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BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF UTAH

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UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

BREAK OUT BAIL BONDS, LLC, License  
no. 345209; and TODD HARRIS, License no.  
109539,

Respondents.

**ORDER**

Docket no. 2016-004 BB  
Enf. Case No. 3717

Administrative Law Judge Greg Soderberg

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INTRODUCTION

This proceeding was initiated by a Notice of Informal Agency Action and Order, entered January 28, 2016. Respondents requested a hearing and the case was converted to a formal proceeding. A hearing was held on May 20, 2016.

The Department alleges that Respondents: failed to properly terminate a designation of an individual no longer working for Break Out Bail Bonds; placed money that should have been placed in a trust account, into a non-trust account; and used forms that were not filed with the Department.

Having considered the arguments presented at the hearing, the Presiding Officer finds that Respondents failed to properly terminate a designation, placed money that should have been placed into a trust account into a non-trust account, and used forms that were not filed with the Department.

## FINDINGS OF FACT

### *Background Facts*

1. Break Out Bail Bonds, LLC is a resident limited line producer organization authorized to do bail bond insurance business in Utah, holding license number 345209
2. D. Todd Harris is a resident limited line producer with a bail qualification and holding license number 109539.
3. Following a complaint to the Department, the Department audited Break Out Bail Bonds in October, 2015. Mr. Harris cooperated with the Department to provide the requested information.

### *Facts Related to Terminating a Designation*

4. Michael Shire had been working for Break Out Bail Bonds as a bail agent. Mr. Shire's license active date was May 20, 2011. (Ex. 3.)
5. Mr. Shire moved to Arizona, and ceased working for Break Out Bail Bonds in July, 2014.
6. Mr. Harris sent a letter to the Department on September 18, 2015, stating that Mr. Shire had moved to Arizona, and asked that the Department "help [Mr. Harris] in removing [Mr. Shire's] name from [his] register." (Ex. 4.)
7. Respondents did not submit the termination of Mr. Shire's designation to the Department using SIRCON or NIPR.
8. Respondents did not submit the termination of Mr. Shire's designation within 30 days of the effective date.

### *Facts Relating to the Trust Account*

9. In December 2014, after she was charged with two crimes, D. Todd Harris, through two entities (Break Out Bail Enforcement, LLC and Break Out Bail Bonds, LLC) entered into an

agreement with Krista Rebello, consisting of two pages or two documents, one entitled “Bail Enforcement Agreement” and the other entitled “Bankers Insurance Company Disclosure Notice” (the “Rebello Agreement”). (Ex. C.)

10. The first page appears to be between Break Out Bail Enforcement, LLC and Krista Rebello (Ex. C p. 1) and the second page appears to be between Break Out Bail Bonds, LLC and Krista Rebello (Ex. C p. 2).

11. The Rebello Agreement states the following:

- a. “The Bail Enforcement Agency has accepted the following collateral as security in connection with the bail transaction: \$5,250.00 Prepaid Bail Enforcement Fees paid into Break Out Bail Enforcement, LLC operating account to be used in bail enforcement services in the event of a failure to appear.” (Ex. C p. 1.)
- b. “Any collateral that is deposited with Bail Enforcement Agency shall be returned to depositor it [sic] within fifteen (15) business days after requested by the person who deposited it if: (i) the bail bond has been exonerated whom these [sic] pre-paid bail enforcement have been paid . . . .” (*Id.*)
- c. “COLLATERAL The following has been given as collateral to guarantee all court appearances of the defendant until the bond is exonerated: [then handwritten] \$5,250 cash placed with Break Out Bail Enforcement to be used as company sees fit to cover bond forfeiture expenses.” (Ex. C p. 2.)

12. The money paid by or for Krista Rebello was paid into the Break Out Bail Enforcement, LLC operating account around December 16, 2014 (at Zions Bank) (Ex. 24), then into a Break Out Bail Enforcement account on December 17, 2014 (at First National Bank) (*id.*; Ex. C p. 3),

and then finally back to Shawn Robinson as a “Krista Rebello refund” on February 2, 2015 (Ex. C p. 3).

13. Court records show that Krista Rebello was charged with felony drug possession, with an offense date of December 14, 2014, and that a bond was posted by Break Out Bail Bonds, LLC in the amount of \$5,250 on January 2, 2015. (Ex. 23.) The bond was exonerated on February 10, 2015. (*Id.* p. 4.)

14. A similar transaction occurred between Respondents and Gabriel Dylan Bussell in February 2015, after his arrest and having been charged with crimes.. (Exs. 25, 26, and D.)

15. On the face of the agreements between Respondents and Break Out Bail Enforcement, LLC and Bussell and Rebello, the money paid by Bussell and Rebello apparently had two functions. First, it was called a bail enforcement fee, to be used for possible costs incurred by Break Out Bail Enforcement related to surrendering the defendant and returning him or her to the court’s custody if he or she does not appear for court proceedings. (*See, e.g.*, Ex. C p. 1 ¶ 2.)

16. Second, the money was “given as collateral to guarantee all court appearances of the defendant until the bond is exonerated.” (Ex. C p. 2.) And the money was not to be returned until “the bail bond [was] exonerated . . . .” (Ex. C p. 1.)

17. In both cases, the amounts paid by or for Rebello and Bussell for bail enforcement fees or collateral, were the same amounts posted to the courts as bail bonds, and the timing of the refunds to the defendants were close to the times the bail bonds were exonerated by the courts.

#### *Facts Relating to the Forms Used by Respondents*

18. The first form in question is identified in the Department’s electronic filing system (“SERFF”) by tracking number BKIC-128343423. (Ex. 5 p. 1.) That form was filed with the

Department on May 8, 2012, and then withdrawn as of December 24, 2012. (*Id.*) The first form at issue was a form entitled “Undertaking” (the “Undertaking Form”). (Ex. 6.)

19. The Undertaking Form was withdrawn on December 24, 2012, and was replaced by a General Surety Appearance Bond form. (Ex. 9.)

20. During 2015, Respondents used the Undertaking Form 10 times. (Ex. 11.)

21. At the time the Undertaking Form was used by Respondents in 2015, the form’s status with the Department was “withdrawn.”

22. The second form in question is entitled the “Utah Addendum to Indemnitor Application Agreement” (the “Addendum Form”). (Exs. 12, 14.) The Addendum Form was filed with the Department and had an effective date of July 21, 2014. (Exs. 12, 13.)

23. In 2015, Respondents completed an Indemnitor Application and Agreement seven times, without also completing the Addendum Form. (Exs. 15–21.)

24. The seven times that Respondents did not complete the Addendum Form when they completed the Indemnitor Application and Agreement, the Addendum Form was filed with the Department.

#### CONCLUSIONS OF LAW

25. If a license is held by an agency, both the agency itself and any individual designated under the license are considered to be holder of the license, for purposes of Utah Code Ann. § 31A-23-111. Utah Code Ann. § 31A-23-111(5)(c). The acts or conduct of any bail bond producer or bail enforcement agent, or bail recovery agent, who acts within the scope of the authority delegated to him by the bail bond surety or bail bond producer, are considered to be the bail bond surety’s or bail bond producer’s acts. *Id.* § 31A-35-601(2) and (3). Accordingly, Mr.

Harris's action at issue here are considered to be the actions of Break Out Bail Bonds, LLC, and Mr. Harris is considered to be a holder of the Break Out Bail Bonds, LLC license.

*Failure to Terminate Designation*

26. Respondents violated Utah Administrative Code rule 590-244-12(2) by failing to timely and properly terminate Michael Shire's designation. Respondents were required to submit the termination of designation to the Department using SIRCON or NIPR, no later than 30 days after the effective termination date. Utah Admin. Code r.590-244-12(2).

27. A violation based on a failure to terminate a designation carries a forfeiture of up to \$2,500. Utah Code Ann. § 31A-2-308(1)(b)(i).

*Failure to Place Cash Collateral into Trust Account*

28. The \$5,250 given by or for Krista Rebello and the \$6,420 given by or for Gabriel Bussell was collateral for the bail bonds posted by Respondents to the courts. It is true that the agreements state that the money may also be used for bail enforcement fees, but the plain language of the agreements is clear that the money was being placed as collateral to guarantee court appearances until the bonds were exonerated.

29. Collateral security that is received by a bail bond producer must be received in a fiduciary capacity, and must be kept separate and apart from other funds or assets. *Id.* § 31A-35-603(2).

30. Respondents violated Utah Code Ann. § 31A-35-603 twice when they collected cash that was used as collateral security in two bail transactions, and then failed to keep the cash collateral separate, and in a fiduciary capacity.

31. Violations of Utah Code Ann. § 31A-35-603 carry a forfeiture of up to \$2,500. Utah Code Ann. §§ 31A-35-703(1)(b); 31A-2-308(1)(b)(i).

*Failure to Use Forms Filed with the Department*

32. Utah Code Ann. § 31A-35-607(1)(b), related to filing forms with the Department, imposes obligations on surety insurers and bail bond agencies. Section 31A-35-607 requires surety insurers (among other requirements) to verify that a bail bond agency and its producers are using the correct form. *Id.* § 31A-35-607(1)(b) and (b)(iii). Section 31A-35-607(1)(b) also states that “a bail bond surety company and its producers are prohibited from using a form that has not been filed by the surety insurer . . . .” *Id.* § 31A-35-607(1)(b)(iv); *see also State v. Watkins*, 2013 UT 28, ¶ 23, 309 P.3d 209 (stating that statutes should be interpreted to give meaning to all parts).

33. Respondents argued at hearing that their surety insurer did not notify them of the changes when forms were filed or withdrawn. However, the statute does not make an exception for when or if there are communication problems between a surety insurer and a bail bond agency. The statute requires a bail bond agency to use forms that have been filed with the Department. Accordingly, I find that Respondents violated Utah Code Ann. § 31A-35-607 10 times when they used the Undertaking Form after it had been withdrawn, and 7 times when they failed to use the Addendum Form when it had been filed for use with the Department.

34. Violations of Utah Code Ann. § 31A-35-607 carry a forfeiture of up to \$2,500. Utah Code Ann. §§ 31A-35-703(1)(b); 31A-2-308(1)(b)(i).

ORDER

On the basis of the above Findings of Fact and Conclusions of Law, Respondents are ordered to pay an administrative forfeiture in the amount of \$10,500 as follows:

- \$500 for one violation of Utah Administrative Code rule 590-244-12(2) for failing to timely and properly terminate Michael Shire’s designation;

- \$5,000 for two violations of Utah Code Ann. § 31A-35-603 for collecting cash that was used as collateral security in two bail transactions, and then failing to keep the cash collateral in a separate trust account;
- \$5,000 for 17 violations of Utah Code Ann. § 31A-35-607 for using a form that had been withdrawn from filing with the Department, and failing to use a form that had been filed.

DATED May 31, 2016.

/s/ Greg Soderberg  
Greg Soderberg  
Presiding Officer  
Utah Insurance Department  
State Office Building, Room 3110  
Salt Lake City, UT 84114  
Telephone: (801) 530-6706  
Email: gsoderberg@utah.gov