
BEFORE THE UTAH INSURANCE COMMISSIONER

CINDY HANSEN,

Petitioner,

vs.

UTAH INSURANCE DEPARTMENT,

Respondent.

**ORDER ON REQUEST FOR
AGENCY ACTION RE: 18 U.S.C. §
1033(e)(2)**

Docket No. 2019-4166

Todd E. Kiser, Utah Insurance Commissioner (“Commissioner”) has reviewed the Presiding Officer’s Recommended Order in this matter. For the reasons set forth in the Recommended Order, the Commissioner grants Petitioner’s Request for Agency Action Re: 18 U.S.C. § 1033(e)(2).

DATED this 7 day of January, 2020.



Todd E. Kiser
Utah Insurance Commissioner

RIGHT TO JUDICIAL REVIEW

This Order on 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.

BEFORE THE UTAH INSURANCE COMMISSIONER

CINDY HANSEN,

Petitioner,

vs.

UTAH INSURANCE DEPARTMENT,

Respondent.

RECOMMENDED DECISION

REQUEST FOR AGENCY ACTION

RE: 18 U.S.C. § 1033(e)(2)

Docket No. 2019-4166

Lisa Watts Baskin
Administrative Law Judge

This matter arose from a recorded formal adjudicative proceeding held on October 25, 2019, wherein Petitioner, Cindy Hansen (hereafter “the Petitioner”), appeared *pro se*. Helen Frohlich, Assistant Attorney General, appeared for the Respondent, the Utah Insurance Department (hereafter “the Respondent”). This matter was commenced on September 24, 2019, when Petitioner submitted her *pro se* Request for Agency Action Re: 18 U.S.C. § 1033(e)(2) (hereafter “the Request”). Petitioner requests to obtain the written consent from the Utah Insurance Commissioner (hereafter “the Commissioner”) to engage or participate in the business of insurance under a waiver to the statutory prohibition of Subsection Utah Code 31A-23a-111(5)(b)(xxv).

JURISDICTION AND AUTHORITY

Jurisdiction is proper and legal authority is provided pursuant to Utah Code §§ 63G-4-201 through -203, 63G-4-206, 31A-2-201, 31A-23a-111, and Utah Admin. Code R590-160, R590-281, and R590-278. In accordance with Utah Administrative Rule R590-278-3, the

presiding officer shall hear the matter on the merits. After the hearing, the presiding officer shall submit to the Commissioner the record of the proceeding, recommended findings of fact and conclusions of law, and a recommended order.

RECOMMENDED FINDINGS OF FACT

1. On July 10, 2019, Petitioner filed an application for a Resident Limited Lines Producer Individual License with lines of authority for GAP Waiver, Credit, and Motor Club. Exhibit 1, PET 020-022. Subsequently, she was notified by the Respondent staff that she must first obtain written consent from the Commissioner before any license application could be processed.¹
2. On September 24, 2019, Petitioner filed her Request for Agency Action Re: 18 U.S.C. § 1033(e)(2), the federal Violent Crime Control and Law Enforcement Act, seeking written consent from the Commissioner to engage or participate in the business of insurance.
3. Petitioner is not permitted to apply for an insurance license without first obtaining written consent from the Commissioner because she has convictions for two felonies involving dishonesty or breach of trust.²
4. On February 9, 1996, Petitioner was convicted by guilty plea of felony forgery under Idaho Code § 18-3601 for check fraud. Petitioner was sentenced to incarceration, supervised probation though work release, alcohol and drug abuse treatment, and restitution. Petitioner was discharged from probation on March 2, 1998. Petitioner's conviction was subsequently reduced to a misdemeanor on August 28, 1998. Exhibit

¹ Utah Admin. Code R590-281-4 (3)(a) and (b).

² Utah Code Subsection 31A-23a-111(5)(b)(xxv), Utah Admin. Code R590-281-4(3).

- 1, UID 001-012.³
5. On May 11, 2004, Petitioner was convicted by accepted guilty plea after trial of misdemeanor fraud for drawing an insufficient funds check under Idaho Code § 18-3106 (C). Exhibit 1, UID 013-021.⁴
6. On May 11, 2004, Petitioner was convicted by guilty plea of misdemeanor fraud for drawing an insufficient funds check under Idaho Code § 18-3106 (C). Exhibit 1, UID 022-028.⁵
7. On June 8, 2004, Petitioner was convicted by guilty plea of misdemeanor fraud for drawing an insufficient funds check under Idaho Code § 18-3106 (C). Exhibit 1, UID 029-037.⁶
8. On February 18, 2004, Petitioner was convicted by guilty plea of Accessory to Grand Theft, a felony under Idaho Code § 18-2403(1). Petitioner was sentenced to incarceration which was suspended, ordered to pay restitution, and placed on probation for three years. Exhibit 1, UID 038-057.⁷
9. On August 6, 2007, the court ordered a discharge of probation. Exhibit 1, UID 076.⁸

³ State of Idaho v. Cindy Martin, Case No. CR 1995-1011, Cassia County District Court (Feb. 9, 1996).

⁴ State of Idaho v. Cindy Martin, Case No. CR 2003-6549, Cassia County Magistrate Court (May 11, 2004). Court records show that an Affidavit and Notice for Failure to Pay (hereafter “the Pay Notice”) was issued on October 26, 2018, for \$820.41. The Pay Notice was returned to sender as undeliverable. Exhibit 1, UID 020-021. Petitioner testified she has no knowledge regarding the Pay Notice. R. at 1:06:04.

⁵ State of Idaho v. Cindy Hansen, Case No. CR 2003-7603, Cassia County Magistrate Court (May 11, 2004). She was placed on one-year probation and suspended jail. Court records show that another Pay Notice was issued on October 26, 2018, for \$296.56. Again, the Pay Notice was returned to sender as undeliverable. Exhibit 1, UID 027-028.

⁶ State of Idaho v. Cindy Hansen, Case No. CR 2004-309, Minidoka County Magistrate Court (June 8, 2004). On March 5, 2007, court records show an Affidavit and Notice of Failure to Pay was issued for \$370.00. Petitioner paid this amount in full within four days on March 9, 2007. Exhibit 1, UID at 036-037. Probation was closed on April 12, 2007.

⁷ State of Idaho v. Cindy Hansen, Case No. CR 2003-2214, Minidoka County District Court (June 8, 2004).

⁸ On February 18, 2004, Petitioner was convicted of Felony Possession of Controlled Substance under Idaho Code §

10. All other facts and sworn testimony stated in the Analysis Section are fully incorporated as findings of fact.

ANALYSIS

At issue is whether the Petitioner's request for written consent pursuant to 18 U.S.C. § 1033(e)(2) should be granted to permit her to engage or participate in the business of insurance. Petitioner has the burden of production of evidence and the burden of persuasion to show her trustworthiness with sufficient weight.

The standard of proof is preponderance of the evidence which "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 federal provision, 18 U.S.C. Sec. 1033(e)(1)(A) and (2), sets forth the following elements:

"(1) Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection."

37-2732(C)(1). *State of Idaho v. Cindy Martin*, Case No. CR 2003-2261, Minidoka County District Court (April 12, 2004). Exhibit 1, UID at 058-076. She was placed on concurrent probation, ordered to pay restitution, and incarceration was suspended. This offense, although a felony, has no bearing on Petitioner's written consent because it did not involve a crime of dishonesty or breach of trust.

According to administrative rules, the Commissioner's written consent may be granted if, in the commissioner's sole discretion, a preponderance of evidence shows that the Petitioner is trustworthy to engage or participate in the business of insurance. The Respondent Department's criteria for such determination are articulated in Utah Admin. Code R590-278-4. This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than not.

The criteria read:

- (1) Any materially false or misleading statement or omission in the request for agency action;
- (2) The nature, severity, and number of the petitioner's crimes;
- (3) The petitioner's age at the time the crimes were committed;
- (4) The petitioner's punishment for the crimes;
- (5) The length of time since the petitioner's most recent conviction;
- (6) The petitioner's rehabilitation, including evidence of counseling, community service, completion of probation, and payment of restitution, fines, and interest if applicable;
- (7) Current reference letters;
- (8) The presence of any fact or circumstance in the petitioner's current life that may have motivated the petitioner to commit crime in the past;
- (9) Any unpaid judgment;
- (10) If the petitioner intends to apply for an insurance license, the duties of a holder of that type of license;
- (11) The extent to which the petitioner, if granted a license, will work under the

supervision of another licensee or another person;

(12) The petitioner's trustworthiness in employment, community service, or other endeavors since the most recent conviction;

(13) Information received from the National Association of Insurance Commissioners and any insurance regulatory official;

(14) Whether the petitioner has had any occupational or professional licenses, certifications, or designations revoked and, if so, the basis for the revocation; and

(15) Whether the petitioner has previously requested written consent in any jurisdiction and, if so, the outcome of that request.

First, Petitioner seeks written consent, utilizing the form provided by the Respondent. During review of and testimony about the documents provided by the parties, Petitioner testified under oath that she did not make any false or misleading misstatements. However, Petitioner admitted that she inadvertently provided an incorrect date for her work history for State Trailer Supply. R. at 33:02-33:30. This misstatement is of no consequence.

Nevertheless, Petitioner did not respond to the prompt on the form that requested "(14) A statement of outstanding judgments against the Petitioner." Based upon the records in evidence, there are some outstanding judgments against Petitioner issued by the Idaho courts. On cross-examination, Petitioner testified that she had no knowledge regarding an Affidavit and Notice of Failure to Pay, which had been returned to sender as undeliverable. Finding of Fact, ¶ 5; R. at 1:06:04-1:07:01. A similar Affidavit was issued and returned to sender as undeliverable. Finding of Fact, ¶ 6. An Affidavit and Notice of Failure to Pay, which Petitioner received, was paid in full upon receipt within four days. Finding of Fact, ¶ 7. Petitioner testified that she had

undergone a bankruptcy discharge in the past but is able to stay current with her debts. R. at 56:38.⁹ This criterion about unpaid judgments must be addressed before written consent is granted.

Petitioner's crimes, their nature, severity and number have been set forth in the findings. Petitioner was convicted of several crimes involving dishonesty or breach of trust: three misdemeanors for drawing insufficient funds checks, felony forgery for check fraud, and felony accessory to grand theft. Findings of Fact, ¶¶ 4, 5, 6, 7, 8; R. at 1:04-1:10:47.

Petitioner testified under oath about her past with contrition, remorse, and embarrassment as a 57-year-old woman. She testified "that person you see here [on paper] is not me. It's there in my life; I have to deal with it. But it is not me." R. at 13:41-14:09. In short, although she takes full responsibility for her past behavior, she testified she is now a rehabilitated and productive person.

Petitioner testified about her first conviction in 1996, for felony forgery check fraud, which occurred when she was thirty-four years old. She testified she was introduced to cocaine through her first husband and drug friends. She testified that "within less than one year, I had turned into the person in these papers and it's not me [now]." R. at 8:01-11:47. Petitioner testified about her conviction, her incarceration, her work release program through the Women's Work Center in Boise, ID, working as a hotel chambermaid for a local hotel, successful drug rehabilitation, and final completion of her sentence and probation.¹⁰

It appeared that Petitioner had moved on with her life as a productive person in society.

⁹ This analysis also applies to Utah Admin. Code R590-278-4(9), any unpaid judgments.

¹⁰ It is not entirely clear from her testimony which rehabilitation program she attended in or about 1996. It could have been Narcotics Anonymous or an aftercare program on a weekly basis where she engaged in group therapy, workbook, classes, and graduation.. Regardless, she successfully completed the programs.

She testified she had no further drug use or criminal convictions until her trouble began again in 2003-2004. She testified she met and married her second husband then, who reintroduced her to drug use, this time methamphetamine. R. 17:56 -19:40. During this period, she was approximately 42 years old.

Petitioner admitted that she wrote checks only on her personal account without sufficient funds on three occasions. She did not use checks from others or her workplace. R. at 17:27-17:56; Findings of Fact at ¶¶ 5, 6, 7. She testified about a police raid on her home that was conducted in August 2003, when unbeknownst to her, stolen property had been stored in her basement. She testified her husband had committed a burglary and hidden the stolen property in her largely unutilized basement. She testified that when stolen goods were found, she encouraged the police to search the entire home, the upstairs, and retrieve anything the police thought was stolen. She testified she also returned any gifts from the husband, suspecting those items were stolen also. Not long afterward, she divorced. On February 18, 2004, Petitioner was convicted by guilty plea of Accessory to Grand Theft, a felony under Idaho Code § 18-2403(1). Sentencing and an Order of Restitution followed. R. at 11:47-14:09; Findings of Fact, ¶ 8.

Petitioner testified that as a result of her 2004 convictions, she was ordered to serve three-years' probation but no prison time. As ordered through probation, she complied fully and avoided any previous relationships and any drugs or alcohol, submitted to urinalysis regularly, remained employed, and performed 20 hours of community service. R. at 16:02-19:40; 48:08. In addition, she regularly attended Narcotics Anonymous and became so well-liked that she was appointed to be the treasurer of the group by her peers. She stayed in the program six months longer than required by probation because she liked the safety, friends, and support. She testified

she learned “to stay away from bad people.” R. at 17:50-18:52, 41:03-43:25. She testified she is a productive person now who has been sober since 2004 and she does not even get traffic tickets. R. at 40:35: Exhibit 1, PET 009.

There is no evidence of any subsequent infractions or convictions. There is no evidence of any fact or circumstance in the petitioner’s current life that may have motivated her to commit crime in the past.

Petitioner testified that she declared bankruptcy in 2008 but remains current with her financial affairs. R. at 55:40-56:38. There is evidence, however, that certain amounts of court fees, fines, and restitution remain due and owing. Findings of Fact, at ¶¶ 5, 6. As recently as October 2018, a Pay Notice was issued by the Idaho court but not deliverable to Petitioner, having relocated to Utah since 2014. She testified she was not aware she had outstanding debts to the court. R. at 1:06:04. If Petitioner is to be granted written consent, it is recommended that she first satisfy and show proof of payment for these unpaid judgments.

Petitioner submitted one letter of reference from her employer and General Manager at Young Truck and Trailer Center with Young Automotive Group. Randy Taylor vouchsafed for her “integrity, competency, accountability, reliability, and responsibility.” Petitioner testified that as a condition of her employment as Finance Manager at Young Truck and Trailer Center, her employer requested that she apply for Resident Limited Lines Producer Individual License with various lines of authority, including GAP Waiver Insurance, Credit, Motor Club, and Financing. R. at 26:54-29:44. Petitioner could not explain fully which licenses she would ultimately apply for, but she testified she anticipates preparing, facilitating, and signing the financial documents for the sales of trailers, selling parts, and road hazard insurance. Petitioner testified her work

duties would include submitting credit applications to the lenders, but not reviewing those herself. She testified that she doubts she would be selling GAP Waiver insurance because her supervisor is already licensed and trailers infrequently if ever have GAP coverage. R. at 26:54-29:44; 1:02:07. She testified her work will be monitored by the Manager, General Manager, and Corporate at Young Trailers. Exhibit 1, PET 006 at ¶¶ 5, 6, 7, R. at 52:00-52:51; 1:00:00-1:02:07.

Petitioner testified about her employment history, including that with State Trailer Supply in Idaho as Assistant Manager from May 2009-2014. Her duties included bank reconciliation, counting monies in the tills at the end of the business day, and depositing those funds to the bank on the next morning. The funds she handled varied in amount on a daily basis, ranging from \$300 to \$15,000. She testified she did her work without any negative incidents. R. at 33:02-36:48.

In presenting its case, Respondent examined its witness from the Department, Ms. Tracy Klausmeier, Director of Property and Casualty Division, who is an experienced analyst of rates, form filings, and consumer complaints. Ms. Klausmeier testified under oath and explained various types of lines of authority the Petitioner identified in her license application which include Guaranteed Asset Protection Waiver Act (GAP Waiver), Credit, Motor Club, other ancillary products and service contracts like Road Hazard for Tires. She explained the role of the Finance Manager in selling these insurance products. In particular, the witness identified unique consumer protection issues associated with the GAP Waiver insurance product. She testified, for example, that no rates must be filed with the Department. No price restrictions are imposed upon the providers or dealers. She testified it is an add-on product which generates

profit for the auto dealerships wherein the provider is responsible, but not the dealer. She testified that finance managers typically sell this product to consumers at the time of purchase of the car or truck, but it arguably could be sold with trailer purchases she said.

Ms. Klausmeier testified at some length about Utah Code § 31A-6b-101 et seq., Waiver Provider Licensing and Registration, with its statutory implications for consumer protection. She testified that the seller of GAP insurance could fail to fully explain the exclusions or conditions, fail to disclose the actual price of the insurance product alone, or fail to inform consumers the product has been added to the final purchase price. Ms. Klausmeier explained she sees complaints by consumers who are unaware that they have GAP coverage or that it is not full coverage, or who are unable to meet the stringent criteria to make a recoverable claim. Additionally, she testified there is no training or testing of sellers who offer GAP insurance. Ms. Klausmeier concluded there is very limited corrective action available to consumers and regulators under the statute. R. at 1:11-1:30. Ms. Klausmeier testified that she had no experience or opinion when asked by the court whether or not the Petitioner should be given written consent to apply for certain lines of authority in light of her past felonies involving dishonesty or breach of trust.

On rebuttal, Petitioner testified she would not likely be selling GAP insurance on trailers nor even apply for such licensure if written consent were acquired. The other products she could possibly sell are a mixed bag with regard to licensure: Motor Club requires licensure; Road Hazard for Tires does not. Based upon Respondent's witness' testimony, certain statutory protections to consumers and providers are inconsistent, and difficult for regulators to enforce. This information assisted the court in analyzing the oversight needed and risks associated with

any Petitioner.

The Court notes that written consent is the first, and preemptive, hurdle Petitioner faces to insurance licensure. Once the criteria are met and written consent obtained pursuant to R590-281-4 (3)(a), Eligibility to Apply for a License, Petitioner may then apply for license. R590-281-4 (3)(b) reads, “An individual who obtains written consent under R590-278 may apply for a license. That individual remains subject to all other license application requirements.” R590-281-4 (4) provides: “The department will deny a license application submitted by an individual who is not eligible under this Section.” More specific eligibility requirements specify timelines which must have elapsed before licenses can be granted. The pertinent provisions of Utah Admin. Code R590-281-4 (1) (c) (i) and (ii) provides: “(c) the following time periods have elapsed from the date the individual was convicted or released from incarceration, parole, or probation, whichever occurred last: (i) seven years in the case of a felony; (ii) five years in the case of a Class A misdemeanor; . . .” It has been established that probation ended on August 6, 2007.

Thus, the ultimate question of Petitioner’s trustworthiness for written consent is at hand. In light of Petitioner’s burden of proof, the court concludes she has met it with substantial weight. The preponderant evidence includes: Petitioner’s sobriety for over 15 years; no criminal convictions since 2007; excellent employment history; professional and trustworthy experience with financial matters at her workplaces; ongoing oversight she will receive at Young Truck and Trailer Center; and character traits to overcome addiction and conduct herself as a rehabilitated member of society. Among further criteria, the Court notes that Petitioner testified she is licensed to sell vehicles in Utah but her health limitations will likely limit her ongoing sales. Exhibit 1,

PET 006, at ¶ 1. She testified that her Idaho vehicle sales license was revoked on or about 1998 but later reinstated within a year. R. at 26:25-26:54. There is no evidence that she applied for written consent previously. Although Petitioner may work with another trailer dealership or apply for other insurance licenses, Petitioner has met her burden of proof that she is trustworthy to engage or participate in the business of insurance, albeit before undergoing the license application process. Petitioner has demonstrated her trustworthiness and the undersigned recommends to the Commissioner that Petitioner be granted her Request for written consent to participate in the insurance industry.

RECOMMENDED CONCLUSIONS OF LAW

1. Jurisdiction is proper and the undersigned has recommendation authority over this matter pursuant to 18 U.S.C. § 1033(e)(2), Utah Code §§ 63G-4-201 through 203, 63G-4-206, 31A-2-201, 31A-23a-111, and Utah Admin. Code R590-160, R590-281, and R590-278.
2. Petitioner has met the burden of proof that there exists sufficient evidence for a recommendation to the Commissioner to grant Petitioner's Request for written consent pursuant to 18 U.S.C. § 1033(e)(2) with specific conditions and certain protections to be taken by the Petitioner and the Respondent.
3. The Findings of Fact, at ¶¶ 5, 6, show that Petitioner has outstanding judgments. Petitioner shall contact the courts in Idaho, satisfy the judgments in full, and file proof of payment with the Commissioner before written consent is granted and executed.

RECOMMENDED ORDER

For good cause and based upon the foregoing, it is therefore **ORDERED**:

Petitioner's Request for Agency Action Re: 18 U.S.C. § 1033(e)(2) is conditionally **GRANTED** and Petitioner is given written consent to engage or participate in the business of insurance **SUBJECT TO THE CONDITIONS** herein:

If Petitioner applies for and is granted an insurance license with GAP line of authority, she shall identify and submit to the Respondent the names and addresses of purchasers, dealers, and providers in a transaction when Petitioner sold GAP insurance. Petitioner shall submit the information on a quarterly basis to the Respondent for three (3) years;

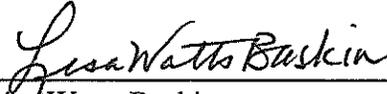
If Petitioner proposes to change employers, if job duties change with her current employer, or other financial transactions are contemplated which are subject to the Department's regulation, she shall notify the Respondent within ten (10) days of the proposed changes or changes. Respondent may take any administrative action (e.g., changing conditions of License) that it deems necessary subject to a hearing request if the parties cannot agree on any continuing conditions;

Petitioner may petition the Respondent to end any of the conditions prior to three (3) years. The Respondent and Petitioner may agree to ending such supervision or parts of the supervision earlier if Respondent believes it is warranted; and

The statutory prohibition pursuant to Subsection 31A-23a-111(5)(b)(xxv) has been waived.

DATED this 20th day of November, 2019.

TODD E. KISER
UTAH INSURANCE COMMISSIONER



Lisa Watts Baskin
Administrative Law Judge
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, UT 84114

FINAL AGENCY ACTION

The final Findings of Fact and Conclusions of Law and a final Order by the Commissioner shall constitute final agency action that is not subject to the review by the agency or by a superior agency.

REQUEST FOR JUDICIAL REVIEW

A party may file a petition for judicial review of agency action within 30 days after the date the order constituting final agency is issued or considered to have been issued as provided in Utah Code § 63G-4-401.