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UTAH STATE  
INSURANCE DEPT.

M. GALE LEMMON #4363  
Assistant Attorney General  
MARK L. SHURTLEFF #4666  
Attorney General  
Attorneys for Utah Insurance Department  
State Office Building, Room 3110  
Salt Lake City, Utah 84114  
Telephone: (801) 538-3872

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BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF UTAH

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**COMPLAINANT:**

UTAH INSURANCE DEPARTMENT

**RESPONDENTS:**

LIBERTY BAIL BONDS  
License No. 347272

and

CLINTON McQUEEN  
License No. 335209



**STIPULATION AND ORDER**

Docket No. 2012-024 BB

Enf. Case No. 3047

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**STIPULATION**

1. Respondent Liberty Bail Bonds ("Agency") is a licensed bail bond surety company in the State of Utah, holding License No. 347272. Respondent Clinton McQueen is a

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licensed bail bond producer in the State of Utah, License No. 335209, and is the owner of Liberty Bail Bonds.

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 Findings of Fact and Conclusions made therefrom;
- 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.

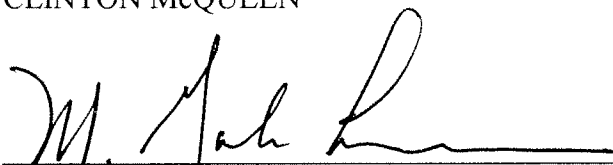
5. Respondents are acting herein free from any duress or coercion of any kind or nature, having been advised fully as to their rights set forth herein.

6. Respondents acknowledges that the issuance of this Order by the Commissioner is solely for purpose of disposition of the matter entitled herein.

DATED this 31<sup>st</sup> day of January, 2012.

  
LIBERTY BAIL BONDS  
Clinton McQueen, Owner

  
CLINTON McQUEEN

  
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 September 9, 2011, a Market Conduct Examiner (MCE) conducted an audit of Respondent Agency. During the audit, Respondent McQueen admitted that he was not properly maintaining nor reconciling the trust account monthly. He stated that he was not sure how far the account was “off.”

2. Respondent was asked to provide the collateral ledger and bank statements for review during the audit. A review of the ledger and bank statements by the MCE revealed that the balances did not match. The MCE noted the collateral report did not identify the date the collateral money was accepted, and the “other” deposits and debits were not noted in the ledger.

3. Respondent McQueen indicated that he thought the account became “off” in February 2011 and again in July 2011 with non-sufficient funds charges and collateral checks returned. McQueen was making premium deposits into the account but was not accounting for the credits and debits in the trust account.

4. Respondent McQueen was not reconciling the trust account ledger to the bank statements and did not accurately account for all trust monies held in his fiduciary capacity. In addition, because the account ledger did not identify the dates the collateral was taken nor when it was returned, the account ledger did not facilitate the audit.

5. On or about September 12, 2011, it was determined that the trust account was “off” by

about \$59.50. McQueen immediately moved that amount from the operating account to the trust account.

6. Respondent McQueen took responsibility for his failure to maintain the integrity of a trust account and ledger by reconciling the account monthly, and that he did not accurately document the debits and credits to the account. Respondent agrees to an administrative forfeiture \$2,500 with a stay of \$1,500 pending successful completion of 12 months 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.
- © 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) 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 money 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; or

(b) in some other account, approved by the commissioner by rule or order, providing safety comparable to federally insured trust accounts.

2. Utah Administrative Code R590-170-5 sets forth the requirements for maintaining 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.

(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. . . .

3. Utah Administrative Code R590-170-7 mandates the manner in which accounting records are to 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.

4. The Respondents were in violation of the above when they failed to maintain or reconcile the trust account as required. Respondents' failure to accurately maintain a trust account ledger by not properly documenting each credit and debit also violated Department rules.

6. A joint administrative forfeiture in the amount of \$2,500, with \$1,500 being stayed, and probation for a period of 12 months is appropriate under the circumstances.

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 Liberty Bail Bonds and Clinton McQueen are hereby jointly and severally assessed an administrative forfeiture in the amount of \$2,500.00. The amount of \$1,500 of said forfeiture is stayed pending successful completion of the probation imposed herein.

2. Respondents' licenses are placed on probation for a period of 12 months commencing with the date of this Order. The terms of the probation are:

a. Respondents shall pay the portion of the forfeiture not stayed, the amount of \$1,000.00, within 30 days of the date of this Order;

b. Respondents shall have no further violations of the Utah Insurance Code or Rules or of any order of the commissioner.

**NOTIFICATION**

Respondents are hereby notified that failure to abide by the terms of this Order may subject you to further penalties, including additional forfeitures of up to \$5,000 per violation and

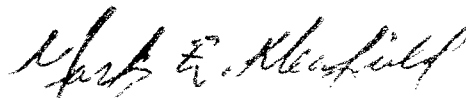


the suspension or revocation of your license, and the filing of an action to enforce this Order in the District Court which may impose penalties of up to \$10,000 per day for continued violation.

You are further notified that other jurisdictions in which you may be licensed may require that you report this action to them.

DATED this \_\_\_\_\_ day of **FEB 14** 2012, 2012.

NEAL T. GOOCH  
Insurance Commissioner



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MARK E. KLEINFELD  
Administrative Law Judge  
Utah Insurance Department  
State Office Building, Room 3110  
Salt Lake City, Utah 84114  
Telephone: (801) 538-3800