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MAR 14 2011

UTAH STATE  
INSURANCE DEPT.

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BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF UTAH

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<p><b>COMPLAINANT:</b></p> <p>UTAH INSURANCE DEPARTMENT</p> <p><b>RESPONDENT:</b></p> <p>RYAN D. GORHAM 180 W. Parrish Lane Centerville, UT 84014 License No. 321250</p>	<p><b>STIPULATION AND ORDER</b></p> <p>Docket No: 2011-020 LC</p> <p>Enf. Case No. 2776</p>
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**STIPULATION**

1. Respondent, Ryan D. Gorham is a resident insurance agent licensed in the State of Utah holding License No. 321250.
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. Respondents 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.

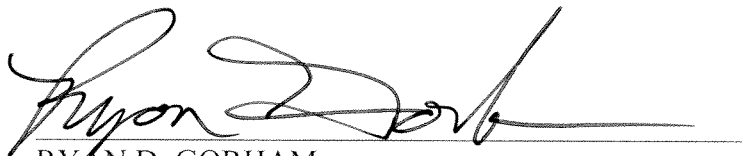
3. Respondent is aware of his right to a hearing at which he may be represented by counsel, present evidence and cross-examine witnesses. Respondent has irrevocably waived his right to such hearing and to any appeal related thereto.


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 11<sup>th</sup> day of March, 2011.

  
\_\_\_\_\_  
RYAN D. GORHAM

  
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UTAH INSURANCE DEPARTMENT  
M. Gale Lemmon  
Assistant Attorney General

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

**FINDINGS OF FACT**

1. This matter arises following a random trust audit of Respondent's trust and operating accounts.

2. On or about December 29, 2010, a Department investigator sent an email to Respondent advising him of an audit being conducted of his agency. The email requested copies of the last 3 months of his operating and trust accounts bank statements.

3. On January 3, 2011, Respondent emailed to the investigator, copies of the trust and operating account "transactions" covering the period October, 2010, November, 2010, and December 2010. The investigator then made telephone contact with Respondent and requested actual account statements for the same periods.

4. On January 16, 2011, Respondent emailed copies of his October through December trust and operating accounts bank statements along with an explanation that on October 12, 2010, he transferred \$294.00 to his business account from the trust account. Respondent explained he did this because he sold a flood policy and was notified by American Family Flood they could not pull or sweep from the trust account and needed a check for the premium. Respondent further explained that because he did not have a check from his trust account, he transferred the premium funds from the trust to his business account and then wrote a check from that account to American Family Flood for the policy.

5. Respondent stated that his commission for the flood policy was \$45.

6. Discussions between the investigator, Respondent, Respondent's District Manager,

and American Family District Manager indicated that Respondent may have received some poor advice on how to handle the subject premium. Respondent takes full responsibility for commingling trust funds with his own funds in violation of Utah law, has been cooperative throughout the investigation, and has provided all information requested. Respondent's commission for the policy sale was \$45.

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 addressing trust obligation for monies collected, states in part:

- (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.**
- (Emphasis added.)

2. Utah Administrative Rule R590-170-5 (2) addresses maintaining the trust account states in part:

(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. Respondent violated the above provision by co-mingling trust funds with his own money and when he deposited trust monies into his business account.

4. An administrative forfeiture of \$500.00, plus twice the amount of profit gained from the violation, totaling \$590.00, with \$500.00 suspended pending successful completion of 24 months of probation.

Based upon the forgoing Findings of Fact and Conclusions of Law, the presiding officer now enters the following:

**ORDER**

**IT IS HEREBY ORDERED:**

1. Respondent is assessed an administrative forfeiture in the amount of \$590.00.
2. A total of \$500.00 of said forfeiture is hereby suspended pending the successful completion of the probation imposed herein. Respondent shall pay the remaining amount of the forfeiture, totaling \$90.00, within 30 days of the date of this Order..
3. Respondent is hereby placed on probation for a period of 24 months commencing with the date of this Order. The terms of probation are that Respondent shall pay the forfeiture

assessed herein in a timely manner and shall have no further violations of the Utah Insurance Code, Department Rules or any order of the Commissioner.


**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 penalties 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.

DATED this 15<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  
Telephone: (801) 538-3800