
STATE OF UTAH
DEPARTMENT OF INSURANCE

<p>UTAH INSURANCE DEPARTMENT, Complainant, vs. JAIME BROWN, Insurance License Applicant, Respondent.</p>	<p>ORDER</p> <p>Docket No. 2018-4035</p> <p>Administrative Law Judge Lisa Watts Baskin</p>
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This matter came before the undersigned on October 19, 2018, at 10:00 a.m., for an appeal of the denial of applicant’s resident producer individual license. The applicant, Ms. Jaime Brown (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 Order of Conversion to Formal Proceeding dated September 26, 2018, and Scheduling Order dated October 5, 2018. The matter was recorded.

PROCEDURAL BACKGROUND

Respondent’s license application was denied on September 12, 2018, by the Utah Insurance Department’s Producer Licensing Division based upon Utah Code Subsections 31A-23a-107(2)(a)(ii) and 31A-23a-111(5)(b)(i), (iv), and (xiv)(B). Respondent filed a timely request for review, dated September 20, 2018.

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

FINDINGS OF FACT

1. On August 24, 2018, Respondent Brown, a resident of Utah, applied for a resident producer individual license.¹
2. Respondent's application was denied on September 12, 2018.² Complainant's denial was accompanied by a written Declaration which stated, "Based on the facts and law set forth above Respondent's application for an individual insurance license should be denied."
3. The denial is based on the Respondent's past criminal history, outstanding debts, and the Department's determination of her untrustworthiness and unqualified status.³
4. Respondent's criminal convictions included two felony counts of forgery which were later amended to Class A misdemeanors through Respondent's guilty plea in abeyance and which were retroactively dismissed effective October 19, 2011. The other criminal convictions were for Class B misdemeanor retail theft and Class C misdemeanor willful failure to appear in the same matter. The no contest plea was entered on September 30, 2015.⁴

¹ Complainant's Ex. 1, Resident Producer Individual Application, UID 008-015.

² Complainant's Ex. 1, Notice of Agency Action and Denial, UID 001-007.

³ Complainant's Ex. 1, Declaration of Randy Overstreet, ¶ 4 (a) through (d), UID 005-006.

⁴ Complainant's Ex. 1, Declaration of Randy Overstreet, ¶ 3 (a) through (g), UID 004

5. Respondent's outstanding debts were substantial but discharged in bankruptcy on May 26, 2017, excluding one outstanding debt owed to Office of State Debt Collection for \$963.89, dated May 8, 2017.^{5 6}

ANALYSIS

At issue is whether or not Respondent has sufficiently proven by a preponderance of evidence that Respondent is qualified and should have been granted her insurance license upon application. Among the evidence weighed, the court heard personal sworn testimony from Respondent and sworn witness testimony from Mr. Randy Overstreet, Producer Licensing Division Director, Utah Insurance Department.

LEGAL STANDARD

The parties must prove by a preponderance of the evidence that the Commissioner's denial of Respondent's licensure pursuant to Utah Code §§ 31A-23a-111(5)(b) and 31A-23a-107(2)(a) was either correct or incorrect. Utah Admin. Code R590-160-5(10). A preponderance of the evidence "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)).

Respondent has been employed by Connexion Point for approximately five years. She testified that she "loves her job," answering questions and helping people. R. at 28:40-28:50. She testified she filed her license application without knowing how difficult the process was. R. at 4:40-4:46. She passed the state examination in preparation for her licensure application and

⁵ Respondent's Ex. 1, Bankruptcy Filing, United States Bankruptcy Court, District of Utah.

⁶ Complainant's Ex. 1, West Jordan City v. Brown, UID 035.

reportedly has passed pre-hire screenings with her employer each of the five past years.⁷

Nevertheless, she admitted she has criminal convictions which involve fraud, misrepresentation, theft or dishonesty.

Utah law requires an insurance license applicant to meet character requirements prior to licensure and upon renewal. Utah Code § 31A-23a-107(2)(a) provides that an “applicant for a license under this chapter shall show to the commissioner that: . . . (2)(a) if a natural person, the applicant is **competent and trustworthy.**” (Emphasis added).

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). The statute is clear that the Commissioner of Insurance has the discretion to either grant or deny a license. Subsection 31A-23a-111(5)(b) 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 of Subsection 111(5)(b)(i) cites the statutory character requirements of competence and trustworthiness in Subsection 107(2)(a). In each instance, the statute uses discretionary verbiage which neither requires nor prohibits the denial of the license.

Criminal Conduct and Pattern of Dishonesty.

At issue is whether or not Respondent has overcome her criminal past and meets the character requirements now. Ms. Brown testified she committed forgery, in violation of Utah Code § 76-6-501, on October 6, 2010, through the suggestion and instruction of an on-line acquaintance. She testified the acquaintance offered to send her two money orders in her name for her to cash and pay her rent and then to send part of the money back to the acquaintance. In retrospect, she testified that this exchange should have appeared suspicious to her, but it did not

⁷ Respondent’s Ex. 2, Medina Letter, HR Manager, Connexion Point.

at the time. R. at 13:40-14:35. She entered a guilty plea in abeyance on October 19, 2011, to two charges of third degree felony forgery which were amended to Class A misdemeanors. On March 7, 2017, the court closed the case. On August 17, 2017, the court ordered dismissal with prejudice retroactively to October 19, 2011. Respondent had completed 50 hours of community service and substantially complied with the terms of the plea in abeyance.⁸

Respondent pled no contest to the retail theft in violation of Utah Code § 76-6-602 (Class B misdemeanor) and willful failure to appear in violation of Utah Code §1-14B-3 (Class C misdemeanor) in the same matter. She was sentenced to jail (suspended) and fined. Findings of Fact, ¶ 4.⁹ Upon the court's questioning, she testified that she committed the theft because she was unemployed, homeless, living in her car with her seven-year-old daughter, and without food or gas. She testified she made an error in judgment. She testified she stole movies to pawn them for cash to buy food and other items she and her daughter needed. R. at 11:40-13:16.¹⁰

Respondent was correctly determined to have failed to meet the character requirements at the time of initial review and denial. Findings of Fact, ¶¶ 3 and 4. However, subsequent to Respondent's application and in support of Respondent's request for review, Connexion Point's Human Resource Manager, Ronda Medina, wrote a letter of recommendation, stating she had "full confidence in Jaime's work performance and trust in her abilities to comprehend the full extent what her job title of a licensed agent would mean. . . . Her possibilities of utilizing the license to become a great licensed agent with Connexion Point is a definite. I have no doubt that she can only get better at her job."¹¹ A written letter of recommendation from Respondent's friends spoke directly to her character, stating "she has never done anything to cause any doubt

⁸ Complainant's Ex. 1, *State v. Brown*, UID 017-028, pp. 11-12.

⁹ Complainant's Ex. 1, *West Jordan City v. Brown*, UID 029-035, p. 7.

¹⁰ There remains an outstanding writ of garnishment for \$963.89. Complainant's Ex. 1, UID 035.

¹¹ Respondent's Ex. 2, Medina Letter, HR Manager, Connexion Point.

in her.” They emphasized Respondent’s compassion when the signator’s father was dying, custodial parentage of her niece and nephew, and resilience to raise herself from homelessness.¹²

In contrast, Randy Overstreet testified that the license denial was justified and should be upheld. He described his experience and protocols in examining a license application, including his analysis regarding criminal background and financial histories. He explained that the insurance industry is highly regulated and takes crimes involving dishonesty very seriously. R. at 16:00-16:50. He aptly testified that in insurance, the product that is bought and sold is only a promise with no other tangible asset until an insurance claim deems coverage. Thus, a pattern of honesty or dishonesty is particularly pertinent. R. at 19:20-19:50. He testified that Respondent did not meet the statutory character requirements based upon her dishonest acts of forgery and retail theft. R. at 21:20-21:42. Mr. Overstreet testified that he typically requires a minimum period of five (5) years without any criminal convictions to prove a pattern of trustworthiness and proper grounds to grant a license. R. at 24:50-25:15. He testified that he could require less time to elapse after a conviction in some retail theft cases, like three to five (3-5) years and the court has ruled to require such a lesser waiting period in previous cases. R. at 25:16-25:40. He also testified he felt compassion for the Respondent and her difficult circumstances, but those facts did not alter his decision to deny her license based upon her pattern of dishonesty. R. at 21:20-21:42.

Outstanding Debts.

At issue is whether or not the Respondent showed that her outstanding debts no longer remain grounds for denial of her license based upon Utah Code § 31A-23-111(5)(b)(iv). Respondent’s debts were discharged in bankruptcy on May 26, 2017, excluding one outstanding debt owed to the Office of State Debt Collection for \$963.89, subject to a writ of garnishment

¹² Respondent’s Ex. 3, Letter from Candice Simpkins and Beau Penton.

and paid monthly. Findings of Fact, ¶ 5. This debt is connected to the convictions and fines for retail theft and failure to appear in March 2015. Upon questioning, Respondent testified that all other judgments were cleared, including consumer debts, and only one outstanding judgment remains which she pays monthly. R. at 8:30-8:57. She also testified that she was not aware of any outstanding debts at the time of her application because she had undergone and completed bankruptcy proceedings prior thereto. R. at 5:10-5:12. The Notice of Agency Action and Order, denying her license, identified five outstanding judgments.¹³ Upon questioning, Ms. Brown testified all those outstanding judgments had been released. R. at 5:45-6:48. Her bankruptcy records were obtained and reviewed post-denial. The Complainant provided no evidence otherwise of other outstanding debts, except the aforementioned writ of garnishment. Mr. Overstreet conceded that all the debts he identified in the Notice were now discharged. R. at 20:25-20:35. He also testified he is no longer concerned with the one outstanding judgment which is being paid by Respondent through the courts. Granted, Respondent's debts were substantial and extensive, and but for the bankruptcy completion and Complainant's change in determination, she could still be denied a license.

CONCLUSION

Respondent's insurance application was properly denied and is UPHELD but modified. Respondent has presented sufficient evidence to justify modification of the denial now, such as Respondent's clean criminal record since March 2015, Connexion Point's offer of ongoing employment and support, and the discharge of her outstanding debts, notwithstanding the writ of garnishment.

Utah Code § 31A-23a-112 (1) provides authority for the commissioner to place a new licensee on probation for a period not to exceed 24 months. For good cause and based on the

¹³ Complainant's Ex.1, Declaration of Randy Overstreet, ¶ 3 (c) through (g), UID 004-005.

testimony and evidence, this license is being placed on probation for the full 24 months.

Therefore, the license should be conditionally granted with probation ordered.

Based upon the foregoing Findings of Fact and Analysis, and for good cause, the Presiding Officer enters the following:

CONCLUSIONS OF LAW

1. The Department has jurisdiction over the parties and subject matter of this administrative action.

2. Utah Code § 31A-23a-111 provides that a license may be denied for failing to meet the trustworthy character requirements and being convicted of a misdemeanor involving fraud, misrepresentation, theft or dishonesty.

3. Utah Code § 31A-23a-112 gives the commissioner authority to place a licensee on probation for a period not to exceed 24 months for circumstances that could justify denial under Section 31A-23a-111.

4. Probation for a period of 24 months is appropriate under the circumstances.

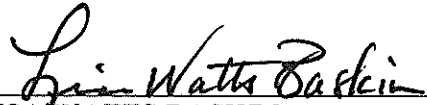
ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law and for good cause, it is ORDERED that:

1. Complainant's Notice of Agency Action and Order is UPHELD, but modified; and
2. Respondent's Application for Licensure is conditionally GRANTED and placed on probation on a 24-month term. During this probation period, Respondent is required to satisfy the writ of garnishment and to abide by any applicable provision of state law, the Utah Insurance Code or Rule, or any order of the Commissioner.

3. At the end of the probation period, a review will be made to determine whether Respondent's debt has been paid in full.

DATED this 1st day of November, 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.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the foregoing

Order was emailed to:

Jaime Brown
jaimeebrown33@gmail.com

Helen Frohlich
Assistant Attorney General
hfrohlich@agutah.gov

DATED this 15th day of November, 2018.



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