
BEFORE THE UTAH INSURANCE COMMISSIONER

<p>UTAH INSURANCE DEPARTMENT, Complainant, vs. TORI YVONNE CLARK, Respondent.</p>	<p style="text-align: center;">ORDER ON AGENCY REVIEW</p> <p>Docket No. 2022-4375</p> <p>Donald H. Hansen Administrative Law Judge/Presiding Officer</p>
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On May 3, 2022, Respondent, Tori Yvonne Clark, filed a Request for Agency Review pursuant to Utah Code § 63G-4-301 and Utah Admin. Code R590-160-8. After having reviewed the complete record and considering the arguments of the parties, Jonathan T. Pike, the Utah Insurance Commissioner (“Commissioner”) issues the following Order:

PROCEDURAL HISTORY

On January 19, 2022, Respondent applied to the Utah Insurance Department (“Department”) for a license as a resident limited line individual producer. On page 5 of the license application form, respondent answered “No” to the question: “Have you been notified by a jurisdiction to which you are applying of any delinquent tax obligation that is not the subject of a repayment agreement.” (Emphasis added). Respondent also answered “No” to the question: “Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?”

The Department’s producer licensing division reviewed Respondent’s license application

and conducted routine records checks regarding possible criminal convictions and delinquent tax obligations. The Department denied Respondent's application because it determined that Respondent had failed to disclose her misdemeanor criminal conviction for retail theft and multiple tax obligations on her application.

On February 8, 2022, a Notice of Agency Action was filed against Respondent by the Department denying Respondent's application for a resident limited line producer individual insurance license. The Department alleged that Respondent had violated Utah Code § 31A-23a-111(5)(b)(xiv)(B) by being convicted of a misdemeanor involving fraud, misrepresentation, theft, or dishonesty and Utah Code § 31A-23a-111(5)(b)(xxii) by failing to pay state income tax, or to comply with an administrative or court order directing payment of state income tax.

On February 9, 2022, Respondent submitted to the Department a timely request for hearing to appeal the Department's agency action. In response to Respondent's request for hearing, the Department entered an Order of Conversion to Formal Proceeding and notice of the formal adjudicative proceeding commencing against Respondent was given on February 9, 2022, by Administrative Law Judge Donald H. Hansen.

In accordance with the notice, a telephone prehearing conference was conducted on February 22, 2022, at which time certain dates for exchange of witnesses and exhibits were established, and an evidentiary hearing was scheduled.

On March 8, 2022, an evidentiary hearing was conducted by remote video. In attendance were Presiding Officer Donald H. Hansen and the Department, represented by Helen A. Frohlich, Assistant Utah Attorney General. Appearing as a witness for the Department was Randy Overstreet, Manager of Producer Licensing. Respondent appeared and testified on her own behalf

and was not represented in the hearing by counsel. Respondent did not offer testimony from any other witness.

Based on the provisions of law cited in the Notice of Agency Action and the evidence received at the evidentiary hearing, by a preponderance of the evidence, the Presiding Officer made the following findings and conclusions:

1. At the time she filed her application, Respondent was a party to an installment repayment agreement which she entered into on July 22, 2021, with a collection agency representing the Utah State Tax Commission. The repayment agreement covered several years of state tax obligations. On the date of Respondent's license application, the repayment agreement was in effect and Respondent was current on her installment payments.
2. The Department was unaware of Respondent's participation in a current repayment plan when it investigated her license application because the database it used to investigate potential tax delinquencies did not reflect the existence of such repayment plans.
3. During the evidentiary hearing, the Department effectively withdrew the tax delinquency issue as a basis for denial of Respondent's license application.
4. On April 15, 2014, Respondent was cited for Retail Theft (Shoplifting), a Class B misdemeanor under the Utah Criminal Code. The Midvale City Justice Court scheduled Respondent's arraignment hearing for May 27, 2014. Respondent failed to appear for arraignment, and the Court issued an arrest warrant for Respondent on May 29, 2014.
5. No further action occurred in the court case until June 3, 2019, when the Court recalled the arrest warrant because it had expired and issued a second arrest warrant for Respondent because of Respondent's failure to appear at a mandatory hearing.

6. Respondent appeared before the court and was arraigned on August 10, 2020.
7. On August 18, 2020, Respondent entered into a twelve-month "plea-in-abeyance" agreement, conditioned upon Respondent's payment of a fine in eight monthly installments beginning September 20, 2020.
8. On January 5, 2021, the Court issued an Order to Show Cause (OSC) due to Respondent's failure to pay one or more of her required installment fine payments as ordered under the plea-in- abeyance agreement. The Court scheduled an OSC hearing for February 10, 2021.
9. On February 10, 2021, Respondent failed to appear for the OSC hearing. Accordingly, the Court found Respondent in violation of the terms of the plea-in-abeyance agreement and entered Respondent's conviction on the Retail Theft, a Class B misdemeanor. The Court then issued notice that it scheduled a sentencing hearing for March 17, 2021.
10. On February 24, 2021, according to the Court's records, Respondent called the Court and requested a "review to talk to Judge about case."
11. On February 25, 2021, the Court rescheduled the sentencing hearing to March 3, 2021.
12. On March 3, 2021, Respondent failed to appear at the sentencing hearing. Proceeding *in absentia*, the court sentenced Respondent and ordered her to pay a fine of \$500.00 plus interest to be paid in full by August 30, 2021.
13. On September 16, 2021, Respondent paid the fine in full to the Court, and the Justice Court case was then closed.
14. Respondent testified that at the time of her citation for retail theft in 2014 and continuing for several years later, Respondent was experiencing marital issues which ultimately

concluded in divorce in January 2020. Respondent's personal problems affected her judgment and behavior, but after her divorce, she wanted to "straighten out" lingering issues, such as the Justice Court case, and was finally able to pay her fine.

15. Respondent has been employed in the title insurance industry for a total of some ten years, and now wishes to secure Department licensure so that she can advance in her career by becoming a licensed escrow officer.

16. Respondent testified that she answered "No" to the question about a misdemeanor conviction because she was "under the impression" that the retail theft charge had been, or would be, dismissed or expunged from her record because of the plea-in-abeyance agreement. She testified that she was given that impression by verbal statements made to her in court by the judge and/or the prosecutor. Respondent stated she was unaware the retail theft conviction remained on her court record because, "I was informed it had been removed."

17. Based on the preponderance of credible evidence offered at the evidentiary hearing in this matter, there is no reasonable basis for the Respondent to have believed the retail theft conviction had been dismissed or expunged by the court. She violated her plea-in-abeyance agreement with the Court by failing to pay timely the ordered fine, resulting in the Court entering a conviction, not an expungement, of the charge. No evidence was presented supporting her assertion that she "was told" the conviction had been "removed."

18. Respondent knew, or reasonably should have known, after repeatedly failing to appear for hearings and having two successive warrants issued for her arrest, and finally being

sentenced for retail theft and paying off her fine in September 2021, more than seven years after being cited for the crime, that the plea-in-abeyance had been voided by the Court and that she had, in fact, been convicted of the offense, and that the conviction remained on her court record.

19. Therefore, Respondent's "No" answer to the application question about a past misdemeanor was, under the circumstances, false and misleading, and not reasonably justified or excused by reliance upon statements allegedly made by the Justice Court judge or prosecutor.
20. Respondent failed to satisfy the character requirements of the Insurance Code by (a) having been convicted of misdemeanor retail theft, and (b) her lack of candor in failing to respond to the license application questions completely and truthfully.
21. Accordingly, because of her conviction of a Class B misdemeanor, and because she was not placed on probation or parole and has fully paid the ordered fine, if otherwise eligible, Respondent will be eligible under the foregoing rule to apply again for licensure with the Department four years after the date of her conviction for Class B misdemeanor retail theft.

Based on the above findings, on March 31, 2022, the Presiding Officer affirmed the department's Order dated February 8, 2022, denying Respondent's January 19, 2022, application for licensure. A copy of the Order was sent to the Respondent that same day, however, an outline of Respondent's appeal options was inadvertently omitted.

On April 7, 2022, the Department sent notice to the Respondent outlining the appeal rights available to her and clarified that due to the delay in notifying the Respondent of her rights, the

statutory time for submitting her appeal would begin on that day.

On May 3, 2022, Respondent filed an appeal with the Commissioner pursuant to Utah Admin. Code R590-160-8. The request was in email form and did not meet any of the requirements outlined in Utah Code § 63G-4-301(1)(b). Regardless, the Department elected to treat the email as an appeal by the Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The standard for agency review for the Commissioner corresponds to the standards for judicial review of formal adjudicative proceedings set forth in Utah Code § 63G-4-403(4). Utah Admin. Code R590-160-8. The issues presented by Respondent for agency review are the following:

1. The Order's legal conclusion that under Department Rule R590-281-4(1)(e)(iii) the Respondent is not eligible to apply for license until the applicable time periods have elapsed, which in the case of a Class B misdemeanor is four years, is incorrect because the required waiting period should run from the date of "the incident", by which the respondent means the actual act of the retail theft or the date she was cited for retail theft, which occurred in 2014 not 2021. Respondent argues that based on the incident date, the applicable time has surpassed, and she should not have to wait an additional three years.
2. The Order's legal conclusion that Respondent failed to satisfy the character requirements of the Insurance Code by 1) having been convicted of misdemeanor retail theft. Respondent argues her criminal conviction was just a "small blip on her record" and that based on her history she should be granted leniency; 2) her lack of candor in

failing to completely and truthfully respond to the license application questions, and 3) the legal finding that Respondent's "No" answer to the application question about a past misdemeanor was, under the circumstances, false and misleading, and not reasonably justified or excused by reliance upon statements allegedly made by the Justice Court judge or prosecutor is incorrect because Respondent argues her failure to report her criminal conviction on the license application was a misunderstanding.

ISSUE 1

Department Rule R590-281-4 governs the eligibility requirements for an individual who has a criminal conviction. The rule states in relevant part as follows:

R590-281-4. Eligibility to Apply for a License.

- (1) [A]n individual who has been convicted of or pleaded no contest to a felony, or a misdemeanor involving fraud, misrepresentation, theft, or dishonesty is eligible to apply for a license if:
 - a. The individual has completed probation, parole or has been released from incarceration;
 - b. the individual has no criminal proceeding pending;
 - c. the individual has paid in full all fines and interest ordered by the court related to the conviction;
 - d. the individual has paid in full all restitution ordered by the court related to the conviction; and
 - e. 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;
 - iii. four years in the case of a class B misdemeanor.

A review of Judge Hansen's order shows he did a thorough analysis of this issue, and his final determination was supported by the evidence in the record. Relevant findings by Judge Hansen supporting his decision include: (1) On April 15, 2014, Respondent was cited for Retail Theft (Shoplifting), a Class B misdemeanor under the Utah Criminal Code; (2) On August 18, 2020, Respondent entered into a twelve-month "plea-in-abeyance" agreement conditioned upon, among other

things, Respondent's payment of a fine in eight monthly installments beginning September 20, 2020; (3) On January 5, 2021, the Court issued an Order to Show Cause (OSC) due to Respondent's failure to pay one or more installment fine payments when due under the plea-in-abeyance agreement; (4) On February 10, 2021, Respondent failed to appear for the OSC hearing. The Court found Respondent in violation of the terms of the plea-in-abeyance agreement and entered Respondent's conviction on the Retail Theft Class B misdemeanor charge; (5) On March 3, 2021, Respondent failed to appear at the sentencing hearing. Proceeding in absentia, the court sentenced Respondent by ordering a fine of \$500.00 plus interest to be paid in full by August 30, 2021; (6) On September 16, 2021, Respondent paid the fine in full to the Court, and the case was then closed.

A review of the complete record supports Judge Hansen's determination that Respondent is not eligible to apply for license until the applicable time periods have elapsed, which in the case of a Class B misdemeanor is four years from the date the individual was convicted or released from incarceration, parole, or probation, *whichever occurred last (emphasis added)*. Respondent's argument that the required waiting period should run from the date of "the incident", which occurred in 2014, and that based on the incident date, the applicable time period has surpassed, and she should not have to wait an additional three years is not supported by the clear language or intent of the rule.

Further, it was the Respondent's own failure to address her criminal case for over seven years that resulted in the delay in commencing the required time period that she is now subject to. In this case, Respondent's probation was not dismissed, and her case was not closed until September 16, 2021. Accordingly, Respondent is ineligible to apply for a license until September 16, 2025, and Issue # 1 is not a valid basis for reversing the Order.

ISSUE # 2

Respondent's Issue # 2 centers upon Judge Hansen's determination that Respondent failed
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to satisfy the character requirements of Utah Code § 31A-23a-107 by having been convicted of a Class B misdemeanor retail theft, as well as her lack of candor in failing to respond to the license application questions completely and truthfully. Respondent argues her criminal conviction is just a “small blip on her record” and “she has paid her dues”. Respondent further argues that her failure to answer the application questions correctly was “just a misunderstanding”.

A review of Judge Hansen’s Order shows that he did not enter these determinations casually. Relevant findings by Judge Hansen supporting his decision include: 1) At the time of her citation for retail theft in 2014 and continuing for several years later, Respondent was experiencing marital issues which ultimately concluded in divorce in January 2020. Respondent's personal problems affected her judgment and behavior, but after her divorce, she wanted to "straighten out" lingering issues, such as the Justice Court case, and was finally able to pay her fine; 2) Respondent has been employed in the title insurance industry for a total of some ten years, and now wishes to secure Department licensure so that she can advance in her career by becoming a licensed escrow officer; 3) Respondent testified that she answered "No" to the question about a misdemeanor conviction because she was "under the impression" that the retail theft charge had been, or would be, dismissed or expunged from her record because of the plea-in-abeyance agreement. She testified that she was given that impression by verbal statements made to her in court by the judge and/or prosecutor. In her written appeal/request for hearing, she stated that she was unaware the retail theft conviction remained on her court record because, "I was informed it had been removed"; 4) Based on the preponderance of credible evidence offered at the evidentiary in this matter, there is no reasonable basis shown for Respondent to have believed that the retail theft charge had been dismissed or expunged by the court. She violated her plea-in-abeyance agreement with the Court by failing to pay timely the ordered fine, resulting in the Court entering a conviction, not an expungement, of the charge. No evidence was

presented supporting her assertion that she "was told" the conviction had been "removed".

Although to the Respondent this may be a "small blip on her record", Judge Hansen clearly outlined the Department's concerns when he made the following finding: "The crime of retail theft is of vital concern to the Department because it reflects adversely on a person's trustworthiness. In the insurance industry, the selling of insurance involves acceptance of an insured's payments in exchange for a promise to provide monetary compensation in the event of the insured's future covered injury or loss. Therefore, the trustworthiness of an insurance licensee is a key consideration to the Department when reviewing a license application."

Of equal concern was Respondent's recent failure to respond to the license application questions completely and truthfully. Respondent argues her failure to answer the application questions correctly was "just a misunderstanding". However, as stated within the analysis of Issue #2, a review of the record shows that Judge Hansen properly found that 1) Respondent knew, or reasonably should have known, after repeatedly failing to appear for hearings and having two successive warrants issued for her arrest, and finally being sentenced for retail theft and paying off her fine in September 2021, more than seven years after being cited for the crime, that the plea-in-abeyance had been voided by the Court and that she had, in fact, been convicted of the offense, and that the conviction remained on her court record.; and 2) Respondent's "No" answer to the application question about a past misdemeanor was, under the circumstances, false and misleading, and not reasonably justified or excused by reliance upon statements allegedly made by the Justice Court judge or prosecutor. Accordingly, Judge Hansen properly found within his discretionary authority that Respondent's application for an insurance license should be denied pursuant to Utah Code § 31A-23a-107.

ORDER

Accordingly, the Commissioner **DENIES** Respondent's appeal and **AFFIRMS** Judge Hansen's Order. Pursuant to Utah Code § 63G-4-302, any party may file a written request for reconsideration with the agency within 20 days after the date of this order. The request should be sent to uidadmincases@utah.gov. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed. Pursuant to Utah Code § 63G-4-401, a party may obtain judicial review of final agency action by filing a petition for judicial review within 30 days after the date the order constituting final agency action is issued. See also, Utah Code Sec. 63G-4-403. A Request for Reconsideration is not a prerequisite to obtaining judicial review.

Entered this 14th day of July 2022



JONATHAN T. PIKE
UTAH INSURANCE COMMISSIONER
Utah Insurance Department
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CERTIFICATE OF SERVICE

I hereby certify that I e-mailed a true and correct copy of the foregoing **Order**, this 14th day of July 2022, to the following:

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