
STATE OF UTAH
DEPARTMENT OF INSURANCE

UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

BRAXTON ELIASON,
Insurance License Applicant,

Respondent.

ORDER

Docket No. 2017-098 LC

E. No. 3948

Administrative Law Judge

Lisa Watts Baskin

This matter came before the undersigned on December 6, 2017, for a license denial hearing. Mr. Braxton Eliason, Respondent, appeared *pro se*. Mr. Josh Nelson, Assistant Utah Attorney General, appeared for the Utah Insurance Department, Complainant. The administrative hearing was held as a formal proceeding pursuant to the October 27, 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 of his application for a resident producer individual license. The denial was based upon Respondent's conviction by guilty plea to a Class A Misdemeanor and the Commissioner's denial pursuant to Utah Code Subsections 31A-23a-107(2)(a) (2014) and

31A-23a-111(5)(a)(iv) and (b)(ix) (2016). The denial was dated October 16, 2017. Respondent's request for hearing was dated October 19, 2017, and filed timely on October 23, 2017.

Both parties stipulated that documents or exhibits would be exchanged by either party within seven (7) days of the hearing which was provided in the Scheduling Order, dated November 22, 2017.

Based on the foregoing, on 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 September 25, 2017, Respondent Braxton Eliason, a resident of Utah, filed a written application for a resident limited line producer individual license.
Complainant Ex. 1, Application.
2. Respondent's application was denied on October 16, 2017, based upon his plea of guilty to a Class A Misdemeanor (Attempted Unlawful Acquisition, Possession, or Transfer of Card) under Utah Code § 76-6-506.3 (2009) which crime occurred on February 2, 2017. His guilty plea was entered on June 5, 2017. Complainant Ex. 2, Utah v. Braxton Eliason; R. at 32:28-32:45.
3. On October 16, 2017, the department's denial letter referenced the statutory ground for denial: Utah Code Subsection 31A-23a-107(2)(a) (2014). Complainant Ex. 4, Denial Letter.

4. Complainant's witness, Randy Overstreet, Director, Producer Licensing Division, testified about his work experience, supervisory authority, and protocols for evaluation of license applications. R. at 29:20-36:27.
5. Mr. Overstreet testified in particular about the trustworthiness requirement in Subsection 31A-23a-107(2)(a) and its public policy. He stated that selling a financial product such as insurance is entirely dependent upon trust because an inchoate benefit or product is purchased which may be utilized potentially, contingent upon an insured event. Therefore, the entire transaction depends upon trust. R. at 33:19; 35:00-38:27.
6. Mr. Overstreet testified that the character requirement of "trustworthiness" is evaluated based upon incidents involving dishonesty, such as the criminal act that occurred at Respondent's employment, a business which specifically involves financial products. Respondent's misdemeanor conviction of attempted unlawful acquisition, possession, or transfer of card, demonstrated the requisite lack of trustworthiness. R. at 32:28; 39:18-41:18.
7. Mr. Overstreet also testified about the recency of the conviction of the attempted crime, i.e., date of offense, February 2, 2017, and conviction date, June 5, 2017, which impacted the denial decision. R. at 32:28-32:45.
8. Mr. Overstreet further testified about the department's unwritten guideline or standard, requiring a period of five years to elapse wherein no act of dishonesty has occurred, before a license may be granted. R. at 39:18-41:01.

9. Respondent, in contrast, provided written evidence and oral testimony to the court regarding his character and trustworthiness.
10. Respondent presented written testimonies about his employment history which were read into the record. The former employer identified respondent's ambition, reliability, and remorse. Respondent Ex. 1, Reference Letter. The former co-worker, a nurse practitioner, wrote about Respondent's self-awareness, personal development, and willingness to succeed and move beyond the conviction. Respondent Ex. 2, Reference Letter. The former manager identified Respondent's abilities and potential, including excellent work performance, business acumen, and communication, marketing, and technological skills. Respondent, Ex. 3, Reference Letter.
11. Respondent provided witness testimony from his grandfather and grandmother and a friend who is his landlord. All testified to his character and requested that he be given the opportunity to leave the "mistake" behind. R. at 11:40-14:48; 24:26-26:28; 26:29-29:02.¹
12. Respondent admitted to the court that he was convicted of a Class A misdemeanor, and he testified that he has completed his community service and the court's

¹ Jaden King, Respondent's witness, testified that he had been convicted of a misdemeanor shoplifting offense and yet had been granted his insurance license approximately one and one-half years after his conviction. 26:46-28:50; 40:26-53:33. The court requested supplemental briefing regarding his testimony. In Complainant's Supplemental Brief, filed on December 20, 2017, Complainant clarified that Mr. King entered a plea in abeyance for another's retail theft which occurred on May 27, 2016, and the charges had been later dropped. The case against Mr. King had been dismissed with prejudice on August 11, 2017. Complainant identified mitigating factors which played a role in Mr. King's licensure, including his limited involvement in the actual retail theft. In contrast, respondent's conviction involved the intentional attempted misuse of financial information, an aggravating factor in light of the special position of trust required in the insurance industry.

required coursework. He is undergoing unsupervised probation for 18 months, having completed six months. R. at 15:22-16:14.

13. Based upon the evidence presented at the hearing, Respondent failed to prove by a preponderance of evidence that his insurance application was improperly denied. Utah Admin. Code R590-160(10). Complainant conversely proved by a preponderance of evidence that the insurance application was properly denied on statutory grounds.

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 Class A misdemeanor on June 5, 2017, which crime was directly related to the attempted misuse of others' financial information for personal gain and occurred just earlier this year on February 2, 2017, is prohibited from engaging in the business of insurance.
3. Respondent failed to satisfy the burden of proof that he can meet the statutory requirements of Utah Code Ann. §§ 31A-23a-107(2)(a).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Administrative Law Judge hereby enters the following ORDER: The department's denial of Respondent's application for a resident producer individual license is upheld.

DATED this 3rd day of January, 2018.



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.