
STATE OF UTAH
DEPARTMENT OF INSURANCE

DAVID SMILEY,

Petitioner,

vs.

UTAH INSURANCE DEPARTMENT,

Respondent.

**AMENDED ORDER GRANTING ON
TERMS AND CONDITIONS
PETITIONER'S REQUEST FOR
AGENCY ACTION RE:
18 U.S.C. § 1033 (e)(2)**

Docket No. 2018-4041

On February 6, 2019, Petitioner met with the Utah Insurance Commissioner and his deputies to discuss the *Order Denying Request for Agency Action re: 18 U.S.C. § 1033(e)(2)* in this proceeding. Based on information provided by Petitioner during the meeting, the Commissioner enters the following Amended Findings of Fact, Amended Conclusions of Law and Amended Order.

AMENDED FINDINGS OF FACT

1. The Commissioner adopts and incorporates by this reference Findings of Fact 1-10 as set forth in the *Order Denying Request for Agency Action re: 18 U.S.C. § 1033 (e)(2)* in this proceeding.

2. At the February 6, 2019 meeting, Petitioner submitted a February 4, 2019 letter of recommendation authored by R. Matthew Visser who manages investments for captive insurers that are regulated by the Utah Insurance Department (copy attached).

A. In the letter, Visser stated that he knows of Petitioner's professional trustworthiness because Petitioner provides bookkeeping services as an independent contractor for Visser's captive insurer clients. In that regard, Visser stated that Petitioner puts his clients' needs first, that he has "displayed tremendous judgment[,]" and that Visser would trust Petitioner with any business dealings he would like to take part in, "especially as a captive manager."

B. Visser stated that he knows Petitioner personally because they work together in the same church congregation – Visser leads the congregation and Petitioner helps accounts for tithes and offerings received. Visser stated that he has never been concerned about Petitioner's accuracy or integrity and that his words and deeds display complete honesty.

3. Petitioner additionally submitted a February 5, 2019 reference letter authored by Bryce Roberts who is Petitioner's brother-in-law (copy attached). Roberts hired Petitioner two years ago to oversee the wind-down of a failed company in which Roberts had invested. Roberts stated that winding-down a company provides many opportunities to alter information that affects the rights of employees and investors. He said that Petitioner handled the wind-down with transparency, honesty and accountability for all stake holders.

4. Petitioner additionally submitted a February 5, 2019 reference letter authored by Greg Colibert (copy attached). Colibert is an employee of a company for whom Petitioner has provided accounting services as an independent contractor for the last 16 years. He stated that petitioner is honest, loyal and knowledgeable in rendering those services. He stated that he would hire Petitioner as an in-house accountant if the opportunity ever presented itself.

5. At the February 6, 2019 meeting, Petitioner provided information about the kind of work he intends to perform if granted consent to engage in the insurance business. Consistent with the Visser letter, Petitioner stated that he would provide the following services to captive insurers as an independent contractor or as an employee of a captive manager: (1) accounting/bookkeeping; (2) preparing tax documents including tax returns; (3) submitting reports and information to regulatory government agencies; (4) creating and maintaining records reflecting claims decisions; (5) retaining and facilitating outside actuarial, legal and other professional services; (6) billing and collecting premiums from insureds; (7) offering advice concerning allocation and liquidity of investments of capital.

AMENDED CONCLUSIONS OF LAW

1. The Commissioner adopts and incorporates by this reference Conclusions of Law 1-6 as set forth in the *Order Denying Request for Agency Action re: 18 U.S.C. § 1033(e)(2)* in this proceeding.

2. The Commissioner vacates Conclusion of Law 7 as set forth in *Order Denying Request for Agency Action re: 18 U.S.C. § 1033(e)(2)* in this proceeding.

3. For the following reasons, Petitioner has proved by a preponderance of the evidence that he is trustworthy to engage or participate in the business of insurance on the terms and conditions set forth in the Amended Order below.

A. A primary factor in determining trustworthiness is the “nature [and] severity” of the petitioner’s crimes. Utah Admin. Code R590-278-4. Here, Petitioner was convicted of first degree aggravated felony theft. He stole tens of thousands of dollars from a company when he

was 46 years of age – a crime far from a youthful indiscretion. In Utah, this crime is so severe that, in order to protect the “public interest”, it cannot be expunged. Utah Code §§ 77-40-107(8)(e), 77-40-105(2)(a)(ii). Because it would be contrary to the public interest to expunge Petitioner’s conviction, it would be contrary to the consumer interest to ignore the conviction based merely on the passage of time since conviction.

B. The reference letters submitted on February 6, 2019 contain information that mitigate the severity of Petitioner’s crime. The authors of those letters enthusiastically report that Petitioner is, and for a long time since his convictions has been, honest, trustworthy and loyal in professional settings.

C. Petitioner has now provided a letter from Visser that in which Visser opines that Petitioner would not constitute a threat to the public in provided the services identified in Amended Finding of Fact No. 5.

D. Based on the information that Petitioner has provided, he is not a threat to insurance consumers or insurers as long as he limits his participation in the insurance business to the seven kinds of services described in Amended Finding of Fact No. 5.

AMENDED ORDER

Based on the foregoing Amended Findings of Fact and Amended Conclusions of Law, and for good cause, it is ordered that Petitioner is granted consent to engage in the insurance business on the following terms and conditions:

1. Petitioner may provide to captive insurers the seven services identified in Amended Finding of Fact No. 5. Additional services may be provided at the Commissioner's sole discretion.

2. Petitioner may not otherwise engage or participate in the business of insurance.

3. Petitioner shall submit quarterly reports to the deputy insurance commissioner. The reports shall contain the following information from the prior quarter:

A. A list of each captive insurer for whom the Petitioner has performed work either as an independent contractor or as an employee;

B. For each captive insurer identified in A. above, a description of the nature of the work that the Petitioner performed;

C. For each captive insurer identified in A. above, the name and contact information of a person with knowledge of the work described in B. above;

D. A statement that Petitioner gives the deputy commissioner authority to contact the persons described in C. above to seek information concerning Petitioner's job performance;

E. A statement of the status of Petitioner's request for a Certified Professional Accountant designation;

F. A description of new criminal charges brought against Petitioner, if any.

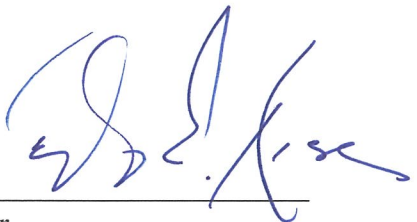
4. A report shall be submitted on April 15, July 15, October 15, 2019 and January 15, 2020.

5. The Commissioner, in his sole discretion, may withdraw the consent granted herein based on the following: (a) Petitioner's violation of the terms and conditions of this Amended Order; (b) conduct that demonstrates that Petitioner is untrustworthy.

6. The consent granted herein expires 18 months from the date of this Amended Order.

7. At any time after March 1, 2020, Petitioner may request written consent to engage or participate in the insurance business on terms and conditions that are more permissive than those set forth in this Amended Order.

Dated: 2-22-19.



Todd E. Kiser
Utah Insurance Commissioner
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, UT 84114

RIGHT TO JUDICIAL REVIEW

This Order Denying Request for Agency Action Re: 18 U.S.C. § 1033 (e)(2) is a final agency action resulting from a formal adjudicative proceeding. To seek judicial review, you must file a petition for review of agency action with the appropriate appellate court in the form required by the rules of the appropriate appellate court. Utah Code § 63G-4-403. The petition must be filed within 30 days after the date that this Order is issued. Utah Code § 63G-4-401(3)(a). Failure to file a petition within the 30-day time limit may constitute a waiver of any right to seek review.