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UTAH STATE
INSURANCE DEPT.

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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

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| <p>COMPLAINANT: UTAH INSURANCE DEPARTMENT</p> <p>RESPONDENTS: A-1 BAIL BONDS License No. 97854</p> <p>and</p> <p>TERRY SMITH License No. 56360</p> <p></p> | <p>STIPULATION AND ORDER</p> <p>Docket No. 2012-046 BB</p> <p>Enf. Case No. 3048</p> |
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STIPULATION

1. Respondent A-1 Bail Bonds ("Agency") is a licensed bail bond surety company in the State of Utah, holding License No. 97854. Respondent Terry Smith is a licensed bail bond producer in the State of Utah, holding License No. 56360, and is the owner of Respondent A-1

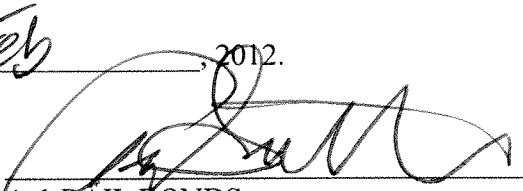
TLW

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 acknowledge that the issuance of this Order by the Commissioner

is solely for purpose of disposition of the matter entitled herein.

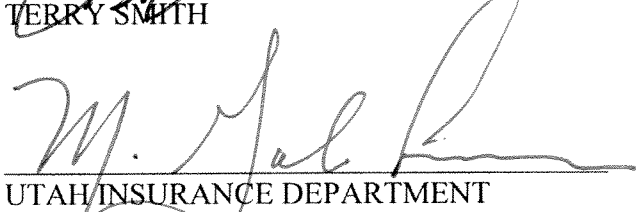
DATED this 29th day of Feb, 2012.



A-1 BAIL BONDS
Terry Smith, Owner



TERRY SMITH



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 7, 2011, a Market Conduct Examiner (MCE) conducted an audit of Respondent A-1 Bail Bonds. During the audit, it was discovered that Respondents were not handling money properly in their fiduciary capacity.
2. Respondent A-1 Bail Bonds did not have a trust account established to hold collateral monies. Collateral money accepted was deposited into the Agency's operating account and was co-mingled with the Agency's own money.
3. Respondent Smith was asked to provide a collateral ledger and bank statements for review during the audit. The review confirmed that the agency did not have a trust account ledger, had co-mingled funds, however, during the audit period, the agency had conducted only one collateral transaction.
4. Respondents accepted responsibility and since the agency audit, a trust account and trust ledger has been set up.
5. Respondents agree to an administrative forfeiture in the amount of \$5,000 and probation for a period of 24 months. It is agreed that \$2,500 of the forfeiture shall be stayed pending successful completion of the 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-35-603 states in part as follows:

- (1) A bail bond producer may accept collateral security in connection with a bail transaction, if the collateral security is reasonable in relation to the face amount of the bail bond.
- (2) (a) The collateral security described in Subsection (1) shall be received by the bail bond producer in the bail bond producer's fiduciary capacity.**
- (b) Before any judgment of forfeiture of bail, the bail bond producer shall keep the collateral separate and apart from any other funds or assets of the licensee.**

2. 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) Money 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.

3. Utah Administrative Code R590-170-4 set forth the requirements for establishing a trust account:

(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.

4. 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. . . .

5. The Respondents' failure to establish and maintain a trust account for collateral monies accepted for written bail bonds, and Respondents' co-mingling collateral received with the Agency's operating monies constitute violations of the above provisions.

6. A joint administrative forfeiture in the amount of \$5,000 with a stay of \$2,500 and probation for a period of 24 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 A-1 Bail Bonds and Terry Smith are hereby jointly and severally assessed an administrative forfeiture in the amount of \$5,000. The amount of \$2,500 of said forfeiture is stayed pending successful completion of the probation imposed herein.

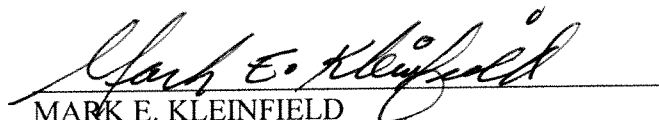
2. Respondents' licenses are placed on probation for a period of 24 months. The terms of the probation are:

a. Respondents shall pay the portion of the forfeiture that has not been stayed, the amount of \$2,500, within 30 days of the date of this Order; and

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

DATED this 1ST day of March, 2012.

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

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 \$2,500 per violation of an individual licensee and of up to \$5,000 per violation for an organization, and the suspension or revocation of your licenses, 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.