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MAR 16 2011

UTAH STATE  
INSURANCE DEPT.

BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF UTAH

**COMPLAINANT:**

UTAH INSURANCE DEPARTMENT

**RESPONDENT:**

HY AND MIKE'S BAIL BONDING  


License No. 125687

**STIPULATION AND ORDER**

Docket No. 2011-023 PC

Enf. Case No. 2767

**STIPULATION**

1. Respondent, Hy and Mike's Bail Bonding is a licensed bail bond agency in the State of Utah, holding License No. 125687.
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.

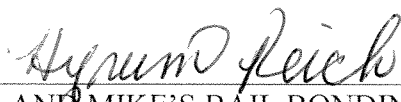
3. Respondent is aware of its right to a hearing at which it may be represented by counsel, present evidence and cross-examine witnesses. Respondent has irrevocably waived its right to such hearing and to any appeal related thereto.


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 15 day of MARCH, 2011.

  
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HY AND MIKE'S BAIL BONDING, by  
HYRUM REICH, Director

  
\_\_\_\_\_  
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. In November of 2010, the Department learned of two bail bond agents in St. George writing bail bonds for Respondent but who were not designated on the license of Respondent Hy and Mike's Bail Bonding.

2. On November 16, 2010, Respondent was contacted by a Department investigator and informed that these two agents could not continue to write bonds until they were designated to the agency and the designation had been updated through SIRCON.

3. On November 17, 2010, designations were completed and verified, and the association between the agents and Hy and Mikes Bail Bonding was updated through SIRCON.

4. As a result of the above, Hy and Mike's Bail Bonding was notified of a compliance audit that would be conducted at the office of record on December 9, 2010.

5. On December 9, 2010, an audit was conducted on the trust account and the bonds executed/issued in southern Utah.

6. The December 9, 2010 audit of the trust account revealed that a loan was made from the trust account to the operating account in the amount of \$25,000.

7. In a written statement and telephonic interview, Respondent Hyrum Reich admitted that he made a loan from the trust account to the operating account for roughly seven months (12/9/2009 - 7/27/2010) to pay a bail bond forfeiture judgment entered against Hy and Mike's Bail Bonding.

8. Respondent Michael Baucum also stated to the auditor that the agency could have

used other sources to pay the judgment, but that he felt as long as a paper trail existed, the loan from the trust account would be easiest.

9. The audit also revealed that Respondent's trust account ledger was not accurately maintained, and deposits were not properly documented as required.

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-35-402 states as follows:

(1) A bail bond surety company may only issue bail bonds.

(2) **In accordance with Section 31A-23a-205, a bail bond producer may not execute or issue a bail bond in this state without holding a current appointment from a bail bond surety or current designation from a bail bond company.**

(3) A bail bond surety may not allow any person who is not a bail bond producer to engage in the bail bond surety business on the bail bond surety's behalf, except for individuals:

(a) employed solely for the performance of clerical, stenographic, investigative, or other administrative duties that do not require a license as:

(I) a bail bond surety company; or

(ii) a bail bond producer; and

(b) whose compensation is not related to or contingent upon the number of bonds written.

(Emphasis Added.)

2. Respondents violated the above provision in allowing two agents to execute/issue bail bonds without being affiliated with Hy and Mikes Bail Bonding.

3. Utah Code Ann. § 31A-23a-409 addresses Trust obligation for monies collected:

(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 insureds or insurers 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; . . .**

4. Utah Administrative Code R590-170-5 addresses disbursements from a trust account:

(1) Funds deposited into a trust account shall be limited to: premiums which may include commissions; return premiums; fees or taxes paid with premiums; financed premiums; funds held pursuant to a third party administrator contract; funds deposited with a title insurance agent in connection with any escrow settlement or closing, amounts necessary to cover bank charges on the trust account; and interest on the trust account, except as provided under Subsection 31A-23a-406(2)(b).

**(2) Disbursements from a trust account shall be limited to: premiums paid to insurers; return premiums to policyholders; transfer of commissions and fees; fees or taxes collected with premiums paid to insurers or taxing authority; funds paid pursuant to a third party administrator contract; funds disbursed by a title insurance agent in connection with any escrow settlement or closing; and the transfer of accrued interest.**

**(3) Personal or business expenses may not be paid from a trust account, even if sufficient commissions exist in the account to cover these expenses. . . .**

(Emphasis Added.)

5. Respondents violated the trust account provisions of Utah law by making a seven month loan from the trust account to the operating account to pay a bail bond forfeiture judgment.

6. Utah Administrative Code R590-170-7 requires that accounting records be maintained:

(1) Bank statements for trust accounts shall be reconciled monthly.

(2) An accounts receivable report showing credits and debits shall be maintained and reconciled monthly. This report must list, at a minimum, the account name and the amount and date due for each receivable. The sum of all receivables shall be shown on the report. Receivables and their sums that are over 90 days old shall be shown separately on the report.

(3) An accounts payable report showing the status of each account shall be maintained and reconciled monthly.

**(4) Adequate records shall be maintained to establish ownership of all funds in the trust account: from whom they were received; and for whom they are held.**

(5) Trust account registers shall maintain a running balance.

**(6) All accounting records relating to the business of insurance shall be maintained in a manner that facilitates an audit.**

7. By failing to maintain accurate and thorough trust account records, Respondents violated Utah Administrative Code Rule R590-170-7.

8. An administrative forfeiture of \$56,000.00 with \$23,000 stayed if records are updated to the satisfaction of the department within 90 days is appropriate. Probation for a period of 24 months is also appropriate.

Based upon the foregoing Stipulation, Findings of Fact and Conclusions of Law, the

Presiding Officer herewith enters the following Order:

**ORDER**

**IT IS HEREBY ORDERED:**

1. Respondents Hy and Mike's Bail Bonding, is assessed an administrative forfeiture in the amount of \$56,000.00. The amount of \$23,000.00 os said forfeiture is hereby suspended, pending successful completion of the probation imposed herein.

Respondents' updating of records to the satisfaction of the Department within 90 days. Thirty three thousand (\$33,000.00) is due to the Utah Department of Insurance within 30 days of the issuance of this Order.

2. Respondent's bail bond surety license is hereby placed on probation for a period of 24 months commencing with the date of this Order. The terms of probation are:

a. Respondent shall have no further violations of the Utah Insurance Code, Department rules, or any order of the commissioner;

b. Respondent shall pay the balance of the forfeiture in the amount of \$33,000.00 within 30 days of the date of this Order; and

c. Respondent shall, within 90 days of the date of this Order update its records to properly maintain its trust account ledger and to properly documents deposits to the trust account.

**NOTIFICATION**

You are hereby notified that a failure to obey an Order of the Commissioner may subject you to further penalties, including forfeiture 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 us 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.

DATED this 17<sup>th</sup> day of March, 2011.

NEAL T. GOOCH  
Insurance Commissioner



MARK E. KLEINFELD  
Administrative Law Judge  
Utah Insurance Department  
State Office Building, Room 3110  
Salt Lake City, Utah 84114  
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