

M. GALE LEMMON #4363
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:

A-AFFORDABLE BAIL BONDS
License No. 98224

JODY GUTIERREZ
License No. 300052



**STIPULATION
&
ORDER**

Docket No. 2012-095 BB

Enf. Case No. 3087

STIPULATION

1. Respondent A-Affordable Bail Bonds is a licensed bail bond surety in the State of Utah, holding License No. 98224. Respondent Jody Gutierrez is a licensed bail bond agent in the State of Utah, holding License No. 300052, and is the manager of Respondent A-Affordable.
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.

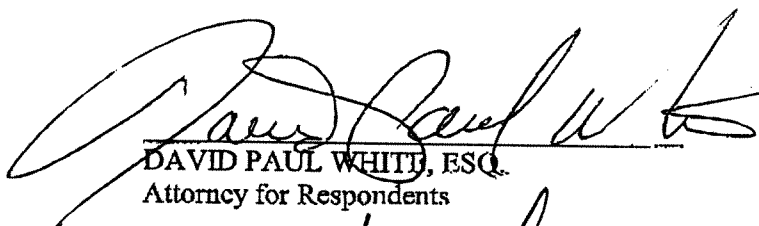
3. Respondent is aware of his right to a hearing at which he may be represented by counsel, present evidence and cross-examine witnesses. Respondent has irrevocably waived his right to such hearing and to any appeal related thereto.

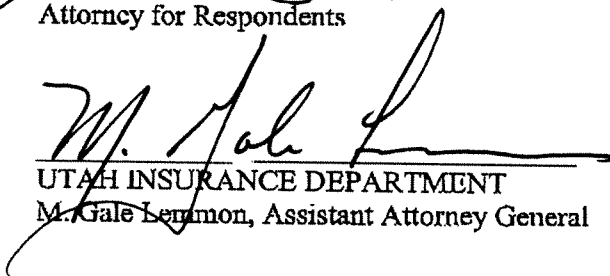
4. Respondent admits the jurisdiction of the State of Utah Insurance Commissioner as to all matters herein.

5. Respondent is acting herein free from any duress or coercion of any kind or nature, having been advised fully as to his rights set forth herein.

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

DATED this 4 day of September, 2012.


 DAVID PAUL WHITE, ESQ.
 Attorney for Respondents


 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. An audit was conducted by a Department Market Conduct Examiner of Respondent A-Affordable on June 27, 2011.
2. The audit established that Respondents A-Affordable and Gutierrez did not have a properly established trust account to deposit funds held in their fiduciary capacity.
3. The audit also established that Respondents were depositing trust funds into A-Affordable's operating account, commingling collateral funds with A-Affordable's own funds.
4. During the period of time covered by the audit, Respondents converted funds held in trust to other purposes.
5. Respondents also did not have a trust fund ledger to account for funds held in trust.
6. Respondents also failed to reconcile the funds held in trust on a monthly basis.
7. Respondents allowed trust funds to be held by agents and failed to deposit funds held in trust into a trust account by the close of the next business day.
8. Respondents charged travel fees to issue bail bonds where no violation of the bond contract had occurred.
9. In operating the business, Respondent A-Affordable operated under the name An-Exit Bail Bonds, LLC, which was not licensed or not filed as an alias with the Department.
10. Respondents failed to keep records in a manner that would facilitate an audit.
11. At times when Respondent Gutierrez was not available, Respondents allowed bail bonds to be issued from an agency in New Mexico that was not licensed to do a bail bond business in the State of Utah.

Based upon the foregoing Stipulation and Findings of Fact, the Presiding Officer enters the following Conclusions of Law:

CONCLUSIONS OF LAW

1. In failing to have a properly established trust account to hold funds held in trust, Respondents violated Utah Code Ann. §§ 31A-35-603(2), 31A-23a-409, and Utah Admin. Code Rule R590-170-4.
2. In commingling trust funds with operating funds, Respondents violated Utah Code Ann. § 31A-23a-409(1)(b).
3. In converting funds held in trust to other purposes, Respondents violated Utah Code Ann. § 31A-23a-409(1)(b)(ii), and -409(6), and Utah Admin. Code Rule R590-170-5(2) & (3).
4. In failing to have a trust account ledger to account for trust funds, Respondents violated Utah Admin. Code Rule R590-170-7(4) & (5).
5. In failing to reconcile the trust account on a monthly basis, Respondents violated Utah Code Ann. § 31A-23a-409(1)(d) and Utah Admin. Code Rule R590-170-7(1).
6. In failing to deposit funds held in trust into a trust account by the close of the next business day, Respondents violated Utah Code Ann. § 31A-34a-409(1)(d)(i).
7. In charging travel fees for the issuance of bonds, and not in connection with a violation of the bond contract, Respondents violated Utah Admin. Code Rule R590-196-4(2)(b).
8. In using names in the conduct of business that were not licensed or registered with the commissioner as an assumed name, Respondents violated Utah Code Ann. §§ 31A-23a-103(1)(a) & (c) and 31A-23a-110(2).
9. In failing to keep records in a manner that would facilitate an audit, Respondents violated Utah Admin. Code Rule R590-170-7(6).

10. In using the services of an unlicensed agency to underwrite and issue bail bonds, Respondents violated Utah Admin. Code Rule R590-170-7(6).

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:

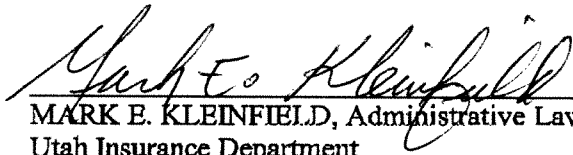
1. Respondents are jointly and severally assessed an administrative forfeiture in the amount of \$10,000.00. Respondents shall pay said forfeiture in the amount of \$5,000.00 within 30 days of the date of this Order and \$5,000.00 within 60 days of the date of this Order.

2. Respondents' bail bond licenses are placed on probation for a period of 24 months beginning with the date of this Order. The terms of probation are:

- a. Respondents shall pay the forfeiture assessed herein in a timely manner;
- b. Respondents shall cooperate with any targeted audits the Department may conduct during the period of probation; and
- c. Respondents shall have no further violations of the Utah Insurance Code or Rules, or of any order of the commissioner.

DATED this 5th day of September, 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 \$2,500.00 per violation for an individual licensee and of up to \$5,000.00 per violation for an organization licensee, 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 \$10,000.00 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.