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BEFORE THE UTAH INSURANCE COMMISSIONER

<p>UTAH INSURANCE DEPARTMENT, Complainant, vs. BRAXTON JAMES EMERY, Respondent.</p>	<p>NOTICE OF AGENCY ACTION AND ORDER Docket No. 2022-4398 Donald H. Hansen Administrative Law Judge/Presiding Officer</p>
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NOTICE OF AGENCY ACTION

The Utah Insurance Department (“the Department”) commences this agency action as an informal adjudicative proceeding against Respondent Braxton James Emery (“Respondent”) pursuant to Utah Code §§ 31A-2-201 and 63G-4-201 through -203 and to Utah Admin. Code R590-160.

This agency action is based on the facts and law set forth in the attached Declaration and is designated as an informal adjudicative proceeding pursuant to Utah Code § 63G-4-202(1) and Utah Admin Code R590-160-4 and -8.

ORDER

Based on the facts and the law set forth in the attached Declaration, and good cause appearing, the Utah Insurance Commissioner orders as follows:

1. Respondent's application for a Utah resident producer individual insurance license is denied.

2. Pursuant to Utah Code § 63G-4-203(1)(i) and Utah Admin. Code R590-160-8(1), this informal adjudicative proceeding shall be deemed closed, and this Order shall become final and take full effect, 15 days after this Notice of Agency Action and Order is emailed to Respondent unless a request for a hearing on this matter is received from Respondent prior to that date.

3. A request for a hearing shall be in writing and sent by email to uidadmincases@utah.gov or by U.S. mail to Office of the Administrative Law Judge, Utah Insurance Department, 4315 S. 2700 W., Suite 2300, Taylorsville, UT 84129. The request for hearing shall be signed by the person making the request and shall state the basis for the relief requested.

4. If you fail to request a hearing you will be bound by this Order. Failure to request a hearing will be deemed a failure to exhaust administrative remedies and will preclude any further administrative or judicial review or appeal of this matter.

DATED this 3rd day of June, 2022.

JONATHAN T. PIKE
Utah Insurance Commissioner

/s/ Donald H. Hansen
DONALD H. HANSEN
Administrative Law Judge/Presiding Officer
Utah Insurance Department
4315 S. 2700 W., Suite 2300
Taylorsville, UT 84129
Telephone: (801) 957-9321
Email: uidadmincases@utah.gov

NOTICE REGARDING ENFORCEMENT OF THE ORDER

Failure to obey the Order may subject you to further penalties that include a forfeiture of up to \$2,500 per violation, with each day of the violation constituting a separate violation. Other penalties for failing to obey this Order include license suspension, probation, refusal to renew, or revocation. Failure to obey this Order may also result in an action taken against you in a court of competent where forfeitures of up \$10,000 for each day the failure to comply continues until judgement is rendered. If you are licensed in other jurisdictions, you may be required to report this proceeding to those jurisdictions.

DECLARATION

Under criminal penalty of Utah law, I, Randy Overstreet, declare the following:

1. I am currently employed as Manager of Producer Licensing in the Financial Regulation & Licensing Division with the Utah Insurance Department (“Department”) where my responsibilities include investigating and enforcing Utah insurance laws.

2. I submit this Declaration as the basis for issuing the Notice of Agency Action and Order against Braxton James Emery (“Respondent”) to which this Declaration is attached.

3. Based on my personal knowledge and/or based on the facts appearing in the Department’s records and files, the following facts are true:

a. Respondent applied for a Utah resident producer individual insurance license on May 8, 2022.

b. Respondent answered “yes” to the question that asked whether he had been convicted of a misdemeanor, and “yes” to the question that asked whether he had been convicted of a felony.

c. On February 12, 2004, Respondent was convicted of Theft, a Third-Degree felony. Respondent was ordered to pay a fine and placed on supervised probation for a period of twelve months. On October 14, 2004, probation was revoked and reinstated for thirty-six months. On August 31, 2005, the Respondent’s probation was terminated successfully. On February 6, 2015, the Respondent received a 402 reduction, and the conviction was reduced to a Class A Misdemeanor. (See State of Utah vs. Braxton James Emery, case # 031702098, Davis County, State of Utah.)

d. On May 4, 2009, Respondent was convicted of Theft, a Class B Misdemeanor. Respondent was ordered to pay a fine and placed on supervised probation for a period of

twelve months. The Respondent's probation was terminated, and the case was closed on December 24, 2010. (See Sandy City vs. Braxton James Emery, case # 091000715, Salt Lake County, State of Utah.)

e. On August 16, 2011, Respondent was convicted of Theft, a Class B Misdemeanor. Respondent was ordered to pay a fine and placed on supervised probation for a period of twelve months. On April 16, 2012, probation was terminated, and the case was closed. (See Sandy City vs. Braxton James Emery, case # 111001277, Salt Lake County, State of Utah.)

f. On April 5, 2016, Respondent was convicted of Retail Theft, a Class A Misdemeanor. The Respondent was placed on supervised probation for a period of eighteen months. On November 17, 2016, the Respondent's probation was revoked and reinstated for an additional eighteen months. Respondent's probation was terminated, and the case was closed on October 16, 2017. (See State of Utah vs. Braxton James Emery, case # 161400217, Salt Lake County, State of Utah.)

g. On November 16, 2016, Respondent was convicted of two counts of Theft, both Class B Misdemeanors. Respondent was ordered to pay a fine and placed on supervised probation for a period of twelve months. On December 19, 2017, the case was closed. (See West Jordan City vs. Braxton James Emery, case # 161301731, Salt Lake County, State of Utah.)

h. On July 27, 2017, Respondent pled guilty to one count of Theft by Deception, a Second-Degree Felony. Respondent entered into a Plea in Abeyance agreement. On August 6, 2019, the felony charge was dismissed, and the case was closed. (See State of Utah vs. Braxton James Emery, case # 171400771, Salt Lake County, State of Utah.)

4. The above declared facts demonstrate that the following Utah insurance laws were not complied with:

a. Utah Code § 31A-23a-111(5)(b) authorizes the Commissioner to act in compliance with the Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. §1033. Having been convicted of a felony involving dishonesty or breach of trust and having failed to obtain from the Commissioner the required written consent to engage or participate in the business of insurance, Respondent is prohibited from engaging in the business of insurance pursuant to Utah Code § 31A-23a-111(5)(b)(xxv) and 18 U.S.C. § 1033(e)(2);

b. Respondent violated Utah Code § 31A-23a-111(5)(b)(xiv)(B) by being convicted of a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;

c. Respondent violated Utah Code § 31A-23a-107(2)(a)(ii) by failing to meet the trustworthy character requirement;

e. Respondent violated Utah Code § 31A-23a-111(5)(b)(i) by being unqualified for a license under Utah Code § 31A-23a-104, 105, or 107;

f. Respondent violated Utah Administrative Rule R590-281-4(1)(e) by applying for a license prior to the end of the required time period resulting from Respondent's misdemeanor conviction involving fraud, misrepresentation, theft, or dishonesty; and

g. Respondent violated Utah Administrative Rule R590-281-4(4)(a)(i), by applying for a license without first obtaining written consent from the Commissioner to engage or participate in the business of insurance. Pursuant to R590-281-4(4)(c)(i), an application for written consent is required even if a felony charge involving dishonesty or breach of trust has been dismissed under a plea in abeyance agreement or a felony conviction has been reduced to a lower degree of offense pursuant to UCA § 76-3-402.

5. Based on the facts and law set forth above, Respondent's application for a resident producer individual insurance license should be denied.

Signed on this 3rd day of June, 2022, in Salt Lake City, Salt Lake County, State of Utah.

/s/ Randy Overstreet
Randy Overstreet, Manager, Producer Licensing
Financial Regulation & Licensing Division
Utah Insurance Department

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the foregoing Notice of Agency Action and Order, with the Declaration attached to it, was emailed to:

Braxton James emery
[REDACTED]

and

Randy Overstreet
Utah Insurance Department
[REDACTED]

DATED this 3rd day of June, 2022.

/s/ Jeanine Couser
Jeanine Couser
Utah Insurance Department
4315 S. 2700 W., Suite 2300
Taylorsville, UT 84129
(801) 957-9321