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FILED
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Department of Insurance
State of Idaho

Attorneys for the Department of Insurance

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

IDAHO DEPARTMENT OF INSURANCE,

Complainant,

vs.

RYAN JAMES SMITH, an Idaho resident
holding Idaho Resident Bail Agent License
No. 111147, dba ATLAS BAIL BONDS,

Respondents.

Docket No. 18-3118-15

**STIPULATION RESOLVING
VIOLATIONS OF IDAHO
INSURANCE CODE AND FINAL
ORDER**

The parties herein, namely the Idaho Department of Insurance ("**Department**") and Ryan James Smith dba Atlas Bail Bonds, do hereby agree and stipulate as follows:

1. Ryan James "RJ" Smith is an Idaho-licensed bail agent, currently holding Idaho Bail Agent License No. 111147, which was originally issued on March 25, 2004, and which expires on August 31, 2016.

2. RJ Smith conducts bail transactions under an assumed business name of Atlas Bail Bonds, which assumed business name is currently registered with Idaho's Secretary of

State.

3. RJ Smith previously conducted business through an entity named Atlas Bail Bonds LLC, which was issued an Idaho Bail Agent License No. 156732. However, the Idaho Bail Agent License No. 156732 held by Atlas Bail Bonds, LLC, lapsed or became inactive as of March 1, 2014. Additionally, Atlas Bail Bonds, LLC, became a defunct entity as of February 10, 2015, when it was administratively dissolved by the Idaho Secretary of State.

4. On December 20, 2014, RJ Smith collected \$10,000 as collateral and \$1,090 as premium and miscellaneous charges for a total amount of \$11,090 from Samuel James Brazil ("Sam Brazil"). The funds were provided as security for a bail bond written in the sum of \$10,000 on behalf of Michael Kevin Brazil, who was charged on December 22, 2014, for certain criminal violations in Criminal Case No. CR-2014-000374, filed in Clark County, Idaho, in Idaho's Seventh Judicial District.

5. The bond in Michael Brazil's case, Case No. CR-2014-000374, was exonerated by the Court on May 20, 2015.

6. RJ Smith was made aware of the exoneration on or about May 20, 2015, and was required by law, pursuant to Idaho Code § 41-1043(3), to return the collateral within no later than fourteen (14) days from the date the underlying bond obligation was satisfied.

7. Between May 20, 2015 and June 3, 2015, Sam Brazil contacted RJ Smith requesting the return of the collateral.

8. On or about July 10, 2015, approximately 51 days after the Court exonerated the \$10,000 bond and after two queries from the Department, RJ Smith returned to Sam Brazil the cash collateral in the amount of \$10,000.

9. Prior to returning the collateral to Sam Brazil, RJ Smith commingled the \$10,000 in cash collateral with other assets by making multiple transfers between several bank accounts,

including both business and personal accounts, and used the funds to pay personal and/or business expenses in violation of the Idaho Code.

10. RJ Smith is required pursuant to Idaho Code § 41-1043(2)(a) to receive those cash collateral funds in a “fiduciary capacity” and to deposit and maintain the same in “a trust account that is separate and apart from any other funds or assets of the bail agent.”

11. On June 18, 2015, RJ Smith posted a \$5,000 surety bond on behalf of Francisco “Frank” Arteaga Lopez, initially without requiring collateral. Frank Lopez had been arrested on a bench warrant on June 18, 2015, for failing to appear for trial in 2007 in Criminal Case No. CR-2007-0009352, filed in Bonneville County, Idaho, in Idaho’s Seventh Judicial District.

12. On June 21, 2015, RJ Smith collected \$5,000 in cash collateral from Sara Lopez to secure the bond previously posted on behalf of Frank Lopez.

13. RJ Smith did not provide Ms. Lopez with a receipt as required by Idaho Code § 41-1043(5) that documented he had collected the \$5,000 cash collateral from her, but instead provided her with a receipt obtained from the Magistrate Division of Idaho’s Seventh Judicial District which evidenced that a bond had been posted on behalf of Frank Lopez in the amount of \$5,000.

14. The Court exonerated the \$5,000 bond in Frank Lopez’ case, Criminal Case No. CR-2007-0009352, on August 28, 2015. RJ Smith was required pursuant to Idaho Code § 41-1043(3) to return the cash collateral within fourteen (14) days of notification of the exoneration.

15. In early September 2015, Sara Lopez notified RJ Smith via telephone, alerting him to the Court’s exoneration and requesting that he return the collateral. Subsequently, between early September 2015 and late October 2015, Sara Lopez made several attempts to reach RJ Smith, leaving messages requesting the return of her cash collateral of \$5,000.

16. RJ Smith neither responded nor returned the cash collateral.

17. Between October 30, 2015, and November 13, 2015, the Department made three written attempts to contact RJ Smith and request information regarding the Lopez' cash collateral. RJ Smith failed or refused to respond to the Department.

18. On December 21, 2015, the Department filed against and served upon RJ Smith a Verified Complaint and Notice of Right to Hearing (the "Complaint") alleging in relevant part the following six counts:

- COUNT ONE: Brazil Transaction---Violations of Idaho Code §§ 41-1043(2) & (3); 41-1016(1)(b), & (d). Asserting RJ Smith breached his fiduciary duty by failing to deposit and maintain the \$10,000 in cash collateral collected from Sam Brazil "in a trust account that is separate and apart from any other funds or assets of the bail agent" but instead depositing the fiduciary funds in a business checking account; commingling the funds with other cash assets; transferring the funds in and out of other business and personal accounts; and for "improperly withholding, misappropriating or converting any moneys or property received in the course of doing insurance business" by making use of the funds for his own business and personal purposes.
- COUNT TWO: Brazil Transaction--Violations of Idaho Code §§ 41-1043(2) & (3); 41-1016(1)(b) & (d). Asserting RJ Smith improperly withheld, misused and/or converted the \$10,000 in cash collateral provided by Sam Brazil by failing to timely return the fiduciary funds within the statutory timeframe of 14 days after notice of exoneration of the underlying bail bond.
- COUNT THREE: Lopez Transaction--Violations of Idaho Code §§ 41-1043(2) & (3) & 41-1016(1)(b) & (d). Asserting that RJ Smith improperly withheld, misappropriated and/or converted the \$5,000 in cash collateral provided by Sara Lopez by failing or refusing to turn over the collateral funds after the exoneration of the underlying bail bond.
- COUNT FOUR: Lopez Transaction---Violations of Idaho Code §§ 41-1043(5) & 41-1016(1)(b). Asserting that RJ Smith collected collateral in the amount of \$5,000 from Sara Lopez and failed or refused to properly document receiving the fiduciary funds by failing to give Ms. Lopez a proper receipt.
- COUNT FIVE: Both Brazil and Lopez Transactions---Violations of Idaho Code §§ 41-247 and 41-117. Asserting that RJ Smith failed to respond to the Department's requests for information regarding both the Brazil and Lopez transactions.
- COUNT SIX: Both Brazil and Lopez Transactions---Violations of Idaho Code §§ 41-1016(1)(h). Asserting that RJ Smith demonstrated a course of conduct that included a practice of commingling fiduciary funds, making personal use of fiduciary funds,

failing to provide proper receipts for accepted collateral, and failing or refusing to return fiduciary funds until well past the statutory timeframe for doing so and that such acts are fraudulent, coercive or dishonest practices or demonstrate incompetence, untrustworthiness or financial irresponsibility, and/or are a source of injury and loss to the public or others in the conduct of business in Idaho.

19. The Department sought an order for the immediate revocation of RJ Smith's Resident Bail Agent License No. 111147 and to prohibit RJ Smith from engaging in any bail transactions either individually or under an assumed business name, and sought a penalty in the cumulative amount of \$16,000 to be paid prior to any application for reinstatement of RJ Smith's resident bail agent license.

20. RJ Smith filed a request for hearing on December 30, 2015. Subsequently, on January 21, 2016, RJ Smith filed an Answer admitting that he collected the bond amount from Mr. Brazil and also that he had provided Ms. Lopez with the receipt that he had collected from the Magistrate Division of Idaho Seventh Judicial District, but generally denying the remaining allegations.

21. In lieu of proceeding to a hearing on the Complaint, RJ Smith and the Department agree to resolve as between them the matters at issue in Administrative Case Docket No. 18-3118-15 through this negotiated and stipulated settlement. As such, the Parties stipulate and agree to the following terms:

a. RJ Smith admits, and does herein admit, to violations of Idaho Code §§ 41-1043(2) & (3); 41-1016(1)(b) & (d) as alleged in COUNT ONE and COUNT THREE of the Complaint. RJ Smith further concurs that improperly withholding, misappropriating, and/or converting collateral is justification for the release of his surety performance bond pursuant to Idaho Code § 41-1040 in the amount of \$5,000 for the benefit of Ms. Sara Lopez; and

b. RJ Smith admits, and does herein admit, to violations of Code § 41-1016(1)(h) as

alleged in COUNT SIX of the Complaint but only as to allegations of demonstrating incompetence and financial irresponsibility; and

- c. COUNT TWO, COUNT FOUR, COUNT FIVE, and the remainder of COUNT SIX as stated in of the Complaint shall be dismissed; and
- d. RJ Smith is liable for an administrative penalty in the amount of \$16,000, of which \$10,000 is waived; PROVIDED, HOWEVER, that RJ Smith delivers \$5,000 to Ms. Sara Lopez in the form of a cashier's check or cash equivalent and provides the Department with documentation confirming delivery by no later than **April 30, 2016**; PROVIDED FURTHER that such waiver of a portion of the penalty amount as stated herein is also contingent upon the Department's confirmation with Ms. Lopez of her receipt of the \$5,000 payment from RJ Smith; and
- e. The administrative penalty in the amount of \$6,000 that is not waived shall be paid in monthly increments of not less than \$250 per month for a period of no more than twenty-four (24) months from the date of the Order herein; and
- f. RJ Smith shall surrender Bail Agent License No. 111147 in lieu of revocation by no later than **April 30, 2016**, in a form approved by the Department and contemporaneously with payment to Ms. Lopez and delivery to the Department of verification of said payment as described in Subparagraph 21 (d) above.
- g. If, in the event RJ Smith fails or refuses to surrender his license in lieu of revocation and/or fails to repay Ms. Lopez and provide documentation of the same to the Department by no later than **April 30, 2016**, the Department shall

immediately: (i) revoke Bail Agent License No. 111147 without further notice or hearing; (ii) withdraw the previous waiver of \$10,000 in administrative penalty amount and RJ Smith shall owe the full penalty amount of \$16,000, less amounts paid, if any, due upon revocation; and (iii) instruct the surety for RJ Smith's performance bond to release \$5,000 of the bond to the Director on behalf of Ms. Lopez; and

- h. Within no later than ten (10) days from the date of the Order herein and again on April 30, 2016, RJ Smith dba Atlas Bail bonds shall provide a full listing of all current bonds that he has issued and that have not been exonerated (which list shall identify the bond amount, the defendant, and the name and contact information of the client that executed the bond and/or paid the premium) and shall provide a listing of all collateral that RJ Smith dba Atlas Bail Bonds is holding (which list shall identify the type, amount, and location of the collateral and the name and contact information for the party/bailor who delivered the collateral to RJ Smith dba Atlas Bail Bonds). Failure of RJ Smith dba Atlas Bail Bonds to timely provide the documentation as described herein at each of the intervals described herein shall result in immediate revocation of Bail Agent License No. 111147; and
- i. RJ Smith shall not reapply for a bail agent/producer license for two years from the date of the Final Order herein.

22. In agreeing to the provisions stated in the preceding Paragraph 21 of this Stipulation, RJ Smith knowingly and voluntarily waives any rights he would otherwise have to dispute this Final Order revoking Bail Agent License No. 111147, should one arise, including

but not limited to the rights afforded by Idaho Code § 41-232A, which provides for: the right to a hearing; the right to be represented at a hearing by counsel chosen and retained by RJ Smith; the right to present a defense, oral and documentary evidence and to cross-examine witnesses at such hearing and the right to seek judicial review or appeal the Amended Final Order revoking Bail Agent License No. 111147.

23. Also, by agreeing to the provisions stated in Paragraph 21 in this Stipulation, RJ Smith knowingly and voluntarily waives any rights he would otherwise have pursuant to Idaho Code § 67-5241, which provides for informal disposition of a contested issue by negotiation, stipulation, agreed settlement or consent order among other rights.

24. By entering into this Stipulation, RJ Smith knowingly and voluntarily waives any rights he would otherwise have to dispute the matters asserted in Administrative Case Docket No. 18-3118-15, including but not limited to the rights afforded by Idaho Code § 41-232A, which provides for: the right to a hearing; the right to be represented at a hearing by counsel chosen and retained by Smith; the right to present a defense, oral and documentary evidence and to cross-examine witnesses at such hearing and the right to seek judicial review.

25. The Parties agree that the terms of this Stipulation are appropriate and proper under the circumstances referenced herein, and that they have entered into this Stipulation knowingly, voluntarily and with full knowledge of any rights they may be waiving thereby.

26. The Parties each agree that this Stipulation is a full and final settlement of the issues raised between them in Administrative Case Docket No. 18-3118-15.

27. Neither this Stipulation nor the Final Order approving this Stipulation shall be deemed in any manner to prevent the Department from commencing any other agency action relating to RJ Smith's conduct not settled herein, and without regard to whether such conduct occurred prior to the date of this Stipulation or the Final Order approving this Stipulation.

28. RJ Smith understands and acknowledges that the Department may take such lawful actions as may be required or appropriate to investigate and determine whether he is in compliance with this Stipulation and the Final Order approving this Stipulation.

29. In the event that the Department takes action relating to alleged violations of this Stipulation or the Final Order approving this Stipulation, the Stipulation and Final Order shall be admissible in full in that proceeding for any purpose.

30. RJ Smith enters into this Stipulation freely and voluntarily, after having had the opportunity to consult with counsel of his choice, and with full understanding of the legal consequences of this Stipulation and the Final Order approving this Stipulation.

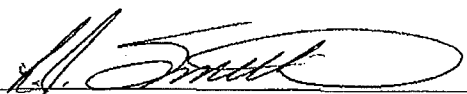
31. RJ Smith agrees that, upon execution of this Stipulation, no subsequent action or assertion shall be maintained or pursued in any manner asserting the invalidity of this Stipulation and Final Order and its provisions.

32. This Stipulation is subject to approval by the Director or the Director's designee, and shall become effective and binding upon the Department and RJ Smith upon such approval. Should the Director decline to approve this Stipulation, the Department and RJ Smith shall retain all of their rights, claims and/or defenses, and any factual and/or legal admissions made by RJ Smith herein shall be withdrawn.

33. This Stipulation and Final Order embodies the entire agreement between the Department and RJ Smith, and there are no agreements, understandings, representations or warranties that are not expressly set forth herein.

AGREED THIS 15th day of March, 2016.

By:

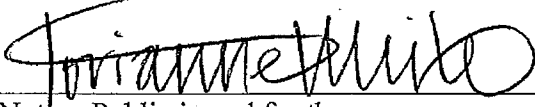


RYAN JAMES SMITH, individually and
dba Atlas Bail Bonds

STATE OF Idaho)
County of Bonneville) ss.

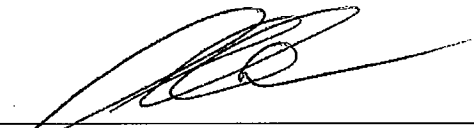
On this 1 day of ^{April} March 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Ryan James Smith, in his individual capacity, who executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said individual, for the uses and purposes therein mentioned.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

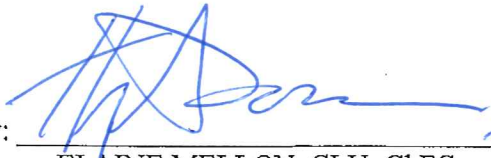

Notary Public in and for the
State of Idaho
Residing at Idaho Falls
My commission expires: 10/22/2020

Approved as to Form:

COX, OHMAN & BRANDSTETTER, CHARTERED

By: 
John M. Ohman, Of the Firm
Attorneys for Ryan James Smith, individually and
dba Atlas Bail Bonds

AGREED THIS 4th day of April, 2016.

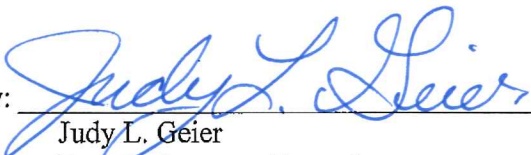
By:  Dep. Director

For

ELAINE MELLON, CLU, ChFC
Bureau Chief, Consumer Services
Idaho Department of Insurance

Approved as to Form:

OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO

By: 
Judy L. Geier
Deputy Attorney General
Attorney for the Idaho Department of Insurance

FINAL ORDER

Having reviewed the record herein, and the Stipulation Resolving Violations of Idaho Insurance Code (the "Stipulation") between the Idaho Department of Insurance (the "Department") and Ryan James "RJ" Smith ("RJ Smith"), the Director of the Department ("Director") concludes as follows

That the Parties' findings of fact, conclusions of law, admissions, waivers, and terms of agreement as stated in the Stipulation are incorporated herein as if fully recited;

That good cause exists for finding RJ Smith breached his fiduciary duties and violated Idaho Code §§ 41-1043(2) & (3) and 41-1016(1)(b) and (d) by improperly withholding, misappropriating or converting monies received in the course of doing insurance business with regards to the bail transactions that RJ Smith conducted with Sam Brazil and with Sara Lopez; and

That good cause exists for finding RJ Smith's admitted acts of improperly withholding, misappropriating, and/or converting collateral constitutes acts of dishonesty for the purpose of triggering a release pursuant to Idaho Code § 41-1040 of an amount of \$5,000 for the benefit of Ms. Sara Lopez of RJ Smith's surety performance bond filed with the Department; and

That good cause exists for finding RJ Smith demonstrated incompetence or financial irresponsibility with regard to the bail transactions conducted with Sam Brazil and with Sara Lopez and that such acts violated Idaho Code § 41-1016(1)(h).

NOW THEREFOR, IT IS HEREBY ORDERED,

1. That COUNT TWO, COUNT FOUR, and COUNT FIVE are hereby dismissed with prejudice; and

2. That COUNT SIX is hereby dismissed with prejudice except as to findings and admissions that RJ Smith demonstrated incompetence or financial irresponsibility with regard to

the bail transactions conducted with Sam Brazil and Sara Lopez; and

3. That RJ Smith shall pay an administrative penalty in the amount of \$16,000 of which \$10,000 is waived; PROVIDED, HOWEVER, that RJ Smith delivers \$5,000 to Ms. Sara Lopez in the form of cashier's check or cash equivalent and provides the Department with documentation confirming said delivery by no later than **April 30, 2016**; PROVIDED FURTHER, that such waiver of a portion of the penalty amount as stated herein is contingent upon the Department's confirmation with Ms. Lopez of her receipt of the \$5,000 payment from RJ Smith; and

4. That the administrative penalty in the amount \$6,000 that is not waived shall be paid in monthly increments of \$250 per month for a period of no more than twenty-four (24) months from the date of the issuance of this Order; and

5. That RJ Smith shall surrender Bail Agent License No. 111147 in lieu of revocation by no later than **April 30, 2016**, in a form approved by the Department and contemporaneously with payment to Ms. Lopez of the \$5,000 and delivery to the Department of verification of said payment as described in Paragraph 3 of this Final Order; and

6. That in the event RJ Smith fails or refuses to surrender his license in lieu of revocation and/or fails to repay Ms. Lopez and provide documentation of the same to the Department by no later than **April 30, 2016**, the Department shall immediately: (i) revoke Bail Agent License No. 111147 without further notice or hearing; (ii) withdraw the previous waiver of \$10,000 in administrative penalty amount and RJ Smith shall owe the full penalty amount of \$16,000, less amounts paid, if any, due upon revocation; and (iii) instruct the surety for RJ Smith's performance bond to release \$5,000 of the bond to the Director on behalf of Ms. Lopez; and

7. That within no later than ten (10) days from the date of this Order herein and

again on **April 30, 2016**, RJ Smith dba Atlas Bail bonds shall provide a full listing of all current bonds that he has issued and that have not been exonerated (which list shall identify the bond amount, the defendant, and the name and contact information of the client that executed the bond and/or paid the premium) and shall provide a listing of all collateral that RJ Smith dba Atlas Bail Bonds is holding (which list shall identify the type, amount, and location of the collateral and the name and contact information for the party/bailor who delivered the collateral to RJ Smith dba Atlas Bail Bonds); and

8. That failure of RJ Smith to timely provide the documentation as described in Paragraph 7 of this Final Order at each of the intervals described therein shall result in immediate revocation of Bail Agent License No. 111147; and

9. That, in accordance with the parties' stipulation, RJ Smith shall not reapply for a bail agent/producer license for two years from the date of this Final Order.

IT IS SO ORDERED.

DATED this 7 day of April, 2016.

STATE OF IDAHO
DEPARTMENT OF INSURANCE


DEAN CAMERON
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 7 day of APRIL, 2016, I caused a true and correct copy of the foregoing STIPULATION RESOLVING VIOLATIONS OF IDAHO INSURANCE CODE AND FINAL ORDER to be served upon the following by the designated means:

John M. Ohman
Cox, Ohman & Brandstetter, Chtd.
510 "D" Street
P.O. Box 51600
Idaho Falls, ID 83405-1600

- ☒ first class mail
- ☐ certified mail
- ☐ hand delivery
- ☐ via facsimile

Judy L. Geier
Deputy Attorney General
Idaho Department of Insurance
700 W. State St., 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043

- ☐ first class mail
- ☐ certified mail
- ☒ hand delivery
- ☐ via facsimile

Continental Heritage Insurance Company
6140 Parkland Blvd., Ste. 321
Mayfield Heights, OH 44124

- ☒ first class mail
- ☐ certified mail
- ☐ hand delivery
- ☐ via facsimile



Kelly Grady