

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

Department of Insurance and Financial Services  
Petitioner

v

Case No. 14-942-L  
Docket No. 14-012698-DIFS

Angella Swain-Jones  
Respondent

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Issued and entered  
this 16<sup>th</sup> day of December 2014  
by Randall S. Gregg  
Special Deputy Director

**FINAL DECISION**

**I. BACKGROUND**

Angella Swain-Jones (Respondent) received a resident insurance producer license in the state of Michigan in 2002. Her conduct as an insurance producer was investigated by the Department of Insurance and Financial Services (DIFS) in connection with consumer complaints regarding her handling of applications and premium payments for automobile insurance. The investigation concluded that the Respondent had violated numerous provisions of the Michigan Insurance Code.

Based on this investigation, on November 12, 2013, Respondent's insurance producer license was summarily suspended. A hearing was convened on September 10, 2014. Respondent failed to appear at the hearing. Counsel for the Petitioner requested that a default judgment be entered against the Respondent. The motion was granted. The administrative law judge issued a Proposal for Decision (PFD) on October 20, 2014.

The Respondent did not file exceptions. Michigan courts have 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. The PFD is attached and made part of this final decision.

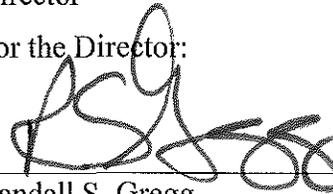
**II. ORDER**

Therefore, it is ORDERED that:

1. The insurance producer license of Respondent Angella Swain-Jones is revoked.
2. Respondent Angella Swain-Jones shall pay restitution to the customers whose premium payments she misappropriated.
3. Respondent Angella Swain-Jones shall pay to the State of Michigan a civil penalty of \$19,000.00 (\$1,000.00 for each of the nine Insurance Code violations described in the PFD and \$10,000.00 for the knowing violation of the cease and desist orders issued in the Respondent's prior compliance actions).
4. The Swain Agency is ordered to Cease and Desist from any further insurance activity.

Annette E. Flood  
Director

For the Director:

A handwritten signature in black ink, appearing to read 'R. S. Gregg', is written over a horizontal line.

Randall S. Gregg  
Special Deputy Director

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STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

DIFS/OGC

IN THE MATTER OF:

Docket No.: 14-012698-DIFS

Department of Insurance and Financial Services,  
Petitioner

Case No.: 14-942-L

v

Angella K. Swain-Jones,  
Respondent

Agency: Department of  
Insurance and  
Financial Services

Case Type: DIFS-Insurance

Filing Type: Appeal

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Issued and entered  
this 20<sup>th</sup> day of October 2014  
by Renee A. Ozburn  
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

On November 12, 2013, the Department of Insurance and Financial Services (DIFS/Petitioner) issued an Order of Summary Suspension, Notice of Opportunity for Hearing, and Notice of Intent to Revoke based on allegations that Angella Swain-Jones (Respondent) had violated the Michigan Insurance Code (Code), 1956 PA 218, MCL 500.100 *et seq.*

A hearing was scheduled for September 10, 2014. Notice of the hearing date was mailed to Respondent at her last known address of record. On September 10, 2014, at the time scheduled for hearing, Attorney Elizabeth Bolden was present and ready to proceed on behalf of Petitioner. Respondent was not present and no one appeared on her behalf. The undersigned Administrative Law Judge deemed that Respondent had been duly served with notice and the hearing could proceed in her absence pursuant to Section 72 of the Administrative Procedures Act, 1969 PA 306, as amended, (APA) MCL 24.201 *et seq.* Attorney Bolden motioned to default Respondent pursuant to Section 78 of the APA. The undersigned Administrative Law Judge granted a default. A default judgment constitutes a decision that allegations in the November 12, 2013 Order of Summary Suspension and Notice of Intent to Revoke are true as alleged.

**ISSUES AND APPLICABLE LAW**

The issue is whether Respondent has violated, as alleged, provisions of Code Sections 1201a(1), 1207(1) & (2), 1239(1)(d),(e) & (h) and 4503 which state:

Sec. 1201a.

(1) A person shall not sell, solicit, or negotiate insurance in this state for any line of insurance unless the person is licensed for that qualification in accordance with this chapter.

Sec. 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.

Sec. 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:

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

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

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

Sec. 4503.

A fraudulent insurance act includes, but is not limited to, acts or omissions committed by any person who knowingly, and with intent to injure, defraud, or deceive:

(i) Knowingly and willfully assists, conspires with, or urges any person to fraudulently violate this act, or any person who due to that assistance, conspiracy, or urging knowingly and willfully benefits from the proceeds derived from the fraud.

### SUMMARY OF EXHIBITS

#### Petitioner's Exhibits:

- Exhibit 1 DIFS Licensing History for Respondent
- Exhibit 2 DIFS Insurance Agency Search for Respondent
- Exhibit 3 Statement of [REDACTED] with attachments
- Exhibit 4 Statement of [REDACTED] with attachments
- Exhibit 5 [REDACTED]-DIFS Complaint with attachments
- Exhibit 6 Statement of [REDACTED] with attachments
- Exhibit 7 8/27/13 Letter from [REDACTED] with attachments
- Exhibit 8 Affidavit of [REDACTED] with attachments
- Exhibit 8-1 MAIPF 2/2012 Letter Disqualifying Respondent and the Swain Agency
- Exhibit 8-2 MAIPF's Temporary Certificate of Insurance
- Exhibit 8-3 8/27/13 Correspondence to Catherine Kirby
- Exhibit 8-4 ACORD Insurance Binder for [REDACTED]
- Exhibit 8-5 Certificate of No-Fault Insurance for [REDACTED]
- Exhibit 8-6 Additional Certificates of Insurance issued by Respondent
- Exhibit 9 Consent Order and Stipulation entered 12/28/09
- Exhibit 10 Consent Order entered 3/1/06
- Exhibit 11 Affidavit of Linda Rogers dated 1/03
- Exhibit 12 New Complaint-[REDACTED]
- Exhibit 13 New Complaint-[REDACTED]

FINDINGS OF FACT

1. Pursuant to Executive Order 2013-1 the Director of the Department of Insurance and Financial Services (Director) has assumed the statutory authority and responsibility, granted to the Commissioner by the Code, to exercise general supervision and control over persons transacting the business of insurance in Michigan.
2. Angella K. Swain-Jones (Respondent) is a licensed resident insurance producer with qualifications in property and casualty, authorized to transact the business of insurance in Michigan. System ID No. 0251677.
3. Swain Insurance (a/k/a The Swain Agency) is a sole proprietorship owned and operated by Respondent. Swain Agency's principal place of business is 4251 Davison Road, Ste. 6, Burton, MI 48509. Although Swain Agency holds itself out to the public as engaged in the business of insurance, Swain Agency is not a licensed resident producer agency as required by the Code, and it is not authorized to transact the business of insurance in Michigan.
4. Based upon the information as set forth below, the protection of the public health, safety and welfare justifies emergency action.
5. In March 2013, the Department of Insurance and Financial Services (DIFS) commenced an investigation of Respondent's business activities after receiving several complaints alleging Respondent collected premium funds from customers without placing insurance policies and issued false certificates of insurance.
6. DIFS' investigation determined that Respondent kept customers' premium funds that should have been remitted to the insurers for insurance purchases. Respondent did not remit the insurance applications or funds to the insurers and the customers did not receive insurance coverage.
7. Additionally, in order to conceal her misappropriation of customer funds, Respondent issued fraudulent insurance binders and false certificates of insurance knowing that the customers had no insurance coverage with any insurer.
8. More specifically, on or about December 29, 2010, [REDACTED] visited Swain Agency to purchase insurance for his automobile. He was given a quote for insurance totaling \$950.00 for a six-month policy. He received a State of Michigan Certificate of No-Fault Insurance showing that he purchased policy [REDACTED] with the Michigan Automobile Insurance Placement Facility (MAIPF) with a date

- of effectiveness beginning December 29, 2010 and ending June 29, 2011. [REDACTED] paid the policy in full on the date of purchase.
9. On May 3, 2011, [REDACTED] was in an automobile accident and sustained severe injuries. The accident led [REDACTED] to discover that he did not have insurance. [REDACTED] learned that despite paying money to Respondent and Swain Agency for insurance, he had no insurance coverage with any company.
  10. Respondent paid for the damage to [REDACTED] vehicle. However, [REDACTED] alleges that he has outstanding and accruing medical expenses as a result of Respondent not placing his insurance.
  11. Between March 2013 and August 2013, customer [REDACTED] visited Swain Agency to purchase insurance for her automobile. She was given a quote for insurance totaling \$920.00 for a six-month policy. She received a State of Michigan Certificate of No-Fault Insurance showing that she purchased policy [REDACTED] with the Michigan Automobile Insurance Placement Facility (MAIPF) with a date of effectiveness beginning March 5, 2013 and ending September 5, 2013. She made regular monthly premium payments to Swain Agency to pay for the auto policy.
  12. In August 2013, [REDACTED] contacted MAIPF to request a copy of her auto policy. MAIPF informed [REDACTED] that she did not have an auto policy with them. [REDACTED] learned that despite her payments to Respondent and Swain Agency for insurance, she had no insurance coverage with any company. Neither Respondent nor Swain Agency refunded [REDACTED] the \$920 received from her for insurance.
  13. In September 2013, Respondent and Swain Agency purchased a six-month policy underwritten by Progressive Casualty Company for [REDACTED]. [REDACTED] did not pay any additional money for the six-month policy underwritten by Progressive.
  14. In March 2012, customer [REDACTED] visited Swain Agency to purchase insurance for his automobile. He was given a quote for a six-month insurance policy. He received a State of Michigan Certificate of No-Fault Insurance showing that he had purchased policy [REDACTED] with Victoria General Insurance Company with a date of effectiveness beginning March 25, 2012 and ending September 25, 2012.
  15. Days before [REDACTED] auto insurance was to renew, he visited another insurance agency to purchase auto insurance. The agent required proof of prior coverage to show continuous liability for underwriting purposes. The agent contacted Respondent and Swain Agency for [REDACTED] insurance information and was provided with a policy number. In an effort to confirm the information received from Respondent and Swain Agency, the agent contacted Victoria General

Insurance Company and upon giving them the policy number and [REDACTED] personal information was told no such policy existed. Although Respondent and Swain Agency had received money for insurance and had given [REDACTED] a certificate of insurance for no-fault insurance coverage, [REDACTED] never had a policy in force.

16. In February 2013, customer [REDACTED] visited Swain Agency to purchase insurance for her automobile. She received Michigan Certificate of No-Fault Insurance showing that she had purchased policy [REDACTED] with MAIPF with a date of effectiveness beginning February 25, 2013, and ending August 25, 2013. She made regular premium payments to Swain Agency to pay for the auto policy. Although Respondent and Swain Agency received funds for insurance and issued a certificate of insurance for no-fault, [REDACTED] never had a policy in force as confirmed by MAIPF.
17. In August 2013, customers [REDACTED] and [REDACTED] contacted Respondent and Swain Agency to verify and confirm their auto insurance with MAIPF. At their direction, Respondent faxed to their credit union an Acord Insurance Binder showing that they had purchased a policy from MAIPF for a 2012 Ford F150 with a total premium of \$805.00 and a date of effectiveness beginning June 9, 2013 and ending December 9, 2013. At the time Respondent faxed the insurance binder to the credit union, she knew or had reason to know no such coverage existed and that the insurance binder was a fraud. Although Respondent and Swain Agency received funds for insurance and issued a certificate of insurance for no-fault, [REDACTED] and [REDACTED] never had a policy in force with MAIPF.
18. In response to complaints, on September 17, 2013 DIFS' staff attempted to conduct an examination of Respondent and Swain Agency's books and records. DIFS' staff was refused access to Respondent and Swain Agency books and records.
19. Respondent has a history of demonstrating noncompliance with the Code. In January 2003, DIFS (formerly the Office of Financial and Insurance Services) assessed a \$3,000 fine against Respondent for fiduciary violations. *In the matter of: Angella Swain-Jones, Enforcement Case No. 02-01129.*
20. In March 2006, Respondent was fined \$300 for failing to remit premiums and failing to maintain reasonable accounting methods to record funds received. Additionally, she was ordered to cease and desist from violating Sections 1207(1) and (2) of the Code. *In the matter of: Angella Swain-Jones, Enforcement Case No. 05-2992.*

21. In December 2009, the Respondent was fined \$500 for failing to remit premium funds and failing to maintain reasonable accounting methods to record funds received. Once again, she was ordered to cease and desist from violation of Section 1207(1) and (2) of the Code. *In the matter of: Angella Swain-Jones, Enforcement Case No. 09-7186.*
22. Respondent's previous disciplinary actions against her insurance producer's license and her continued dishonest and fraudulent practices coupled with her untrustworthiness and incompetence in the conduct of business of insurance demonstrates a pattern of behavior constituting a serious threat to the public.
23. Respondent Angella Swain-Jones has committed multiple actions providing justification to suspend and revoke her insurance producer license including:
  - a. Operating Swain Agency without it being properly licensed to engage in the business of insurance as required by MCL 500.1201a(1).
  - b. Intentionally misrepresenting the status of an application for insurance by falsely indicating to consumers that applications were placed with insurance carriers for insurance, with knowledge that they were not placed, in violation of MCL 500.1239(1)(e) and (h).
  - c. Intentionally misrepresenting the terms of an application for insurance by stating the application was being accepted and submitted for automobile insurance for a specific premium amount and for a period of effectiveness with knowledge that applications had not been submitted or accepted by any insurance carriers, in violation of MCL 500.1239 (1)(e) and (h).
  - d. Converting money received from customers as part of their insurance transaction for reasons other than purchasing the customers' insurance coverage, in violation of MCL 500.1239(1)(d) and (h).
  - e. Using dishonest and fraudulent practices including intentionally misrepresenting the status of and terms of insurance applications, binders and policies to consumers and members of the public, in violation of MCL 500.1239(1)(h).
  - f. Using dishonest practices in issuing false and fraudulent binders and certificates of insurance to consumers and members of the public indicating insurance coverage was being provided when no coverage existed, in violation of MCL 500.1239(1)(h) and MCL 500.4503(i).

- g. Demonstrating untrustworthiness and incompetence in the conduct of insurance business by misrepresenting the terms and status of insurance coverage, converting premium funds received from consumers and refusing to provide books and records of such transactions.
  - h. Failing to remit insurance premiums to the insurance carriers, in violation of MCL 500.1207(1).
  - i. Violating prior orders of the Director to cease and desist from the same and/or similar activities that led to compliance actions in 2003, 2006 and 2009.
24. The continuing dishonest and fraudulent practices, and continued untrustworthy and incompetent conduct of Respondent indicates that Respondent does not possess the knowledge to be engaged in the business of insurance, and further indicates that the public cannot be confident or assured that Respondent will comply with the law.

#### CONCLUSIONS OF LAW

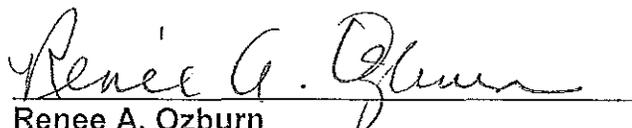
Petitioner bears the burden of proving that Respondent violated the Code as alleged in the November 2013 Order of Summary Suspension and Notice of Intent to Revoke. Pursuant to the above default Findings of Fact, the Petitioner has established its alleged violations of Code Sections 1201a(1), 1207(1), 1239(1) (d), (e) & (h) and 4503(i).

#### PROPOSED DECISION

The undersigned Administrative Law Judge recommends that the Director issue a final decision consistent with the above Findings of Fact and Conclusions of Law.

#### EXCEPTIONS

The parties may file Exceptions to this Proposal for Decision within 20 days after it is issued. Exceptions should be addressed to the Office of Financial and Insurance Regulation, 611 West Ottawa Street, 3<sup>rd</sup> Floor, P.O. Box 30220, Lansing, Michigan 48909; Attention: Dawn Kobus.

  
Renee A. Ozburn  
Administrative Law Judge