
BEFORE THE UTAH INSURANCE COMMISSIONER

UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

OMAR ALBERTO GARCIA-MANZANO,
Insurance License Applicant,

Respondent.

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

Docket No. 2022-4451

Donald H. Hansen
Administrative Law Judge/Presiding Officer

BACKGROUND

This matter was commenced on December 13, 2022, when Complainant Utah Insurance Department (“Department”) filed a Notice of Agency Action and Order denying Omar Alberto Garcia-Manzano’s (“Respondent”) application for a resident individual insurance producer license.

The Notice of Agency Action were served on Respondent by email on December 13, 2022. Respondent timely filed his request for hearing on December 26, 2022.

In accordance with Utah Admin. Code R590-160, the Presiding Officer duly noticed and conducted an evidentiary hearing on March 9, 2023. The Department appeared at the hearing, represented by Helen Frohlich, Assistant Attorney General, Utah Attorney General’s Office. The Department called one witness, Randy Overstreet, Manager of Producer Licensing for the Department. Respondent appeared without legal counsel and testified on his own behalf, and did

not call any other witnesses. The Presiding Officer received live testimony and documentary evidence at the hearing.

Based on the foregoing provisions of law and the evidence received at the evidentiary hearing, and by a preponderance of such evidence, the Presiding Officer makes the following:

FINDINGS OF FACT

1. On November 27, 2022, Respondent applied for licensure by the Department as a Utah resident individual insurance producer.

2. In the Department's application form for licensure, applicants are asked: "Have you been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?" Respondent answered "yes" to this question.

3. On December 7, 2022, Respondent entered a plea of no contest to a charge of Class B misdemeanor retail theft initiated by the West Valley City Police Department. The date of the alleged offense was November 9, 2022, which was 18 days before Respondent applied for an insurance license. Respondent's plea was held in abeyance by the court, and Respondent entered into a plea-in-abeyance agreement which specified certain conditions which, if satisfied by Respondent through the term of the plea agreement, will result in dismissal of the charge.

4. Respondent testified that the retail theft charge arose from a "misunderstanding" which occurred at a WalMart store, and doesn't reflect on his character for trustworthiness and honesty.

5. Respondent is not certain whether the plea-in-abeyance agreement will be terminated, and the retail theft charge dismissed, upon (a) completion of his monthly fine payment which he intends to accomplish by April 2023, or (b) the court's tracking review date of

December 7, 2023. *See* Court Minutes, Department Exhibit UID 014 - 016. In either case, the plea-in-abeyance agreement presently remains pending, has not been terminated, and the retail theft charge has not been dismissed.

6. Insurance is essentially a promise to provide payment for losses covered by an insured's policy.

7. A license applicant's court history of theft is a relevant consideration to the Department in reviewing an application. The insurance industry is highly regulated, and requires a high degree of trustworthiness and honesty on the part of its licensed members because insurance brokers and agents act as fiduciaries in handling funds of insured parties, and providing the coverage for which they have paid.

CONCLUSIONS OF LAW

1. Respondent's application for licensure violates Utah Admin. Rule R590-281-4(1)(b) which prohibits an application while the applicant has a pending criminal proceeding.
criminal

2. Respondent's application for licensure violates Utah Code Sec. 31A-23a-105(5)(a)(ii) which prohibits licensure for an applicant who commits an act which would be grounds for denial, suspension or revocation under Section 31A-23a-111.

3. Respondent's application for licensure violates Utah Code Sec. 31A-23a-107(2)(a)(ii) which prohibits licensure for an applicant who fails to demonstrate the trustworthy character requirement.

4. Respondent's application for licensure violates Utah Code Sec. 31A-23a-111(5)(b)(i) which prohibits licensure for an applicant who is unqualified under the provisions of

Utah Code Section 31A-23a-104, 105 or 107.

5. On the multiple grounds set forth under the Utah Insurance Code and Administrative Rules referenced above, Respondent's licensure should be denied at this time.

Accordingly, the Presiding Officer finds substantial evidence and good cause to enter the following:

ORDER

Based upon the foregoing, the Department's decision to deny Respondent's application for licensure is AFFIRMED.

DATED this 10th day of March 2023.

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
801-957-9321
Email: uidadmincases@utah.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the foregoing

Findings of Fact, Conclusions of Law, and Order was emailed to:

Omar Alberto Garcia-Manzano

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Helen Frohlich
160 E. 300 S., 5th Floor
P.O. Box 140874
Salt Lake City, Utah 84114-0874
hfrohlich@agutah.gov

DATED this 10th day of March 2023.

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

Right to Agency Review

Any party may request agency review of an order in an adjudicative proceeding within 30 days of the date of the order to be reviewed. The request should be sent to uidadmincases@utah.gov. Utah Insurance Department Rule R590-160-8 provides as follows:

(1)

(a) Agency review of an adjudicative proceeding, except an informal adjudicative proceeding that becomes final without a request for a hearing pursuant to Subsection R590-160-7(1), shall be available to a party to a proceeding by filing a request for agency review with the commissioner within 30 days of the date of the order.

(b) Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(2) Agency review shall comply with Sections 63G-4-301 and 63G-4-302.

(3)

(a) The commissioner or the commissioner's designee shall conduct the review.

(b) A designee shall not be the presiding officer who issued the decision under review.

(c) If a designee conducts a review, the designee shall recommend a disposition to the commissioner who shall make the final decision and shall sign the order.

(4) Content of a Request for Agency Review.

(a) A request for agency review shall comply with Subsection 63G-4-301(1)(b), and shall include the following:

(i) a copy of the order that is the subject of the request;

(ii) the factual basis for the request, including:

(A) citation to the record of the formal adjudicative proceeding; and

(B) clear reference to evidence or a proffer of evidence in an informal adjudicative proceeding;

(iii) the legal basis for the request, including citation to supporting authority;

(iv) for a challenge to a finding of fact in a formal adjudicative proceeding, the reason that the finding is not supported by substantial evidence based on the entire record; and

(v) for a challenge to a finding of fact in an informal adjudicative proceeding, the reason that the finding is not supported by substantial evidence based on the evidence received or proffered.

(b) A party challenging a finding of fact in a formal adjudicative proceeding shall:

(i) order a transcript of the recording relevant to the finding;

(ii) certify that a transcript has been ordered;

(iii) file the transcript with the commissioner or the commissioner's designee and serve a copy on each party; and

(iv) bear the cost of preparing the transcript.

(c) The commissioner or commissioner's designee may waive the transcript requirement on motion for good cause shown.

(5) Memoranda.

(a)(i) A party requesting agency review shall submit a supporting memorandum with the request.

(ii) If a transcript is necessary to conduct the agency review, the supporting memorandum shall be filed no later than 15 days after the service of the transcript on the opposing party.

(b) An opposing memorandum shall be filed no later than 15 days after the filing of the

supporting memorandum.

(c) A reply memorandum shall be filed no later than five days after the filing of the opposing memorandum.

(d) The commissioner or the commissioner's designee may order a party to submit additional memoranda to assist in conducting agency review.

(6) Request for a Stay.

(a) On motion by any party and for good cause, the commissioner or commissioner's designee may stay the presiding officer's order during the pendency of agency review.

(b) A motion for a stay shall be made in writing and may be made at any time during the pendency of agency review.

(c) An opposition to a motion for a stay shall be made in writing within 10 days from the date the stay is requested.

(7) The commissioner or the commissioner's designee may grant oral argument if requested in a party's initial pleading.

(8) Failure to comply with Section R590-160-9 may result in dismissal of the request for agency review.

Right to Request Reconsideration

Pursuant to Utah Code Sec. 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.

Right to Judicial Review

Pursuant to Utah Code Sec. 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.