
BEFORE THE UTAH INSURANCE COMMISSIONER

UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

TORI YVONNE CLARK,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
and
ORDER**

Docket No. 2022-4375

Donald H. Hansen
Administrative Law Judge/Presiding Officer

PROCEDURAL BACKGROUND

This matter was commenced on February 8, 2022, when Complainant Utah Insurance Department (“the Department”) filed a Complaint and a Notice of Agency Action and Order denying the application of TORI YVONNE CLARK’s (“Respondent”) for a resident limited line producer individual insurance license.

On February 9, 2022, Respondent submitted to the Department a timely request to appeal the Department’s agency action and request for hearing.

On February 9, 2022, in response to Respondent’s request for hearing, the Department entered an Order of Conversion to Formal Proceeding and Notice of Prehearing Telephone Conference. In accordance with said notice, a telephonic 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 for Tuesday, March 8, 2022 at 10:00 am.

An evidentiary hearing conducted by remote video conference as noticed above. In attendance were 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 makes the following:

FINDINGS OF FACT

1. On January 19, 2022, Respondent applied to the Department for a license as a resident limited line individual producer. Her application form was submitted electronically.
2. On page 5 of the license application form, respondent answered “No” to the following 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).
3. On page 3 of the application form, Respondent answered “No” to the following question: “Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?”
4. The Department’s producer licensing division reviewed Respondent’s license application and conducted routine records checks regarding possible criminal convictions and delinquent tax obligations.
5. The Department denied Respondent’s application because it determined that Respondent had inaccurately answered the questions set forth in paragraphs 2 and 3 above.

Respondent's Answer Regarding Delinquent Tax Obligations

6. 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.

7. 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.

8. During the evidentiary hearing, the Department effectively withdrew the tax delinquency issue as a basis for denial of Respondent's license application.

Respondent's Answer to the Misdemeanor Conviction Question

9. On April 15, 2014, Respondent was cited for Retail Theft (Shoplifting), a Class B misdemeanor under the Utah Criminal Code.

10. The Midvale City Justice Court scheduled Respondent's arraignment hearing for May 27, 2014.

11. Respondent failed to appear for arraignment, and the Court issued an arrest warrant for Respondent on May 29, 2014.

12. 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.

13. On August 5, 2020, the Court scheduled arraignment for August 10, 2020.

14. On August 10, 2020, Respondent appeared before the Court and was arraigned.

15. On August 18, 2020, Respondent again appeared before the Court and 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.

16. 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, and issued notice of a remote electronic hearing on the OSC for February 10, 2021.

17. 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 B misdemeanor charge. The Court then issued notice that it scheduled a sentencing hearing for March 17, 2021.

18. On February 24, 2021, according to the Court's records, Respondent called the Court and requested a "review to talk to Judge about case."

19. On February 25, 2021, the Court rescheduled the sentencing hearing to March 3, 2021.

20. 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.

21. On September 16, 2021, Respondent paid the fine in full with interest to the Court, and the Justice Court case was then closed.

22. 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.

23. 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.

24. 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.

25. 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."

26. 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."

27. 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.

28. 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.

CONCLUSIONS OF LAW

29. Under Utah Code Sec. 31A-23a-105(b)(ii) provides that the Insurance Commissioner may deny an application for an insurance license if the Commissioner finds a licensee violated a Utah Insurance Code statute by failing to satisfy the character requirements of Utah Code Sec. 31A-23a-107.

30. 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 completely and truthfully respond to the license application questions.

31. Respondent's "No" answer on the license application to the delinquent tax question was proper and truthful. Moreover, the Department has withdrawn this issue as a basis for licensure denial.

32. The Department is authorized by Utah statute, *i.e.*, Utah Code Sec. 31A-2-201(3), to adopt rules to implement the provisions of the Utah Insurance Code. The Department has duly adopted Rule R590-281-4.

33. Department Rule R590-281-4 provides in relevant part as follows:

Eligibility to Apply for a License.

[A]n individual who has been convicted of or pleaded no contest to a ... misdemeanor involving ... theft ... is eligible to apply for a license if: ...

(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 [and]

(e) the following time periods have elapsed from the date the individual was convicted ... :

(iii) four years in the case of a class B misdemeanor.

34. 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 B misdemeanor retail theft, *i.e.*, February 10, 2025.

Based upon the foregoing, the Presiding Officer finds substantial evidence and good cause to enter the following:

ORDER

The Department's Order dated February 8, 2022 denying Respondent's January 19, 2022 application for licensure is hereby AFFIRMED.

DATED this 31st day of March, 2022.

JONATHAN T. PIKE
Utah Insurance Commissioner

/s/ Donald H. Hansen _____
DONALD H. HANSEN
Administrative Law Judge/Presiding Officer
Utah Insurance Department
4315 South 2700 West, Suite 2300
Taylorsville, UT 84129

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Findings of Fact, Conclusions of Law, and**

Order was sent via electronic mail to the following:

Tori Yvonne Clark

████████████████████
████████████████████

Helen Frohlich
Assistant Attorney General

████████████████████

DATED this 31st day of March, 2022.

/s/ Jeanine Couser _____
Jeanine Couser
Utah Insurance Department
4315 South 2700 West, Suite 2300
Taylorsville, UT 84129
801-957-9321