
STATE OF UTAH

DEPARTMENT OF INSURANCE

UTAH INSURANCE DEPARTMENT,

Complainant,
vs.

DELRIC ELLINGTON,
Insurance License Applicant,

Respondent.

ORDER

Docket No. 2019-4099

Administrative Law Judge
Lisa Watts Baskin

This matter came before the undersigned on April 26, 2019, for a license denial review hearing. Mr. Delric Ellington, (hereafter "Respondent"), appeared *pro se*. Ms. Helen Frohlich, Assistant Utah Attorney General, appeared for the Utah Insurance Department, hereafter ("Complainant"). The administrative hearing was held as a formal proceeding pursuant to the Order of Conversion to Formal Proceeding, dated March 14, 2019. The matter was recorded.

PROCEDURAL BACKGROUND

Respondent filed a timely written hearing request to challenge the Complainant's license denial for a resident producer individual license. The license application was denied on March 5, 2019, pursuant to Utah Code Ann. Subsections 31A-23a-105(2)(b)(ii) (failure to report at time of filing a criminal prosecution taken against him); 31A-23a-111(5)(b)(ix) (providing incorrect, misleading, or materially untrue information in the license application); 31A-23a-111(5)(b)(iv) (failure to pay a final judgment); 31A-23a-111(5)(b)(i) (failure to meet licensure

qualifications); and 31A-23a-107(2)(a)(ii) (failure to meet the trustworthy character requirement). Respondent filed a timely request for review on March 11, 2019.

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

FINDINGS OF FACT

1. On January 18, 2019, Respondent Ellington, a resident of Utah, applied for a resident producer individual license.¹
2. The license application was denied on March 5, 2019, and mailed on March 6, 2019.²
3. On the application form, Respondent incorrectly answered "No" to the License Application Question: "Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or is currently charged with committing a misdemeanor."
4. Respondent's answer failed to report the criminal prosecutions taken against him and thus provided incorrect, misleading, incomplete, or materially untrue information in the license application.
5. The numerous grounds for license denial were Respondent's:
 - (a) failing to report at the time of filing the license application that he had criminal prosecutions or convictions taken against him in violation of Utah Code Subsection 31A-23a-105(2)(b)(ii);³

¹ Complainant Ex. 1, License Application, UID 027-033.

² Complainant Ex. 1, License Denial Notice, UID 001-007.

- (b) providing incorrect, misleading, incomplete, or materially untrue information in his license application in violation of Utah Code Subsection 31A-23a-111(5)(b)(ix);⁴
- (c) entering a plea in abeyance for a misdemeanor involving fraud, misrepresentation, theft, or dishonesty for retail theft, which may result in a conviction, could be in violation of Utah Code Subsection 31A-23a-111(5)(b)(xiv)(B);
- (d) failing to meet the trustworthy character requirement in violation of Utah Code Subsection 31A-23a-107(2)(a)(ii);
- (e) failing to pay a final judgment rendered against Respondent in this state in violation of Utah Code Subsection 31A-23a-111(5)(b)(iv);⁵ and
- (f) possessing an unqualified status for a license pursuant Utah Code Subsection 31A-23a-111(5)(b)(i) [for grounds mentioned herein].

³ Complainant Ex. 1, License Application, UID 029; South Salt Lake Justice Court, South Salt Lake City v. Ellington, Class B Misdemeanor, Criminal Mischief, Case No. 171500715, which was entered as a plea in abeyance on February 13, 2018, and later amended to guilty plea on March 13, 2019, UID 011-017, 035-044. Complainant Ex. 3, West Jordan City Justice Court, West Jordan City v. Ellington, Misdemeanor DUI, Case No. 185302743, Class B Misdemeanor, Impaired Driving, Operating Vehicle Without Insurance, August 7, 2018. Probation ordered for one year. Respondent's guilty plea herein resulted in amended plea of guilty for Class B criminal mischief in Case No. 171500715 MO, UID 043.

⁴ Third District Court – Silver Summit, Utah v. Ellington, Class A Misdemeanor, Retail Theft, Case No. 181500266, which was entered as a plea in abeyance on December 10, 2018. The conditions of plea last for a period of 18 months and require Respondent to: complete a Thinking Errors course with proof of completion, maintain good behavior with no violations of the law, except minor traffic citations, complete 35 hours of community service, pay restitution, and report violations or changes in contact information within 48 hours. Tracking review date for plea in abeyance is June 10, 2020. UID 018-023. Respondent testified under oath that he has not completed the course and community service yet.

⁵ Complainant Ex. 1, Salt Lake County Justice Court, TOSH INC DBA Check City v. Ellington, Small Claims, Case No. 178600943, Default Judgment, Writ of Garnishment, March 22, 2018, UID 008-010, Judgment Satisfied, March 15, 2019, 046-048; Fourth District Court – American Fork, Express Recovery Services Inc., v. Ellington, Debt Collection, Case No. 189106534, Default Judgment, Writ of Garnishment, January 3, 2019, UID 024-026; and Fourth District Court – American Fork, NAR INC v. Ellington, Debt Collection, Case No. 199102115, Judgment Paid, April 18, 2019, UID 045.

6. Respondent has been employed by Wells Fargo Bank for 4.5 years and seeks licensure to become a brokerage associate, which would permit him to provide information regarding certain securities and to make referrals to a financial advisor. Respondent could earn commissions for referrals that result in an account. R. at 18:06.
7. Respondent testified he will appear in West Jordan City Justice Court on May 13, 2019, on an Order to Show Cause to confirm to the Court that he completed the State Mandated DUI Course, carries automobile insurance, and intends to pay the \$1,700 fine. R. at 16:16.

ANALYSIS

Respondent admitted under oath that he answered “No” to the license application question regarding whether or not he had “ever been convicted of a misdemeanor, had a judgment withheld or deferred, or is currently charged with committing a misdemeanor.” This answer was incorrect, misleading, incomplete, or materially untrue because at the time of his license application, Respondent already had two convictions, dated August 7, 2018, for Class B misdemeanor Impaired driving and Class C misdemeanor for operating a vehicle without auto insurance. Respondent has another Class B misdemeanor conviction (criminal mischief) which was entered on March 13, 2019, just two months after his application. Further, his answer in the negative was false because he entered a plea in abeyance for retail theft which is interpreted to be “a judgment withheld or deferred” or a “current charge” that remains

pending until he satisfies the plea agreement.⁶ Respondent's 18-months' probation expires on June 10, 2020.

Respondent testified that his main concern was damage to his reputation that he would be perceived as unethical or less than "upfront" in his answer. He wanted to clarify why he answered the way he did on the application. R. at 6:50-7:40. Respondent's recollection was he understood the plea in abeyance to be a pending criminal conviction or dismissal and therefore "not a conviction on the record."⁷ The undersigned sees this confusion regularly and notes that a plea in abeyance is considered "on the record" for purpose of insurance license applications. Furthermore, had Respondent read the question more thoroughly, he could have answered affirmatively as to a "withheld or deferred judgment" or a "current charge" for a misdemeanor. Nevertheless, Respondent pleaded guilty to Impaired Driving and Operating a Vehicle without Auto Insurance, Class B Misdemeanor, which occurred five months before his application but which he did not disclose.

Respondent's plea in abeyance for retail theft is pending until June 10, 2020, when his tracking review date is set. Until such time, his trustworthiness and qualifications to work as a licensed insurance producer remain in question. Due to the recency of the alleged retail theft (offense date of February 23, 2018) and plea in abeyance (December 10, 2018), Respondent has

⁶ The application form is prepared for a national market through SIRCON and utilized state-by-state. Changes to clarify certain questions are warranted.

⁷ Respondent testified he relied upon the Court's explanation that a plea in abeyance is not a conviction and thus he answered "No." The application question may be unclear and the effect of a plea in abeyance is often unclear to the defendant and in this instance, the applicant. The Utah courts' explanation of CJA 4-704 describes the plea in abeyance process and its limitations: "Although the charges are ultimately dismissed, the records still exist. To have the records sealed you will have to have them expunged" or "file a Motion to Dismiss once you have completed all the requirements or the court will not dismiss the case." Nevertheless, Respondent pleaded guilty to Impaired Driving and Operating Vehicle without Insurance on August 7, 2018. He applied for his insurance license on January 18, 2019, nearly five months after the conviction. See Complainant Ex. 3, West Jordan City Justice Court, West Jordan City v. Ellington. The probation period for one year expires on August 7, 2019.

yet to prove by a preponderance of evidence that he has established a pattern of trustworthiness and is qualified for licensure.

Respondent's outstanding judgments as identified in Footnote 5 have been satisfied, with the exception of one creditor for the amount of \$478.55 which is now subject to a writ of garnishment. However, these facts reveal default judgments ordered against Respondent for failure to appear, which he testified were due to his frequent relocations and failure to update the court of his whereabouts. These facts weigh heavily against his likelihood to be a qualified and trustworthy licensee.

Respondent introduced a letter of reference from a co-worker and former manager who has known Respondent for five years. Mr. Clint Norcross praised Respondent's teamwork ethic, honesty, and transparency which have resulted in loyal customers and an ethical reputation.⁸ This evidence weighs in favor of license approval. Respondent testified that he has no incidences of mishandling funds while working for Wells Fargo since October 2014. R. at 59:52-1:00:42.

In contrast, Complainant's witness, Mr. Randy Overstreet, Director of Producer Licensing Division, Utah Insurance Department, testified about his reasons to determine that Respondent does not qualify for licensure. Mr. Overstreet testified that Respondent's failure to disclose criminal convictions, whether intentional or mistaken, at the time of his application and during the application review process, and the outstanding retail theft charge, weigh heavily against his burden of proof. R. at 51:49-54:44. This court has upheld license denials for failure to disclose misdemeanor convictions. See Utah Insurance Department v. Johns, Case No. 2017-

⁸ Respondent Ex. 2, March 29, 2019 Letter from Clint Norcross Letter, Business Relationship Manager, Wells Fargo Business Banking.

097 LC, E. No. 3945 (December 1, 2017) (license denial upheld because Respondent was convicted of Class B misdemeanor for retail theft in 2014 and failed to disclose on application); Utah Insurance Department v. Popadich, 2018-4049 (November 30, 2018) (license denial upheld for failure to disclose misdemeanors involving fraud, including retail theft).

Due to the recency of Respondent's convictions, his ongoing probation, and the pending determination of innocence or guilt for retail theft in the plea in abeyance matter, the court agrees with Mr. Overstreet's assessment that Respondent must first establish a pattern of trustworthiness before licensure. R. at 49:42-56:44; 58:30-59:07. These are proper statutory grounds for the license denial. Despite Respondent's payment of his debts, he still needs to complete probation and address other personal issues as identified therein. Until such time as the court has concluded the matter regarding the plea in abeyance for retail theft, this court cannot approve licensure with sufficient justification nor do so under probationary status. Respondent's license application is premature, but he may reapply when he has satisfied probation and resolved the plea in abeyance.

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 through 205; 31A-23a-101 et seq., and Utah Admin. Rule R590-160-1.
2. Respondent, in being convicted of two Class B misdemeanors and one Class C misdemeanor is prohibited from engaging in the business of insurance under the Utah Code Subsections 31A-23a-107(2)(a) and 31A-23a-111(5)(b)(xiv)(B). Findings of Fact, ¶¶ 3, 4, 5.

3. Respondent, in having failed to failure to report at the time of filing the license application that he had a current criminal prosecution is in violation of Utah Code Subsection 31A-23a-105(2)(b)(ii) and, in providing incorrect, misleading, incomplete, or materially untrue information in his license application, is in violation of Utah Code Subsection 31A-23a-111(5)(b)(ix).
4. Respondent, in failing to satisfy outstanding debts at the time of application, is in violation of Utah Code Subsection 31A-23a-111(5)(b)(iv).
5. Respondent failed to satisfy the burden of proof that he can meet the statutory requirements of competence and trustworthiness under Utah Code Ann. §§ 31A-23a-107(2).
6. Complainant properly denied Respondent's individual resident producer license application.

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 Notice of Informal Agency Action and Order, dated March 5, 2019, denying Respondent's application for a resident producer individual license is AFFIRMED.

Respondent's Application for an insurance license, dated January 18, 2019, is hereby DENIED.

DATED this 10th day of May, 2019.

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

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

JUDICIAL 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 § 63G-4-301 and filed with the commissioner in writing or electronically at uidadmincases@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.