

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE DIRECTOR OF THE DIVISION OF INSURANCE**

In the Matter of:)
)
 SETH T. BRYANT and BIGFISH BAIL,)
)
 Licensees.) OAH No. 11-0313-INS
) Agency Nos. D 11-10 & D11-13
_____)

DECISION

I. Introduction

This case involves the manner in which two bail bond licensees conducted business. Seth Bryant was issued an individual limited lines producer license, license #34249, and Bigfish Bail holds a firm license, license # 34248.¹ Since mid-2010, Seth Bryant has been the sole agent and employee of Bigfish Bail.²

The Division of Insurance (division), after investigation, concluded that Mr. Bryant and Bigfish Bail had violated the insurance code in several respects, including losing collateral, returning collateral late, and not being available to their customers to conduct business. The division sought to revoke the licenses for both Seth T. Bryant and Bigfish Bail. Both licensees requested a formal hearing.

The hearing was originally set to begin on December 6, 2011. The hearing date was rescheduled twice, and was ultimately held on April 5, 2012. The division filed its Second Amended Accusation on March 23, 2012, and the issues at the hearing were those specified in the seven counts of the amended accusation.

Bryant's and Bigfish Bail's attorney filed his prehearing brief on March 30, 2012, noting that he had not had contact with his clients. Neither licensee nor their attorney appeared for the hearing and the hearing was conducted without Mr. Bryant's and Bigfish Bail's participation.³ At the conclusion of the hearing, the division was asked to submit a post hearing brief addressing

¹ Affidavit of Rick Jones, page 1, attached to Motion for Summary Adjudication.

² *Id.*; Testimony of Rick Jones.

³ Although 2 AAC 64.320(a) allows for dismissal when the party requesting a hearing fails to appear, the division asked to follow the procedure set out in the Administrative Procedure Act, specifically AS 44.62.530, for defaults in cases governed by the APA. This procedure allowed for the creation of an evidentiary record to be used in issuing the proposed decision required by AS 44.64.060 and 2 AAC 64.320(e).

several issues including, but not limited to, penalties that have been imposed in other matters for violations of the insurance code.

Based on the evidence presented by the division, some, but not all, of the alleged violations have been proven. Based on the proven violations, the licenses of Mr. Bryant and Bigfish Bail should be revoked.

II. Facts

A. Sun Surety's Relationship to Bigfish Bail and Seth Bryant

Michael Wood is Vice President of Sun Surety Insurance Company.⁴ Sun Surety's primary business is insuring bail bonds, with agents in many different states. Seth Bryant was one of their agents in Alaska. After collecting a premium for a bond, Bigfish Bail would pay Sun Surety 1.5% of the penal amount.

B. Lost Collateral

Count I of the amended accusation alleges that Bigfish Bail and Mr. Bryant lost a motorcycle⁵ that had been accepted as collateral for a \$50,000 bail bond issued for Robert Ball.⁶ In November of 2008, Mr. Ball contacted William Bryant,⁷ who is Seth Bryant's father and who was licensed to issue bail bonds at the time. Mr. Ball had been arrested and needed to post a \$50,000 bond.⁸ The original agreement was that Mr. Ball would pay Bigfish Bail \$1,500 and \$250 per month for a total of \$5,000.⁹ When he was unable to continue making payments, Mr. Ball agreed to give Bigfish Bail his Harley Davidson three-wheel motorcycle as collateral.¹⁰

Jose Beltran testified with the assistance of his wife, Alicia Beltran, acting as an interpreter. He owns Beltran Auto Repair on Old Seward Highway.¹¹ His nephew Thomas asked him to store a motorcycle for a few days for someone Mr. Beltran knew to be in the bail bond business. Mr. Beltran later identified that person as Seth Bryant.¹² Mr. Beltran, Mr. Bryant, Thomas, and one other person¹³ drove a few blocks to pick up the motorcycle and

⁴ The factual findings in this section are based on Mr. Wood's testimony.

⁵ There was also evidence introduced concerning title to a flex bus. The alleged loss of that vehicle was not included in the Second Amended Accusation, and no findings are made regarding that vehicle.

⁶ Exhibit 2 (appearance bond).

⁷ Testimony of Robert Ball.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ The factual findings in this paragraph are based on the testimony of Mr. Beltran.

¹² *See* Exhibit 26 (photo lineup).

¹³ Mr. Beltran identified this person at the hearing as Josh Womack.

brought it back to Beltran Auto on a trailer. The motorcycle remained at Beltran Auto for several months. Mr. Beltran attempted to call Mr. Bryant, but was unable to reach him.

Joshua Womack testified that he was present when the motorcycle was picked up by Mr. Beltran. He is Mr. Bryant's second cousin, and they were sharing an apartment at the time. The motorcycle was picked up from their apartment where Mr. Bryant had been storing it.

Mr. Beltran began the process of obtaining permission from the Department of Motor Vehicles to sell the motorcycle as abandoned property.¹⁴ On May 27, 2009, he sold the motorcycle to Roberto Del Real Garcia.¹⁵ The purchase price was \$2,000.¹⁶ The market value of the motorcycle is approximately \$7,000.¹⁷

Department of Motor Vehicle records were introduced as evidence and identified by Deputy Director Shelly Mellott. These records show that ownership of the motorcycle was transferred to Robert Ball in November of 2007, and then transferred to Roberto Del Real Garcia on May 27, 2009.¹⁸

After he was sentenced in May of 2010 and his bail was exonerated, Mr. Ball called Bigfish Bail and Seth Bryant several times to arrange for the return of the collateral. Mr. Bryant would not answer his phone calls.¹⁹ Since he was incarcerated, Mr. Ball gave his father, Robert Ball, Sr., power of attorney to retrieve the motorcycle.

Robert Ball, Sr. was also unsuccessful in obtaining the return of the motorcycle.²⁰ Robert Ball, Sr. testified that he called Seth Bryant approximately 30 times. When he was able to speak with Seth Bryant, he was told that Bigfish Bail had the motorcycle, that it was in a secure location, and would be returned.²¹ In fact, as described above, the motorcycle had long since been sold to a third party and was no longer in the possession or control of Bigfish Bail.

C. Public Access to Business

Count II of the accusation alleges that Mr. Bryant did not maintain a place of business physically accessible to the public.²² Division investigator Rick Jones testified that he went to

¹⁴ Testimony of Mr. Beltran; Mrs. Beltran.

¹⁵ Exhibit 11.

¹⁶ Testimony of Mr. Beltran.

¹⁷ This is the average of the two written estimates contained in Exhibit 12.

¹⁸ Exhibit 9.

¹⁹ *Id.*

²⁰ *Id.*, Testimony of Robert Ball, Sr.

²¹ Testimony of Robert Ball, Sr.

²² Counts V and VI also allege failure to provide access in addition to other allegations in those counts described below.

the address listed on Mr. Bryant's license, 5901 E. 6th Avenue, several times.²³ He stated that this was a trailer and appeared to be residential rather than a business location. According to Mr. Jones, there were no signs or other markings to indicate that a business was operated there. On one occasion when no one was present, he was able to look in a window and see a dry erase board with names and court case numbers listed on it. On another occasion when Mr. Bryant was there, Mr. Bryant stepped outside to speak with Mr. Jones and stated that people were sleeping inside. Mr. Jones was never invited inside on any of the occasions when he visited Mr. Bryant at this location.

During a phone conversation he had with Mr. Bryant, Mr. Jones was told that Bigfish Bail had a new address at 2150 E. Dowling, Suite D. Mr. Jones was not invited inside this location when he visited. Instead, Mr. Bryant stepped outside to speak with him. In February of 2012, Mr. Jones again visited the office and took pictures from the outside.²⁴ These pictures show that an ice berm had built up in front of the door, making the office inaccessible. No one was inside the office at that time.

Christene Gravely also testified about this business location. She owns and operates a speech language therapy clinic in Suite C and subleased Suite D to Bigfish Bail beginning in November of 2010.²⁵ Her office is next door to Suite D, and she is there two or three days each week. She testified that she rarely saw Mr. Bryant or anyone else in Suite D. She also confirmed that the door to Suite D opened out, and that the ice berm prevented anyone from entering that office.

In further support of the allegations in this count, the division presented testimony from several witnesses about their inability to contact Bigfish Bail and Mr. Bryant by telephone. When they attempted to do so, they either had to leave a message or they heard an announcement that the voice mail box was full or that the telephone number was no longer accepting calls.

D. Failure to Produce Records

In Count III, the division alleged that Mr. Bryant and Bigfish Bail failed to produce records requested by the division. This count was the subject of the division's Motion for Summary Adjudication. Mr. Bryant and Bigfish Bail did not dispute the factual allegations in that motion, and it was held that

²³ Exhibit 20 consists of pictures of this location.

²⁴ Supplemental Exhibit 6.

²⁵ Testimony of Ms. Gravely.

Mr. Bryant is in the business of providing bail bonds, operating under the business name of Bigfish Bail. Both Mr. Bryant and Bigfish Bail hold limited lines producer licenses and are regulated by the division. Beginning in May of 2011, the division's investigator, Rick Jones, sought copies of business records from Bigfish Bail. He did this informally at first, and ultimately served Mr. Bryant with a subpoena for certain records of Bigfish Bail. Service was perfected on June 2, 2011.

On the subpoena's return date, counsel for Mr. Bryant requested an additional 30 days to produce the documents. Mr. Jones offered an extension of four days, but refused the 30-day extension. Mr. Bryant then requested certification from the state that the requested documents would be used for civil purposes only, and not for any criminal proceedings. Mr. Jones did not reply to that request.

Mr. Bryant did not comply with the subpoena, and has not produced the subpoenaed records.^[26]

E. Lying Under Oath

Count IV accuses Mr. Bryant of either lying under oath or being incompetent when he stated to Mr. Jones that he had no knowledge of Mr. Ball's motorcycle. Mr. Bryant was interviewed under oath by Mr. Jones during the division's investigation.²⁷ Mr. Jones testified that Exhibit 13 is an accurate transcript of his interview with Mr. Bryant. During that interview, he was asked if he had ever seen Mr. Ball's Harley Davidson motorcycle. Mr. Bryant stated that he had never seen it, "not to my recollection."²⁸ After being reminded that he had sworn to tell the truth, Mr. Bryant said "Rick! I've never seen the bike. And if I have, I don't remember seeing it."²⁹ He continued to maintain that he knew nothing about the motorcycle.³⁰

Mr. Jones provided additional information about Beltran Auto and the people involved in transferring the motorcycle to Beltran Auto.³¹ Mr. Bryant stated that he knew nothing about Beltran Auto or the motorcycle.³²

F. Failure to Return Collateral Timely

Counts V and VI allege that Mr. Bryant and Bigfish Bail failed to return collateral within 10 days of receiving notice that the bond had been exonerated. Sheila Islam testified that she was visiting Anchorage in the summer of 2011 when she was arrested for trespassing. She stated that she contacted Bigfish Bail, and she had family members pay \$1,500 for her \$15,000 bond.

²⁶ Order Regarding Motion for Summary Adjudication, dated December 15, 2011 (internal footnote omitted).

²⁷ Testimony of Rick Jones, Exhibit 13.

²⁸ Exhibit 13, page 36.

²⁹ Exhibit 13, page 37.

³⁰ Exhibit 13, page 41.

³¹ Exhibit 13, pages 40 – 43.

³² Exhibit 13, pages 43 – 44.

She believed that she would get the \$1,500 back when the bond was exonerated. After her court case was over, she was unsuccessful in contacting Bigfish Bail to get this money returned. Her lawyer had her call Investigator Jones, who helped her connect to Sun Surety and get her money returned.

The court records reflect that the bond amount was actually \$5,000.³³ The premium for a bond in that amount would be \$500, so the \$1,500 paid by her family was more likely collateral posted on her behalf which should be returned once the bail is exonerated.³⁴ The court records show that the bond was exonerated on November 4, 2011.³⁵ On January 11, 2012, Mr. Wood from Sun Surety wrote an email to Mr. Jones to inform him that he was working with Ms. Islam to get her collateral returned.³⁶

Gail Blomberg testified that she paid Bigfish Bail \$500 for a \$5,000 bond for her son. She later became concerned that her son would skip his court appearance and she would be responsible for the \$5,000 bail amount. She attempted to contact Bigfish Bail by phone and by mail to have a new bail hearing so that she could be removed from the bond. Eventually, she spoke with Investigator Jones who put her in touch with Sun Surety. Sun Surety was able to assist in getting the bond exonerated.

G. Allegations Related to Criminal Prosecution

Count VII alleges that Mr. Bryant was arrested on a domestic violence charge. He is accused of both failing to report the charge, as required by statute, and of lying under oath about his income to qualify for a public defender.

Seth Bryant is listed as the defendant in case number 3AN-12-15 CR.³⁷ With the assistance of a court clerk, Mr. Bryant completed a financial statement requesting appointment of a public defender. The court clerk, Robert Lee, testified that one of his job duties is to interview defendants and ask if they would like to have appointed counsel. If they do request appointed counsel, he cautions them against perjury and then asks them for information about their income and expenses. He writes the information on the financial statement form for them, because the prisoner is on the other side of a glass screen. According to Mr. Lee, once the information is

³³ Supplemental Exhibit 1, page 5 (August 1 entry).

³⁴ Or the family may have paid \$500 for the premium and \$1,000 as collateral. The exact amount of the collateral is of no consequence in this case.

³⁵ Supplemental Exhibit 1, page 2.

³⁶ Supplemental Exhibit 2, page 1.

³⁷ Supplemental Exhibit 9.

written down, he has the prisoner swear under oath that it is accurate. He testified that he did that with Mr. Bryant's request for court appointed counsel which was admitted into evidence as Supplemental Exhibit 9. In that request, Mr. Bryant stated that his income for the last 12 months was \$20,000.³⁸

Mr. Wood testified that in 2011, Bigfish Bail wrote 111 bail bonds and collected \$52,250 in premiums. Of that amount, Bigfish Bail paid Sun Surety \$7,837.50.³⁹

Mr. Jones testified that the Mr. Bryant never notified the Division of Insurance that criminal charges had been filed against him.

III. Discussion

A. Loss of the Motorcycle

Based on the evidence described in section II A above, the division has established that William Bryant and Bigfish Bail accepted Mr. Ball's motorcycle as collateral for the unpaid premium for his \$50,000 bond.⁴⁰ A licensee accepting collateral does so as a fiduciary,⁴¹ and must "maintain collateral with fairness and good faith as custodian of the collateral."⁴² It has also been established that Bigfish Bail did not maintain this collateral, and instead had it moved to Beltran Auto where it was subsequently sold to Mr. Garcia.

It is unclear whether any premium was still owed when Mr. Ball's bail was exonerated. If premium was owed, Bigfish Bail would have been required to follow the procedure set out in regulation for disposing of this property.

If collateral was deposited as security for unpaid premium, if the premium remains unpaid at the time of surrender, exoneration, or forfeiture of the bond, and if a demand has been made by the licensee in custody of the collateral, the surety acting by itself, or through its agent, may dispose of the collateral in the manner provided for in AS 34.45.030 – 34.35.080 of the Uniform Property Act and the proceeds may be applied against the unpaid premium.^[43]

There is nothing in the record to suggest that Bigfish Bail followed this procedure. In fact, since the motorcycle was sold to Mr. Garcia before Mr. Ball's bail was exonerated, it could not have followed this procedure as the collateral may not be disposed of before that time. Instead of

³⁸ Supplemental Exhibit 9, page 2. He was arrested and charged on January 1, 2012 (Testimony of Mr. Jones).

³⁹ Testimony of Mr. Wood; Supplemental Exhibit 8.

⁴⁰ Mr. Ball's testimony was that the motorcycle was collateral for the unpaid premium, rather than collateral to ensure his appearance in court.

⁴¹ 3 AAC 23.800(a).

⁴² 3 AAC 23.859(5).

⁴³ 3 AAC 23.830(b).

intentionally disposing of this motorcycle under the Uniform Property Act to pay for any unpaid premium, the evidence shows that Bigfish Bail attempted to store the motorcycle at Beltran Auto for a short period of time, and then neglected to retrieve it or otherwise keep the collateral safe and secure. Bigfish Bail violated 3 AAC 23.800(a) when it failed to maintain custody of the motorcycle accepted as collateral.

The division also seeks to hold Mr. Bryant responsible for the loss of this motorcycle because he is the sole owner of Bigfish Bail, and Bigfish Bail has no other employees or licensees. The division's evidence proved that William Bryant was the person who issued the original bond and who accepted the motorcycle as collateral. At that time, William Bryant was one of the firm's licensees.⁴⁴ He remained with Bigfish Bail until June 5, 2010.⁴⁵ The motorcycle was transferred to Mr. Garcia on May 27, 2009.⁴⁶ William Bryant was still active in the firm and possibly the owner of Bigfish Bail when the collateral was lost. The division has not met its burden of proving that Seth Bryant violated any regulation when William Bryant and Bigfish Bail lost the motorcycle accepted as collateral.

B. Access to Place of Business

Mr. Bryant and Bigfish Bail were required to have a place of business in Alaska "physically accessible to the public[. ⁴⁷]" As discussed above, Bigfish Bail was first operated out of a trailer on 6th Avenue, and later operated on Dowling Road. There were no signs indicating that either location was a business, and frequently no one was present during normal business hours. When Mr. Jones did find Mr. Bryant present, he was not invited inside.

By statute, Bigfish Bail and Mr. Bryant were only required to have a physical location in the state. Another statute, AS 21.27.340, requires that the licensee's license be posted in "that part of the business that is customarily open to the public." Read together, these two statutes show that a licensee must maintain a physical space in Alaska that members of the public can actually go to. These statutes do not, however, require it to be easy for customers to find that space, and do not require any minimum number of hours of operation. Nor do the statutes

⁴⁴ Exhibit 1, page 1.

⁴⁵ *Id.*

⁴⁶ Exhibit 9.

⁴⁷ AS 21.27.330(a).

preclude a licensee from using the same location as a business and a residence, as long as there is an area that is open to the public.⁴⁸

The 6th Avenue location was a place that the public could actually go to. While Mr. Jones was not invited inside, Mr. Jones did not testify that he insisted on being allowed inside and was refused. In addition, Mr. Bryant was aware that Mr. Jones was an investigator and not a potential customer. There was no evidence that customers were not allowed inside the business. The division has not met its burden of proving that this location was not physically accessible to the public.

The Dowling Road location was also initially accessible to the public. However, in February an ice dam had built up in front of the door. Based on the testimony of both Mr. Jones and Ms. Gravely, it was not possible for a member of the public to enter the business at any time. The division has met its burden of proving this violation.

The division also argued that the failure to provide access by telephone was a violation of AS 21.27.330.⁴⁹ There is no requirement in that statute, or any regulation identified by the division, that licensees have a telephone number. If Bigfish Bail and Mr. Bryant had been available by telephone, that might have mitigated to some degree their failure to have a location physically accessible to the public, but the failure to have a telephone is not a violation of AS 21.27.330.⁵⁰

C. Failure to Produce Records

As licensees, Mr. Bryant and Bigfish Bail are obligated to maintain certain records.⁵¹ Those records must be available for inspection by the division during business hours.⁵² If the division inquires about these records, the licensee must respond in writing within 10 days.⁵³

The division moved for summary adjudication prior to the hearing, arguing that the undisputed evidence established that Mr. Bryant and Bigfish Bail violated AS 21.27.350. In opposition, Mr. Bryant and Bigfish Bail did not dispute that a violation had occurred. They

⁴⁸ Nothing in this decision is intended to suggest that the division could not adopt regulations establishing minimum standards of public accessibility.

⁴⁹ Second Amended Accusation, ¶ 10.

⁵⁰ In its posthearing brief, the division argued that the failure to provide physical and telephonic access for the public was also a violation of AS 21.27.410(a)(8). The division did not allege that the lack of access was a violation of this statute in its Second Amended Accusation, and no ruling is made here as to whether this would constitute a violation had it been raised prior to the hearing.

⁵¹ AS 21.27.350.

⁵² AS 21.27.350(c).

⁵³ AS 21.27.350(e).

argued instead that at the time they had refused to comply with this statute, Mr. Bryant had a good faith belief that he could assert his Fifth Amendment privilege against self-incrimination. Mr. Bryant and Bigfish Bail conceded, however, that the division's argument for why this privilege did not apply was correct.

An order was issued granting summary adjudication. That order is affirmed with this decision.

D. Lying Under Oath

A license may be suspended or revoked for conduct that shows the licensee is untrustworthy.⁵⁴ A firm's license may be suspended or revoked based on the conduct of a person acting on behalf of the firm.⁵⁵ The testimony introduced by the division established that Mr. Bryant helped move the motorcycle from Mr. Bryant's apartment to Beltran Auto. During Mr. Jones' interview of him, Mr. Bryant denied any knowledge of the motorcycle, even after being shown pictures of it.⁵⁶ The motorcycle is sufficiently unusual that Mr. Bryant would have remembered storing it at his apartment and then moving it to Beltran Auto. While forgetting this motorcycle entirely is a possibility, it is more likely true than not true that Mr. Bryant did in fact have some knowledge of the motorcycle when he was interviewed by Mr. Jones, and his completely disavowal of any knowledge is an indication of untrustworthiness. The division has proven cause to revoke or suspend his license pursuant to AS 21.27.410(a)(8).

Whether Mr. Bryant's conduct during the interview also establishes cause to revoke or suspend Bigfish Bail's license depends on whether Mr. Bryant was acting on behalf of the firm during that interview. At the time of the interview, Mr. Bryant was the only person working for Bigfish Bail.⁵⁷ He was answering questions about bonds written by Bigfish Bail and collateral accepted by Bigfish Bail. It is more likely true than not to true that Mr. Bryant was answering questions on behalf of both himself and Bigfish Bail when he was interviewed by Mr. Jones. The division has proven cause to revoke or suspend Bigfish Bail's license pursuant to AS 21.27.410(a)(8).

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⁵⁴ AS 21.27.410(a)(8).

⁵⁵ AS 21.27.410(b).

⁵⁶ The transcript was not prepared by a court reporter and was not certified as accurate. Mr. Jones, however, testified that it accurately reflected what Mr. Bryant stated during his interview. While it may not be an exact word for word transcript, this transcript is sufficient to establish that Mr. Bryant did deny any knowledge of the motorcycle.

⁵⁷ Exhibit 13, page 16.

E. Timely Return of Collateral

Bigfish Bail and Mr. Bryant were required to return collateral within “10 days after receiving written notification from the court that a bail bond and the surety have been exonerated[.]”⁵⁸ The division alleged two instances where Bigfish Bail and Mr. Bryant failed to meet the ten day time requirement. The first involved Sheila Islam. Her bond was exonerated on November 4, 2011.⁵⁹ As of January 11, 2012, Sun Surety was working with Ms. Islam to have her money returned to her.⁶⁰ There was no evidence presented as to when “written notification from the court” was actually received, but it is probable that such notification was mailed shortly after November 4, and would have been received well before January 1, 2012. Since Sun Surety was still trying to resolve the problem on January 11, 2012, Ms. Islam did not receive her collateral within 10 days.

The second instance involved Gail Blomburg. Ms. Blomburg testified that she paid \$500 for a \$5,000 appearance bond for her son. There was no evidence presented at the hearing that there was any collateral involved in that transaction. Because there was no collateral, there could be no failure to return that collateral in a timely manner. In addition, the evidence concerning Ms. Blomburg all related to her efforts to have the bail exonerated. Even if there had been collateral, she was not entitled to its return until after exoneration.⁶¹

F. Criminal Prosecution

When Mr. Bryant was arrested for assault, he was assisted in completing an application for a court appointed attorney. As discussed above, he asserted that his income for the previous 12 months was less than \$20,000. The division asserts that his actual income was over \$44,000 because he received \$52,250 in gross premium, and was only required to pay Sun Surety \$7,837.50 of that amount. Thus, according to the division, Mr. Bryant falsely understated his income.

Payments to Sun Surety would not have been the only business expense for Mr. Bryant and Bigfish Bail. Rent was paid at the Dowling Road location through October of 2011, and there was some form of telephone service during at least some portion of 2011. In addition, as

⁵⁸ 3 AAC 23.830(a).

⁵⁹ Supplemental Exhibit 1, page 2.

⁶⁰ Supplemental Exhibit 2.

⁶¹ The record contains evidence of other individuals experiencing difficulties in getting their collateral returned within ten days. Because the amended accusation only specified the instances regarding Ms. Islam and Ms. Blomburg, no ruling is made as to whether there were additional violations. This evidence does support the allegation that there was a delay in returning Ms. Islam’s collateral as it shows a pattern of untimely response.

shown with the motorcycle example described above, Bigfish Bail and Mr. Bryant do not always receive the full amount of the premium charged. To assume that Mr. Bryant's business expenses would have been less than \$24,000, and therefore his personal income greater than \$20,000, would require drawing inferences about his business expenses that are not supportable by the evidence in the record. The division has not met its burden of proving that Mr. Bryant made false representations about his income to obtain a court appointed attorney.

The division has proven that Mr. Bryant was charged with a crime. Alaska law provides, in part

A licensee shall report to the director any criminal prosecution of the licensee in this or another state or jurisdiction within 30 days after the date of filing of the criminal complaint, indictment, information, or citation in the prosecution. The licensee shall submit to the director a copy of the criminal complaint, calendaring order, or other relevant legal documents in the prosecution.^[62]

A licensee's failure to provide this information is grounds for suspension or revocation of a license.⁶³ The division has met its burden of proving grounds for taking action against Mr. Bryant's license for failing to comply with AS 21.27.025(a).

G. Appropriate Sanction

An insurance license may be suspended or revoked for a violation of Title 21,⁶⁴ or for "conduct considered by the director to reflect incompetence or untrustworthiness, or to be a source of potential injury and loss to the public."⁶⁵ Mr. Bryant violated Title 21 by failing to provide public access to the Dowling Street office,⁶⁶ failing to produce records,⁶⁷ and failing to report a criminal prosecution.⁶⁸ In addition, his failure to admit knowledge of the motorcycle during the investigative interview is conduct that could be considered an indication of untrustworthiness, and the late return of collateral could be considered an indication of incompetence.

Of these violations, Mr. Bryant's misrepresentations during the investigative interview and his failure to produce records are the most serious. The director is dependent on the licensee's cooperation when conducting an investigation. Licensees who do not produce

⁶² AS 21.27.025(a).
⁶³ AS 21.27.025(c).
⁶⁴ AS 21.27.410(a)(2).
⁶⁵ AS 21.27.410(a)(8).
⁶⁶ AS 21.27.330.
⁶⁷ AS 21.27.350.
⁶⁸ AS 21.27.025.

requested records, and who are not completely honest during an investigation, may be able to hide violations that need to be corrected in order to protect the public. Mr. Bryant was more than just uncooperative. He lied under oath and actively resisted providing access to his records during Mr. Jones' investigation.⁶⁹ These two violations are sufficient to justify revocation, but to the extent they are not, the additional violations proven during the hearing confirm the need to revoke rather than suspend Mr. Bryant's license. For the same reasons, Bigfish Bail's license should also be revoked.⁷⁰

The division also asked that Bigfish Bail and Mr. Bryant be ordered to pay restitution for the loss of Mr. Ball's motorcycle. Title 21 provides for suspension and revocation of a license,⁷¹ and for civil penalties.⁷² The division has not cited to any provision allowing an order of restitution directly to a party harmed by a licensee's actions. Accordingly, no restitution will be awarded.⁷³

The division did not request a civil penalty, and no civil penalty is imposed.

IV. Conclusion

Bigfish Bail and Mr. Bryant have each violated Title 21, and have engaged in conduct that indicates a lack of competence or trustworthiness. As discussed above, their licenses should be revoked.

V. Order

1. Seth T. Bryant's limited lines producer license (license # 34249) is hereby REVOKED. Mr. Bryant may not seek re-licensure for a period of 12 months from the date the director issues a final order;
2. Bigfish Bail's limited lines produce license (license # 34348) is hereby REVOKED.

⁶⁹ AS 21.27.350 requires that records be kept and that the licensee reply within ten days to requests for those records.

⁷⁰ Bigfish Bail is also responsible for the loss of Mr. Ball's motorcycle. That conduct resulted in actual injury to Mr. Ball, and would justify revocation pursuant to AS 21.27.410(a)(8).

⁷¹ AS 21.27.410.

⁷² AS 21.27.430(c); AS 21.27.440.

⁷³ An additional reason for not awarding restitution or any civil penalty is that the amended accusation did not request those sanctions, so neither licensee was on notice that any other sanction might be requested.

3. Bigfish Bail may not seek re-licensure for a period of 12 months from the date the director issues a final order.

DATED this 20th day of April, 2012.

By: Signed
Jeffrey Friedman
Administrative Law Judge

Non-Adoption Options

1. The undersigned Director of the Division of Insurance declines to adopt this Decision, and instead orders that the case be returned to the administrative law judge to

take additional evidence about _____;

make additional findings about _____;

conduct the following specific proceedings: _____.

DATED this _____ day of _____, 2012.

By: _____
Linda Hall
Director
Division of Insurance

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2. The undersigned Director of the Division of Insurance revises the Decision follows:

See Attachment A

1. Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 10th day of May, 2012.

By: Signed
Linda Hall
Director
Division of Insurance

ATTACHMENT A

The undersigned Director of the Division of Insurance revises the Decision as follows:

IV. Conclusion

Big Fish Bail and Mr. Bryant's conduct, as set forth above in Section III of this proposed decision, were particularly egregious. There is no question that revocation of their respective licenses is authorized under AS 21.27.410, AS 47.21.420 and AS 47.21.420. In determining the scope of the revocation, the record shows that revocations are generally between three and five years in duration (see State's Post Hearing Brief at pp. 2-3 citing to ITMO *Jeffries*, D98-01, ITMO *Eyman*, Case No. D92-15, ITMO *Ambrecht*, Case No. D 92-15, ITMO *Washington*, Case No D93-27 and ITMO *Wagstaff*, Case No D94-22).

Big Fish Bail and Mr. Bryant both violated Title 21 and engaged in conduct that indicates a lack of competence or trustworthiness. Accordingly, their licenses shall be revoked as set forth below in Section V.

V. Order

1. Seth T. Bryant's limited lines producer license (License #34249) is REVOKED pursuant to AS 21.27.410(a). Pursuant to AS 21.27.430(b), Seth T. Bryant is precluded from seeking licensure, in this state, or licensure relative to a subject resident, located or to be performed in this state for a period of five (5) years from the date of this decision.

2. Big Fish Bail's limited lines producer license (License #34348) is REVOKED pursuant to AS 21.27.410(a). Pursuant to AS 21.27.430(b), Big Fish Bail is precluded from seeking licensure, in this state, or licensure relative to a subject resident, located or to be performed in this state for a period of five (5) years from the date of this decision.

[This document has been modified to conform to the technical standards for publication.]