

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of Insurance and Financial Services

Office of Financial and Insurance Regulation¹
Petitioner

v

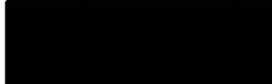
Craig L. Whatley and
Thomas L. Whatley Agency, Inc.
Respondents

Case No. 13-902-L
Docket No. 13-000137-OFIR

For the Petitioner:

William R. Peattie
Office of Financial and Insurance Regulation
P.O. Box 30220
Lansing, MI 48909-7720

For the Respondent:

Craig L. Whatley


Issued and entered
this 9th day of May 2013
by Randall S. Gregg
Special Deputy Director

FINAL DECISION

I. Background

On January 14, 2013, Chief Deputy Commissioner Annette E. Flood issued an Order Referring Complaint for Hearing in this case which included allegations that Respondents had violated sections 1207(1), 1239(1), and 1244(1) of the Michigan Insurance Code, MCL 500.1207(1), 500.1239(1), and 500.1244(1), by failing to remit premiums they had collected from their customers to various insurers.

A hearing was held on March 11, 2013. The Administrative Law Judge issued a Proposal for Decision (PFD) on March 28, 2013. Neither party filed exceptions. Michigan courts have

1. Pursuant to Executive Order 2013-1, the Office of Financial and Insurance Regulation is now known as the Department of Insurance and Financial Services. During the pendency of this case all authority, powers, duties, functions, and responsibilities of the Commissioner of the Office of Financial and Insurance Regulation were transferred to the Director of the Department of Insurance and Financial Services. See Executive Order 2013-1, effective March 18, 2013.

long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v Public Service Comm*, 136 Mich App 52 (1984).

The factual findings in the PFD are in accordance with the preponderance of the evidence and the conclusions of law are supported by reasoned opinion. Those findings and conclusions are adopted. The PFD is attached and made part of this final decision. The findings and conclusions most pertinent to this Final Decision are stated below.

II. Findings of Fact

1. At all times pertinent to this case, Respondent Craig Whatley was a licensed resident insurance producer. Respondent Thomas L. Whatley Agency, Inc. was a licensed resident insurance producer. Respondents were appointed to represent, among other insurers, Atlantic Specialty Insurance Company, Capital Specialty Insurance Corporation, and Nautilus Insurance Company.
2. In 2012, the Respondents failed to remit to the above-named insurers \$20,746.54 in insurance premiums they had collected from their clients for insurance coverage. (At the hearing, Respondent Craig Whatley admitted they had failed to remit to their insurers a total of \$27,473.66 in insurance premiums.) The Respondents used the premiums for their own expenses.
3. In May 2012, in a previous enforcement case, the Respondents entered into a consent order and stipulation in which they admitted to fiduciary violations and were ordered to cease and desist from further violations of the Insurance Code. The consent order required the Respondents to pay a civil penalty of \$1,000.00 and pay restitution of the \$6,088.10 they had misappropriated.

III. Conclusions of Law

1. Failing to remit insurance premiums collected on behalf of an insurer is a violation of section 1207(1) of the Michigan Insurance Code and constitutes grounds for license revocation under section 1239(1)(d) of the Insurance Code. The Respondents' conduct also demonstrates incompetence, untrustworthiness or financial irresponsibility in the conduct of business, conduct which constitutes grounds for license revocation under section 1239(1)(h) of the Insurance Code.

2. The Respondents' failure to remit client premiums constitutes a violation of the May 2012 consent order. Violating the consent order may result in the revocation of an insurance producer's license under section 1239(1)(b) of the Insurance Code.

IV. Order

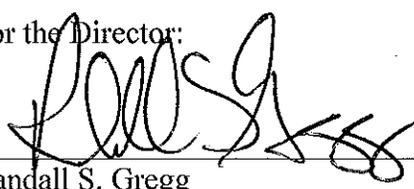
Based on the conduct described above and in accordance with the Insurance Code provisions cited above:

1. Respondent Craig L. Whatley's insurance producer license is revoked.
2. Respondent Thomas L. Whatley Agency's license is revoked.
3. Respondents shall pay restitution to the following insurers:

Atlantic Specialty Insurance Company	\$12,000.00
Capital Specialty Insurance Corporation	\$6,286.54
Nautilus Insurance Company	\$2,460.00

R. Kevin Clinton
Director

For the Director:



Randall S. Gregg
Special Deputy Director

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

RECEIVED
MAR 28 2013
OFIR/OGC

IN THE MATTER OF:

Office of Financial and Insurance
Regulation,
Petitioner

v

Craig L. Whatley, Thomas L. Whatley
Agency, Inc.,
Respondent

Docket No.: 13-000137-OFIR

Case No.: 13-902-L

Agency: Department of
Insurance and
Financial Services

Case Type: DIFS-Insurance

Filing Type: Appeal

Issued and entered
this 28th day of March, 2013
by: Kandra K. Robbins
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

On or about January 14, 2013, Petitioner issued a Complaint against Respondent, alleging certain violations of the Michigan Insurance Code of 1956, being 1956 PA 218, as amended, MCL 500.100 *et seq.* (hereafter "Insurance Code"). On January 14, 2013, an Order Referring Complaint for Hearing was issued by Annette E. Flood, Chief Deputy Commissioner of the Office of Financial and Insurance Regulation (OFIR) pursuant to the Insurance Code. This matter was referred to the Michigan Administrative Hearing System to conduct the hearing. This matter was assigned to the undersigned Administrative Law Judge and on February 13, 2013, a Notice of Hearing was issued scheduling a hearing in this matter for March 11, 2013.

On March 11, 2013, the hearing commenced as scheduled. Attorney William Peattie, Administrative Law Specialist, appeared on behalf of the Office of Financial and Insurance Regulation, Petitioner. Respondent Craig L. Whatley appeared on behalf of himself and the Thomas L. Whatley, Agency, Inc.

The following witnesses testified in this matter:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. Craig Whatley

Pursuant to an Order Granting Motion for Telephone Testimony issued on February 28, 2013, Ms. Roberto testified by telephone during the hearing.

The following exhibits were offered by Petitioner and admitted into evidence:

1. Petitioner's Exhibit No. 1 consists of nine pages of a complaint filed by OneBeacon professional Insurance with OFIR, dated October 9, 2012.
2. Petitioner's Exhibit No. 2 is a Business to Business Agent to Agent Insurance Complaint filed by Premco financial Corp., Inc. with OFIR on October 1, 2012.
3. Petitioner's Exhibit No. 3 is an Insurance Proposal for B & D Property Management, LLC and Dearing Co., Inc. DBA Bert's Market Place with Regency Insurance Brokerage Services, Inc., dated July 7, 2011.
4. Petitioner's Exhibit No. 4 is an Insurance Premium Finance Contract and Disclosure Statement between B & D Property Management, LLC and Premco Financial Corporation signed by Bert Dearing and Craig Whatley, dated July 8, 2011.
5. Petitioner's Exhibit No. 5 consists of 23 pages of correspondence between Clare Rothi and Craig Whatley for the time period of April to August 2012.
6. Petitioner's Exhibit No. 6 consists of 12 pages of a complaint filed by James McKee with OFIR, dated September 6, 2012.
7. Petitioner's Exhibit No. 7 is a Department of Licensing and Regulatory Affairs Office of Financial and Insurance Regulation Consent Order and Stipulation for Craig L. Whatley and Thomas L. Whatley Agency, Inc. Enforcement Case No. 10-11115, dated May 17, 2012.

The following exhibits were offered by Respondent and admitted into evidence:

1. Respondent's Exhibit A is an Auto Club Group Bonus Plan 2012.
2. Respondent's Exhibit B is an Auto-Owners Insurance 2012 Profit Sharing Calculations.

The record was closed at the conclusion of the hearing.

ISSUES AND APPLICABLE LAW

The issue in this matter is whether Respondent violated Insurance Code Sections 1207(1) and 1239(1)(b)(d) and (h), and if so, whether sanctions are applicable under Section 1244. These statutory provisions provide in pertinent part:

500.1207. Agent as fiduciary; accounting methods; examination of records; remuneration of person acting as agent; placing refused coverage; use of intimidation, threats, or unlawful inducements; agent as party to contract

Section 1207(1) An agent shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility. An agent shall not accept payment of a premium for a medicare supplemental policy or certificate in the form of a check or money order made payable to the agent instead of the insurer. Upon receiving payment of a premium for a medicare supplemental policy or certificate, an agent shall immediately provide a written receipt to the insured.

500.1239. Probation, suspension, or revocation of insurance producer's license; refusal to reissue; causes; civil fine; notice of license denial; hearing; license of business entity; penalties and remedies

Section 1239(1) In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

* * *

(b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

* * *

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

* * *

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

500.1244. Violation of chapter; hearing; serving copy of findings and cease and desist order; additional orders; reopening, altering, modifying, or setting aside order; violation of cease and desist order; notice and hearing; civil fine; suspension or revocation of license; disposition of fine

Section 1244 (1) If the commissioner finds that a person has violated this chapter, after an opportunity for a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the commissioner shall reduce the findings and decision to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from the violation. In addition, the commissioner may order any of the following:

(a) Payment of a civil fine of not more than \$500.00 for each violation. However, if the person knew or reasonably should have known that he or she was in violation of this chapter, the commissioner may order the payment of a civil fine of not more than \$2,500.00 for each violation. An order of the commissioner under this subsection shall not require the payment of civil fines exceeding \$25,000.00. A fine collected under this subdivision shall be turned over to the state treasurer and credited to the general fund of the state.

(b) A refund of any overcharges.

(c) That restitution be made to the insured or other claimant to cover incurred losses, damages, or other harm attributable to the acts of the person found to be in violation of this chapter.

(d) The suspension or revocation of the person's license.

FINDINGS OF FACT

Based on the entire record in this matter, including the testimony and admitted exhibits, the following findings of fact are established:

1. At all relevant times, Respondent Craig L. Whatley was a licensed resident producer with qualifications in Property, Casualty, Life, Accident and Health, and Variable Annuities. (Whatley Testimony)
2. At all relevant times, Respondent Thomas L. Whatley Agency, Inc. was a licensed resident agency with qualifications in Property, Casualty, Life, Accident and Health, and Variable Annuities. (Whatley Testimony)
3. Craig L. Whatley is the President of Thomas L. Whatley Agency, Inc. (Whatley Testimony)
4. On May 17, 2012, OFIR and Respondents entered into a Consent Order and Stipulation in which Respondents admitted to fiduciary violations under Sections 1207(1), 1239(1)(d) and 1239 (1)(h) of the Insurance Code, MCL 500.1207(1), 500.1239(1)(d) and (h) and were ordered to cease and desist from further violations of the Insurance Code. (Pet. Exhibit 7)
5. On October 9, 2012, Atlantic Specialty Insurance Company, a member of insurer OneBeacon Insurance Group, filed a complaint with OFIR alleging that Respondents failed to remit insurance premium to Atlantic Specialty Insurance Company. (Pet. Exhibit 1 and Testimony of A. Roberto)
6. On or about May 18, 2012, Heritage Vision Plans, Inc. issued a check for \$15,000.00 to Respondents for renewal of its Managed Care Errors & Omissions Liability policy issued by Atlantic Specialty Insurance Company. (Pet. Exhibit 1, page 3 and Testimony of A. Roberto)
7. On or about May 18, 2012, Respondents deposited the \$15,000.00 check into Respondent Thomas L. Whatley Agency's First Place Bank account. On or about May 21, 2012, the check cleared. (Pet. Exhibit 1, page 3 and Testimony of A. Roberto)
8. On or about May 24, 2012, OneBeacon Professional Insurance, a division of One Beacon Insurance Group, acting on behalf of Atlantic Specialty Insurance Company, sent an Invoice for the payment of the policy premium to Respondents. Respondents were authorized to withhold a commission of 20% or \$3,000.00 as provided in the Invoice, the remaining premium of \$12,000.00 was due on or before July 8, 2012. (Pet. Exhibit 1, page 2 and Testimony of A. Roberto)

9. On or about July 29, 2012, OneBeacon Professional Insurance sent Respondents an e-mail requesting payment of \$12,000.00. (Pet. Exhibit 1, page 6 and Testimony of A. Roberto)
10. On or about August 7, 2012, Respondents sent OneBeacon Professional Insurance a \$12,000.00 check. On or about August 13, 2012, the check was returned due to Non-Sufficient Funds. (Pet. Exhibit 1 and Testimony of [REDACTED])
11. On or about September 2012, Atlantic Specialty Insurance Company sent Heritage Vision Plans, Inc. a Notice of Cancellation of Insurance, due to nonpayment of premium. (Pet. Exhibit 1 and Testimony of [REDACTED])
12. Atlantic Specialty Insurance Company withdrew its Notice of Cancellation of Insurance after it learned that Heritage Vision Plans, Inc. paid \$15,000.00 and Respondents failed to remit the premium to Atlantic Specialty Insurance Company. (Testimony of [REDACTED])
13. On or about October 1, 2012, OFIR received a complaint from Premco Financial Corporate (Premco) alleging that on or about July 8, 2011, Premco gave Respondents \$13,013.66, as a premium finance payment for B&D Property Management, LLC's insurance policy through Capitol Specialty Insurance Corporation. (Pet. Exhibit 2 and Testimony of [REDACTED])
14. Respondent admits that he failed to remit the \$13,013.66 to Capitol Specialty Insurance Corporation. (Respondent's Testimony)
15. Capitol Specialty Insurance Corporation cancelled the insurance policy for non-payment of premium.
16. On or about June 27, 2012, Respondent paid \$1,000.00 to Premco. On or about July 2, 2012, Respondent paid \$2,200.00 to Premco. Respondent currently owes Premco \$6,286.54. (Testimony of [REDACTED])
17. On or about September 12, 2012, OFIR received a complaint from [REDACTED] alleging that he gave two insurance premium checks to Respondents but Respondents failed to remit any of the premium received to the insurer. (Pet. Exhibit 6)
18. On or about May 3, 2012, [REDACTED] met with Respondents concerning obtaining insurance coverage on rental property located at [REDACTED] San Juan Drive, Detroit, Michigan. (Testimony of [REDACTED])

19. On or about May 3, 2012, [REDACTED] gave Respondents a \$1,500.00 check for insurance on the San Juan Drive property. (Pet. Exhibit 6 and Testimony of [REDACTED])
20. On or about May 4, 2012, Respondents deposited the \$1,500.00 check into Respondent Thomas L. Whatley Agency's First Place Bank account. On or about May 7, 2012, the check cleared. (Pet. Exhibit 6)
21. On or about June 14, 2012, [REDACTED] gave Respondents a \$960.00 check for insurance on a rental property at [REDACTED] Monica Street, Detroit, Michigan. (Pet. Exhibit 6 and Testimony of [REDACTED])
22. On or about June 14, 2012, Respondents deposited the \$960.00 check into Respondent Thomas L. Whatley Agency's First Place bank account. On or about June 14, 2012, the check cleared. (Pet. Exhibit 6)
23. On or about July 19, 2012, [REDACTED] received a Notice of Cancellation from Nautilus Insurance Company. (Pet. Exhibit 6)
24. Respondent failed to remit the \$960.00 Insurance premium to an insurer for the Monica Street Property.
25. Respondent admits that he failed to remit \$27,473.66 in insurance premiums received in their capacity as agents (Testimony of Respondent)
26. Respondent testified that he used the payments to cover office expenses incurred. (Testimony of Respondent)

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. The Petitioner bears the burden of proving, by a preponderance of the evidence, that the Respondent violated the Insurance Code as alleged and that grounds exist for imposing sanctions.

A. Fiduciary for Money Received

Petitioner has accused Respondents of violating the following:

- 1) An agent shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility. MCL 500.1207(1)

The weight of evidence on record establishes Respondent violated the above. Respondents failed to remit \$27,473.66 in insurance premiums received in their capacity as agents. Respondents used the money for office expenses.

B. Violating Order of Insurance Commissioner

Petitioner has accused Respondents of violating the following:

(1) In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes: . . .

b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner. MCL 500.1239(1)(b)

Respondents entered into a Consent Order and Stipulation on May 17, 2012. In the Consent Order, Respondents admitted to fiduciary violations under Sections 1207(1), 1239(1)(d) and (h) of the Insurance Code. Respondents were ordered to cease and desist from further violations of the Insurance Code. Respondents were placed on probation for a period of two years. Petitioner has established by a preponderance of the evidence, that Respondents have continued to violate Sections 1207(1) and 1239(1)(d) and (h) despite the Consent Order and the probation.

C. Improper Use of Money Received

Petitioner has accused Respondents of violating the following:

(1) In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes: . . .

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

MCL 500.1239(1)(d)

The weight of evidence on record establishes a violation of the above. All the funds Respondents kept were for premiums, and therefore received in the course of doing insurance business. Respondents improperly withheld the money, misappropriated it for their own uses, and converted it for their needs.

D. Demonstrating Incompetence, Untrustworthiness, or Financial Irresponsibility

Petitioner has accused Respondents of violating the following:

- (1) In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes: . . .
- (h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere. MCL 500.1239(1)(h)

Respondents admit that he failed to remit insurance premium payments received by clients. Respondents admit that he used the insurance payments to cover office expenses. This is found to be using fraudulent or dishonest practices and demonstrating untrustworthiness and financial irresponsibility. Respondents attempts to justify his actions as a result of the economy and his father's health. These excuses are not justification for the fraudulent and dishonest actions of Respondents. While I am sympathetic to Respondent, Craig Whatley, that his father's stroke caused financial hardship. This financial hardship does not justify Respondent's actions in failing to remit premiums.

The above Findings of Fact establish by a preponderance of the evidence that Respondents Craig L. Whatley and the Thomas L. Whatley Agency, Inc. failed to turn over money which he held in a fiduciary capacity to persons to whom it was owed in violation of Code Section 1207(1).

The above Findings of Fact establish by a preponderance of the evidence that Respondents Craig L. Whatley and the Thomas L. Whatley Agency, Inc. improperly withheld and misappropriated money he received in the course of doing insurance business in violation of Code Section 1239(1)(d).

The above Findings of Fact establish by a preponderance of the evidence that Respondents Craig L. Whatley and the Thomas L. Whatley Agency, Inc. had a pattern of failing to properly remit premiums which constitutes incompetence, untrustworthiness and financial irresponsibility in violation of Code Section 1239(1)(h).

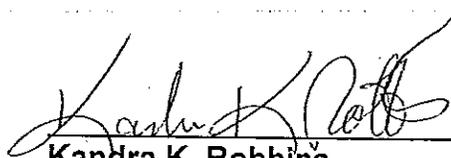
The violation of Code Sections 1207(1) and 1239(1)(b)(d) and (h) constitute grounds for imposing sanctions including fines, suspension and/or license revocation under Code Section 1244.

PROPOSED DECISION

The undersigned Administrative Law Judge proposes that the Commissioner issue a final order consistent with the above Findings of Fact and Conclusions of Law.

EXCEPTIONS

Any Exceptions to this Proposal for Decision should be filed in writing with the Office of Financial and Insurance Regulation, Division of Insurance, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty (20) days of the issuance of this Proposal for Decision. An opposing party may file a response within ten (10) days after Exceptions are filed.



Kandra K. Robbins
Administrative Law Judge