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

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**JASON ESTRIDGE,**

Petitioner,

vs.

**UTAH INSURANCE DEPARTMENT,**

Respondent.

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

Docket No. 2018-4057

Lisa Watts Baskin  
Administrative Law Judge

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This matter came before the undersigned on December 14, 2018, on a Request for Agency Action (hereafter “Written Consent Petition”) to obtain written consent from the Utah Commissioner of Insurance (hereafter “the Commissioner”) to engage or participate in the business of insurance. The applicant, Mr. Jason Estridge (hereafter “Petitioner”) appeared and was self-represented. Ms. Helen Frohlich, Assistant Utah Attorney General, appeared for the Utah Insurance Department, (hereafter “Respondent”). The formal administrative hearing was held pursuant to the November 28, 2018 Scheduling Order. The Formal Proceeding was recorded.

**PROCEDURAL BACKGROUND**

On October 25, 2018, Petitioner filed a Request for Agency Action (Written Consent Petition) Re: 18 U.S.C. § 1033(e)(2) in compliance with The Violent Crime Control and Law Enforcement Act of 1994, (hereafter § 1033) to obtain the written consent of the Commissioner

to waive the felony restriction and to receive official authorization to engage or participate in the insurance business.<sup>1</sup>

### **JURISDICTION**

Respondent Department has jurisdiction over this matter pursuant to Utah Code § 63G-4-201(3), Utah Admin. Rule R590-160-5, R590-160-5.5, R590-160-6, and R590-278-1 *et seq.*,<sup>2</sup> and in compliance with The Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. § 1033(e)(2).

### **LEGAL STANDARD**

The parties must prove by a preponderance of evidence that written consent should or should not be granted by the Commissioner pursuant to § 1033. A preponderance of the evidence standard “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 Petitioner bears the burden of proof in this proceeding. See *Owen v. Utah Insurance Department*, Case No. 2018-4044 (January 2, 2019).

Based on the analysis of the foregoing, using the preponderance of evidence standard, weighing Petitioner’s exhibits, letter of reference, and sworn testimony and Respondent’s

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<sup>1</sup> The written consent process was modified pursuant to Utah Code 63G-4-102(6) through Utah Administrative Rule R590-278-1, *et seq.*, which became effective on December 24, 2018, during Petitioner Estridge’s request process. The petitioner and respondent discussed the Court’s utilizing the proposed procedures and draft rule as guidance, clarifying that there were no previous written policies or rules in the Department for Section 1033 waivers. Petitioner waived any objection to use of the proposed R590-278-1, *et seq.* R. at .40-.52.

<sup>2</sup> Effective on December 24, 2018.

exhibits and witness testimony, the undersigned makes the following Recommended Findings of Fact, Conclusions of Law, and Order.

### **RECOMMENDED FINDINGS OF FACT**

1. On February 21, 1991, Petitioner entered a plea of guilty to Attempted Theft by Receiving Stolen Property, a Class A Misdemeanor.<sup>3</sup>
2. On July 10, 1991, Petitioner entered a plea of guilty to Attempted Tampering with a Witness, a Class A Misdemeanor.<sup>4</sup>
3. On July 26, 1991, Petitioner entered a plea of guilty to three third degree felonies, in violation of Utah Code § 76-6-204, for Theft.<sup>5</sup> By stipulation, Petitioner was ordered to undergo a 90-day evaluation at Utah State Prison in Draper and served an additional six (6) months at the Parkview Community Correctional Center Halfway House in Ogden, Utah. In all, he completed jail time for eight months in county jail and 118 days in evaluation at the state prison. He paid restitution in full, and fines were waived. There is no statement in the docket as to whether or not probation had been satisfied.
4. On June 23, 2004, Petitioner entered a plea of guilty to Reckless Endangerment, Class A Misdemeanor. He was placed on 18-month probation and ordered to perform 10 hours of community service.<sup>6</sup>

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<sup>3</sup> Respondent Ex. 1, CASE HISTORY, State v. Estridge, Fifth District Court-St. George, Case No. 901502231 FS, October 24, 2018.

<sup>4</sup> Respondent Ex. 1, CASE HISTORY, State v. Estridge, Fifth District Court-St. George, Case No. 911000948 FS, October 24, 2018.

<sup>5</sup> Respondent Ex. 1, State v. Estridge, Fifth District Court-St. George, Case No. 911500076, July 26, 1991. UID 001-005.

<sup>6</sup> Respondent Ex. 2, State v. Estridge, Fifth District Court-St. George, Case No. 041500005, June 23, 2004. UID 006-010.

5. On September 13, 2004, Petitioner entered a plea of no contest to Disorderly Conduct, an Infraction.<sup>7</sup>
6. On August 30, 2006, Petitioner entered a plea of no contest to Disorderly Conduct, an infraction. He was placed on bench probation for twelve (12) months and paid a fine of \$312. Jail time was suspended.<sup>8</sup>
7. On October 25, 2018, Petitioner filed his Written Consent Petition in compliance with § 1033.
8. Petitioner is a business partner with his brother, Parker Estridge, at Team D Auto Sales (Emotors, LLC) in St. George, Utah, and has worked there since 2010 to present. His duties include purchasing vehicles for inventory, book-keeping, social media, and inventory management. R. at 15:27-15:33.
9. Petitioner seeks to be licensed to sell GAP insurance. He testified that he was notified by a Georgia company, on or about September 2018, to whom he had submitted a batch of 15 executed GAP agreements, that Petitioner could not submit such because Petitioner was unlicensed. R. at 17:30-19:18.
10. Petitioner admitted that he has sold GAP insurance and service contracts without possessing a limited lines license while at St. George Motors and Thrifty Car Sales from 2000-2005. He admitted that he sold GAP insurance with multiple companies. R. at 14:17-14:23.

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<sup>7</sup> Respondent Ex. 3, St. George City v. Estridge, Washington County Justice Court, Case No. 041708569, September 13, 2004. UID 011-013.

<sup>8</sup> Respondent Ex.4, St. George City v. Estridge, Washington County Justice Court, Case No. 041708569, August 30, 2006. UID 014-016.

11. Petitioner admitted under oath that he has sold GAP insurance on two or three occasions in the last three years when his brother, the only other employee and his partner, has been gone, utilizing paperwork preprinted and pre-signed by his brother. R. at 15:47-15:55; 16:36-19:30; 1:02-1:03.
12. Petitioner testified that his brother has been selling all the GAP insurance since their car dealership was notified of the licensure requirements and since the Written Consent request was filed. R. at 19:30-19:37.
13. Petitioner admitted under oath that he sold GAP insurance without a license because he misunderstood only the car dealership was subject to insurance licensure, not the individual employees. R. at 14:15-14:45; 1:30.
14. On October 25, 2018, Petitioner, a resident of Utah, filed his Written Consent Petition in compliance with § 1033 and proposed Utah Administrative Rule R590-278-1 et seq.

### ANALYSIS

The federal provision, 18 U.S.C. § 1033(e) and (f), sets forth the following applicable requirements and definitions. The operative language provides a legal mechanism for states to regulate insurance to protect Utah consumers from dishonest individuals who should not be permitted to sell insurance. The federal statute reads:

(e)(1)(A) “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.”

(B) Any individual who is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) shall be fined as provided in this title or imprisoned for 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.”  
[Bold added].

(f) As used in the section—(1) the term “business of insurance” means—

(A) the writing of insurance, or

(B) the reinsuring of risks, by an insurer, including all acts necessary or incidental to such writing or reinsuring and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons . . .

(Emphases added).

Furthermore, Utah Admin. Code R590-278-4 sets forth the sole discretionary authority granted to the Commissioner and the criteria to be used to determine such written consent requests. Petitioner’s request for written consent “may be granted if, in the commissioner’s sole discretion, a preponderance of the evidence shows that the petitioner is trustworthy to engage or participate in the business of insurance.”

The relevant criteria are provided in the rule: (1) any materially false or misleading statement or omission in petitioner’s request for agency action; (2) the nature, severity, and

number of petitioner's crimes; (3) the petitioner's age at the time the crime was committed; (4) the length of the sentence; (5) the length of time since petitioner's most recent conviction; (6) evidence of petitioner's rehabilitation, including counseling, community service, reference letters, completion of probation, and payment of restitution, fines, and interest; (7) whether the facts or circumstances that motivated the petitioner to commit the past crime are currently present in petitioner's life; (8) the presence of facts or circumstances in petitioner's life that may motivate him to commit a crime; and (9) information received from the National Association of Insurance Commissioners and any insurance regulatory official.

Utilizing the criteria and applying them to the facts, the Court determines the following:

Materially False or Misleading Statements or Omissions.

Petitioner provided a "materially false or misleading statement or omission" in his Written Consent Petition. Both form and content prove unsatisfactory to the court. Petitioner was required to submit to this proceeding "a *sworn declaration* from the petitioner's anticipated employer that: (a) describes in detail the petitioner's employment duties; and (b) contains the employer's unequivocal opinion that the petitioner's performance of those duties does not constitute a threat to the public."<sup>9</sup> (Emphasis added).

As to subparagraph (a) above, Petitioner submitted only minimal detail of his employment duties through his employer's written and signed statement. The employer's four-sentence statement read: "Hello. I sell *all* the GAP contracts and Service Contracts for the Emotors, LLC. I handle *all* the finance as well. Jason Estridge is more involved with the office administration and inventory purchasing. I deal with the customers and handle the sales. I am

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<sup>9</sup> See requirements in the Utah form, Request for Agency Action Re: 18 U.S.C. § 1033(e)(2), at subsection (10).

licensed with the State CE license.” (Emphases added).<sup>10</sup> Petitioner testified that his duties include purchasing vehicles for inventory and bookkeeping. Both activities involve financial dealings so the employer’s statement is itself materially false and misleading. See Findings of Fact, ¶ 9.

Next, there is a blatant misrepresentation in the employer’s statement that the employer sells “all the GAP contracts . . . for the Emotors, LLC.” The employer’s written testimony lacks any credibility in this regard because petitioner admitted under oath to his selling GAP insurance and service contracts without an insurance license and with the collaboration of his employer. R. at 14:15-14:45; 15:47-19:30.

Regarding Subparagraph (b) above, Petitioner failed to produce the necessary document, i.e., the sworn declaration, which creates a negative inference. See Owen v. Utah Insurance Department, Docket No. 2018-4044 (January 2, 2019).<sup>11</sup> This requirement that a “sworn declaration” be submitted may prove unwieldy or unworkable for a self-represented or *pro se* litigant who may have limited understanding of the form and function of a sworn declaration. However, the requirement could have been satisfied through substantial compliance if there had been an “unequivocal opinion” provided that petitioner’s performance of his work duties does not constitute a “threat to the public.” No such statement was provided. Instead, the written statement simply reads: “I recommend Jason Estridge to be granted by the State of Utah’s Insurance Department to have his company be allowed to sell GAP insurance. I have been there to watch my brother Jason grow into a responsible adult. I remember him as a young teen getting

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<sup>10</sup> Complainant Ex. 1, Statement of Parker Estridge, dated 10/31/2018.

<sup>11</sup> Findings of Fact, Conclusions of Law and Order, ¶ 10 D, citing Burns v. Cannondale Bicycle Co., 876 P.2d 415 (Utah App. 1994) (stating that if a person fails to provide requested evidence the court may infer that the evidence is adverse to the party).

into trouble while I was in college. I watched him deal with the death of our father in 1992, get married, become a church leader, have children, and maintain a healthy life style. Im [sic] proud of his accomplishments and to rise out of the abyss he was in as a young man.” Even though employer makes an honest and favorable assessment of petitioner’s laudable life corrections, his statement completely fails to address whether the petitioner’s projected job duties and performance would constitute “a threat to the public.” On these inadequate written statements alone, the written consent could be denied.

Respondent’s witness. Mr. Reed Stringham, testified under oath his experience as a former Department attorney with the Utah Attorney General’s office, his role as Deputy Commissioner who oversees the litigation for the Department, and his direct involvement in drafting the Utah Admin Code. R590-278-1 et seq. R. at 1:05-1:08. He also testified about his legal research and understanding of the public policy underlying § 1033, its narrowed application to only serious criminal convictions, and the public interest to be protected, i.e., that dishonest individuals should not be permitted to sell insurance. He explained that the Insurance Department does not regulate GAP coverage, other than by requiring a limited lines license. He testified that in some instances the car dealership makes its profit on selling GAP insurance but not in the actual selling of the car. He said the GAP product has the potential for a lot of dishonesty. No rates are filed. No limits are provided on what can be charged for this kind of insurance. He concluded that there are reported cases when the consumer has complained about having no knowledge that he or she has even bought it. R. at 1:18-1:21. He testified at some length about the utilization of the Utah Expungement Act, at Utah Code §§ 77-40-105 and 77-40-107, as grounds to determine eligibility for Written Consent in light of Petitioner’s past three

felonies and a total of eight criminal convictions. R. at 1:09-1:18. See Smiley v. Utah Insurance Department, Order Denying Request, Docket No. 2018-4041 (January 8, 2019). Nevertheless, the Court concludes the proper analysis in the instant case is a straightforward analysis of the rule's criteria.

The nature, severity and number of petitioner's crimes.

In 1991, Petitioner entered a Class A Misdemeanor plea of guilty to Attempted Theft by Receiving Stolen Property (a burgled car stereo) on February 21, 1991, and three third degree felony pleas to theft (car stereos, radar detectors, and seats) on July 26, 1991. Findings of Fact, ¶¶ 1, 3. The nature, severity and number of crimes were closely linked to the auto industry and weigh heavily against petitioner's reputation for honesty and trustworthiness. Petitioner testified under oath that he was a car thief for over eight months, stealing six cars over that time, and committing numerous burglary thefts of car stereos, radios, and radar detectors for which he was neither arrested nor convicted. R. at 30:42-34:00. He also testified under oath to his extensive knowledge of the nefarious ways crimes are committed in the car business, having worked for and informed against a former crooked employer. R. at 10:48-11:10; 36:15-45:00.

The petitioner's age at the time the crimes were committed.

Petitioner was 18 years old when he committed the theft offenses and 19 years old upon conviction. His age at the time of the car theft offenses weighs in his favor as well as his present criticisms of his past immaturity and criminal behaviors. R. at 23:14; 32:45-34:00.

The length of his sentences.

Petitioner has been incarcerated, evaluated, placed on probation, ordered to pay restitution and fines for eight convictions total. Weekends were spent in jail and 118 days at the Point of the Mountain. Findings of Fact ¶¶ 1, 2, 3, 4, 5, 6.

The length of time since petitioner's most recent conviction.

Petitioner had three subsequent non-felony convictions in 2004 and 2006. None of those crimes involved an act of dishonesty or breach of trust. Findings of Fact, ¶¶ 4, 5, 6. For twelve years and four months approximately, petitioner has had no criminal history or convictions.

Evidence of the petitioner's rehabilitation, including counseling, community service, reference letters, completion of probation, and payment of restitution, fines and interest.

Records were produced to evidence payment of restitution, fines and interest. With the exception of one omission in the court's docketing, it appears that Petitioner has completed all probation, maintained sobriety, and maintained a clean record for many years. Petitioner provided one brief reference letter from his business partner and brother. Petitioner testified openly about the reasons for his criminal activities as a youth and that he has counseled youth to avoid gang membership and poor decision-making. R. at 21:56-22:57. Petitioner even suggested ways to the Court to improve safeguards for auto purchasers through the development of purchase contracts which require initials per section for each item purchased, in addition to the car itself. This speaks volumes to the excellent car salesman he has become and may continue to be, even without the insurance license he seeks. R. at 12:45-14:00.

Whether the facts and circumstances in his past that motivated the petitioner to commit past crimes are currently present in petitioner's life.

The facts or circumstances that motivated the petitioner to commit past crimes are not currently present. Petitioner testified that he is now mature, sober, employed, debt-free, and disassociated from criminals. Additionally, petitioner testified that he assisted law enforcement in the apprehension of criminal activity in the car industry while employed at South George Motorcars. R. at 12:45-14:00.

The presence of facts and circumstances in petitioner's life that may motivate him to commit a crime.

This criterion cannot be met. Petitioner testified about his misunderstanding or intentional noncompliance with the licensure requirements. This fact weighs most heavily against the petitioner and his employer. The brothers sold GAP insurance together without proper licensure in violation of state insurance licensing provisions. It was argued by the Respondent that this behavior alone violated the provisions of § 1033(e)(1)(A). R. at 1:21-1:22. If pursued by the licensing authorities, the conduct could be considered an unapprehended violation of § 1033. Findings of Fact, ¶¶ 10, 11, 12, 13. Upon questioning, Reed Stringham testified that the Department is very concerned that petitioner was selling GAP insurance without a license for at least five years. Stringham concluded petitioner either ignored the law or did not think to look at it. R. at 1:18-1:20; 1:21-1:25. Stringham commented that that petitioner went ahead and nevertheless worked with his licensed brother, whom he knew required a proper license. The fact that petitioner used GAP purchase forms which had been completed and pre-signed by his brother was irrelevant. Stringham testified that in his judgment the petitioner was selling insurance without a license, regardless of the technical signature provided. R. at 1:23:50-1:24:10.

Information received from NAIC and any regulatory official.

No such relevant documentation was identified as such when submitted to the Court.

**CONCLUSION**

Petitioner has not met his burden of proof that he is trustworthy and capable of engaging or participating in the business of insurance. The unlawful and troublesome nature of the cooperative efforts by petitioner and his employer to sell GAP insurance and service contracts leave the court with no alternative but to recommend denial of the written consent. Such a blatant disregard for the insurance statutes and its concomitant threat to the public are sufficient grounds to recommend denial.

Based upon the Recommended Findings of Fact, Analysis, and Recommended Conclusions of Law, and for good cause, the Presiding Officer enters the following:

**RECOMMENDED CONCLUSIONS OF LAW**

1. The Insurance Commissioner has jurisdiction over the parties and this formal proceeding pursuant to Utah Code §§ 31A-1-105 and 31A-2-201.
2. The Insurance Commissioner has legal authority to deny or grant written consent pursuant to Utah Code § 31A-2-308.
3. The Presiding Officer has authority to adjudicate this matter and recommend a decision to the Commissioner pursuant to Utah Code § 63G-4-201 through 205 and Utah Admin. Rule R590-160-1 et seq. and Rule R590-278-1 et seq.
4. Petitioner was convicted of three felonies, and therefore subject to provisions of proposed Utah Admin. Rule R590-278-1 et seq., which implements the federal

statute, The Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. § 1033 (e)(1) and (2).

5. Petitioner waived any objection to the application of then-proposed administrative rule, R590-278-1 et seq., in this matter.
6. Petitioner does not meet the criteria in R590-278-4 to prove by a preponderance of the evidence to be trustworthy to engage or participate in the business of insurance.

### **RECOMMENDED ORDER**

Based upon the foregoing Recommended Findings of Fact and Conclusions of Law and for good cause, the Presiding Officer enters the following RECOMMENDED ORDER to the Commissioner:

The Petitioner's Application for Written Consent to engage in the business of insurance or participate in such business pursuant to The Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. § 1033(e)(2) should be DENIED.

Dated this 18<sup>th</sup> day of January, 2019.

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