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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

RESPONDENT:

MAIN STREET INSURANCE AGENCY
20 N Main Street, Suite 203
St. George, UT 84770
License No. 304879

STIPULATION AND ORDER

Docket No. 2011-090 PC

Enf. Case No. 2829

STIPULATION

1. Respondent, Main Street Insurance Agency is a resident insurance agency in the State of Utah holding license No. 304879.
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 he 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 18th day of May, 2011.



MAIN STREET INSURANCE AGENCY
Brett Labrum, Managing Member



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 29, 2010, a random agency audit of Respondent was initiated by the Department
2. In response to a request, on December 31, 2010, the Respondent faxed copies of the agency operating and trust account statements covering periods September, October, and November of 2010 to the Department investigator.
3. After a review of the account statements, the investigator contacted Respondent with questions regarding some checks written from the operating account to the trust account.
4. On or about January 26, 2011 and February 12, 2011, Respondent's managing member, Brett Labrum, provided written statements which specifically identified several checks that had been written from the operating account to the trust account. He explained that the agency had established a credit card system to handle customer insurance payments for clients who wished to pay premiums by credit card. The operating account number was mistakenly used for account where the funds were dropped. He stated that three checks represented trust fund monies being transferred from the operating account to the trust account.
5. Labrum further stated that the problem had been fixed and the credit card payments would now be deposited into the trust account.
6. Throughout the audit, Respondent was very cooperative, took full responsibility, and immediately corrected the problem.

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 (emphasis added) 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. Respondent violated the above provisions when the credit card system dropped trust fund monies into the operating account, commingling trust funds with the agency's funds, and writing checks from the operating account to the trust account to transfer the funds.

3. An administrative forfeiture in the amount of \$3,000.00 and probation for a period of 12 months is appropriate in this matter.

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:

Respondent Main Street Insurance Agency is assessed an administrative forfeiture in the total amount of \$3,000.00 to be paid to the department within 30 days of the issuance of this Order. Respondent's insurance agency license is also placed on probation for a period of 12 months commencing with the date of this Order. The terms of probation are that Respondent

shall timely pay the forfeiture assessed herein and shall have no further violations of Utah statutes, Department Rules, or any order of the Commissioner.

DATED this 26th day of May, 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

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 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.