

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH**

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

RESPONDENT:

REAL BAIL BOND



License No. 204543

PABLO A. ALCALDE



License No.s 118422,
204113 &
237162

ORDER ON HEARING

(Formal Hearing)

DOCKET No. 2011-159-PC
Enforcement Case No. 2808

Mark E. Kleinfield,
Presiding Officer

THIS MATTER concerning whether the Respondents' respective bail bond and insurance licenses should be revoked came on to be heard before the Commissioner of the Utah State Insurance Department ("Department") on Monday, December 12th, 2011 and Wednesday, December 14th, 2011 at 9:00 o'clock A. M. Mountain Time, each day, with Mark E. Kleinfield, Administrative Law Judge, serving as designated Presiding Officer.

Said hearing being held at the Department's offices located at the Utah State Office Building, Room 3110, Salt Lake City, Utah 84114, having been convened at the designated time of 9:00 A. M., December 12th, 2011 and December 14th, 2011, respectively.

Appearances:

M. Gale Lemmon, Assistant Attorney General, Attorney for Complainant, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

Pablo A. Alcalde, individually and on behalf of Real Bail Bond, Respondents, [REDACTED]
[REDACTED].

By the Presiding Officer:

Pursuant to a Notice of Continuance (of Formal Hearing) a hearing was conducted on December 12th, 2011 and December 14th, 2011 in the above-entitled proceeding. The Respondents were present at that time.

The hearing was convened and conducted as a **formal hearing** in accordance with Utah Code Ann. Sections 63G-4-204, 63G-4-205, 63G-4-206, 63G-4-207 and 63G-4-208 and Administrative Rule R590-160.

ISSUE, BURDEN and "STANDARD OF PROOF"

1. The basic issue(s) in this case is (are):

Should the Respondents' respective bail bond and insurance licenses be revoked?

(SEE also Paragraph 2 under DISCUSSION-ANALYSIS.)

2. The "*burden of proof*" or "*burden of going forward*" in this case as to the above issue(s) is on the Complainant Department.

3. As per Utah Administrative Code Rule, R590-160-5(10) as to the above and foregoing "issue(s)" or "question(s)" to be answered the "*standard of proof*" as to issues of fact is to be proven by a "*preponderance of the evidence*".

The parties presented opening statements.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Complainant Department:

1. Randy Overstreet, Director, Producer Licensing Division, Utah Insurance Department, 3110 State Office Building, Salt Lake City, Utah 84114.
2. Jaimee George, Market Conduct Examiner, Market Conduct Division, Utah Insurance Department, 3110 State Office Building, Salt Lake City, Utah 84114.
3. Susan Ulberg, Compliance Officer, Universal Fire & Casualty Insurance Company, 3214 Chicago Drive, Hudsonville, Michigan 49426. (Testified via telephone (616) 662-0524).
4. Tom Parker, President, Universal Fire & Casualty Insurance Company, 3214 Chicago Drive, Hudsonville, Michigan 49426. (Testified via telephone (616) 662-0524).
5. Cheryl Lyman, UID Licensee, 4885 South 900 East, #2, Salt Lake City, Utah 84117.

For the Respondents:

1. Jaimee George, Market Conduct Examiner, Market Conduct Division, Utah Insurance Department, 3110 State Office Building, Salt Lake City, Utah 84114.
2. Pablo A. Alcalde, Respondent, [REDACTED]

All of whom were placed on their respective oaths, sworn and testified.

Exhibits:

The Complainant Department offered the following exhibits:

1. **Complainant's Exhibit No. 1**, Print-out of the Utah Insurance Department's SIRCON licensing file for Pablo A. Alcalde.
2. **Complainant's Exhibit No. 2**, Print-out of the Utah Insurance Department's SIRCON licensing file for Real Bail Bonds.
3. **Complainant's Exhibit No. 3**, Print-out of the Utah Department of Commerce's Utah Business Entity Search file for Real Bail Bonds.
4. **Complainant's Exhibit No. 4**, Print-out of the Utah Insurance Department's SIRCON licensing file for AA La Guadalupana Bail Bonds.

5. Complainant's Exhibit No. 5, Print-out of the Utah Department of Commerce's Utah Business Entity Search file for AA La Guadalupana Bail Bonds.

6. Complainant's Exhibit No. 6, Copy of a Stipulation and Order dated July 15, 2011, in the matter of Utah Insurance Department vs. Pablo A. Alcalde and Real Bail Bond, Docket No. 2010-043-PC, Enf. Case Nos. 2471 & 2472.

7. Complainant's Exhibit No. 7, Real Bail Bond's file for Jose de Jesus Sandoval (12 pages), and print-out of case docket for State v. Jose de Jesus Sandoval, Case No. 101401720, Third District Court, West Jordan, State of Utah (8 pages).

8. Complainant's Exhibit No. 8, Copies of bank statements from USBank for Pablo Alcalde dba Real Bail Bonds, Acct. No. 153151241780, for the period of January 4, 2010, through December 31, 2010 (72 pages).

9. Complainant's Exhibit No. 9, Copies of account statements from Granite Credit Union for Pablo A. Alcalde, Acct. No. 81172, for the period of September 2009, and November 2009 through December 2010 (15 pages).

10. Complainant's Exhibit No. 10, Compact Disk containing photocopies of Receipts for Powers of Attorney issued by Universal Fire & Casualty Insurance Company to Pablo Alcalde and Real Bail Bonds and used between July 2009 and July 2007, consisting of 65 images containing 149 bail bond receipts for Powers of Attorney.

11. Complainant's Exhibit No. 11, Copies of Appearance Bond Face Sheets with accompanying Powers of Attorney for a sampling of 16 bonds filed with the Salt Lake City Metro Jail between October 2009 and August 2010, bearing the name of AA La Guadalupana Bail Bonds (32 pages).

12. Complainant's Exhibit No. 12, Copy of an Immigration Bond file posted by Pablo A. Alcalde on July 29, 2010, on Universal Fire & Casualty paper for Roberto Chavez Lopez (13 pages).

13. Complainant's Exhibit No. 13, Copy of letter and attachments from Tom Parker, President, Universal Fire & Casualty Insurance Company, dated January 25, 2011, terminating the contract and appointment of Pablo Alcalde and Real Bail Bonds (14 pages).

14. Complainant's Exhibit No. 14, Print-out of SERFF filing by Universal Fire & Casualty Insurance Company to the Utah Insurance Department dated February 4, 2010, with copies of accompanying forms (13 pages).

15. Complainant's Exhibit No. 15, Copies of Checks for accounts of Real Bail Bonds and a bank statement for the purported trust account for January 2011, received from Respondents on February 7, 2011.

16. Complainant's Exhibit No. 16, Copies of "Plain Language Contract" for AA La Guadalupana Bail Bonds for dates from June 1, 2010 through July 5, 2010, issued by Respondents. These copies received from Respondents on January 24, 2011.

(No objection being made which exhibits were accepted and entered.)

The Respondent offered the following exhibits:

1. Respondents' Exhibit No. 1, Copy of letter from Cheryl K. Lyman to Robert Herrera, Market Conduct Examiner, State of Utah Insurance Department, August 3, 2010.

2. Respondents' Exhibit No. 2, Copy of Release – Individual by Cheryl K. Lyman, d/b/a Real Insurance to Pablo A. Alcalde, July 30, 2010.

3. Respondents' Exhibit No. 3, Copy of Release – Individual by Cheryl K. Lyman, d/b/a AA La Guadalupana to Jerry Pacheco, December 1, 2010.

4. Respondents' Exhibit No. 4, Copy of FAX from Linda Hardy, State of Utah Insurance Department to Cheryl K. Lyman, Fax (801) 964-6293, concerning Order To Show Cause, Utah Insurance Department, Complainant, AA Guadalupana Bail Bonds, Docket No. 2010-051-PC, March 30, 2010 (13 pages).

5. Respondents' Exhibit No. 5, Copy of email from Jaimee L. George, Utah Insurance Department to Sharon Preston, attorney for Cheryl K. Lyman, January 25, 2011 (2 pages).

6. Respondents' Exhibit No. 6, Copy of Letter from Cheryl K. Lyman, attention to Bob Ryzanca, Mindy De Besten and Susan Ulberg, Universal Fire & Casualty, January 17, 2011.

7. Respondents' Exhibit No. 7, Copy of Letter from Cheryl K. Lyman, surrender of AA Guadalupana Bail Bond license, January 12, 2011.

8. Respondents' Exhibit No. 8, Letter from Universal Fire & Casualty Insurance, Notification of Appointment, from Universal Fire & Casualty Company re Cheryl K. Lyman, April 12, 2007 and September 13, 2007..

9. Respondents' Exhibit No. 9, Copy of Commission, EFT Authorization from Cheryl K. Lyman, d/b/a Real Insurance to Dairyland Insurance Company, Real Insurance, August 1, 2008.

10. Respondents' Exhibit No. 10, Copy of FAX from National Insurance Underwriters, Inc., Producer Agreement, to Cheryl K. Lyman, February 22, 2005 (5 pages).

11. **Respondents' Exhibit No. 11**, Copy of Bank Statement from US Bank for Cheryl K. Lyman, d/b/a Real Insurance, Account No. 153190575917.

12. **Respondents' Exhibit No. 12**, Copy of Business License certificate, West Valley City re Pablo A. Alcalde, Business address (1) [REDACTED] and (2 & 3) [REDACTED] (both) West Valley City, Utah, July 7, 2006, December 14, 2007 and December 21, 2010 to December 31, 2011.

(No objection being made which exhibits were accepted and entered.)

Argument followed.

The Presiding Officer being fully advised in the premises and taking administrative notice of the files and records of the Department, now enters his *Findings of Fact, Conclusions of Law, and Order*, on behalf of the Department:

FINDINGS OF FACT

I, find by a preponderance of the evidence, the following facts:

Preliminary-Procedural Facts (Paragraphs 1-8)

1. The Utah Insurance Department ("Department") is a governmental entity of the State of Utah. The Department as per Utah Code Ann. Section 31A-2-101 is empowered to administer the *Insurance Code*, Title 31A, Utah Code Ann., 1953, as amended.

2. a. The Respondent, Real Bail Bond, a Utah business entity, is a bail bond agency domiciled in and maintaining a present principal business address of [REDACTED] [REDACTED] having been initially licensed as of March 15, 2006 and holding License No. 204543 (Inactive), currently as of July 15, 2011 in a lapsed status, and is a d/b/a of Respondent Pablo A. Alcalde, as shown on the records of the Utah Insurance Department (Complainant Exh. No. 2) (SEE Dept, witn. Overstreet testimony); and

b. The Respondent Pablo A. Alcalde, is a resident bail bond licensee and resident producer, domiciled in and maintaining a present principal business address of [REDACTED] [REDACTED], having been initially licensed as of August 12, 1999 and is the owner of Respondent Real Bail Bond, holding License No.s 118422 (Inactive), 237162 (Inactive), and 204113 (Active), currently as of May 31, 2010 in a lapsed non-renewed status based on apparent lack of CE requirements compliance, with Respondent Alcalde's bail bond producer's license is currently on probation, having been placed on probation for a period of 24 months beginning July 15, 2010, for, *inter alia*,

acting as a bail bond producer while his license had lapsed, (Docket No. 2010-043-PC, Enf. Case Nos. 2471 & 2472), as shown on the records of the Utah Insurance Department. (Complainant Exh. No. 1 and 6) (SEE Dept, with. Overstreet testimony).

3. The Department on or about July 20, 2011 filed its Complaint dated July 18, 2011 praying for revocation of Respondents' respective bail bond agency license and producer licenses. (SEE file).

4. The Presiding Officer on July 20, 2011 issued a Notice of Formal Adjudicative Proceeding and Pre-Hearing Conference setting the present matter for pre-hearing conference on Tuesday, August 23, 2011 at 9:30 o'clock A. M. Mountain Time, which due to the Respondent Alcalde being out of the country at the time of the Complaint's filing moved to Tuesday, August 23, 2011 at 9:30 o'clock A. M. Mountain Time. (SEE file).

5. A Pre-hearing Conference was held on August 30, 2011 and the Respondents given until September 19, 2011 to file their respective Answers to the Complaint, and a Formal Hearing date(s) of Tuesday, December 13, Wednesday, December 14 and Thursday, December 15, 2011 scheduled, with respective witness and exhibit list due dates and discovery cut-off set¹. (SEE file).

6. The individual Respondent and Real Bail Bond owner, Pablo A. Alcalde, filed an Answer dated September 15, 2011 on September 19, 2011. (SEE file).

7. Based on a scheduling conflict the Presiding Officer *sua sponte* via a November 21, 2011 Notice of Continuance re-scheduled the Formal Hearing to Monday, December 12 and Wednesday, December 14, 2011.² (SEE file).

¹ Based on the August 30, 2011 Pre-hearing Conference and Order entered that same day, discovery cut-off was set for the close of business 5:00 o'clock P. M. Mountain Time, Tuesday, October 25, 2011. The Presiding Officer inadvertently issued a Subpoena (documents and witness attendance) at Respondents' request on October 31, 2011. Such issuance subsequently culminating in a Motion to Quash being filed on December 1(2), 2011 by Randall R. Smart, Salt Lake City, Utah, counsel for Universal Fire & Casualty Company, one of the three (3) parties subpoenaed. After telephone hearing on December 7 (?), 2011 with Universal's counsel, the Respondents and counsel for the Department, the requested documentation in the subpoena was acknowledged as supplied by counsel for Universal notwithstanding his Motion to Quash. As to the two (2) individual parties subpoenaed the Presiding Officer ruled notwithstanding the cut-off date of October 25, 2011 that such witnesses should be available via telephone. At the ultimate hearing the Respondents choice not to call the two (2) individual subpoenaed parties, Jeff Marculis, Claims & Transfer Bond Manager and Bob Ryzanca, Vice-president, respectively, Universal Fire & Casualty Insurance Company, Hudsonville, Michigan as witnesses.

² Respondents on December 5, 2011 filed a "Motion of Continuance Stipulations" which while somewhat confusing appears to be a request for extension of time for discovery which effectively if granted would extend the date for hearing. This matter was taken up at the same telephone hearing referenced in footnote 1, immediately above, and based on the proximity of the scheduled hearing appeared dilatory in nature and was accordingly denied.

8. That based on the preliminary facts as set forth in paragraphs 1 through 7, immediately above, the present hearing took place on December 12 and 14, 2011 at the Utah Insurance Department.³

Operative Facts
(Paragraphs 9-19)

9.a. Respondent Real's license to act as a bail bond surety lapsed on July 15, 2009, when its application for renewal was denied, and was not authorized to do any bail bond business until its license was reinstated on July 15, 2010. (Complainant Exh. No. 2) (SEE Dept, withn. Overstreet testimony).

b. When Real's license lapsed, all of its insurer appointments and all of its agent affiliations were automatically cancelled. (SEE Dept, withn. Parker & Ulberg testimony).

10. During the time that Respondent Real's license was lapsed, Respondent Real, acting through Respondent Alcalde and Christina M. Trujillo, now deceased, ("Trujillo"), continued to issue bail bonds on bail bond forms and powers of attorney issued by Universal Fire and Casualty Insurance Company ("Universal") to Real. (Complainant Exh. No. 10, 11 & 12) (SEE Dept, withn. George & Lyman testimony).

11. Real, through Alcalde and Trujillo, when issuing bail bonds while Real's license was lapsed and when it had no authority to act for Universal, used the name and license of AA La Guadalupana Bail Bonds ("Guadalupana") to issue such bail bonds. (SEE Dept, withn. George, Lyman & Parker testimony).

12.a. Although Guadalupana was appointed with Universal on the records of the Utah Insurance Department ("Department"), Universal had not completed a contract with Guadalupana nor its owner to act as an agent in its behalf, and had not issued any bail bond forms or powers of attorney to Guadalupana to utilize. (SEE Dept, withn. Lyman, Parker & Ulberg testimony).

b.i. Guadalupana did not have authority to issue bail bonds.

³ Respondents on January 4, 2012, substantially after the close of evidence and submission, filed a "Motion to Dismiss" based on alleged non-compliance to discovery requests. Counsel for the Department on January 10, 2012 filed his "Memorandum in Opposition". Respondents' Motion to Dismiss is **denied** based on mootness as well as its lack of timeliness. Respondents' allege they were harmed by the failure of the Department to provide a copy of or transcript of an alleged recording involving Cheryl K. Lyman. As Department counsel points out in his Memorandum in Opposition the record does not seem to reflect such was a specific definitive discovery request. Even if requested Ms. Lynman testified at the instant hearing and Respondents' had sufficient opportunity to inquire of Ms. Lyman about such conversation(s), recorded or otherwise, and did in fact to some extent attempt such during cross-examination. Factually Respondents' Motion to Dismiss is not well taken. Procedurally the Presiding Officer notes the Department counsel's succinct analysis of the circumstances, including Rule 37, Utah Rules of Civil Procedure. Respondents were not harmed, let alone to an extent justifying dismissal.

ii. Guadalupana's license was surrendered on January 12, 2011, by its owner, Cheryl K. Lyman ("Lyman") (SEE Dept, withn. George & Lyman testimony) ; and

iii. Guadalupana did not do any bail bond business during the time it was licensed.

13. Neither Alcalde nor Trujillo was associated with the license of Guadalupana and had no authority to use the name of Guadalupana in marketing, selling, or issuing bail bonds. (Complainant Exh. No. 1) (SEE Dept, withn. Lyman testimony).

14. When "issuing" bail bonds under the name of Guadalupana, Respondent Alcalde either forged or caused to be forged the name of Lyman on the bonds and powers of attorney. (Complainant Exh. No. 10) (SEE Dept, withn. Lyman testimony).

15.a. Respondent Alcalde, acting for Respondent Real, accepted collateral funds as security in connection with the issuance of bail bonds. (Complainant Exh. No. 8 & 9).

b. Respondents failed to establish and maintain an appropriate trust account and to deposit the collateral funds, which they held in a fiduciary capacity, into a trust account and hold them there until the bond was either collected on or exonerated, and failed to properly account for the funds held in trust. (Complainant Exh. No. 8 & 9).

16. Respondent Alcalde deposited collateral funds into his own account or in the account of Real, commingling funds held in trust with his own funds, and converted those funds to his own use, and failed to timely return collateral funds when a bond was exonerated. (Complainant Exh. No. 8 & 9).

17.a. Notwithstanding Universal canceled the appointment of Alcalde and Real on February 1, 2011, the Respondents continued to "issue" bail bonds after the cancellation of that appointment. (Complainant Exh. No. 10) (SEE Dept, withn. George & Parker testimony).

b. Respondents acting as a bail bond surety without meeting the minimum financial requirements to act as a bail bond surety company by: having a letter of credit of at least \$300,000 assigned to the State of Utah; pledging assets and filing a financial statement with the department showing a net worth of at least \$300,000; or having a qualifying power of attorney from a surety insurer authorized to do business in the State of Utah.

18.a. Respondent Alcalde's license lapsed on May 31, 2010, when Alcalde failed to timely renew his license, and was reinstated on July 15, 2010. (Complainant Exh. No. 1) (SEE Dept, withn. Overstreet testimony).

b. During the period that Alcalde's license had lapsed, he continued to act as a bail bond agent by soliciting, selling, and issuing bail bonds. (SEE Dept, withn. George testimony).

19.a. The Presiding Officer finds each respective Department witness more credible and more believable in their respective testimony on points coalescing with the testimony of the Respondent Pablo A. Alcalde.

b. The Presiding Officer finds the Respondent Pablo A. Alcalde less credible and less believable in his testimony on points coalescing with the testimony of each respective Department witness.

DISCUSSION-ANALYSIS

1.a. The Respondent and the Department in large measure while advocating **clearly different characterizations or interpretations** of the above referenced operative facts in substance concurred as to the basic *chronology* of the facts.

b. The record now being complete sets forth competent and credible evidence for the entry of the following analysis.

2. The question(s) presented is:

a. "Whether the Respondents' actions are violative of the statutory and or administrative rule sections referenced in the the Department's July 18, 2011 Complaint⁴, namely as to Respondent Alcalde, Utah Code Ann. Section 31A-23a-111(5)(b): **(i)**, is unqualified for a license; **(ii)(A) and (B)**, has violated an insurance rule or statute; **(xii)**, improperly withholds, misappropriates, or converts money or property received in the course of doing insurance business; **(xvi)**, in the conduct of business uses fraudulent or dishonest practices, or demonstrates untrustworthiness; **(xvii)**, forges another's name to a document related to an insurance transaction; and or **(xxiv)**, engages in a method or practice in the conduct of business that endangers the legitimate interests of customers and the public; and as to Respondent Real Bail Bond, Utah Code Ann. Section 31A-35-703, the statutes and rules governing the conduct of bail bond sureties, based on acts of Respondent Real Bail Bonds agent, Pablo A. Alcalde, being considered to be the acts of his "*respondeat superior*" under Utah Code Ann. Section 31A-35-601(2)";

⁴ Counsel for the Department at the conclusion of the formal hearing on December 14, 2011 moved to strike Paragraphs 15 and 30 of the Department's July 18, 2011 Complaint referencing the alleged "use[d] forms in issuing bail bonds that had not been filed with the department prior to use" (Paragraph 15) and the conclusionary prayer for relief that "[In] utilizing forms that had not previously been filed with the Department in connection with issuing bail bonds, Respondents violated Utah Code Annotated 31A-35-607" (Paragraph 30). Such motion being granted Paragraphs 15 and 30 were stricken accordingly.

b. “If the Respondents have so violated said cited statutory sections is the revocation of the Respondents’ respective bail bond agency license and individual producer licenses the appropriate penalty to be imposed”; and

c. Whether as per Utah Administrative Code Rule, R590-160-5(10) as to each of the above and foregoing “issue(s)” or “question(s)” to be answered the “*standard of proof*” as to issues of fact have been proven by a “*preponderance of the evidence*”?

3. Applicable Pertinent Statutes and Administrative Rules are as follows (although others may be otherwise specifically cited within the body of this “*Order on Hearing*”):

a. Section 31A-23a-111(5), UCA, 1953, as amended, read as follows:

31A-23a-111. Revocation, suspension, surrender, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal or reinstatement.

(5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:

(i) revoke:

(A) a license; or

(B) a line of authority;

(ii) suspend for a specified period of 12 months or less:

(A) a license; or

(B) a line of authority;

(iii) limit in whole or in part:

(A) a license; or

(B) a line of authority; or

(iv) deny a license application.

(b) The commissioner may take an action described in Subsection (5)(a) if the commissioner finds that the licensee:

(i) is unqualified for a license or line of authority under Section 31A-23a-104, 31A-23a-105, or 31A-23a-107;

(ii) violates:

(A) an insurance statute;

(B) a rule that is valid under Subsection 31A-2-201(3); or

(C) an order that is valid under Subsection 31A-2-201(4);

(iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;

(iv) fails to pay a final judgment rendered against the person in this state within 60 days after the day on which the judgment became final;

(v) fails to meet the same good faith obligations in claims settlement that is required of admitted insurers;

(vi) is affiliated with and under the same general management or interlocking directorate or ownership as another insurance producer that transacts business in this state without a license;

- (vii) refuses:
 - (A) to be examined; or
 - (B) to produce its accounts, records, and files for examination;
 - (viii) has an officer who refuses to:
 - (A) give information with respect to the insurance producer's affairs; or
 - (B) perform any other legal obligation as to an examination;
 - (ix) provides information in the license application that is:
 - (A) incorrect;
 - (B) misleading;
 - (C) incomplete; or
 - (D) materially untrue;
 - (x) violates an insurance law, valid rule, or valid order of another state's insurance department;
 - (xi) obtains or attempts to obtain a license through misrepresentation or fraud;
 - (xii) improperly withholds, misappropriates, or converts money or properties received in the course of doing insurance business;**
 - (xiii) intentionally misrepresents the terms of an actual or proposed:
 - (A) insurance contract;
 - (B) application for insurance; or
 - (C) life settlement;
 - (xiv) is convicted of a felony;
 - (xv) admits or is found to have committed an insurance unfair trade practice or fraud;
 - (xvi) in the conduct of business in this state or elsewhere:**
 - (A) uses fraudulent, coercive, or dishonest practices; or**
 - (B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;**
 - (xvii) has an insurance license, or its equivalent, denied, suspended, or revoked in another state, province, district, or territory;
 - (xviii) forges another's name to:**
 - (A) an application for insurance; or**
 - (B) a document related to an insurance transaction;**
 - (xix) improperly uses notes or another reference material to complete an examination for an insurance license;
 - (xx) knowingly accepts insurance business from an individual who is not licensed;
 - (xxi) fails to comply with an administrative or court order imposing a child support obligation;
 - (xxii) fails to:
 - (A) pay state income tax; or
 - (B) comply with an administrative or court order directing payment of state income tax;
 - (xxiii) violates or permits others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and 1034; or
 - (xxiv) engages in a method or practice in the conduct of business that endangers the legitimate interests of customers and the public.**
- (c) For purposes of this section, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the license.

(d) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:

- (i) the individual;
- (ii) the agency, if the agency:
 - (A) is reckless or negligent in its supervision of the individual; or
 - (B) knowingly participates in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or
- (iii) (A) the individual; and
- (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

(EMPHASIS ADDED).

b.i. **SEE** Sections 31A-23a-103(1)(a), (b) and (c), 31A-23a-205(2), 31A-23a-401(1)(a)(i), 31A-23a-409(1)(b)(i) and 31A-23a-409(6), UCA, 1953, as amended.

ii. **SEE** Utah Administrative Code Rules R590-170-7 and R590-186-7(2), (6), (7), (8), (14), (19), (21) and (23).

iii. **SEE** also Sections 31A-23a-408 and 31A-23a-409, UCA, 1953, as amended.

iv. **SEE** Sections 31A-31-103(1)(a) and (d), UCA, 1953, as amended.

c.i. **SEE** Section 31A-35-703, UCA, 1953, as amended.

ii. **SEE** Section 31A-35-601(2), UCA, 1953, as amended.

iii. **SEE** Sections 31A-35-401(1)(b) and 31A-35-404(3), UCA, 1953, as amended.

iv. **SEE** also Sections 31A-35-401, 31A-35-404, 31A-35-408, 31A-35-603, UCA, 1953, as amended.

5. In reviewing the Department's witnesses' testimony and tendered exhibits it is abundantly clear that the statutory and or administrative rule sections referenced in the Department's July 18, 2011 Complaint, namely:

a. as to Respondent Alcalde, Utah Code Ann. Section 31A-23a-111(5)(b): **(i)**, is unqualified for a license; **(ii)(A) and (B)**, has violated an insurance rule or statute; **(xii)**, improperly withholds, misappropriates, or converts money or property received in the course of doing insurance business; **(xvi)**, in the conduct of business uses fraudulent or dishonest practices, or demonstrates untrustworthiness; **(xvii)**, forges another's name to a document related to an insurance transaction; and or **(xxiv)**, engages in a method or practice in the conduct of business that endangers the legitimate interests of customers and the public; and

b. as to Respondent Real Bail Bond, Utah Code Ann. Section 31A-35-703, the statutes and rules governing the conduct of bail bond sureties, based on acts of Respondent Real Bail Bonds agent, Pablo A. Alcalde, being considered to be the acts of his “*respondeat superior*” under Utah Code Ann. Section 31A-35-601(2)”;

have been violated and repeatedly violated by Respondents during the timeframes as alleged and set forth in the Department’s July 18, 2011 Complaint.

6.a. Respondents’ position in large (total?) measure being that the present matter(s) is for want of a better phrase, “**a conspiracy**”, and that he (Alcalde) for all intents and purposes is as “**pure as the driven snow**” and a “**clean one owner**”.⁵

b. Respondents’ arguing *ad infinitum* that basically all of the wrongful acts alleged by the Department were committed by AA La Guadalupana through its Agent-Owner Cheryl K. Lyman.

c. Notwithstanding being testified to effectively⁶ by all of the Department’s five (5) witnesses and quite frankly confronted with the most voluminous amount of documentary evidence the Presiding Officer has seen in the almost 12+ years serving in such capacity for the Utah Insurance Department, as well as close to 40 years practicing law, both civil and criminal, the Respondent Alcalde’s *litany* was one of “it ain’t me” and “they (the Department and Jaimee George) have it in for me” and “its AA La Guadalupana and Cheryl K. Lyman, not me” falling from his lips “*ad infinitum*”, no, rather “*ad absurdum*”.⁷

7. Revocation of the Respondents’ respective bail bond agency and individual producer licenses is the only effect means of protecting the public in the present instance.⁸

⁵ In light of the fact that the bulk (all) of the facts present deal with criminal bail bonds the use of the vernacular in characterizing Respondents’ position seems appropriate. Respondent Alcalde repeatedly in presenting his position arguing, confusing and commingling procedural jargon from his criminal background regarding the burden of proof.

⁶ As referenced the burden of proof in the present matter is by a “*preponderance*”. Quite frankly if a criminal proceeding, which the present matter is not, and the burden was “beyond a reasonable doubt”, which it is not, the Department would have effectively met even such higher burden of proof.

⁷ Particularly telling was Complainant’s Exhibit No. 10, being a disk with 272 instances of bonds “issued” by Respondent Alcalde over the forged signature of Cheryl K. Lyman. Notwithstanding witness Lyman testified that in all instances on the disk that the “signature(s)” was not her signature Respondent Alcalde argued otherwise.

⁸ It must be noted that Respondent Alcalde’s bail bond producer’s license is currently on probation, having been placed on probation for a period of 24 months beginning July 15, 2010, for, *inter alia*, acting as a bail bond producer while his license had lapsed, (Docket No. 2010-043-PC, Enf. Case Nos. 2471 & 2472). Part of the terms of that probation being that Alcalde “shall not commit any violations of the Utah Insurance Code or Rules or violate any order of the commissioner.”

BASED ON THE ABOVE AND FOREGOING FINDINGS OF FACT and discussion-analysis the Presiding Officer enters the following:

CONCLUSIONS OF LAW

1. The Respondents' Motion to Dismiss dated January 4, 2012 should be denied.
2. a. The acts of Respondent Real Bail Bond's agents are considered to be the acts of Respondent Real Bail Bond under Utah Code Annotated § 31A-35-601(2); and

b. Respondent Pablo A. Alcalde was (is) an agent of the Respondent Real Bail Bond.

3.a. In "issuing" bail bonds **surreptitiously** via the forged signature of Cheryl K. Lyman and AA La Guadalupana during the time its license was lapsed, Respondent Real Bail Bond violated Utah Code Annotated §§ 31A-35-401 and 31A-23a-103(1)(a), and Utah Administrative Code Rule R590-186-7(14).

b. In using Respondent Real to "issue" bail bonds by stealth via AA La Guadalupana when its license was lapsed, Respondent Pablo A. Alcalde violated Utah Code Annotated 31A-23a-103(1)(c).

c. In "issuing" bail bonds using bail bond forms and powers of attorney issued by Universal Fire and Casualty Insurance Company after its appointment had been terminated by the lapse of its license, Respondents violated Utah Code Annotated §§ 31A-35-404(3), 31A-23a-408 and 31A-23a-205(2).

d. In misusing the name and license of AA La Guadalupana, when not authorized to do so, to issue bail bonds after Real's license had expired, Respondents provided false or misleading information relating both to an insurance product and a licensee under the Utah Insurance Code, in violation of Utah Code Annotated § 31A-23a-402(1)(a)(i) and Utah Administrative Code Rule R590-186-7(23).

e. In forging or causing to be forged the name of Cheryl K. Lyman on bail bonds and powers of attorney, Respondent Alcalde violated Utah Code Annotated § 31A-23a-402(1)(a)(i), committed acts of insurance fraud under Utah Code Annotated § 31A-31-103(1)(a)(d), and committed acts of unprofessional conduct under Utah Administrative Code Rule R590-186-7(19) and -7(21).

f. In accepting collateral funds and failing to deposit them into a trust account, Respondents violated Utah Code Annotated §§ 31A-35-603 and 31A-23a-409 and Utah Administrative Code Rule R590-186-7(7).

g. In commingling collateral funds held in trust with his own funds or the funds of Real, Respondent Alcalde violated Utah Code Annotated §§ Utah Code Annotated §§ 31A-23a-409(1)(b)(i) and Utah Administrative Code Rule R590-186-7(2).

h. In failing to return collateral in a timely manner after the exoneration of a bail bond, Respondents violated Utah Administrative Code Rule R590-186-7(8).

i. In converting collateral funds held in trust to his own purposes, Respondent Alcalde violated Utah Code Annotated § 31A-23a-409(6) and Utah Administrative Code Rule R590-186-7(8).

j. In failing to keep adequate records of collateral received in connection with the issuance of bail bonds, Respondents violated Utah Administrative Code Rule R590-170-7 and R590-186-7(6).

k. In conducting business as a bail bond surety company by advertising as a bail bond surety company, posting cash bonds, and charging a premium for the service, when not appointed by an insurer authorized to issue bail bonds in this state, or not otherwise meeting the minimum financial requirements to act as a bail bond surety, Respondents violated Utah Code Annotated § 31A-35-404.

l. In acting as a bail bond producer while his license was lapsed, Respondent Alcalde violated Utah Code Annotated § 31A-23a-103(1)(a) and (b).

4. The Complainant-Department's prayer for relief in its request for revocation of the Respondents' respective bail bond and insurance licenses should be granted having been proven by a preponderance of the evidence.

5. The Respondents' respective bail bond and insurance licenses should be revoked:

a. Respondent Pablo A. Alcalde's bail bond and insurance licenses should be revoked pursuant to Utah Code Annotated § 31A-23a-111(5)(b)(i), as he is unqualified for a license; -111(5)(b)(ii)(A) and (B), as he has violated an insurance statute or rule; -111(5)(b)(xii), as he has improperly withheld, misappropriated, or converted money or property received in the course of doing insurance business; -111(5)(b)(xvi), as he in the conduct of business used fraudulent or dishonest practices, or demonstrated untrustworthiness; -111(5)(b)(xviii), as he forged another's name to a document related to an insurance transaction; -111(5)(b)(xxiv), as he engaged in a method or practice in the conduct of business that endangered the legitimate interests of customers and the public; and

b. Respondent Real Bail Bond's bail bond agency license should be revoked pursuant to Utah Code Annotated § 31A-35-703, having violated the statutes and rules governing the conduct of bail bond sureties.

AND BASED ON THE ABOVE AND FOREGOING CONCLUSIONS OF LAW
the Presiding Officer enters the following:

ORDER

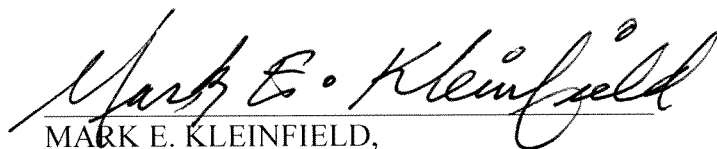
WHEREFORE, IT IS ORDERED that:

1. The Respondents' Motion to Dismiss dated January 4, 2012 is **denied**.
2. The Respondent Pablo A. Alcalde's respective bail bond and insurance licenses, namely License No.s 118422, 204113 and 237162 are **revoked**, and Respondent is further ordered to cease doing any insurance business in the State of Utah, and is prohibited from being an owner, partner, member, officer, director, agent, employee or consultant of or to any entity doing an insurance business in this state, all effective upon entry of this present Order
3. The Respondent Real Bail Bond's bail bond agency license, namely License No. 204543 is **revoked** effective upon entry of this present Order.

DATED and ENTERED this 13th day of January, 2012.

**NEAL T. GOOCH,
INSURANCE COMMISSIONER**





MARK E. KLEINFELD,
ADMINISTRATIVE LAW JUDGE and
PRESIDING OFFICER
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Salt Lake City, Utah 84114
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ADMINISTRATIVE AGENCY REVIEW

Administrative Agency Review of this Order may be obtained by filing a Petition for Review with the Commissioner of the Utah Insurance Department within thirty (30) days of the date of entry of said Order consistent with Utah Code Ann. Section 63G-4-301 and Administrative Rule R590-160.

Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(R590-160 and Section 63G-4-401)

JUDICIAL REVIEW

As an **“Formal Hearing”** after agency review judicial review of this Order may be obtained by filing a petition for such review consistent with Utah Code Ann. Section 63G-4-403.