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**STATE OF UTAH**  
**DEPARTMENT OF INSURANCE**

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**UTAH INSURANCE DEPARTMENT,**

Complainant,  
vs.

**MICHAEL PAUL DICKAMORE,**

Respondent.

**ORDER**

Docket No. 2019-4102

Lisa Watts Baskin  
Administrative Law Judge

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This matter came before the undersigned on May 3, 2019, at 10:00 a.m., for a requested review of the license renewal denial for Respondent's Utah Resident Producer Individual Insurance License. The applicant, Mr. Michael Paul Dickamore, (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 28, 2019 Order of Conversion to a formal adjudicative proceeding. The matter was recorded.

**PROCEDURAL BACKGROUND**

Respondent's license renewal was denied on March 14, 2019, by the Complainant based upon Utah Code Subsections 31A-23a-111(5)(b)(xiv)(2) (three misdemeanor convictions); 31A-23a-105(2)(b)(ii) (failure to report criminal prosecution); 31A-23a-107(2)(a)(ii) (trustworthy

character requirement not met); and 31A-23a-111(5)(b)(i) (unqualified for renewal). Respondent filed a timely request for review, dated March 27, 2019.

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 February 28, 2019, Respondent, a resident of Utah, sought the renewal of his resident producer individual license, which was scheduled to expire on the same day.<sup>1</sup>
2. Respondent's renewal was denied on March 14, 2019.<sup>2</sup>
3. On March 27, 2019, Respondent filed a timely written request for an administrative hearing to review the license renewal denial.<sup>3</sup>
4. Complainant's principle grounds for denial of renewal were based upon Respondent's guilty pleas to Retail Theft, (Shoplifting), a violation of Utah Code Ann. § 76-6-602, Class B Misdemeanors, which were entered on June 4, 2018, and December 10, 2018.<sup>4</sup>
5. Respondent pled guilty to and was convicted of three misdemeanors involving fraud, misrepresentation, theft, or dishonesty.

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<sup>1</sup> Complainant Ex. 1, Individual Information Inquiry, UID 001-007.

<sup>2</sup> Complainant Ex. 1, Notice of Agency Action and Order, UID 009-004.

<sup>3</sup> UID Admin Cases Filing, March 27, 2019, at 9:47 a.m.

<sup>4</sup> Complainant's Ex. 1, Riverton Justice Court, Riverton City v. Michael Paul Dickamore, Class B Misdemeanor, Case No. 181000065, which was entered as a plea in abeyance on June 4, 2018, and later amended to guilty plea on February 10, 2018, UID 034-037; Utah County Justice Court, Cedar Hills City v. Michael Paul Dickamore, Class B Misdemeanor, Case No. 181101013 MO, Offense Date: August 31, 2018, UID 031-033, and Case No. 181101014, Offense Date: July 26, 2018, UID 019-023. Both judgments were rendered on October 8, 2018.

6. Respondent was sentenced in Case No. 181000065 to six months' probation with no violations, continued counseling, and completion of a court-approved thinking errors course within three months.<sup>5</sup>
7. Respondent was sentenced in Case Nos. 181101013 and 181101014 to twelve (12) months' probation, which terminates if satisfied in October 2019.

### ANALYSIS

Utah law is clear that the Commissioner of Insurance has the discretion to either grant or deny a request for license renewal. Utah Code Ann. § 31A-23a-105(2)(b)(i) states, "If the commissioner makes a finding under Subsection (5)(b) as part of an adjudicative proceeding, . . . 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 renewal. 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

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<sup>5</sup> Complainant Ex. 2, Order to Show Cause Cancelled upon Respondent's completion of course, May 1, 2019, R. at 9:20. Probation terminates in one month, June 2019.

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 renewal 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 mitigating circumstances. Respondent testified under oath that he currently suffers from certain psychological conditions which impair his attention, focus, sleep patterns, and which cause anxiety, depression, and panic attacks. Respondent testified that all three retail theft misdemeanors resulted from his inattention and anxiety as he self-checked grocery items, failing to check all of them. He testified as to his ongoing counseling to address his symptoms. He also testified to his guilty pleas, stating the retail thefts were unintentional and minimal in value, but admitted that they nonetheless occurred. Respondent has worked in the insurance industry continuously for more than ten years without any errors or omissions, or other

regulatory problems. Respondent has no other criminal convictions. Respondent testified that he “loved” insurance work and wished to renew his license.<sup>6</sup>

Complainant’s witness, Mr. Randy Overstreet, Director of the Producer Licensing Division, Utah Insurance Department, testified under oath about his professional training and experience, the criteria in the license renewal form and relevant data, and his protocols in examining license renewals, including review of criminal convictions or prosecutions if any. He also testified that the denial of renewal was justified and should be upheld, but under the mitigating circumstances, renewal might be granted subject to 24-months’ probation.<sup>7</sup>

Respondent satisfied his burden by a preponderance of the evidence that the license could have been renewed, based upon his limited criminal history, employment history, social history, psychological conditions, and ongoing counseling and strategies. Were it not for these explainable and reportedly unintentional retail thefts, Respondent has demonstrated his trustworthy and capable engagement in the insurance industry for many years and that his trustworthiness can be restored. See Utah Insurance Department v. Sutton, Case No. 2017-3971 (September 14, 2018), wherein the court overturned the license denial and granted his license application after conviction for retail theft.

Based on the evidence presented at the hearing and Complainant’s testimony regarding license renewal along with a lengthy probationary period, Respondent has shown by a preponderance of evidence that the insurance license renewal should be

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<sup>6</sup> Respondent’s testimony, R. at 5:40-7:40; 7:50-15:12; Complainant Ex. 1, Respondent’s letter of explanation, UID 008.

<sup>7</sup> Complainant testimony, R. at 19:06-34:30; 34:40-35:10.

granted, with conditions of probation. Indeed, the undersigned made a ruling from the bench to grant the renewal and to order a probationary period of 24 months, as ordered herein.

### **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-4-204 through 63G-4-208; 31A-23a-101 et seq., and Utah Admin. Code, R590-160.
2. Respondent, in being convicted of three Class B misdemeanors, may be prohibited from license renewal to engage 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 the license renewal may and should be granted, subject to probationary conditions to address trustworthiness concerns.
4. Respondent's license renewal is granted, and he is authorized to work in the insurance industry subject to probation

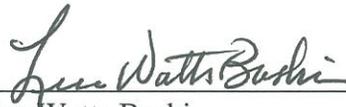
### **ORDER**

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

Complainant's March 14, 2019 denial of Respondent's application for renewal of an individual resident producer license is OVERTURNED; and Respondent's renewal is

hereby GRANTED pursuant to 24-month probation when Respondent remains in compliance with all insurance laws and rules and Utah State Code.

DATED this 3<sup>rd</sup> day of May, 2019.



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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](mailto: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.