
STATE OF UTAH
DEPARTMENT OF INSURANCE

UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

KYLE SUTTON,
Insurance License Applicant,

Respondent.

ORDER

Docket No. 2018-019 PL
E. No. 3971

Lisa Watts Baskin
Administrative Law Judge

This matter came before the undersigned on August 23, 2018, at 10:00 a.m., for an appeal of the denial of applicant's Utah Resident Producer Individual License. The applicant, Mr. Kyle Sutton, (hereafter "Respondent"), appeared *pro se*. Ms. Helen Frohlich, Assistant Utah Attorney General, appeared for the Utah Insurance Department, hereafter ("Complainant"). The formal administrative hearing was held pursuant to the March 1, 2018 Order of Conversion to a formal adjudicative proceeding. The matter was recorded.

PROCEDURAL BACKGROUND

Respondent's license application was denied on February 9, 2018, by the Complainant based upon Utah Code Ann. Subsection 31A-23a-107(2)(a). Respondent filed a timely request for review, dated February 15, 2018, which was received by the Complainant on February 21, 2018.

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 January 29, 2018, Respondent Sutton, a resident of Utah, applied for a resident producer individual license.¹
2. Respondent's application was denied on February 9, 2018.² Complainant's denial letter stated, "Your application for a resident producer individual license in Utah dated January 29, 2018, 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 B misdemeanor, you fail to meet the character requirement of trustworthiness pursuant to Utah Code Ann. § 31A-23a-107(2)(a)." [Bold in original].
3. On February 21, 2018, Respondent filed a timely written request for an administrative hearing to appeal the license denial decision.³
4. Complainant's ground for denial was based solely upon Respondent's guilty plea to Retail Theft, (Shoplifting), a violation of Utah Code Ann. § 76-6-602, Class B Misdemeanor, which he entered on September 30, 2015.⁴

¹ Complainant's Ex. 1, Resident Producer Individual Application, UID 001-007.

² Complainant's Ex. 4, License Denial Letter, UID 014.

³ Complainant's Ex. 5, Appeal Request Letter, UID 015.

⁴ Complainant's Ex. 3, Grand County Justice Court, Moab City v. Kyle Sutton, Misdemeanor, UID 009-013.

ANALYSIS

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).

Subsection 107(2)(a) requires the applicant to show competency and trustworthiness.

The statute uses discretionary verbiage which neither requires the denial nor the grant of the license. The statute also authorizes the Commissioner to act -- after an insurance applicant has been granted a license -- such as to revoke or suspend a license, to assess a forfeiture, or to take a combination of actions for any violation of 24 separate instances of unprofessional or illegal conduct under statute, rule, or order. See Utah Code § 31A-23a-111(5)(b)(i) through (xxiv). Thus, once an applicant is licensed, the licensed individual is then be subject to continual regulation, oversight, and possible sanctions for violation of Subsection (5)(i) and (xxiv).

At issue is whether or not Respondent has proven by a preponderance of evidence that he should have been granted his insurance license upon application.

The parties must prove by a preponderance of the evidence that the Commissioner’s application of Utah Code § 31A-23a-107(2)(a) was proper or in error. Utah Admin. Code R590-160-5(10). The preponderance of the evidence test “means the greater weight of

the evidence, or as sometimes stated, such degree of proof that the greater probability of truth lies therein.” *Handy v. United States Bank, NA.*, 2008 UT App 9, ¶ 25, 177 P.3d 80 (quoting *Wightman v. Mountain Fuel Supply Co.*, 302 P.2d 471, 473 n.5 (1956) (further citation omitted)).

The court first considers Respondent’s seven letters of character reference, including letters from three employers, two high school coaches, his father, and his current employer, a licensed insurance agent, who has offered him a job.⁵ The court also notes Complainant’s systematic protocols and vast experience in determining license grants or denials.

Respondent’s former restaurant employers described him as trustworthy and dependable. His coach of four years described the Respondent as not only accountable for his crime, but accepting of the discipline that was handed out. His employer since June 2014, Sapphire Wojcieszek, identified him as one of her best workers, and that she had personally seen “a lifestyle change in him.” Ms. Brittney Melton, Licensed Agent for State Farm Insurance, wrote that she had known Respondent prior to hiring him as a great teammate to his peers, a loving brother to his disabled, younger brother, Team Mate of the Year in baseball at Grand County High School, and consistently polite, genuine, and sincere. She emphasized the shoplifting conviction was an isolated incident which Respondent fully owned and regretted every single day. She described his consistent efforts to become licensed by purchasing, studying and passing the test, quitting his hotel employment to advance his career, and seeking a Section 19 waiver from the Federal

⁵ Complainant’s Ex. 6, UID 024-036.

Reserve System, among other efforts. She described the Respondent as “honest” who “owns his mistakes.” Id.

Respondent testified about the retail theft on August 21, 2015, more than three years ago when he had just turned 18 years old. He admitted that he “impulsively” stole a \$3.00 bottle of Advil from the local market due to encouragement from two football buddies and a bad headache he had that afternoon before a pending football game. He testified that this was the first and only time he had ever stolen anything, although he had observed other friends and peers steal from the market over the years. R. at 13:53-14:34; 16:38-19:20. He admitted he did not contact authorities to stop the others’ conduct when it occurred. He concluded, “Nothing in life is free. Everything comes with a price. Every mistake you make stays with you.” Id.

In a letter dated February 7, 2018, Respondent wrote: “I was in my senior year in high school and was with a group of students. I took a bottle of Advil without paying for it; for which I was charged with shoplifting, a misdemeanor B. [sic] I regret this decision every day. I felt there was a lot of peer pressure with several of the students that were encouraging me to take the bottle. As a result of the event, I have chosen not to be a part of the group of boys anymore, who were encouraging me to steal, and am disappointed in myself in even being in the situation. I feel I was too impressionable at the time and feel I have come out a more mature and stronger person for this experience.”⁶

Respondent also explained his decision to plead guilty, having waived counsel at the time. R. at 14:34-14:36. He paid restitution and interest in full for \$690.67. He also

⁶ Complainant’s Ex. 2, UID 008.

stated he paid \$250.00 to the local market.⁷ ⁸ The court did not order any probation. The court closed the case on July 27, 2016.

Respondent also read into the record his receipt of a Section 19 Waiver from the Board of Governors of the Federal Reserve System, which granted but likewise limited his authority to act as an institution-affiliated party. R. at 9:27-13-53.⁹

Complainant's witness, Mr. Randal Overstreet, Director of the Producer Licensing Division, Utah Insurance Department, testified that the license denial was justified and should be upheld. R. at 19:43-21:30. Mr. Overstreet testified about his professional training and experience, the criteria in the license application form, and his protocols in examining a license application, including background checks. R. at 24:27-26:07. The witness testified that once he obtains information that an applicant has any criminal conviction, such as Respondent's Class B misdemeanor conviction, he then applies the statute to determine that the applicant is not trustworthy and therefore disqualified, as in the instant case. He testified that he denies license applications uniformly in cases of retail theft convictions which have occurred within five years of the application. R. at 31:20, 33:18 -34:18. Mr. Overstreet also testified that his review of the numerous letters of reference and notice of the federal waiver did not cause him to change his denial determination. R. at 22:16-23:27. He concluded that the letters of reference show the Respondent is a "good person" and "on his way to be able to qualify for a license." R. at 32:48.

⁷ Complainant's Ex. 6, UID 027-028.

⁸ Complainant's Ex. 5, UID 015.

⁹ Respondent's Ex. 9, pp. 1-2. He requested and was granted an earlier continuance so he could obtain the federal waiver prior to the evidentiary hearing.

Once one is convicted of retail theft for stealing a \$3 bottle of Advil, one may demonstrate trustworthiness in less time than five years as demanded pursuant to the Complainant's discretion. In fact, evidence shows that Respondent paid all of the court fines without any financial help from his parents but rather from his monies earned in his after-school job. He did so in planned installments of \$25 a month for 28 months.¹⁰ Respondent testified he chose different friends almost immediately. He testified he has matured since and even because of the theft. R. at 18:14-18:50.

Did Respondent show by a preponderance of the evidence that the license should have been granted, based upon his criminal history, employment history, social history, athletic achievements, health and safety certifications, community and family support, and his insurance employer's full support and positive assessment of his trustworthiness? Yes. Were it not for this single, isolated incident, Respondent has demonstrated his good faith intention to engage in the type of business the license would permit, namely selling property and casualty insurance and writing related policies. By successfully completing the professional entrance exam and receiving support from his employer, Respondent has sufficiently demonstrated a trajectory of success, trustworthiness and commitment to serve in an honorable profession. In light of this evidence, the Department's uniform standard to wait five years post-conviction to satisfy the requirements of Subsection 31A-23a-107(2)(a) is unwarranted here. See Utah Insurance Department v. Panameno, Docket

¹⁰ Complainant's Ex. 6, UID 016. This evidence of personal payment and lack of financial help from his parents is derived from a Stipulated Motion to Dismiss his misdemeanor conviction, filed by Respondent's attorney on the motion with the assent of the Moab City Attorney, at ¶ 3. The Court denied the request to set aside the conviction and dismiss the charge, stating in handwriting that the motion was denied because there was no "basis in law that allows" the dismissal. Complainant's Ex. 6, Denial of Stipulated Motion to Dismiss, UID 042-043. The court issued a recent Order Affirming Justice Court Decision on July 17, 2018, which is relevant to the court's procedural stance but irrelevant to the issue of current trustworthiness of the applicant. See Complainant's Ex. 8, UID 044-045.

No. 2017-082 LC, E. No. 3933, wherein the court overturned the license denial and granted her license after conviction for retail theft just two years prior to her application.

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

1. 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 and 63G-4-203; 31A-23a-101 et seq., Subsection 63G-4-208(2), and Utah Admin. Code, R590-160.
2. 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).
3. Based upon witnesses' testimonies and exhibits, Respondent has satisfied the burden of proof that he meets the statutory requirements of trustworthiness and is qualified.
4. His license application should have been granted.

ORDER

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

The Department's February 9, 2018 Letter, denying Respondent's application for an individual resident producer license is OVERTURNED; and Respondent's January 1, 2018 Application for an insurance license is hereby GRANTED.

DATED this 14th day of September, 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 uidadminscales@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.