

RECEIVED

SEP 15 2011

UTAH STATE
INSURANCE DEPT.

M. GALE LEMMON #4363 Jv4
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

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

RESPONDENTS:

BEEHIVE BAIL BONDS
License No. 97864

GARY WALTON
License No. 109636



STIPULATION AND ORDER

Docket No. 2011-206 BB

Enf. Case No. 2951

STIPULATION

1. Respondent Beehive Bail Bonds is a bail bond surety company located in the State of Utah holding license number 97864. Respondent Gary Walton is the owner of Respondent Beehive Bail Bonds and is a licensed bail bond producer in the State of Utah holding license number 109636.

2. Respondents stipulate 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. Respondents admit the Commissioner's authority to make the Findings of Fact and Conclusions made herein;
- c. Respondents stipulate 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 Respondents agree to its entry and further agree to be bound by all its terms.

3. Respondents are aware of their right to a hearing at which they may be represented by counsel, present evidence and cross-examine witnesses. Respondents have irrevocably waived their right to such hearing and to any appeal related thereto.

4. Respondents admit the jurisdiction of the State of Utah Insurance Commissioner as to all matters herein.

5. Respondents are acting herein free from any duress or coercion of any kind or nature, having been advised fully as to their rights set forth herein.

6. Respondents acknowledge that the issuance of this Order by the Commissioner is


/


/


/

solely for purpose of disposition of the matter entitled herein.

DATED this 13th day of September, 2011.


BEEHIVE BAIL BONDS
Gary Walton, Owner


GARY WALTON


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. During an audit of Respondent Beehive Bail Bonds on March 15, 2011, the examiner discovered the Agency was out of compliance in the following areas:

- A. Records were not maintained at the principal location;
- B. Beehive Bail Bonds had two trust accounts and one trust account ledger;
- C. The trust account at University of Utah Credit Union did not identify the account as a trust account;
- D. The trust account ledger was not properly maintained;
- E. There was a failure to timely deposit trust account monies as required by statute;
- F. The trust account was being used for "other" business activities such as immigration bonds;
- G. There was unauthorized use of trust account money;
- H. The files were not available during the audit; and
- I. The auditor could not verify that the Rule, requiring that at least 10% of the face amount of a bond was being charged as premium for the bond, was being followed by the Respondents.

2. The examiner requested a written explanation of the above violations, and also contacted Respondent's agents to determine how the bail bond premiums were being handled.

3. On May 10, 2011, a meeting was held with Respondent Gary Walton, owner Beehive Bail Bonds, Gale Lemmon, legal counsel for the Department, Suzette Green-Wright and Jaimee L. George of the Department to discuss the alleged violations and recommended corrections.

Respondent Walton admitted that he had not acted properly in his fiduciary capacity and admitted that he had failed to maintain the integrity of the trust account and bail bond records as required by state statute and Department rules.

4. At the meeting it was agreed that Respondents would have until July 1, 2011, to make

the following corrections:

- A. All bonding files will be moved to and kept at the principal location listed with the Department;
- B. All collected bail bond premiums will be forwarded to Beehive Bail Bonds and thereafter the agreed upon commissions will be paid out to the agent;
- C. The immigration bond business will be kept separate from Beehive Bail Bonds with a separate trust account and ledger;
- D. Beehive Bail Bonds will maintain one trust account and trust account ledger for the bail bonds;
- E. Beehive Bail Bonds will identify the trust account checks, account, and ledgers with the wording "Trust Account."

5. On July 12, 2011, the examiner conducted an agency follow-up visit. The examiner confirmed that Respondents made the necessary adjustments to come into compliance.

6. The Respondent Walton cooperated during the audit and the period of making corrections.

7. On July 21, 2011, Respondent Walton agreed with the Department's enforcement recommendation of a \$15,000 and 18 months probation with \$10,000 stayed pending the successful completion of probation.

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 states in part as follows:

- (1) (a) Subject to Subsection (7), a licensee is a trustee for money 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 money; or
- (B) money held in any other capacity.
- (ii) This Subsection (1)(b) does not apply to:
 - (A) amounts necessary to pay bank charges; and
 - (B) money 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 money is 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) Money deposited under this Subsection (1)(d) shall remain in an account authorized under Subsection (2) until sent to the appropriate payee. . . .

2. Department Rule 590-170-4 requires the establishment of a designated trust account which shall be separate and distinct from operating and personal accounts. The trust account shall have a separate account number, separate account register, different checks, deposit and withdrawal slips.

3. Department Rule R590-170-4 states the following:

- (1) All records relating to a trust account shall be identified with the wording "Trust Account" or words of similar import. These records include checks, bank statements, general ledgers and records retained by the bank pertaining to the trust account.
- (2) All trust accounts shall be established with a Federal Employer Identification Number rather than a Social Security Number.
- (3) A trust account shall be separate and distinct from operating and personal accounts, i.e., a separate account number, a separate account register, and different checks, deposit and withdrawal slips.
- (4) A non-licensee may not be a signator on a licensee's trust account, unless the non-licensee signatory is an employee of the licensee and has specific responsibility for the licensee's trust account.

5. Department Rule R590-170.5 sets forth the requirements for maintaining a trust account as follows:

(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.

(4) Commissions may not be disbursed from a trust account prior to the beginning of the policy period for which the premium has been collected.

(5) Commissions attributed to premiums and fees collected must be disbursed from a trust account on a date not later than the first business day of the calendar quarter after the end of the policy period for which the funds were collected.

(6) Premiums due insurers may not be paid from a trust account unless the premiums directly relating to the amount due have been deposited into, and are being held in, the trust account, or unless funds have been retained in the trust account consistent with Subsection 5 above, or placed by a licensee into the trust account to finance premiums on behalf of insureds.

(7) Premiums financed by a licensee must be accounted for as a loan with interest charged at no less than the statutory rate for any loan exceeding 90 days, pursuant to Section 31A-23a-404.

5. Section 31A-35-604 addressing records, requires a bail bond surety company to maintain for three years after receipt all records of any bail bond executed or countersigned by a bail bond producer appointed by the bail bond surety company.

6. Utah Code Ann. § 31A-35-602 requires the bail bond surety company to keep records at the place of business (location) on record with the Department.

7. Utah Department Rule R590-196-4 sets the minimum fee at not less than 10% of the bond amount.

8. The audit of Respondent Beehive Bail Bonds revealed facts that constituted violations of the above provisions.

9. The Respondents have agreed to an administrative forfeiture in the amount of \$15,000.00 and 18 months probation, with \$10,000.00 stayed pending successful completion of probation.

10. The above penalty 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:

1. Respondents Beehive Bail Bonds and Gary Walton are hereby jointly assessed an administrative forfeiture in the amount of \$15,000.00, with \$10,000.00 being stayed pending successful completion of the probation imposed herein. The remaining forfeiture of \$5,000.00

shall be paid to the Department within thirty days from the date of this Order.

2. Respondents' licenses are placed on probation for a period of 18 months commencing with the date of this Order.

3. The terms of probation are:

a. Respondents shall pay the forfeiture assessed herein in a timely manner;

b. Respondents shall properly maintain a single trust account for its state-licensed bail bond business and shall deposit all funds received in a fiduciary capacity into the trust account in a timely manner and shall maintain proper trust account records, and shall not commingle immigration bond collateral in that trust account;

c. Respondents shall assure that all bail bond premium is sent to the agency without prior deductions;

d. Respondents shall maintain all records at the principal location listed with the department; and

e. Respondents 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 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.

DATED this _____ day of SEP 20 2011, 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