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**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH**

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

RESPONDENTS:

MASSEY'S BAIL BONDS
License No. 255583

JOSH MASSEY
License No. 221052



STIPULATION AND ORDER

Docket No. 2012-117 BB

Enf. Case No. 3176

STIPULATION

1. Respondent Massey's Bail Bonds ("Agency") is a licensed bail bond surety company in the State of Utah, holding License No. 255583. Respondent Josh Massey is a license

bail bond producer in the State of Utah, holding License No. 221052, and is the owner of Respondent Massey's 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.

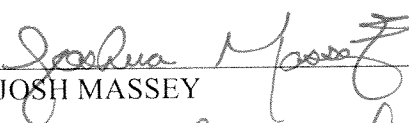
5. Respondents are acting herein free from any duress or coercion of any kind or nature, having been advised fully as to their rights set forth herein.

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 29 day of August, 2012.



MASSEY'S BAIL BONDS
Josh Massey, Owner



JOSH MASSEY



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 July 11, 2011, a Utah Insurance Department Market Conduct Examiner (MCE) conducted an audit of Respondent Massey's Bail Bonds. As part of the audit, Respondents were asked to provide certain documents and records. A review of the initial documents provided to the MCE revealed that some of the items requested had not been provided. On December 21, 2011, a second request for the missing documents was sent to Respondents.

2. On May 22, 2012, during a review of the information provided by Respondents, it was discovered that Respondents were not properly handling funds held in their fiduciary capacity.

3. Specifically, Respondents were not properly reconciling and maintaining the trust account for collateral monies accepted. Respondents also co-mingled collateral funds with personal and business monies.

4. The Agency was using a disclosure form that had not been filed with the Department; the disclosure form being used did not contain the last paragraph of Utah Admin. Code R590-196-6 as required.

5. On May 22, 2012, the MCE reviewed the audit findings with Respondent Josh Massey on the telephone, and on May 30, 2012 the MCE sent the findings and recommendations to Josh Massey.

6. Respondents accepted full responsibility. Since the audit, Respondents have put in place a system to ensure proper reconciliation and maintenance of the trust account. The disclosure form issue has been also corrected.

7. Respondents agree to a joint administrative forfeiture in the amount of \$5,000 for trust account violations and \$500.00 for the disclosure form violation. Respondents also agree to probation for a period of 24 months. The Department agrees to a stay of \$250.00 of the forfeiture because the disclosure form violation has been corrected.

8. Respondents have requested a payment plan for the payable amount of \$5,250.00

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.

(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.

3. Utah Code Ann. Section 31A-35-603 provides:

- (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 an judgment or forfeiture of bail, the bail bond producer shall keep the collateral separate and apart from any other funds or assets of the licensee.**

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.

5. Utah Admin. Code R590-170-7 mandates that all bank statements for trust accounts be reconciled monthly. It also requires that adequate records be maintained to establish ownership of all funds in the trust account, from whom they were received, and for whom they are held. Trust account registers shall maintain a running balance. All accounting records relating to the business of insurance must be maintained in such a manner that facilitates an audit.

6. Utah Code Ann. Section 31A-23a-607 requires a bail bond surety to file with the Commissioner a sample copy of each form it uses in its business. The forms are to be filed before use and again if the form is changed after it is filed.

7. Utah Admin. Code R590-196-6 sets forth the disclosure language to be used on the agency's disclosure form.

8. The Respondents' failure to reconcile and properly maintain the 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 statutory provisions.

9. The Respondents' failure to file a sample copy of the proper disclosure form as required by Rule 590-196-6 is a violation of Utah Code Ann. Section 31A-35-607.

10. A joint administrative forfeiture in the amount of \$5,500 with a stay of \$250 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 Massey's Bail Bonds and Josh Massey are jointly and severally assessed an administrative forfeiture in the amount of \$5,500.00. The amount of \$250.00 of that forfeiture is hereby stayed.

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

3. The terms of probation are:

A. Respondents shall pay the portion of the forfeiture not stayed in three payments, the first payment of \$1,750 shall be paid within 30 days of the date of this Order, the second payment of \$1,750.00 shall be paid within 60 days of the date of this Order, and a final payment of 1,750.00 shall be paid within 90 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 them to further penalties, including additional forfeitures of up to \$5,000.00 per violation

for a licensed organization and of up to \$2,500.00 per violation for a licensed individual, 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.

DATED this 5th day of September, 2012.

NEAL T. GOOCH
Insurance Commissioner



MARK E. KLEINFELD
Administrative Law Judge
Utah Insurance Department
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