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Attorney for the CSI

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE,
MONTANA STATE AUDITOR**

IN THE MATTER OF)	CASE NO. INS-2012-241
)	
FRIEDEL, LLC, dba FREEDOM BAIL BONDS,)	NOTICE OF PROPOSED AGENCY ACTION AND OPPORTUNITY FOR HEARING
)	
Respondent.)	
)	

Staff of the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, et seq. (Code), is proposing to the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), that she take specific action against Respondent Friedel, LLC, dba Freedom Bail Bonds (Respondent), for violations of the Code. The Commissioner has authority to take such action under the provisions of §§ 33-1-102, 33-1-301, 33-1-311, 33-1-317, 33-1-318, 33-17-236, 33-18-1002, and 33-18-1003. Service of process is pursuant to § 33-1-314.

REASONS FOR ACTION

There is probable cause to believe that the following facts, if true, justify and support such specific action. Furthermore, there is reason to believe that the following facts will be proven true and justify and support an appropriate fine.

ALLEGATIONS OF FACT

1. Respondent is licensed with the CSI as a surety bail producer, license #750457.
2. Respondent has not been appointed with any insurers.
3. Respondent is affiliated with Christopher Friedel, Douglas Friedel, Neil Friedel, Richard Friedel, and Michelle Riley, who are licensed with the CSI as surety bail producers and appointed by Roche Surety and Casualty Company, Inc. (Roche).
4. On June 29, 2012, Respondent entered into an agreement with Christopher McBride (McBride) to provide a bail bond in the amount of \$5,000 to McBride.
5. As part of that agreement, Respondent asserted it would charge 18 percent interest per annum on any unpaid balance.
6. Also on June 29, 2012, Respondent entered into an indemnity agreement with Mary Marchington (Marchington), and had Marchington execute a Promissory Note for McBride's bond.
7. On the Promissory Note, Respondent wrote in an interest rate of 18 percent on any unpaid balance, payable semi-annually.
8. On August 14, 2012, two of Respondent's agents arrested McBride for missing a court appearance, and surrendered him to the Yellowstone County Sheriff's Department.
9. On or about August 23, 2012, Marchington received an invoice from Respondent in the amount of \$2,450.00.
10. In that invoice, Respondent states that "all outstanding balances are subject to an 18 percent rate of interest per annum and all amounts are due 'ON DEMAND'."

11. In that invoice, Respondent charged fees of \$100 per hour for agent time spent apprehending McBride and for time spent perfecting title on a vehicle pledged as collateral for the bond, and charged \$300 for “miscellaneous” costs.

12. The bail bond agreement, indemnity agreement, and promissory note state that Respondent may be reimbursed for “expenses” or “costs.” Respondent did not disclose that fees of \$100 per hour may be charged or collected as part of those documents.

13. On or about August 25, 2012, the CSI received a consumer complaint from Marchington regarding Respondent’s invoice and the taking of McBride’s collateral.

14. From January of 2012 through the current date, the Federal Reserve System interest rate for bank prime loans has been 3.25 percent.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to the Code.

2. A “person” is an individual, insurer, company, association, organization, partnership, business trust, corporation, or any other legal entity. § 33-1-202(3)

3. Respondent is a “person” as defined by § 33-1-202(3).

4. “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance. § 33-17-102(10).

5. Respondent is an insurance producer as defined by § 33-17-102(10).

6. An insurance producer may not claim to be a representative of or use another term implying a contractual relationship with a particular insurer unless the insurance producer is an appointed insurance producer of that insurer pursuant to § 33-17-236.

7. Respondent expressly stated there was a contractual relationship between it and Roche when respondent was not appointed by Roche in violation of § 33-17-236.

8. An insurance producer who violates § 33-17-236 is subject to a fine of up to \$5,000 per violation, pursuant to § 33-1-317.

9. A person may not charge or agree in writing to an interest rate greater than 15 percent or an amount that is 6 percentage points above the Federal Reserve System bank prime rate, whichever is greater. § 31-1-107.

10. A person may not take, receive, reserve, or charge an interest rate greater than that allowed by § 31-1-107. § 31-1-108.

11. A person engaged in the business of insurance who charges or attempts to charge an interest rate in violation of § 31-1-107 or § 31-1-108 has engaged in an unfair or deceptive act or practice. § 33-18-1003(1).

12. Respondent charged an interest rate greater than 15 percent in violation of § 31-1-107, § 31-1-108, and § 33-18-1003(1).

13. A person engaged in the business of insurance who charges or attempts to charge a \$100-per-hour fee without prior disclosure of that fee has engaged in an unfair or deceptive act or practice. § 33-18-1003(1).

14. Respondent charged a \$100-per-hour fee without prior disclosure of that fee in violation of § 33-18-1003(1).

12. A person who violates § 33-18-1003 is subject to a fine of up to \$5,000 per violation, pursuant to § 33-1-317, and an order enjoining those practices pursuant to § 33-18-1004.

RELIEF REQUESTED

WHEREFORE, the CSI seeks the following relief:

1. Pursuant to § 33-17-317, imposition of a fine not to exceed \$25,000 per violation of the Code.
2. Pursuant to § 33-18-1004, entering of an order enjoining Respondent from the acts or practices in violation of § 33-18-1003.

STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this notice, and to present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, § 2-4-601 et seq., including § 2-4-631. If you demand a hearing, you will be given notice of the time, place, and nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 21 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by **writing** to:

Michael A. Kakuk
Office of the Commissioner of Securities and Insurance, Montana State Auditor
840 Helena Avenue
Helena, Montana 59601

Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case.

Pursuant to § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation, or any other adverse action against a professional license. Should you

request a hearing on the matters raised in this Notice, a hearing must be held within 45 days of the request, unless postponed by mutual consent of the parties, pursuant to § 33-1-701(3).

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.*, 164 Mont. 139, 520 P.2d 103 (1973), and *Montana Supreme Court Commission on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

CONTACT WITH COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Michael A. Kakuk, legal counsel for the CSI, by telephone at (406) 444-2040, or by email at mkakuk@mt.gov. Please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give notice or to advise of your demand for a hearing or informal procedure within 15 days will result in the entry of a default order imposing the disciplinary sanctions against you without further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 11th of February, 2014.



Michael A. Kakuk
Attorney for the CSI

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing document was sent by U.S. mail, postage paid, this 11th day of February, 2014, to the following:

Friedel, LLC, dba Freedom Bail Bonds
c/o Myra Friedel, registered agent
1302 24th Street West, #221
Billings, MT 59102

