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BEFORE THE UTAH INSURANCE COMMISSIONER

<p>UTAH INSURANCE DEPARTMENT, Complainant, vs. MARK SWALLOW, Respondent.</p>	<p>NOTICE OF AGENCY ACTION AND ORDER Docket No. 2022-4407 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 Mark Swallow (“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 laws 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 -7.

ORDER

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

1. Respondent's non-resident producer individual insurance license number 787413 is revoked.
2. Pursuant to Utah Code § 63G-4-203(1)(i) and Utah Admin. Code R590-160-7(1), this informal adjudicative proceeding shall be 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., Taylorsville, UT 84129. The request for hearing 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 is a failure to exhaust administrative remedies and precludes any further administrative or judicial review or appeal of this matter.

DATED this 6th day of July, 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 jurisdiction where forfeitures of up to \$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, Connie Nowland, declare the following:

1. I am currently employed as a Market Conduct Examiner by 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 Mark Swallow (“Respondent”) to which this Declaration is attached.

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

a. Respondent holds Utah non-resident producer individual insurance license number 787413.

b. Respondent’s mailing address is [REDACTED].

c. Respondent’s email address is [REDACTED].

d. In 2021, the Respondent met with a Consumer (the “Consumer”) who had recently retired. He advised the Consumer to take a lump-sum distribution of her retirement plan to reinvest the funds into an interest-bearing account. The Consumer signed a bank authorization form in August 2021 to transfer her retirement funds to her account at Cyprus Credit Union.

e. The Consumer never received her pension plan proceeds amounting to approximately \$220,000. The Consumer learned from her pension plan that the proceeds had been deposited in a checking account with JP Morgan Chase Bank in November 2021.

f. The Consumer does not have and has never had an account with JP Morgan Chase Bank. The Consumer obtained documentation showing that a bank authorization form

different from the one she originally completed was submitted to her pension plan in September 2021, along with a voided check from JP Morgan Chase Bank.

g. The bank authorization form appears to use the Consumer's original signature but requests that the funds be transferred to a Chase Bank account with a branch address in Queen Creek, Arizona

h. To date, the Consumer has not received her retirement funds despite contacting Respondent many times. Respondent has not provided an accounting to the Consumer.

i. On or about February 4, 2022, I was assigned to investigate the Consumer's complaint regarding Respondent.

j. On February 11, 2022, I sent a letter requesting information to Respondent by email at [REDACTED], the email address listed in SIRCON. The email was returned as undeliverable on February 12, 2022.

k. On March 9, 2022, I attempted to call Respondent at the phone number listed in SIRCON.

l. On March 10, 2022, I sent a second letter requesting information to Respondent by email to [REDACTED] and by certified mail to [REDACTED]. The email was again returned as undeliverable. The mail was returned to the Department with a forwarding address.

m. On March 16, 2022, I sent a letter requesting information to Respondent by certified mail to [REDACTED].

n. On March 21, 2022, Respondent sent me an email requesting an extension of time to respond and providing an email address of [REDACTED]. I replied to his

email, granted an extension of time to March 25, 2022, to respond, and requested that Respondent update his contact information in SIRCON.

o. On March 25, 2022, Respondent provided a response to the March 16 letter.

p. On March 30, 2022, I sent a request for additional information to the Respondent by email to [REDACTED]. He did not respond.

q. I sent follow up requests by email to [REDACTED] on April 12, 2022, and April 20, 2022. Respondent did not reply to either of these three requests.

r. To date, Respondent has not updated his contact information in SIRCON.

4. The above declared facts demonstrate that the following Utah insurance law(s) were not complied with:

a. Respondent violated Utah Code § 31A-23a-111(5)(b)(xii), when he misappropriated and converted funds into an account not authorized by the Consumer, failed to provide an accounting of funds to the Consumer, and submitted a falsified bank authorization form.

b. Respondent violated Utah Code §§ 31A-23a-111(5)(b)(vii)(A) and 31A-23a-111(5)(b)(vii)(B), when he failed to cooperate in an investigation involving a falsified bank authorization form.

c. Respondent violated Utah Code § 31A-2-202, when he failed to respond to three written requests from the Department.

d. Respondent violated Utah Code § 31A-23a-412, when he failed to update his address, telephone number, and email address in SIRCON.

5. Based on Utah Code § 31A-2-308 and consistent with prior administrative actions taken by the Department, Respondent's non-resident producer individual insurance license number 787413 should be revoked.

Signed on this 6th day of July 2022, at Salt Lake City, Utah.

/s/ *Connie Nowland*
Connie Nowland
Market Conduct Examiner
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:

Mark Swallow

████████████████████

and

Connie Nowland
Utah Insurance Department

████████████████████

DATED this 6th day of July, 2022.

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