contest the license denial decision which was granted. Complainant Ex. 4, Request for Administrative Hearing, Elise M. Peterson.
7. At this license denial hearing, Respondent provided no witnesses and no documents. However, she provided personal testimony under oath regarding her sincere desire and good faith efforts to be licensed by the commissioner as a resident producer, her work history and current employment, her test passage for licensure, her probation information, her full ownership for her past difficulties, and her understanding from a potential employer that she could obtain employment, pending license approval. R. at 4:35-5:29;¹ 0:00-1:45; 3:43-5:28. However, she provided no documents thereto or other witnesses, notwithstanding her admitted

¹ The recording device's batteries had been depleted. The recording started again after batteries were replaced.

receipt and knowledge of the requirement to exchange documents and exhibits by June 19, 2017, in accordance with the May 31, 2017 scheduling order.

8. As a courtesy of the court and as recommended by complainant's counsel, the court granted a brief recess to permit Respondent to return to her parked vehicle to retrieve documents in a red leather binder which were previously unproduced but she perceived to be possibly relevant to the requested review of the license issuance denial. R. at 5:30-14:40.
9. Respondent failed to identify with any particularity any documents in the red leather binder as to their relevance. She declined to introduce into evidence any of those documents therein. R. at 16:12-20:18.
10. Based upon the evidence presented at the hearing, Respondent failed to prove by a preponderance of evidence that the insurance application was improperly denied. Utah Admin. Code R590-160(10).

CONCLUSIONS OF LAW

1. The department has jurisdiction over the parties and subject matter of this administrative action. Utah Code Ann. §§ 31A-1-105 (2000); 31A-2-201 (2010); 63G-4-201 (2010); Title 31A, Chapter 23a, Part 100, Utah Code; and Utah Admin. Code, R590-160.
2. Respondent, in being convicted of a felony involving dishonesty and having no written consent from the Utah Insurance Commissioner to work in the insurance industry, is prohibited from engaging in the business of insurance under the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. § 1033. Although

federal law may allow lifting of this prohibition for persons who have written consent of the commissioner, written consent had been denied. See 18 U.S.C. § 1033(e)(2); Findings, at ¶ 4.


3. Respondent failed to satisfy the burden of proof that she can meet the statutory requirements of Utah Code Ann. §§ 31A-23a-105(1)(b)(ii) and (vii); 31A-23a-107 (2); and 31A-23a-111(5)(b)(i), (xiv), and (xxiii)(2016).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Administrative Law Judge hereby enters the following Order:

The February 22, 2017 Notice of Informal Agency Action and Order, denying Respondent's application for a resident producer individual license is affirmed; and Respondent's December 2, 2016 Application for an insurance license is hereby denied.

DATED this 6th day of July, 2017.



LISA WATTS BASKIN
Administrative Law Judge
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, UT 84114

JUDICIAL REVIEW

To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for agency review with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court. Utah Code Ann. § 63G-4-403.