

M. GALE LEMMON #4363
Assistant Attorney General
MARK L. SHURTLEFF #4666
Attorney General
Attorneys for Utah Insurance Department
160 East 300 South, Fifth Floor
P.O. Box 140874
Salt Lake City, UT 84114-0874
Telephone: 801.366.0375

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

RESPONDENT:

BW INSURANCE AGENCY, INC.
300 South Grand Ave, Sixth Floor
Los Angeles, CA 90071
License No. 91143

STIPULATION AND ORDER

Docket No. 2010-139 PC

Enf. Case No. 2707

STIPULATION

1. Respondent, BW Insurance Agency, Inc. is an active insurer in the State of Utah holding License No. 91143.

2. Respondent stipulates with the Complainant, Utah Insurance Department, as follows:

- a. If a hearing were held, witnesses called by the Complainant could offer and introduce evidence that would support the Findings of Fact herein;
- b. Respondent admits the Findings of Fact and Conclusions made therefrom;
- c. Respondent stipulates to the summary entry of the Order herein which

shall be in lieu of other administrative proceedings by Complainant in this matter; and

d. Respondent and Complainant have negotiated the terms of the Order entered herein and Respondent agrees to its entry and further agrees to be bound by all its terms.

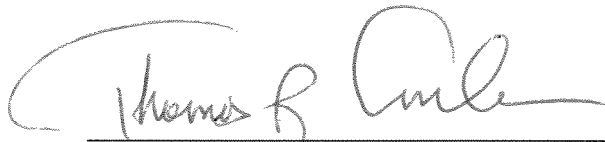
3. Respondent is aware of its right to a hearing at which it may be represented by counsel, present evidence and cross-examine witnesses. Respondent has irrevocably waived its right to such hearing and to any appeal related thereto.

4. Respondent admits the jurisdiction of the State of Utah Insurance Commissioner as to all matters herein.

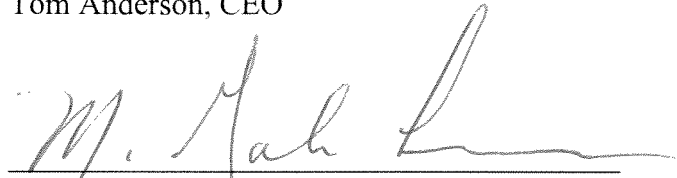
5. Respondent is acting herein free from any duress or coercion of any kind or nature, having been advised fully as to its rights set forth herein.

6. Respondent acknowledges that the issuance of this Order by the Commissioner is solely for purpose of disposition of the matter entitled herein.

DATED this 10th day of September, 2010.



BW INSURANCE AGENCY, INC.
Tom Anderson, CEO



UTAH INSURANCE DEPARTMENT
M. Gale Lemmon
Assistant Attorney General

Based upon the foregoing Stipulation and information in the file, the Presiding Officer makes the following Findings of Fact:

FINDINGS OF FACT

1. On December 3, 2009, a Department investigator paid an unannounced visit to the Sandy, Utah office of BW Insurance Agency, Inc. During the visit, the investigator asked the agency sales manager about the agency trust accounts. The sales manager explained that insurance premiums are deposited to an account not identified as a trust account and that premium payments are sometimes not deposited until “a few days” after receipt.

2. The investigator was referred to the agency’s Vice President of Operations and Chief Compliance Officer, Mark Radermacher.

3. On December 16, 2009, via email to the investigator, Respondent’s Chief Compliance Officer, Mark Radermacher, stated that the account to which premiums were deposited was “not a Trust Account, rather a deposit account used by all of our agencies,” and that “the account’s sole purpose is to be a repository for daily premium payments collected by our agencies.”

4. The investigator thereafter reviewed with Radermacher the Utah insurance laws and rules regarding trust accounts and instructed him to open a trust account for deposit of insurance payments.

5. On January 20, 2010, Radermacher confirmed via email to the investigator his understanding and agreement to establish a trust account and to comply with all regulations.

6. On April 21, 2010, upon inquiry by the investigator, Radermacher responded that “everything mentioned has been implemented.”

7. On June 30, 2010, the investigator again visited the Sandy office to verify compliance.

The then customer service agent, Mary Ann Garrett, showed him evidence of two accounts. One was identified as a “trust account” and the other as an “operations account.” However, Garret stated that the incoming insurance premiums were being deposited into the operations account as instructed by the home office.

8. In a July 1, 2010, email to the investigator, Garrett identified a BW Insurance Agency deposit account (ending in 2728) and a BW Insurance Agency trust account (ending in 5122). Garret stated that funds deposited into the deposit account (2728) are commissions and “sweep payments” from its clients.

9. A July 2, 2010 email from Radermacher states that “our Sandy Agency has, on occasion utilized our Operating Account in lieu of the Trust Account” and that “due to the small volume of sweeps from the Sandy office, it was an oversight on behalf of our Corporate Home Office. . .not to address sweep payments in regards to the Trust Account.”

10. Radermacher admitted the Sandy office failed to comply with Utah law by not establishing a trust account initially, and that after addressing the issue, the corporate home office gave the direction to the Sandy office to deposit insurance premiums into the operations account even after the trust account was established.

Based upon the foregoing Stipulation and Findings of Fact, the Presiding Officer enters the following Conclusions of Law:

CONCLUSIONS OF LAW

1. Utah Code Ann. § 31A-23a-409 (2009) states:

(1) (a) Subject to Subsection (7), a licensee is a trustee for monies received or collected for forwarding to insurers or to insureds.

(b) (i) Except as provided in Subsection (1)(b)(ii), a licensee may not commingle trust funds with:

- (A) the licensee's own monies; or
- (B) monies held in any other capacity.

(ii) This Subsection (1)(b) does not apply to:

- (A) amounts necessary to pay bank charges; and
- (B) monies paid by insureds and belonging in part to the licensee as a fee or commission.

(c) Except as provided under Subsection (4), a licensee owes to insureds and insurers the fiduciary duties of a trustee with respect to money to be forwarded to insurers or insureds through the licensee.

(d) (i) Unless monies are sent to the appropriate payee by the close of the next business day after their receipt, the licensee shall deposit them in an account authorized under Subsection (2).

(ii) Monies deposited under this Subsection (1)(d) shall remain in an account authorized under Subsection (2) until sent to the appropriate payee.

(2) Monies required to be deposited under Subsection (1) shall be deposited:

(a) in a federally insured trust account in a depository institution, as defined in Section **7-1-103**, which:

(i) has an office in this state, if the licensee depositing the monies is a resident licensee;

(ii) has federal deposit insurance; and

(iii) is authorized by its primary regulator to engage in the trust business, as defined by Section 7-5-1, in this state; or

(b) in some other account, approved by the commissioner by rule or order, providing safety comparable to federally insured trust accounts.

(3) It is not a violation of Subsection (2)(a) if the amounts in the accounts exceed the amount of the federal insurance on the accounts.

(4) A trust account into which monies are deposited may be interest bearing. The interest accrued on the account may be paid to the licensee, so long as the licensee otherwise complies with this section and with the contract with the insurer.

(5) A depository institution or other organization holding trust funds under this section may not offset or impound trust account funds against debts and

obligations incurred by the licensee.

(6) A licensee who, not being lawfully entitled to do so, diverts or appropriates any portion of the monies held under Subsection (1) to the licensee's own use, is guilty of theft under Title 76, Chapter 6, Part 4, Theft. Section **76-6-412** applies in determining the classification of the offense. Sanctions under Section **31A-2-308** also apply.

(7) A nonresident licensee:

(a) shall comply with Subsection (1)(a) by complying with the trust account requirements of the nonresident licensee's home state; and

(b) is not required to comply with the other provisions of this section.

(Emphasis added.)

2. Respondent violated the above statute by failing to deposit insurance premiums it received into a trust account no later than the next business day.

3. Respondent violated the above provision by failing to deposit payments into a designated trust account.

4. Utah Administrative Code R590-170-4(3) states:

(1) All records relating to a trust account shall be identified with the wording "Trust Account" or words of similar import. These records include checks, bank statements, general ledgers and records retained by the bank pertaining to a trust account. . . .

(3) A trust account shall be separate and distinct from operating and personal accounts, i.e., a separate account number, a separate account register, and different checks, deposit and withdrawal slips.

5. Respondent violated the above Rule when it failed to maintain a trust account that was separate and distinct from its operating account.

6. An administrative forfeiture in the amount of \$40,000 and probation for a period of 12 months is appropriate under the circumstances of this case.

ORDER

1. Respondent BW Insurance Agency Inc. Be assessed an administrative forfeiture in the amount of \$40,000 to be paid to the Department within thirty days of entry of this Order.

2. Respondent is placed on probation for a period of 12 months commencing with the date of this order. The terms of probation are that Respondent shall have no further violations of the Utah Insurance Code, Department Rules or any order of the Commissioner.

DATED this 14 day of September, 2010.

NEAL T. GOOCH
Insurance Commissioner



MARK E. KLEINFELD
Administrative Law Judge
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, Utah 84114
Telephone: (801) 538-3800

NOTIFICATION

_____ You are hereby notified that a failure to obey an Order of the Commissioner may subject you to further penalties, including forfeitures of up to \$5,000 per violation and the suspension or revocation of your license and the filing of an action in district court, which may impose forfeitures of up to \$10,000 per day for continued violation.

You are further notified that other jurisdictions in which you may be licensed may require that you report this action to them.