

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

**Craig L. Whatley and
Thomas L. Whatley Agency, Inc.**
Petitioners

v

Case No. 13-917-L
Docket No. 13-000415-OFIR

Department of Insurance and Financial Services
Respondent

For the Petitioners:

Craig L. Whatley

For the Respondent:

**William R. Peattie
Department of Insurance and
Financial Services
P.O. Box 30220
Lansing, MI 48909-7720**

**Issued and entered
this 5th day of June 2013
by Randall S. Gregg
Special Deputy Director**

FINAL DECISION

I. Background

On February 21, 2013, in an earlier enforcement action, the Petitioners' insurance producer licenses were summarily suspended on the basis of allegations that the Petitioners had collected premium payments from several of their clients and failed to remit those payments to the insurers on whose behalf the premiums had been collected. Such conduct violates sections 1207(1) of the Michigan Insurance Code, MCL 500.1207(1).

On March 25, 2013, Chief Deputy Director Annette E. Flood issued an Order Referring Complaint for Hearing in this case to determine whether the suspension of the Petitioners' insurance producer licenses should be continued or withdrawn and to determine whether the Petitioners' insurance producer licenses should be revoked.

In a Final Decision in a separate enforcement action (Case No. 13-902-L) issued May 9, 2013, the insurance producer licenses of the Petitioners were revoked for engaging in dishonest business practices and violating their fiduciary obligations under the Michigan Insurance Code. The present case began before Case No. 13-902-L was completed. While the Director revoked the producer licenses of Respondents Craig Whatley and Thomas L. Whatley Agency, Inc. in the

earlier enforcement case, there remains an issue of restitution in this case. Consequently, there is a need to bring the present case to a conclusion with this Final Decision.

A hearing was held on April 18, 2013. The administrative law judge issued a Proposal for Decision (PFD) on May 6, 2013. The Respondent filed exceptions on May 23, 2013. In those exceptions, the staff of the Department of Insurance and Financial Services requested that a Final Decision be issued upholding the summary suspension, revoking the Petitioners' licenses and ordering the Petitioner to pay restitution to the complainants.

The Petitioners 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. The conclusions of law, with one exception detailed below, 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

The Petitioners collected premium payments from four clients but failed to remit the payments to the insurers that were owed the money:

<u>NAME</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>INSURER</u>
	7/19/12	\$3,500.00	Unidentified
	9/14/11	2,434.00	Michigan Basic
	11/10/11	1,784.00	Michigan Basic
	4/29/12	1,000.00	Nautilus Ins. Co.
	6/17/12	806.00	Nautilus Ins. Co.
	3/12/12	<u>1,734.43</u>	Endurance American
TOTAL		\$11,258.43	

III. Conclusions of Law

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 Petitioners' conduct also demonstrates

untrustworthiness and financial irresponsibility in the conduct of business. This conduct constitutes grounds for license revocation under section 1239(1)(h) of the Insurance Code.

The conduct described above, considered along with the Petitioners' prior history of fiduciary violations, warrants the continuation of the summary suspension of the Petitioners' insurance producer licenses through the date of this order. The Petitioners' actions also warrant the revocation of the Petitioners' insurance producer licenses now that the hearing process has concluded.

On pages 3 and 4 of the PFD, the administrative law judge has transposed the terms "Petitioner" and "Respondent." This has resulted in a misstatement of the burden of proof and the identity of the parties who have violated the Insurance Code in this matter. The Petitioners are Craig Whatley and the Thomas L. Whatley Agency, Inc. The Respondent is the Department of Insurance and Financial Services. To the extent that the incorrect terms have been applied to the parties in the PFD, those portions of the PFD are not adopted. Rather, the PFD is corrected to accurately reflect the identities of the Petitioners and Respondent.

IV. Order

Based on the conduct described in the Proposal for Decision and in accordance with the Insurance Code provisions cited there and above it is ordered that:

1. Petitioner Craig L. Whatley's insurance producer license is revoked.
2. Petitioner Thomas L. Whatley Agency's license is revoked.
3. Respondents shall pay restitution as follows:

\$3,500.00

\$4,218.00

\$1,806.00

\$1,734.43

R. Kevin Clinton
Director

For the Director:

Randall S. Gregg
Special Deputy Director

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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

OFIR/OGC

IN THE MATTER OF:

Docket No.: 13-000415-OFIR

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

Case No.: 13-917-L

Agency: Department of Insurance
and Financial Services

v

Department of Insurance and
Financial Services,
Respondent

Case Type: DIFS-Insurance

Filing Type: Appeal

Issued and entered
this 6th day of May 2013
by Renée A. Ozburn
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

On February 21, 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 (Notice of Intent to Revoke) against the insurance producer licenses of Craig L. Whatley and the Thomas L. Whatley Agency, Inc. (Respondents) Mr. Whatley requested a hearing.

A hearing was held on April 18, 2013. Attorney William Peattie appeared on behalf of DIFS. Craig Whatley represented himself and the Thomas L. Whatley Agency. Chayla Beason testified as a witness for DIFS.

ISSUES AND APPLICABLE LAW

The issue is whether Respondents have violated the Michigan Insurance Code (Code), 1956 PA 218, as amended, MCL 500.100 *et seq.*, specifically Code Sections 1207(1) and 1239(1)(d) & (h), which provide as follows:

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.

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

SUMMARY OF EXHIBITS

Petitioner Exhibits:

Exhibit 1	Insurance Complaint Form
Exhibit 2	Check dated 7/19/12
Exhibit 3	Invoice
Exhibit 4	Check dated 9/14/11
Exhibit 5	Check dated 11/5/11
Exhibit 6	Check dated 3/12/12
Exhibit 7	Receipt dated 3/12/12
Exhibit 8	Consent Order dated 5/17/12

Respondent Exhibits:

Exhibit A	Check dated 3/11/12
Exhibit B	Check dated 3/8/13

FINDINGS OF FACT

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

1. At all times relevant to this matter, Craig Whatley and the Thomas L. Whatley Agency, Inc. (Respondents) has been licensed in Michigan as insurance producers authorized to accept premium payments in a fiduciary capacity.
2. On May 17, 2012, a Consent Order and Stipulation was entered between Respondents and the Office of Financial and Insurance Services. (Exhibit 8) Pursuant to the Consent Order and Stipulation, Respondents admitted violations of Code Sections 1207(1) and 1239(1)(d) &(h) based on failures to properly remit premiums held in a fiduciary capacity. The Consent Order imposed a two year probation and ordered Respondents to immediately cease and desist from operating in a manner that violates the Code.
3. C & E Real Estate Management, LLC. On April 29, 2012 gave Respondents a check for \$1000.00. On June 17, 2012 gave Respondents a check for \$806.00. (Exhibit 1) The total of the two checks (i.e. \$1,806.00) was given to Respondents in their fiduciary capacity for the purpose of securing insurance for C & E Real Estate from Nautilus Insurance Company. Both checks were cashed by the Respondent shortly after they were received.
4. Craig Whatley provided [redacted] with a certificate of insurance and she assumed she had coverage until she received notice dated July 27, 2012 indicating that Nautilus was cancelling her policy, effective August 8, 2012, due to non-payment of premium. Subsequently, [redacted] received an email indicating that the check forwarded by Respondents for purposes of premium payment was returned for non-sufficient funds. (Exhibit 1)
5. When [redacted] contacted Mr. Whatley about the cancellation notice, he told her not to worry, it was an 'internal' error that would be corrected within a week and her policy would not be cancelled. When no documents were forthcoming, [redacted] again contacted Mr. Whatley who indicated he had taken care of things. However, when [redacted] contacted Nautilus she learned that the policy had been cancelled despite Mr. Whatley's assurances. The insurer sent [redacted] copies of the non-sufficient funds check received from Mr. Whatley. As of April 18, 2013, Respondents have not refunded \$1806.00 to [redacted]
6. Mr. Whatley received a check dated July 19, 2012, in the amount of \$3,500 from [redacted] on behalf of Motor City Soul Food, LLC, for insurance. (Exhibit 2) Mr. Whatley deposited and cashed the check. Mr. Whatley did not obtain coverage for Motor City Soul Food and there is no credible or material evidence that he has refunded [redacted] \$3,500.00 or any parts thereof.

7. By correspondence dated September 8, 2011, T.L. Whatley & Associates sent /Bayview Loan Servicing, LLC, an invoice indicating that an annual premium payment of \$2,434.00 should be submitted to T.L. Whatley & Associates for purposes of obtaining coverage from the Michigan Basic Property Insurance Association. (Exhibit 3) Bayview Loan Serving, LLC paid TL Whatley & Associates \$2,434.00 in a check dated September 14, 2011. (Exhibit 4) Mr. Whatley does not know if coverage was effected. The Thomas L. Whatley Agency, Inc. issued a check to (Exhibit 5) dated November 10, 2012, in the amount of \$1,784.00 which was returned for non-sufficient funds. On March 11, 2013, Mr. Whatley gave another check in the amount of \$1800.00. (Exhibit A) Mr. Whatley attributes any monies that were not promptly paid or refunded to between September 2011 and March 2013, to the "financial stress" of his business and problems with his comptroller.

8. In a check dated March 12, 2012, Globe Estates, LLC, paid T.L. Whatley & Associates \$1,734.43 for insurance. (Exhibits 6 & 7) The check was deposited and cashed by Respondents. Coverage was not bound. of Globe Estates, requested a refund. Respondents were not forthcoming with a timely refund. filed a lawsuit. By check dated March 8, 2013, Mr. Whatley paid Globe Estates \$1,834.43 which included the amount refunded and cost related to the lawsuit. (Exhibit B)

9. Mr. Whatley acknowledges that he improperly handled funds held in a fiduciary capacity and failed to timely remit those funds to insureds or insurers. As of April 18, 2013, Mr. Whatley still owes money held in a fiduciary capacity to and Mr. Whatley attributes his failure to honor his fiduciary responsibilities to financial stress, budgeting inaccuracies, family financial backing that never came through, a reduction of home sales, and the Wall Street crash.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings, 8 Callaghan's Michigan Pleadings and Practice, §60.48 at 239 (2d ed. 1994). The burden of proof is on Petitioner to prove, by a preponderance of the evidence, that Respondents violated the Insurance Code as alleged in the Order of Summary Suspension and Notice of Intent to Revoke.

The above Findings of Fact establish, by a preponderance of the evidence that, while licensed as insurance producers, Respondents repeatedly failed to properly and timely remit or return money held in a fiduciary capacity in violation of Code Section 1207(1). This dereliction of fiduciary duties involving over \$7,000 occurred while Respondents were on probation for a previous violation of Section 1207(1) and after Respondents had entered a Consent Order and Stipulation agreeing to cease and desist from further violations.

The above Findings of Fact establish, by a preponderance of the evidence, that Respondents improperly withheld, misappropriated and converted money received in the course of doing insurance business in violation of Code Section 1239(1)(d). Respondents were aware of the obligation to properly remit or refund monies but chose to misappropriate and convert those funds to shore up Respondents personal business. This misappropriation and conversion of funds for personal use occurred during the time Respondents were on probation for a previous violation of Section 1239(1)(d) and after entering a Consent Order and Stipulation agreeing to cease and desist from further violations.

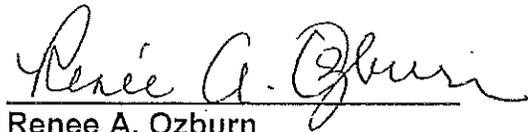
The above Findings of Fact establish, by a preponderance of the evidence, that Respondents demonstrated incompetence, untrustworthiness and financial irresponsibility in the conduct of business in this state in violation of Code Section 1239(1)(h). Further, this conduct occurred while Respondents were on probation for a previous violation of Section 1239(1)(h) and after Respondents had entered a Consent Order and Stipulation agreeing to cease and desist from further violations.

PROPOSED DECISION

The undersigned Administrative Law Judge proposes that the Commissioner affirm the Notice of Intent to Revoke.

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, 3rd Floor, P.O. Box 30220, Lansing, Michigan 48909; Attention: Dawn Kobus.



Renee A. Ozburn
Administrative Law Judge