

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 12380-AG13-0715-064

IN THE MATTER OF: )

David James, )  
Respondent )

4811 Crystal River Court )  
Indianapolis, IN 46240 )

Type of Action: Enforcement )

Indiana Insurance License No.: 2344440 )

**FILED**

JAN 28 2014

STATE OF INDIANA  
DEPT. OF INSURANCE

**FINAL ORDER**

On December 18, 2013, the Administrative Law Judge, filed her Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter.

1. The Department served Findings of Fact, Conclusions of law, and Recommended Order and Notice of Filing Recommended Order on Respondent by mailing to counsel of record. The Findings of Fact, Conclusions of Law and Recommended Order was returned as undeliverable, per Respondents Counsel's request on December 30, 2013, the Administrative Law Judge, scanned and emailed a copy of her Findings of Fact, Conclusions of Law and Recommended Order.

2. The Department has complied with the notice requirements of Ind. Code §4-21.5-3-17.

3. Neither party has filed an objection with the Commissioner regarding the Administrative Law Judge's Recommended Order, and more than eighteen (18) days have elapsed.

Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order and issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. The Administrative Order Notice of Nonrenewal of License filed July 17, 2013 is upheld.

ALL OF WHICH IS ORDERED by the Commissioner this 28<sup>th</sup> day of January, 2014.

  
Stephen W. Robertson, Commissioner  
Indiana Department of Insurance

Copies to:

Michael Mullen  
Indiana Department of Insurance  
311 W. Washington St., Suite 103  
Indianapolis, IN 46204

Steven Sams  
STEVEN SAMS, P.C.  
7 Launch Way, Suite 430  
Fishers, IN 46038  
Email: [stevensamslaw@att.net](mailto:stevensamslaw@att.net)

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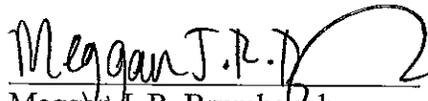
DEC 18 2013

STATE OF INDIANA  
DEPT. OF INSURANCE

**NOTICE OF FILING OF RECOMMENDED ORDER**

The parties to this action are hereby notified that the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order are deemed filed as of this date.

To preserve an objection to this Order for judicial review, you must object to the Order in a writing that: (1) identifies the basis of your objection with reasonable particularity; and (2) is filed with the ultimate authority for the Final Order, Stephen W. Robertson, Commissioner of the Department of Insurance, within eighteen (18) days from the date stamped on this Order.

  
Megan J. R. Brumbaugh  
Administrative Law Judge

Distribution:

Michael F. Mullen  
INDIANA DEPARTMENT OF INSURANCE  
311 W. Washington Street, Suite 300  
Indianapolis, IN 46204

Steven Sams  
STEVEN SAMS, P.C.  
8520 Allison Pointe Blvd  
Suite 220  
Indianapolis, IN 46250

STATE OF INDIANA )  
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BEFORE THE INDIANA  
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CAUSE NUMBER: 12380-AG13-0715-064

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DEC 18 2013

STATE OF INDIANA  
DEPT. OF INSURANCE

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

Administrative Law Judge Meggan J. R. Brumbaugh (“ALJ Brumbaugh”), having considered and reviewed all of the evidence, will now render a decision in the matter of Dave James (“Respondent”). This matter came to be heard by ALJ Brumbaugh, designated Administrative Law Judge, at approximately 10:00 a.m. on September 20, 2013.

The Indiana Department of Insurance (“Department”) was represented by counsel, Michael F. Mullen. Respondent was present and represented by counsel, Steven Sams. Witnesses testified under oath, evidence was heard, and exhibits were received into evidence.

Based upon the evidence presented at said hearing, ALJ Brumbaugh now makes the following Findings of Fact and Conclusions of Law and issues her Recommended Order.

**FINDINGS OF FACT**

1. Respondent, a resident insurance producer, has held insurance producer license number 2344440 since July 30, 1993 (“Respondent’s License”). (Ex. 1 at p. 1).
2. Respondent’s License was scheduled to expire on July 31, 2013. (Ex. 1 at p. 1).

3. As of September 19, 2013, Respondent's License was listed as inactive. (Ex. 1 at p. 2).
4. On July 9, 2013, the Licensing Division of the Indiana Department of Insurance received a letter from Respondent, requesting that his license be renewed. (Ex. 2).
5. The request states that, in April 2013, Respondent entered a plea of guilty to a crime. (Ex. 2 at p. 1).
6. On July 17, 2013, a Notice of Nonrenewal of License was entered in the above-captioned matter ("Nonrenewal Order"). The Nonrenewal Order notified Respondent that his license would not be renewed.
7. The Nonrenewal Order also stated that, should Respondent make a written request within sixty (60) days of receiving notice of the Nonrenewal Order, a hearing to determine the reasonableness of the nonrenewal would be held within thirty (30) days from the date the Department received Respondent's request.
8. On August 26, 2013, Respondent, through counsel, timely filed Respondent's Written Demand for Hearing.
9. On August 30, 2013, a Notice of Hearing was filed in this matter, which set a hearing date for September 11, 2013 at 10:00 a.m.
10. On September 9, 2013, a Notice of New Hearing Date reset the hearing in this matter for September 20, 2013 at 9:00 a.m.
11. Notice of the date, time and issues to be heard in this matter was mailed to Respondent, by counsel.
12. Kim Green, an investigator for the Department, testified at the hearing that she was assigned to investigate Respondent's conduct for a criminal conviction disclosed on his request for license renewal. (Tr. at pp. 27-28).

13. Ms. Green testified that her investigation revealed that the Department was not made aware of Respondent's criminal matter until July 9, 2013. (Tr. at p. 27).
14. At the hearing, Respondent testified that he entered a plea of guilty to a felony in April 2013. (Tr. at p. 12).
15. Respondent testified that he was asked to serve as a board member for the Laine James Educational Foundation ("Foundation") by Laine James. (Tr. at p. 13). Respondent testified that the Foundation was "set up back in 2005 or 2006, basically for helping students who have a need for educational scholarships." (Tr. at p. 13).
16. Respondent further testified that he met Ms. James "through life insurance sales" and that he had sold her policies. (Tr. at p. 13).
17. On April 1, 2013, a charging document was filed against the Respondent in the Criminal Division of Marion Superior Court under cause number 49F24-1304-FD-021162 (the "Charging Document"). (Ex. 3).
18. The Charging Document states that Respondent "did knowingly exert unauthorized control over the property, to wit: US currency of another person, to wit: [t]he Laine M. James Trust Fund/Laine James Educational Foundation, with the intent to deprive the person of any part of its value or use." (Ex. 3).
19. On April 2, 2013, an Affidavit for Probable Cause was filed under the above-mentioned cause number. (Ex. 4).
20. Detective David A. Lindsey is identified as the affiant in the Affidavit for Probable Cause. (Ex. 4 at p. 1). The Affidavit for Probable Cause states the following information relating to Respondent's criminal prosecution:

- a. "On March 18, 2004, [t]he Laine M[.] James Revocable Trust was created listing Laine M[.] James as the Trustee of the trust." (Ex. 4 at p. 1).
- b. "In 2004, [Ms.] James passed away" and "a board was established to administer the James Trust." (Ex. 4 at p. 1).
- c. "The sole purpose of the [Trust] was to provide scholarship funds to students to further their education at college." (Ex. 4 at p. 1).
- d. "As a board member, [Respondent] was responsible for maintaining the finances and accounting for the Trust." (Ex. at p. 1).
- e. "In 2010, a representative of the Laine James Educational Foundation contacted the Marion County Prosecutor's Office ... [because] it was suspected that [Respondent] had taken money from the Foundation and placed it in a personal account." (Id.).
- f. "A review of the Laine James Educational Foundation bank account statements was conducted and several withdrawals and/or checks were found to have been made payable to [Respondent]." (Ex. 4 at p. 4).
- g. The total withdrawals and/or checks made payable to [Respondent] amounted to Thirty-One Thousand Eight Hundred Fourteen Dollars and Ninety-Eight Cents (\$31,814.98). (Ex. 4 at p. 5).
- h. Several unauthorized withdrawals and/or checks were also found to have been made payable to Global Capital Investments ("Global"). (Ex. 4 at pp. 1, 5).
- i. Global was a mortgage brokerage company owed by Dave James, and was not contracted with the Foundation for any purpose. (Ex. 4 at pp. 1, 6).
- j. The total withdrawals and/or checks made payable to Global amounted to Eleven Thousand Four Hundred Eighty Dollars (\$11,480.00). (Ex. 4 at pp. 5-6).

- k. "Detective Lindsey observed that [Respondent] used funds from the [Trust] for personal expenses including rental cars, home utility bills, cell phone bills, home mortgage payments, and other personal expenses at various stores throughout Indianapolis, Indiana." (Ex. 4 at p. 7).
  - l. On March 5, 2013, Detective Lindsey interviewed Respondent at the Marion County Prosecutor's Office. (Ex. 4 at p. 6).
  - m. At that interview, Respondent admitted that he stole money from the Laine James Foundation Trust and that he knew he was not authorized to take money from the account to pay his personal expenses. (Ex. 4 at p. 6).
  - n. Also at that interview, Respondent "admitted to writing each of the checks to Global Capital Investments and himself," and stated, "I stole the money." (Ex. 4 at p. 6).
  - o. Also at that interview, Respondent stated that he was paid One Thousand Dollars (\$1,000.00) per month from the Foundation account for his work, and that other Foundation board members were aware of his compensation. (Ex. at p. 6).
  - p. When interviewed separately, other Foundation board members Konrad Kirlew and Philip Edwards stated that the Respondent was not authorized to receive any money from the Foundation account and that no one received any compensation for serving on the Foundation board. (Ex. at p. 7).
21. Respondent testified that he received Thirty-Four Thousand Dollars (\$34,000.00) from Greville James, Laine James' brother, in 2008. Respondent and Mr. James had an agreement to purchase real estate as an investment. (Tr. at pp. 14, 18; Exhibit 4 at p. 7).

22. Respondent also testified that he deposited the sum from Mr. James in the Foundation account in order to hide it from the IRS, to which he owed approximately Thirty-Eight Thousand Dollars (\$38,000). (Tr. at pp. 14, 16, 18).
23. Respondent testified that the activity which was the subject of his conviction occurred from 2008 through 2010. (Tr. at p. 19). Respondent further testified that this activity stopped in 2010 when he was approached by the other members of the Trust's board. (Tr. at pp. 19-20).
24. Respondent testified that the other members of the Trust's board asked the Respondent to pay back Thirty Thousand Dollars (\$30,000). Respondent repaid Sixteen Thousand Dollars (\$16,000) of his personal money. (Tr. At p. 20).
25. On April 25, 2013, a Plea Agreement was filed in the Criminal Division of the Marion Superior Court under cause number 49F24-1304-FD-021162 ("Plea Agreement"). The Plea Agreement was executed by Respondent, Respondent's counsel, and a Deputy Prosecutor. (Ex. 5 at p. 3).
26. The Plea Agreement states that Respondent "agrees to plead guilty to: Ct. 1 Theft, a Class D Felony." (Ex. 5 at p. 1).
27. The Plea Agreement further states that Respondent acknowledges that "entry of a guilty plea pursuant to this agreement constitutes an admission of the truth of all facts alleged in the charge or counts to which the [Respondent] pleads guilty..." (Ex. 5 at p. 2).
28. On April 25, 2013, an Order of Judgment of Conviction was filed against Respondent in the Criminal Division of the Marion Superior Court ("Conviction Order").
29. The Conviction Order entered a judgment of conviction against Respondent for the offense of Theft, a Class D Felony. (Ex. 6 at p. 1).

30. The Conviction Order also imposed restitution obligations on Respondent. (Ex. 6 at p. 2).  
Specifically, Respondent is required to pay the Foundation restitution in the amount of Twenty-Two Thousand Two Hundred Eighty-One Dollars (\$22,281.00). The Conviction Order also requires Respondent to pay Greville James restitution in the amount of Thirty-Four Thousand Dollars (\$34,000.00).
31. Respondent offered testimony that conflicted with the findings of the Affidavit for Probable Cause. For instance, Respondent stated that he took withdrawals from the Foundation to invest in real estate transactions and for the purpose of establishing a group home authorized by the Trust; Respondent testified that "if [the funds] were [spent on] personal expenses, it would connect to the investments of the real estate" investments. (Tr. at pp. 15-17).
32. Respondent testified that he did not report his felony conviction to the Department because he was unaware of the requirement to do so. (Tr. at p. 12).
33. Respondent testified that he is current in his restitution payments to Greville James and to the Foundation. (Tr. At pp.37-38; Exhibit A).
34. The Respondent argued that ALJ Brumbaugh should give consideration to four recent enforcement cases involving felony convictions before making a recommendation to the Commissioner.
35. The first case is in the matter of Susan Haydon, Cause Number 11892-AD13-0129-002. In the *Haydon* case, the applicant's request for licensure was denied because she had entered a plea of guilty to Dealing Cocaine, a Class B Felony, on February 28, 2002. The applicant was later granted a probationary license with additional reporting requirements for two (2) years.
36. The second case is in the matter of Robert McCarthy, Cause Number 11498-AD12-1212-

066. In the *McCarthy* case, the applicant's request for licensure was denied because he had two (2) felony convictions for Possession of Drug Paraphernalia, Class 6 Felonies in Arizona, in August 2007 and April 2008. The applicant was later granted a probationary license with additional reporting requirements for two (2) years.

37. The third case is in the matter of Adam Wallace, Cause Number 11917-AD13-0207-004. In the *Wallace* case, the applicant's request for licensure was denied because he had pled guilty to felony convictions for Operating While Intoxicated, Operating a Vehicle with ACE .15 or More, Endangering a Person, and Possession of Marijuana in March 2010. The applicant was later granted a producer license subject to a probationary period of one (1) year.

38. The final case is in the matter of Mary Taylor, Cause Number 12190-AG13-0514-034. In the *Taylor* case, the respondent failed to disclose a felony conviction from March of 1970 for Interstate Transportation of Falsely Made and Forged Securities on her 2004, 2005, and 2006 applications. The respondent later agreed to pay an administrative fine of Seven Hundred Fifty Dollars (\$750.00).

39. Conclusions of Law that can be adopted as Findings of Fact are hereby incorporated herein as such.

#### **CONCLUSIONS OF LAW**

40. The Commissioner has jurisdiction over both the subject matter and the parties to this action.  
(Ind. Code §§ 27-1-1-1, -2).

41. The hearing was held in compliance with the Indiana Administrative Orders and Procedures Act, codified at Ind. Code § 4-21.5 *et seq.*

42. The Department complied with those service of process requirements set forth in Ind. Code § 4-21.5-3-1.

43. Pursuant to Ind. Code § 27-1-15.6-12(b)(6), the Commissioner may reprimand, levy a civil penalty, place an insurance producer on probation, suspend an insurance producer's license, revoke an insurance producer's license for a period of years, permanently revoke an insurance producer's license, or refuse to issue or renew an insurance producer license, or take any combination of these actions, for having been convicted of a felony.
44. The Department has shown, by a preponderance of the evidence, that Respondent was convicted of Theft, a Class D Felony, under cause number 49F24-1304-FD-021162.
45. Pursuant to Ind. Code § 27-1-15.6-12(b)(2), the Commissioner may reprimand, levy a civil penalty, place an insurance producer on probation, suspend an insurance producer's license, revoke an insurance producer's license for a period of years, permanently revoke an insurance producer's license, or refuse to issue or renew an insurance producer license, or take any combination of these actions, for violating an insurance law.
46. Ind. Code § 27-1-15.6-17(b) states that “[n]ot more than thirty (30) days after an initial pretrial hearing date, a producer shall report to the Commissioner any criminal prosecution of the producer initiated in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.”
47. The Department has also shown, by a preponderance of the evidence that Respondent did not report his criminal prosecution to the Commissioner within thirty (30) days of an April 2, 2013 initial hearing held under cause number 49F24-1304-FD-021162.
48. Pursuant to Ind. Code § 27-1-15.6-12(b)(8), the Commissioner may reprimand, levy a civil penalty, place an insurance producer on probation, suspend an insurance producer's license, revoke an insurance producer's license for a period of years, permanently revoke an insurance

producer's license, or refuse to issue or renew an insurance producer license, or take any combination of these actions, for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.

49. The Department has shown, by a preponderance of the evidence that Respondent used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of insurance business. Specifically, Respondent used his relationship with a consumer to access large sums from a trust account for unauthorized purposes.

50. While the cases cited by the Respondent—*Haydon*, *McCarthy*, *Wallace*, and *Taylor*—all involve felony convictions, the cases are factually distinct and are therefore not instructive in the present matter. Additionally, the convictions range in date from 1970 to 2010; whereas, Respondent's conviction occurred in April 2013.

51. Acting within his authority, the Commissioner refused to renew Respondent's license for three (3) separate violations of the Indiana Producer's Statute, Ind. Code § 27-1-15.6.

52. Respondent has failed to meet his burden of proof in showing, by a preponderance of the evidence, that the Commissioner's nonrenewal of his license was unreasonable.

53. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated herein as such.

**RECOMMENDED ORDER**

With the Findings of Fact and the Conclusions of Law as stated, ALJ Brumbaugh now recommends to the Commissioner of Insurance:

1. That Nonrenewal Order be deemed reasonable; and
2. That the Nonrenewal Order be given full effect.

**ALL OF WHICH IS ADOPTED** by the Administrative Law Judge and recommended to the Commissioner of Insurance this 18<sup>th</sup> day of December, 2013.

  
\_\_\_\_\_  
Meggan J. R. Brumbaugh  
Administrative Law Judge

Distribution:

Michael F. Mullen  
INDIANA DEPARTMENT OF INSURANCE  
311 W. Washington Street, Suite 300  
Indianapolis, IN 46204

Steven Sams  
STEVEN SAMS, P.C.  
8520 Allison Pointe Blvd  
Suite 220  
Indianapolis, IN 46250

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OCT 18 2013

STATE OF INDIANA  
DEPT. OF INSURANCE

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED  
ORDER**

The Enforcement Division of the Indiana Department of Insurance (the "Department"), by counsel, Michael F. Mullen, having participated in the matter of Respondent Dave James ("Respondent"), which came to be heard on September 20, 2013, at approximately 10:00 A.M., at the Indiana Department of Insurance, 311 West Washington Street, Indianapolis, Indiana 46202, now submits Proposed Findings of Fact, Conclusions of Law and Recommended Order, pursuant to Ind. Code Ind. Code § 4-21.5-3-17, as follows:

**FINDINGS OF FACT**

1. Respondent, a resident insurance producer, has held insurance producer license number 2344440 since July 30, 1993 ("Respondent's license"). (Exhibit 1 at p. 1).
2. Respondent's license was scheduled to expire on July 31, 2013. (Ex. 1 at p. 1).
3. As of September 20, 2013, Respondent's license was listed as inactive. (Ex. 1 at p. 2).

### Procedural Facts

4. On July 9, 2013, the Licensing Division of the Indiana Department of Insurance received a fax requesting that Respondent's license be renewed. (Ex. 2).
5. Said fax states that, in April 2013, Respondent pled guilty to a crime. (Ex. 2 at p. 1).
6. On July 17, 2013, an Administrative Order Notice of Nonrenewal of License was entered in the above-captioned matter ("Nonrenewal Order"). (Administrative Order Notice of Nonrenewal of License.) The Nonrenewal Order notified Respondent that his license would not be renewed.
7. The Nonrenewal Order also stated that, should Respondent make a written request within sixty (60) days of receiving notice of the Nonrenewal Order, a hearing would be held within thirty (30) days from the date the Department received Respondent's request. (Notice of Nonrenewal at pp. 2—3). The purpose of such a hearing is to determine the reasonableness of his nonrenewal. (Notice of Nonrenewal of License at p. 3).
8. On August 26, 2013, Respondent, through counsel, timely filed a written request for a hearing. (Respondent's Written Demand for Hearing at p. 1).
9. On August 30, 2013, a Notice of Hearing was filed in this matter, which set a hearing date for September 11, 2013. (Notice of Hearing).
10. On September 9, 2013, a Notice of New Hearing Date reset this matter for September 20, 2013.
11. Both Respondent and his counsel received notice of the date, time and issues to be heard in this matter via U.S.P.S. Certified Mail Numbers 9214 8901 0661 5400 0020 4046 79 and 9214 8901 0661 5400 4345 22.

### License Nonrenewal Facts

12. Kim Green, an investigator for the Department, testified at the hearing. (September 20, 2013 Evidentiary Hearing Transcript at p. 23—24).
13. Mrs. Green testified that she was assigned to investigate Respondent's conduct for a criminal conviction disclosed on his request for license renewal. (Tr. at pp. 27—28).
14. On April 1, 2013, a charging document was filed in The Marion Superior Court Criminal Division under cause number 49F24-1304-FD-021162 (the "Charging Document"). (Ex. 3).
15. The Charging Document states that Respondent "did knowingly exert unauthorized control over the property, to wit: US currency of another person, to wit: [t]he Laine M. James Trust Fund/Laine James Educational Foundation, with the intent to deprive the person of any part of its value or use." (Ex. 3).
16. On April 2, 2013, an Affidavit For Probable Cause was filed under the above-mentioned cause number. (Ex. 4).
17. Detective David A. Lindsey is identified as the affiant in said Affidavit for Probable Cause. (Ex. 4 at p. 1). The Affidavit for Probable Cause states the following information relating to Respondent's criminal prosecution:
  - a. "On March 18, 2004, [t]he Laine M[.] James Revocable Trust was created listing Laine M[.] James as the Trustee of the trust." (Ex. 4 at p. 1).
  - b. "In 2004, [Ms.] James passed away" and "a board was established to administer the James Trust." (Ex. 4 at p. 1).
  - c. "The sole purpose of the [Trust] was to provide scholarship funds to students to further their education at college." (Ex. 4 at p. 1).

- d. "As a board member, [Respondent] was responsible for maintaining the finances and accounting for the Trust." (Ex. at p. 1).
- e. "In 2010, a representative of the Laine James Educational Foundation contacted the Marion County Prosecutor's Officers ... [because] it was suspected that [Respondent] had taken money from the Foundation and placed it in a personal account." (Id.).
- f. "A review of the Laine James Educational Foundation bank account statements was conducted and several withdrawals and/or checks were found to have been made payable to [Respondent]." (Ex. 4 at p. 4).
- g. The total withdrawals and/or checks made payable to [Respondent] amounted to Thirty One Thousand Eight Hundred Fourteen Dollars and 98/100 (\$31,814.98). (Ex. 4 at p. 5).
- h. "Detective Lindsey observed that [Respondent] used funds from the [Trust] for personal expenses including rental cards, home utility bills, cell phone bills, home mortgage payments, and other personal expenses at various stores through Indianapolis, Indiana." (Ex. 4 at p. 7).
- i. Respondent "stated he also opened an account with Old National Bank for Global Capital Investment." (Ex. 4 at p. 6).
- j. "A review of the Laine James Educational Foundation bank account statements was conducted and several withdrawals and/or checks were found to have been made payable to Global Capital Investment." (Ex. 4 at p. 5).
- k. The total withdrawals and/or checks made payable to Global Capital Investment amounted to Eleven Thousand Four Hundred Eighty Dollars and no/100 (\$11,480.00). (Ex. 4 at p. 6).

- l. "On March 5, 2013, Detective Lindsey interviewed [Respondent] at the Marion County Prosecutor's Office, Grand Jury Division." (Ex. 4 at p. 6).
  - m. At that interview, Respondent "admitted that he stole money from the Laine James Foundation Trust [and that] he knew he was not authorized to take money from the account to pay his personal expenses." (Ex. 4 at p. 6).
  - n. Also at that interview, Respondent "admitted to writing each of the checks to Global Capital Investments and himself[, he] also admitted to taking money through the bank's atm [sic] and paying personal expenses with funds...[Respondent] stated 'I stole the money.'" (Ex. 4 at p. 6).
18. On April 25, 2013, a Plea Agreement was filed in the Marion Superior Court Criminal Division under cause number 49F24-1304-FD-021162 ("Plea Agreement"). The Plea Agreement was executed by Respondent, Respondent's counsel, and a Deputy Prosecutor. (Ex. 5 at p. 3).
  19. The Plea Agreement states that Respondent "agrees to plead guilty to: Ct. 1 Theft, a Class D Felony." (Ex. 5 at p. 1).
  20. The Plea Agreement further states that "[Respondent] acknowledges that entry of a guilty plea pursuant to this agreement constitutes an admission of the truth of all facts alleged in the charge or counts to which the [Respondent] pleads guilty..." (Ex. 5 at p. 2).
  21. On April 25, 2013, an Order of Judgment of Conviction was filed in the Marion Superior Court Criminal Division under cause number 49F24-1304-FD-021162 ("Conviction Order").
  22. The Conviction Order entered a judgment of conviction against Respondent for the offense of Theft, a Class D Felony. (Ex. 6 at p. 1).

23. The Conviction Order also imposed restitution obligations on Respondent. (Ex. 6 at p. 2). Specifically, Respondent is required to pay the Laine James Educational Foundation restitution in the amount of Twenty Two Thousand Two Hundred Eighty One Dollars and no/100 (\$22,281.00). The Conviction Order also requires Respondent to pay Greville James restitution in the amount of Thirty Four Thousand Dollars and no/100 (\$34,000.00).
24. At the evidentiary hearing, Respondent testified that he pled guilty in April 2013 to a felony. (Tr. at p. 12).
25. Respondent testified that he was asked to serve as a board member for the Laine James Educational Foundation by Laine James. (Tr. at p. 13). Respondent testified that the “foundation was set up back in 2005 or 2006, basically for helping students who have a need for educational scholarships.” (Tr. at p. 13).
26. Respondent further testified that he met Ms. James “through life insurance sales” and that he had sold her policies. (Tr. at p. 13).
27. Respondent testified that he received money from Greville James in 2008 to invest in real estate. (Tr. at p. 14). Respondent also testified that he deposited the sum from Mr. James in the Laine James Foundation account. (Tr. at p. 14). Respondent stated that he deposited this money into the Laine James Foundation’s account in order to hide it from the IRS. (Tr. at p. 16).
28. Respondent offered testimony that conflicted with the findings of the Affidavit for Probable Cause. For instance, Respondent stated that he took withdrawals from the Trust to invest in real estate transactions and for the purpose of establishing a group home authorized by the Trust; Respondent testified that “if [the funds] were [spent on] personal expenses, it would connect to the investments of the real estate” investments. (Tr. at pp. 15—17).

29. Respondent testified that this activity occurred from 2008 through 2010. (Tr. at p. 19).

Respondent further testified that this activity stopped in 2010 when he was approached by the other members of the Trust's board. (Tr. at pp. 19-20).

30. Mrs. Green testified that her investigation revealed that the Department was not made aware of Respondent's criminal matter until July 9, 2013. (Tr. at p. 27).

31. Respondent testified that he did not report his felony conviction to the Department because he was unaware of his requirement to do so. (Tr. at p. 12).

### CONCLUSIONS OF LAW

32. The Commissioner has jurisdiction over both the subject matter and the parties to this action.

33. The hearing was held in compliance with the Indiana Administrative Orders and Procedures Act, codified at Ind. Code § 4-21.5 *et seq.*.

34. The Department complied with those service of process requirements set forth in with Ind. Code § 4-21.5-3-1.

35. Respondent has failed to meet his burden of proof in showing, by a preponderance of the evidence, that the Commissioner's nonrenewal of his license was unreasonable.

36. Pursuant to Ind. Code § 27-1-15.6-12(b)(6), the Commissioner may reprimand, levy a civil penalty, place an insurance producer on probation, suspend an insurance producer's license, revoke an insurance producer's license for a period of years, permanently revoke an insurance producer's license, or refuse to issue or renew an insurance producer license, or take any combination of these actions, for having been convicted of a felony.

37. The Department has shown, by a preponderance of the evidence, that Respondent was convicted of Theft, a Class D Felony, under cause number 49F24-1304-FD-021162.

38. Pursuant to Ind. Code § 27-1-15.6-12(b)(2), the Commissioner may reprimand, levy a civil

penalty, place an insurance producer on probation, suspend an insurance producer's license, revoke an insurance producer's license for a period of years, permanently revoke an insurance producer's license, or refuse to issue or renew an insurance producer license, or take any combination of these actions, for violating an insurance law. Ind. Code § 27-1-15.6-17 is such an insurance law.

39. Ind. Code § 27-1-15.6-17(b) states that “[n]ot more than thirty (30) days after an initial pretrial hearing date, a producer shall report to the Commissioner any criminal prosecution of the producer initiated in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.”
40. The Department has also shown, by a preponderance of the evidence that Respondent did not report his criminal prosecution to the Commissioner within thirty (30) days of an April 2, 2013 initial hearing held under cause number 49F24-1304-FD-021162.
41. Pursuant to Ind. Code § 27-1-15.6-12(b)(8), the Commissioner may reprimand, levy a civil penalty, place an insurance producer on probation, suspend an insurance producer's license, revoke an insurance producer's license for a period of years, permanently revoke an insurance producer's license, or refuse to issue or renew an insurance producer license, or take any combination of these actions, for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.
42. The Department has shown, by a preponderance of the evidence that Respondent used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of insurance business.

Specifically, Respondent used his relationship with a consumer to access large sums from a trust account for unauthorized purposes.

43. Acting within his authority, the Commissioner refused to renew Respondent's license for three (3) separate violations of the Indiana Producer's Statute, Ind. Code § 27-1-15.6.
44. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated herein as such.

**RECOMMENDED ORDER**

With the Findings of Fact and the Conclusions of Law as stated, Administrative Law Judge Meggan J. Brumbaugh now recommends to the Commissioner the following:

1. That the Commissioner's Order of Nonrenewal of License be deemed reasonable;
2. That the Commissioner's Order of Nonrenewal of License be given full effect.

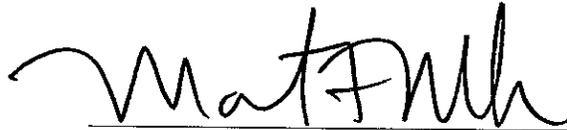
**ALL OF WHICH IS ADOPTED** by the Administrative Law Judge and recommended to the Commissioner this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Meggan J. Brumbaugh  
Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that a copy of the Proposed Findings of Fact, Conclusions of Law and Recommended Order has been served upon Respondent's counsel in the above-captioned proceeding by depositing a copy of same in the United States Mail to the addresses below, First Class Postage prepaid, this 18<sup>th</sup> day of October 2013.

Steven Sams  
STEVEN SAMS, P.C.  
8520 Allison Pointe Blvd  
Suite 220  
Indianapolis, IN 46250



Michael F. Mullen  
Attorney No. 30395-49

Indiana Department of Insurance  
Enforcement Division  
311 West Washington Street, Suite 103  
Indianapolis, IN 46204-2787  
317/232-2422 - telephone  
317/232-5251 - facsimile