
STATE OF UTAH
DEPARTMENT OF INSURANCE

UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

ZIOMARA S. PANAMENO,
Insurance License Applicant,

Respondent.

AMENDED ORDER

Docket No. 2017-082 LC

E. No. 3933

Administrative Law Judge

Lisa Watts Baskin

This matter came before the undersigned on October 11, 2017, at 10:25 a.m., for an appeal of the denial of applicant's resident producer individual license. The applicant, Ms. Ziomara Panameno, (hereafter "Respondent"), appeared *pro se*. Mr. Josh Nelson, on behalf of Assistant Utah Attorney General Perri Babalis, appeared for the Utah Insurance Department, hereafter ("Complainant"), pursuant to Special Practice Rule R14-807(c)(2), as authorized by the Utah Code of Judicial Administration. The formal administrative hearing was held pursuant to the September 28, 2017 Order of Conversion to Formal Proceeding. The matter was recorded.

PROCEDURAL BACKGROUND

Respondent's license application was denied on August 23, 2017, by the Utah Insurance Department's Producer Licensing Division Director based upon Utah Code Ann. Subsections 31A-

23a-107(2)(a) and 31A-23a-111(5)(b)(i). Respondent filed a timely request for review, dated August 31, 2017, which was received by the Complainant on September 5, 2017.¹

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

FINDINGS OF FACT

1. On August 9, 2017, Respondent Panameno, a resident of Utah, applied for a resident producer individual license.²
2. Respondent's application was denied on August 23, 2017.³ Complainant's denial letter stated, "Your application for a resident producer individual license in Utah dated August 9, 2017, is hereby **denied**. The denial is based on one or more of the following: As a result of a conviction of retail theft, a Class A [sic] misdemeanor, you failed to meet the character requirement of trustworthiness pursuant to Utah Code Ann. § 31A-23a-107(2)(a), and are unqualified for a license pursuant to Utah Code Ann. § 31A-23a-111(5)(b)(i)." [Bold in original].
3. On September 5, 2017, Respondent filed a timely written request for an administrative hearing to appeal the license denial decision.⁴

¹ Both parties stipulated in the Scheduling Order dated September 28, 2017, that discovery was not necessary and documents and exhibits would be exchanged by either party on or before October 2, 2017, which indeed occurred.

² Ex. 2, Resident Producer Individual Application.

³ Ex. 3, License Denial Letter.

⁴ Ex.1, Appeal Request Letter, dated August 31, 2017.

4. Complainant's grounds for denial were based upon Respondent's guilty plea to Retail Theft, (Shoplifting), a violation of Utah Code Ann. § 76-6-602, Class B Misdemeanor, which she entered on October 6, 2015.^s

ANALYSIS

At issue is whether or not Respondent has proven by a preponderance of evidence that she should have been granted her insurance license upon application. Among the evidence weighed, the court observed Respondent's two character witnesses who testified about Respondent's competency and trustworthiness and offered their personal opinions as to her qualifications to be licensed.

Mr. Tony Gomez, Licensed Agent for American Family Insurance, testified that he offered Respondent a permanent position with his agency if she were to become licensed. He testified favorably regarding Respondent's knowledge, commitment, and ability to become a valued insurance agent. The witness testified that Respondent had already passed the licensing examination. The witness testified he had observed Respondent's work over the past eight months as his employee, and as a result, he wanted to give her an opportunity to work in the insurance business. Mr. Gomez also testified that he would help Respondent succeed by monitoring her personal practices, making certain she appropriately complied with the law and insurance regulations, and ensuring that her continuing education requirements were kept current. He testified that the shoplifting

^s Ex. 4, West Valley City Justice Court, West Valley City v Ziomara Sucet Panameno, Misdemeanor. In correspondence, Complainant's witness admitted a typographical error, referring to Respondent's conviction for a Class A misdemeanor. The witness testified it would have made no difference as to his ultimate determination of untrustworthiness. R. at 22:14-31:11.

conviction was not relevant to him because Respondent has moved on with different friends and has matured since the shoplifting crime. R. at 8:15-11:55.

Ms. Mercedes Irene Panameno, Respondent's sister, co-worker, and licensed agent with Tony Gomez Agency, testified favorably about Respondent's competency and trustworthiness.⁶ The witness testified of her observations of Respondent's dedication to pass the exam. Ms. Panameno also testified she had been training Respondent for the past eight months and would continue to do so, until Respondent surpassed her skill level. She concluded that Respondent would benefit from being licensed. R. at 12:23-13:59.

Respondent testified as to her apparent aptitude for the work and her sincere desire to make insurance work her career. R. at 43:51-44:06.

Regarding the Class B misdemeanor, Respondent testified that this shoplifting incident was her one and only criminal conviction, including traffic citations. She explained her decision to plead guilty and that she had waived counsel. She testified that she had neither criminal history before the July 2015 shoplifting incident nor any criminal history since that time. Respondent emphasized to the court that she had completed her two-year probation in one year. R. at 18:07. Respondent's testimony is corroborated in Exhibit 4, West Valley City Justice Court Docket. Respondent indeed had no RAP sheet for prior offenses. She waived counsel. She paid in full the \$680.00 in fines owed to the court, except those waived. The case was closed on October 24, 2016.

Complainant's witness, Mr. Randal Overstreet, Director of the Producer Licensing Division, Utah Insurance Department, testified that the denial was justified and should be

⁶ Mercedes Panameno testified she had been licensed for two years.

upheld. The witness testified about the license application form, his protocols in examining a license application, including background checks. The witness testified that once he obtains information that an applicant has any criminal conviction, such as Respondent's Class B misdemeanor conviction, he would consult the Criminal Courts Exchange. The witness testified about the grounds for denial of Respondent's license application, stating he applied the statutory criteria that resulted in his determination that Respondent was not trustworthy and therefore disqualified.⁷ The witness concluded that a typographical error designating the misdemeanor as a Class A, rather than the less serious and actual Class B, would not have impacted the denial decision. R. at 22:14-31:11.

When questioned by Complainant's counsel and the court whether or not anyone could eventually satisfy the requirements for trustworthiness, the witness testified that "after a few years of showing a pattern of trustworthiness," an applicant could meet the requirements. The witness then testified that he usually requires two years to elapse but admitted there was presently no statutory or regulatory authority for that time-frame. R. at 31:39-34:48. The witness testified that we "try not to be discriminatory." R. at 34:51.

It is reasonable to conclude that once one is convicted of a misdemeanor, as in the instant case for the retail theft of a blouse reportedly valued at \$24.95,⁸ one may demonstrate trustworthiness in less time than required by Complainant, especially when the applicant has completed probation, paid the court fines, and satisfied her debt to society. The standard of waiting a "few years" or "two years" to satisfy the requirements

⁷ Ex. 5, Utah Code Ann. Subsections 31A-23a-107(2)(a) and 31A-23a-111(5)(b)(i).

⁸ Ex. 1.

of Subsection 31A-23a-107(2)(a), in light of the other evidence, appears arbitrary at best. When asked if the licensure determination is discretionary, the witness testified that the applicant “shall show” that he or she [applicant] is competent and trustworthy. R. at 33:56-34:24.

Utah law is clear that the Commissioner of Insurance has the discretion to either grant or deny a license. Utah Code Ann. § 31A-23a-111(5)(a) states, “If the commissioner makes a finding under Subsection (5)(b), . . . the commissioner may:

. . .

(iv) deny a license application.” (Emphasis added).

Subsection (5)(b) then provides, “The commissioner may take an action described in Subsection (5)(a) if the commissioner finds that the licensee: . . . (i) is unqualified for a license or line of authority under Section . . . 31A-23a-107.” (Emphasis added). The statutory language uses discretionary verbiage, which neither requires nor prohibits the denial of the license.

In the instant case, Respondent completed probation early, by one year, and paid the court fines in full, for a crime that occurred on July 4, 2015. Respondent testified she has not communicated or associated with the former friend by her side when the crime occurred. She testified there has been no contact for more than two years. R. at 41:03-42:39. Furthermore, from her perspective, Respondent testified about the circumstances surrounding the retail theft for which she was convicted. Respondent also provided information about her excellent scholastic record, lack of any previous criminal activity,

and her efforts to obtain expungement.⁹ Were it not for this single, isolated incident, Respondent demonstrated her good faith intention to engage in the type of business the license would permit. By successfully completing the professional entrance exam and receiving pledges of long-term support and guidance from her employer and co-worker, Respondent has sufficiently demonstrated a trajectory of success, trustworthiness and commitment to an honorable profession.

Based on the evidence presented at the hearing, Respondent has shown by a preponderance of evidence that the insurance application was improperly denied. Utah Admin. Code R590-160-5(10).

CONCLUSIONS OF LAW

5. The department has jurisdiction over the parties and subject matter of this administrative action. Utah Code Ann. §§ 31A-1-105; 31A-2-201; 63G-4-201; 31A-23a-101 et seq., Subsection 63G-4-208(2), and Utah Admin. Code, R590-160.
6. Respondent, in being convicted of a Class B misdemeanor, may be prohibited from engaging in the business of insurance under the Utah Code Ann. § 31A-23a-107(2)(a), based upon the discretion of the commissioner as provided in Utah Code Ann. Section 31A-23a-111(5)(b)(i).
7. Based upon witnesses' testimonies and exhibits, Respondent has satisfied the burden of proof that she met the statutory requirements of trustworthiness and is qualified.

⁹ Ex. 1.

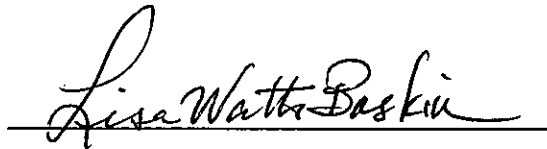
8. Her license application should have been granted.

ORDER

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

The August 23, 2017 Notice of Informal Agency Action and Order, denying Respondent's application for an individual resident producer license is overturned; and Respondent's August 9, 2017 Application for an insurance license is hereby granted.

DATED this 27th day of October, 2017.

A handwritten signature in black ink, reading "Lisa Watts Baskin", is written over a horizontal line.

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

AGENCY REVIEW

To appeal this Order, a party must file a petition for agency review within 30 days from the date of this Order. Petitions for agency review shall be filed in accordance with Utah Code Ann. § 63G-4-301 and filed with the commissioner in writing or electronically at uidadminscases@utah.gov. Failure to file a petition for agency review is a failure to exhaust administrative remedies and will result in the order becoming final.