

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

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**RECEIVED**  
DEC 09 2010  
UTAH STATE  
INSURANCE DEPT

BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF UTAH

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**COMPLAINANT:**

UTAH INSURANCE DEPARTMENT

**RESPONDENT:**

DONALD E. BENNETT  
896 Mesa Vista Drive  
Ivins, UT 84738  
License No. 308217

**STIPULATION AND ORDER**

Docket No. 2010-173 LC

Enf. Case No.2738

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**STIPULATION**

1. Respondent, Donald E. Bennett is a licensed resident insurance producer in the State of Utah holding License No. 308217.
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 his right to a hearing at which he may be represented by counsel, present evidence and cross-examine witnesses. Respondent has irrevocably waived his right to such hearing and to any appeal related thereto.

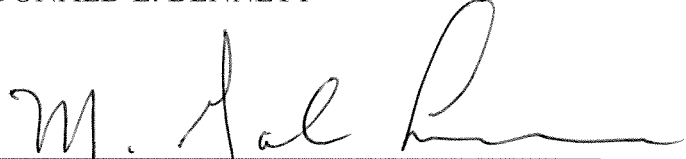
4. Respondent admits the jurisdiction of the State of Utah Insurance Commissioner as to all matters herein.

5. Respondent is acting herein free from any duress or coercion of any kind or nature, having been advised fully as to his 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 4 day of December, 2010.

  
DONALD E. BENNETT

  
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 September 28, 2010, while conducting random agency visits, a Department investigator made contact with Respondent.
2. The investigator asked Respondent if he maintained a trust account. The Respondent said he did, and provided a copy of his most recent trust account statement.
3. The trust account was established at Farmers Insurance Group Federal Credit Union (FIGFCU), located out of state, in the personal name of Respondent “Mr. Donald E. Bennett.” There appeared to be a sub-account named “S12 Share A/C - BristolWest Prem Trst.”
4. Further investigation revealed that FIGFCU has no offices in Utah. When, the investigator asked why Respondent had established a trust account at his out of state credit union, Respondent replied that he was told to open a trust account and that someone mentioned opening an account at FIGFCU.
5. The investigator then instructed Respondent on the legal requirements of establishing and maintaining a proper trust account, and advised Respondent to open a trust account at a financial institution with offices in Utah.
6. Respondent has since opened a proper trust account.
7. The Respondent has agreed to a recommend \$250.00 forfeiture.

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.

© 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. . . .

(Emphasis added.)

2. Respondent violated the above Utah statute by failing to deposit payments into a trust account at a financial institution with offices in this state..

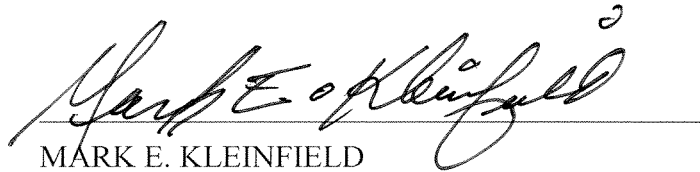
3. An administrative forfeiture of \$250.00 is appropriate under the circumstances of this case.

**ORDER**

1. Respondent Donald E. Bennett is assessed an administrative forfeiture in the amount of \$250.00 to be paid to the Commissioner within thirty (30) day of the issuance of this Order.

DATED this 14 day of December, 2010.

NEAL T. GOOCH  
Insurance Commissioner



MARK E. KLEINFELD  
Administrative Law Judge

Utah Insurance Department, Room 3110  
Salt Lake City, UT 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 \$2,500 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.