

**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. 10-788-L**  
**Docket No. 10-000067-OFIR**

**Eric Carrier**  
**Respondent**

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Issued and entered  
this 30<sup>th</sup> day of September 2013  
by Randall S. Gregg  
Special Deputy Director

**FINAL DECISION**

**I. Background**

Eric Carrier (Respondent) is a licensed public adjuster in the state of Michigan. His conduct as an adjuster was investigated by the Department of Insurance and Financial Services (DIFS) in connection with a 2007 fire loss and insurance claim involving a residence in Garden City, Michigan. The investigation concluded that the Respondent had violated numerous provisions of the Michigan Insurance Code. In addition, the investigation discovered that the Respondent had been ordered by a Louisiana court to pay \$10 million for fraudulent conduct in adjusting losses in that state following Hurricane Katrina.

Based on the findings of the investigation, on September 13, 2010, Chief Deputy Stephen Hilker issued an Order Referring Complaint for Hearing and Order to Respond. Hearings were held in October 2012 and January 2013. In February, Respondent's attorney filed a motion to withdraw as the Respondent's counsel. The motion was granted and the Respondent was instructed to obtain new counsel by March 18, 2013, with the next hearing scheduled for May 2, 2013. No counsel filed an appearance and the Respondent failed to appear at the May 2 hearing. Counsel for the Petitioner moved to have the Respondent's direct testimony stricken from the record. The motion was granted. No further hearings were scheduled.

Written closing arguments were to be filed by June 21, 2013. The Respondent failed to submit a closing argument. The administrative law judge issued a Proposal for Decision (PFD) on July 25, 2013.

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 PFD is attached and made part of this final decision.

## **II. Findings of Fact**

The findings of fact in the PFD are in accordance with the preponderance of the evidence. Those findings are adopted. The findings of fact most pertinent to this Final Decision are summarized below.

### **A. Violations related to a fire repair contract**

In June 2007, the Respondent signed an adjuster agreement with \_\_\_\_\_ of Garden City. The \_\_\_\_\_ home had been damaged in a fire and, under the agreement, the Respondent was to assist the \_\_\_\_\_ in settling their insurance claim and obtaining repairs of their home. By law, the amount the Respondent could charge for his services was a maximum of 10 percent of the amount paid by the \_\_\_\_\_ insurer. The Respondent overcharged the \_\_\_\_\_ for his services and then arranged to have the home repaired by contractors with whom the Respondent had familial and financial relationships. The \_\_\_\_\_ home repairs proceeded slowly and the primary contractor was not paid for its work, leaving the \_\_\_\_\_ to pay the contractor from their own funds.

The Respondent's conduct related to the \_\_\_\_\_ claim violated the Michigan Insurance Code in various ways. The Respondent acted as a representative of a fire repair contractor while licensed as a public adjuster and charged a fee in excess of the fee permitted by the Insurance Code. The Respondent failed to provide business records related to the \_\_\_\_\_ when he was ordered to do so by the Director of DIFS. Respondent also failed to maintain business records required by the Insurance Code.

### **B. Violation of a prior consent order**

The Respondent violated the cease and desist provisions of a Consent Order he had entered into with this Department in 1998.

### **C. Louisiana civil judgment**

Respondent was found by a Louisiana court to have engaged in fraudulent conduct in connection with adjusting insurance claims following Hurricane Katrina. The Louisiana court

entered a judgment against Respondent and his two co-defendants in the amount of \$10,088,295.24. Respondent has not made any payment on this judgment.

### III. Conclusions of Law

The conclusions of law in the PFD are supported by reasoned opinion. Those conclusions are adopted. The following conclusions are the basis for the Director's order in Part IV, below.

- By acting for a fire repair contractor while licensed as a public adjuster, Respondent violated section 1224(4) of the Insurance Code
- By charging a fee that exceeded 10 percent of an insurer's claim payment, Respondent violated section 1226(3) of the Insurance Code.
- By failing to provide the business records requested during the investigation, Respondent violated section 249 of the Insurance Code.
- By failing to maintain required business records, Respondent violated section 1228 of the Insurance Code.
- The Respondent knew, or should have known, that his conduct was in violation of sections 1224(4), 1226(3), 249, and 1228 of the Insurance Code. Knowingly violating provisions of the Insurance Code warrants imposing civil penalties of \$2,500.00 for each Insurance Code violation cited above.
- By using misleading methods to obtain fire repair work for his relatives and by concealing his relationship to the fire repair contracts he was promoting, the Respondent violated the 1998 Consent Order and Stipulation. The Consent Order included a provision requiring Respondent to cease and desist from violating sections 1228(1), 1224, and 1226(3) of the Insurance Code. Respondent's conduct in the present case is a violation of that cease and desist provision of the 1998 Consent Order. Under section 1244(3) of the Insurance Code, violating the provisions of a cease and desist order warrants the assessment of a civil penalty of up to \$10,000.00 per violation.
- Respondent's violation of the 1998 Consent Order and his failure to comply with the order of the Louisiana Civil District Court, to repay more than \$10 million in fraudulently handled insurance claims, demonstrates a failure to act in a fair, open, and honest manner as required by section 1242(3) of the Insurance Code.

- The Respondent's conduct warrants an order revoking the Respondent's insurance adjuster license, ordering restitution, and assessing civil penalties.

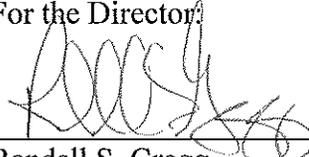
#### IV. Order

Based on the Proposal for Decision and the Findings of Fact and Conclusions of Law above, it is ordered that:

1. Respondent Eric Carrier's insurance adjuster license is revoked.
2. Respondent Eric Carrier shall pay restitution of \$10,825.31 to
3. Respondent Eric Carrier shall pay to the State of Michigan a civil penalty of \$20,000.00 (\$2,500.00 for each of the four Insurance Code violations and \$10,000.00 for violation of the cease and desist provision in the 1998 Consent Order).

R. Kevin Clinton  
Director

For the Director:



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Randall S. Gregg  
Special Deputy Director

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OFIR/OGC

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 10-000067-OFIR

Office of Financial and Insurance  
Regulation,  
Petitioner

Case No.: 10-788-L

Agency: Department of Insurance and  
Financial Services

v

Eric R. Carrier,  
Respondent

Case Type: DIFS-Insurance

Filing Type: Appeal

Issued and entered  
this 25<sup>th</sup> day of July, 2013  
by Renee A. Ozburn  
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

On September 13, 2010, the Office of Financial and Insurance Regulation, OFIR/Petitioner), currently known as the Department of Insurance and Financial Services, issued a Complaint against Eric Carrier (Respondent) alleging violation of the Michigan Insurance Code, 1956 PA 218 (Code), as amended, MCL 500.1001 *et seq.* Mr. Carrier requested a contested case hearing. Attorney John McCauslin filed an appearance on behalf of Mr. McCauslin. Attorney Elizabeth Bolden represented OFIR.

After the initial hearing date was scheduled, several prehearing conferences were conducted. In May 2011, Petitioner filed a Motion for Summary Decision. Oral argument on the motion and the contested case hearing were held in abeyance by stipulation of the parties pending the outcome of a Circuit Court decision on Respondent's June 2011 Complaint for Declaratory Relief. On April 3, 2012, an Order Denying Summary Decision was issued.

Hearings were held on October 18, 2012, and January 22 & 23, 2013. At the conclusion of the hearing on January 23, 2013, Petitioner had rested its proofs and Attorney McCauslin had completed his direct examination of Mr. Carrier. By Order of Continuance dated January 30, 2013, the hearing was further continued to March 5, 2013. The hearing on March 5, 2013 was to begin with the cross-examination of Mr. Carrier by Attorney Bolden.

On February 22, 2013, Attorney McCauslin filed a Motion to Withdraw as Attorney for Respondent. The reason given was deterioration in the client/attorney relationship. On March 5, 2013, at the time scheduled for continuation of the hearing, Eric Carrier, and Attorney Bolden were present in the hearing room. Attorney McCauslin appeared by telephone. Mr. Carrier indicated on the record that he no longer wished to be represented by Attorney McCauslin. Although Attorney McCauslin had represented Mr. Carrier for over two years in this matter, and motioned to withdraw less than 2 weeks before his client was scheduled to face cross-examination, the motion to withdraw was granted because the undersigned Administrative Law Judge has no statutory or rule authority to order continued representation. Mr. Carrier requested a continuance for the purpose of obtaining new counsel.

The hearing was continued to May 2, 2013. The Order for Continuance specifically directed Mr. Carrier to "...be diligent in obtaining new counsel. An appearance should be filed by new counsel on or before Monday, March 18, 2013." No appearance was filed by or after March 18, 2013 on behalf of Mr. Carrier.

On May 2, 2013, at the time scheduled for hearing, Attorney Bolden appeared and was ready to proceed. Mr. Carrier did not appear. No attorney appeared on behalf of Mr. Carrier. This tribunal received no request for adjournment or extension of time to obtain counsel by or on behalf of Mr. Carrier. Ms. Bolden motioned to have the direct testimony of Mr. Carrier stricken from the record due to his failure to appear for cross-examination. The motion was granted.

On May 3, 2013, an Order for Written Closing Arguments was issued. The record remained open until June 21, 2013 for closing written arguments.

#### **ISSUES AND APPLICABLE LAW**

The September 13, 2010 Complaint alleged that Respondent Eric Carrier violated Insurance Code Sections 249, 1228, 1224(4), 1226(1), 1226(3) and 1242(3). Respondent Carrier stipulated to violating Code Sections 249 and 1228. OFIR withdrew the alleged violation of Section 1226(1). The Code Sections at issue in this matter provide as follows:

**500.249 Insurance commissioner; investigations of agents, adjusters, counselors, managers, promoters, officers and directors.**

Sec. 249.

For the purposes of ascertaining compliance with the provisions of the insurance laws of the state or of ascertaining the business condition and practices of an insurer or proposed insurer, the commissioner, as often as he deems advisable, may initiate proceedings to examine

the accounts, records, documents and transactions pertaining to:

- (a) Any insurance agent, surplus line agent, general agent, adjuster, public adjuster or counselor.
- (b) Any person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control an insurer.
- (c) Any person holding the shares of voting stock or policyholder proxies of an insurer, for the purpose of controlling the management thereof, as voting trustee or otherwise.
- (d) Any person engaged in or proposing to be engaged in or assisting in the promotion or formation of an insurer or insurance holding corporation, or corporation to finance an insurer or the production of its business.
- (e) A person or organization owning stock representing 10% or more of the voting shares of an insurer.
- (f) Any officer or director of an insurer.

**500.1224 Adjuster; application for license; forms; examination; investigations and interrogatories; waiver; decision; issuance of license; qualifications; additional restrictions; licenses to certain persons prohibited; "home state" defined.**

Sec. 1224.

(4) The commissioner shall not issue a license to act as an adjuster to a person who is employed by, owns stock in, is an officer or director of, or in any other manner is connected with, a fire repair contractor.

**500.1228 Records of adjuster.**

Sec. 1228.

(1) An adjuster for an insured shall maintain a complete record of each of his transactions as an adjuster for the insured. The record shall include: (a) the name of the insured, (b) the date, location and amount of the loss, (c) a

copy of the contract between the adjuster for the insured and the insured, (d) the name of the insurer and the amount, expiration date and number of each policy carried with respect to the loss, (e) an itemized statement of the recoveries by the insured from the sources known to the adjuster for the insured, (f) the name of each person soliciting the adjustment for the insured and the date and time when solicited, and (g) the total compensation received for the adjustment and the amount of commission, salary or other compensation paid to each representative of the adjuster for the insured in connection with the transaction.

(2) Records shall be maintained for at least 6 years after the termination of the transaction with an insured, and shall be open to examination by the commissioner.

**500.1226 Persons aiding adjuster; representation by adjuster; procedure for soliciting loss; schedule of rates; limitation on charges; contract.**

Sec. 1226.

(3) An adjuster for the insured shall not charge a rate for his or her services which exceeds 10% of the amount paid by the insurer in settlement of the loss.

**500.1242 Refusal, suspension, or revocation of license; notice; hearings; summary suspension; subpoenas.**

Sec. 1242.

(3) After notice and opportunity for a hearing, the commissioner may refuse to grant or renew a license to act as a solicitor, adjuster, or insurance counselor if he or she determines by a preponderance of the evidence, that it is probable that the business or primary occupation of the applicant will give rise to coercion, indirect rebating of commissions, or other practices in the sale of insurance that are prohibited by law.

**SUMMARY OF EXHIBITS**

Petitioner Exhibits:

Exhibit 1	Consumer complaint dated 5/14/08
Exhibits 2, 3 & 4	Not offered

Exhibit 5	Cancelled checks
Exhibit 6	Fax from OFIR to E. Carrier dated 7/2/09
Exhibits 7, 8 & 9	Not offered
Exhibit 10	Cancelled checks
Exhibit 11	Check dated 8/9/07
Exhibit 12	Summary of insurance proceeds disbursements
Exhibit 13	Not offered
Exhibit 14	1998 Stipulation to Consent Order
Exhibit 15	"Eric Gerard/TNT Builders, Inc." business card
Exhibit 16	Adjusting Agreement dated 3/14/08
Exhibit 17	Cancelled checks
Exhibit 18	Not offered
Exhibit 19	"James Roberts/TNT Builders, Inc." business card
Exhibit 20	Revenue Ledger re: payments to TNT
Exhibit 21	Consumer funds statement & cancelled checks
Exhibit 22	Upgrades and consumer funds statement
Exhibit 23	Not offered
Exhibit 24	Insurance Code Section 1242(2)
Exhibit 25	Insurance Code Section 1228

Respondent Exhibits:

Exhibit A	Adjusting Agreement dated 6/22/07
Exhibit B	Louisiana Civil Court Petition for Damages
Exhibit C	Insurance Code Section 1224(4)
Exhibit D	Dictionary definition of "sister-in-law"
Exhibit E	Recovery Management L.T.D., Articles of Incorporation
Exhibit F	Standard Residential Public Adjusting Contract
Exhibit G	Cleaning estimate and invoice
Exhibit H	Building Permit

**FINDINGS OF FACT**

1. At all times relevant to this matter, Respondent Eric Gerard Carrier has been a licensed resident adjuster qualified to transact business as a public adjuster, d/b/a Adjusters World Wide, Inc., for fire and other hazards, with a principle place of business registered as 37637 Five Mile Road, Suite 323, Livonia, MI 48154.
2. On or about June 20, 2007 the home of \_\_\_\_\_ located at \_\_\_\_\_ in Garden City, Michigan, sustained fire damage. The home was insured through the Homesite Group Insurance Company. Within a few days of the fire, Eric Carrier appeared, unsolicited, at the \_\_\_\_\_ home indicating that he was a public adjuster who served as a liaison with insurance companies and could help the \_\_\_\_\_ find contractors to complete the fire repairs.

3. On June 22, 2007, the \_\_\_\_\_ signed an Adjusters World Wide, Inc., Residential Public Adjusting Agreement (Exhibit A). The Agreement was also signed by Eric Carrier. The agreement indicates that the \_\_\_\_\_ were retaining Adjusters World Wide, Inc., located at 37637 Five Mile Road, #323, Livonia, MI 48154, "to assist in the preparation and presentation of their claim with the insurance company or companies with an interest in their claim of loss caused by insured perils to business, contents and ALE". The agreement indicated that the \_\_\_\_\_ as insureds agreed to pay and assign 10% of the total adjusted claim to Adjusters World Wide, Inc.
4. \_\_\_\_\_ met with Eric Carrier a number of times pursuant to the adjusting contract (Exhibit A). During one of these meetings, Eric Carrier called James Carrier (a/k/a "Jim Carrier" and "James Roberts") and asked him to come to the \_\_\_\_\_ property. Eric Carrier stayed at the property until James Carrier showed up and introduced James Carrier to \_\_\_\_\_.
5. James Carrier gave \_\_\_\_\_ a TNT Builders, Inc., business card with the name "James Roberts" imprinted on the card. James Carrier's brother-in-law Larry Marson testified at the contested case hearings of this matter and confirmed that James Roberts is an alternate name used by James Carrier. \_\_\_\_\_ was also given a TNT Builders, Inc., business card with the name "Eric Gerard". (Exhibits 15 & 19). Eric Gerard and Eric Gerard Carrier are the same person. At the time the \_\_\_\_\_ contracted with Adjusters World Wide, Inc., both James Carrier and Eric Carrier were doing business as agents of TNT Builders, Inc. using business cards which did not accurately reflect their full names.
6. The Eric Gerard business card established that Eric Carrier acted as an agent of TNT Builders, Inc., in addition to being a public adjuster. Eric Carrier persuaded the \_\_\_\_\_ that he had the knowledge and connections to help the \_\_\_\_\_ find contractors to work on repairing their home. Relying on Mr. Carrier's representations, the \_\_\_\_\_ also agreed to let Eric Carrier handle the disbursement of insurance proceeds during the time fire repair work was progressing.
7. Larry Marson is owner/president/agent of L. Marson Tile & Marble, Inc. and Marson Building and Restoration, Inc. Mr. Marson bid on the job to repair the \_\_\_\_\_ property and became the primary sub-contractor in a contract between Mr. Marson and general contractor TNT Builders, Inc. (Exhibit 20) Mr. Marson learned about the \_\_\_\_\_ job through his brother-in-law James Carrier, who is married to Larry Marson's sister, Linda Carrier. Most of the work Mr. Marson performed on the home was repair of fire damage.

8. Work began on the property in the summer of 2007. As work progressed the regularly signed over insurance proceed checks to Eric Carrier for the purpose of paying contractors. (Exhibits 5 & 10)
9. Mr. Marson's contract with TNT Builders, Inc. required completing repairs for \$110,000. Mr. Marson received \$59,900 from TNT Builders, Inc. /James Carrier out of the \$110,000 his contract called for. (Exhibit 20) In or around January 2008, there was still \$50,100 owed on the contract which caused Mr. Marson to stop working because he was not being paid. Subsequently, agreed to pay Mr. Marson out of pocket to get the work finished.
10. was unsuccessful in attempts to contact Eric Carrier when the work stopped. When, agreed to pay Mr. Marson out of pocket to finish the job, he negotiated some additional upgrades. (Exhibit 22) paid Mr. Marson approximately \$34,902 to have the job completed after TNT Builders, Inc., stopped paying Mr. Marson. (Exhibit 21). paid approximately \$17,234 (Exhibit 22) for upgrades that were not part of the agreement for insurance reimbursed repairs. never received any receipts or invoices from Eric Carrier or Mr. Marson.
11. Felix Sharpe is an OFIR Insurance Investigator. He investigated the complaint filed by against Eric Carrier. In correspondence dated June 6, 2008, from Eric Carrier to OFIR, Mr. Carrier indicated he would be forwarding copies of checks representing his handling of insurance proceeds for the property. Approximately one year later, by facsimile addressed to Eric Carrier dated July 2, 2009, Mr. Sharpe indicated that the checks had not been received and requested that Eric Carrier provide them by July 23, 2009. Eric Carrier did not respond to this OFIR request. (Exhibit 6)
12. Public adjusters are required to keep a ledger of payments to sub-contractors and vendors. Upon request by OFIR, public adjusters must show proper disbursement of insurance proceeds. During Mr. Sharpe's initial investigation he was unable to get the records he requested from Eric Carrier regarding his adjusting contract with
13. Through subpoenas, Mr. Sharpe obtained insurance proceed checks intended for repair of the property totaling \$191,926.24. These checks were indorsed by Eric Carrier and Adjuster's World Wide, Inc. Pursuant to the June 2007 adjusting agreement between Eric Carrier and the , Eric Carrier would have been entitled to \$19,192.62 of this amount. Evidence showed that Eric Carrier signed over one of the proceeds checks directly to the in the amount of \$19,200. Mr.

Sharpe then attempted to account for disbursement of the remaining \$153,533.62. Mr. Sharpe eventually saw checks indicating that Eric Carrier disbursed checks totaling \$96,200.12 to James Carrier and TNT Builders for purposes of work on the property. In addition to these checks, Mr. Sharpe also saw a \$45,509.19 check made payable to Patricia Freeman as well as a \$5,000 check made out to "Cash" and a \$5,000 check made payable to Eric Carrier. Together these checks accounted for \$152,708.31 of the insurance proceeds, leaving \$825.31 unaccounted for. Mr. Sharpe opined that the \$5,000 made out to "Cash" and the \$5,000 made out to Eric Carrier, constituted an additional \$10,000 Eric Carrier retained for himself over and above his 10% fee of \$19,192.62. Therefore, the amount of proceeds kept by Eric Carrier over and above the 10% he was legally entitled to totaled \$10,825.31. (Exhibits 5, 10 & 12).

14. Mr. Sharpe also investigated the relationship between Eric Carrier and the contractors he referred to the for purposes of performing the fire repair work on their property. Mr. Sharpe found documents listing Linda Carrier as the resident agent of the general contractor TNT Builders, Inc. Linda Carrier is Eric Carrier's sister-in-law. She is married to Eric Carrier's brother James Carrier. Eric Carrier arranged for his brother James Carrier to become the general contractor for fire repair work on the Freeman property. In addition, L. Marson Tile and Marble, Inc., the primary sub-contractor for the job, is owned by Larry Marson, the brother of Eric Carrier's sister-in-law, Linda Carrier.
15. Eric Carrier adjusted the property damage and then, acting on behalf of the , hired his family to do the fire repair based on Eric Carrier's estimates of the cost.
16. The State of Michigan does not issue a separate class of license for fire repair contractors. Performing fire repair work on the property made TNT Builders, Inc. and L. Marson Tile and Marble, Inc., fire repair contractors for purposes of the Insurance Code.
17. In May 1998, Eric Carrier signed a Stipulation to Consent Order accepted by the Michigan Commissioner of Insurance, admitting to violation of Sections 1224, 1228(1) and 1226(3) of the Insurance Code. In part, the violations resulted from Eric Carrier and his brothers Mark and James Carrier acting as licensed public adjusters while maintaining connections and soliciting fire repair business with fire repair contractors. (Exhibit 14)
18. As of 2013, Eric Carrier still owes \$10,088,295.24 pursuant to a Judgment of Default issued on April 24, 2009 by the Civil District Court for the Parish of Orleans State of Louisiana in the matter of *Versai Management Corp. d/b/a Versailles Arms Apartments v Mark Carrier, Eric Carrier and*

*Recovery Management, Inc.* Eric Carrier and the other defendants were found to have perpetrated insurance fraud while acting as insurance adjusters after the Katrina Hurricane disaster. (Exhibit B)

### 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 Respondent violated the Insurance Code as alleged in the September 13, 2010 Complaint.

#### Section 249

Insurance Code Section 249 gives OFIR the authority to ascertain the business condition and practices of a public adjuster. Respondent stipulated to a failure to produce records upon request. Therefore, Respondent violated Insurance Code Section 249 by failing to respond to a legitimate OFIR request to produce accounts, records and documents regarding the insurance transactions.

#### Section 1228

Insurance Code Section 1228 requires public adjusters to maintain a complete record of each of his transactions as an adjuster including the name of the insured; the date, location and amount of the loss; a copy of the contract between the adjuster and the insured; the name of the insurer and the amount, expiration date and number of each policy carried with respect to the loss; an itemized statement of the recoveries by the insured; the name of each person soliciting the adjustment for the insured and the date and time when solicited, and the total compensation received for the adjustment and the amount of commission or other compensation paid to each representative of the adjuster for the insured in connection with the transaction. Section 1228 also requires adjusters to maintain records for at least 6 years after termination of the transaction with an insured, and remain available for OFIR examination. Respondent stipulated to a failure to keep the required records. Therefore, Respondent violated Insurance Code Section 1228 as alleged.

#### Section 1224(4)

Insurance Code Section 1224(4) indicates that a public adjuster license cannot be issued or maintained by a person who is employed by, owns stock in, is an officer or director of, or in any other manner is connected with, a fire repair contractor. There is no separate licensure required for fire repair. Therefore, a general or sub-contractor that performs fire repair work becomes a fire repair contractor for those jobs. The evidence established that Respondent was a public adjuster who also acted as an agent for TNT Builders, Inc. which was the general fire repair contractor for purposes of performing fire repair on the property. In addition, Respondent's brother and sister-in-law were agents and/or principles in TNT Builders, Inc. Further, the primary

sub-contractor performing fire repair work on the \_\_\_\_\_ property, Larry Marson, was the brother of Respondent's sister-in-law who was a principle of TNT Builders, Inc. These close, entangled, familial relationships between the adjuster and fire repair contractors for the \_\_\_\_\_ property are exactly what the legislature intended to prevent by enacting Section 1224(4).

This matter is a clear example of a vulnerable homeowner being subject to undue influence by an adjuster acting in collusion with a fire contractor to maximize their benefits at the expense of the homeowner. The Respondent appeared at the \_\_\_\_\_ home unsolicited and offered his services to help them after a severe fire loss. In addition to offering his licensed services as an adjuster, Respondent recommended that his brother's company was the best fire repair contractor to complete the repairs. Respondent attempted to hide the sibling relationship between his adjuster company and the contractor he recommended as evidenced by the business cards used by both Respondent and his brother which excluded their joint family surname 'Carrier'. The Respondent's business card, using the name "Eric Gerard" also indicates he had an active agency relationship with the general fire repair contractor at the time of the \_\_\_\_\_ repairs.

After referring his brother's company to the \_\_\_\_\_, Respondent then recommended himself as liaison for purposes of paying the contractors from the \_\_\_\_\_ insurance proceeds. The homeowners trusted Respondent and were unaware of any problems with this arrangement because Respondent did not keep required records of his transactions on behalf of the homeowner. Further, as long as the repair work appeared to be progressing, the homeowner had no reason to suspect that his insurance proceeds were not being disbursed appropriately.

As succinctly articulated in OFIR's closing brief, "The very reason that the legislature intended for public adjusters to be well-separated from fire repair contractors was to prevent the kind of self-dealing, prohibited referrals and misappropriation of insurance proceeds which existed in the \_\_\_\_\_ transactions." The above Findings of Fact establish by a preponderance of evidence that Respondent was connected to the fire repair contractor in this matter in violation of Insurance Code Section 1224(4). Further, this was Respondent's second violation of Section 1224(4) as evidenced by his admissions in a 1998 Stipulation to Consent Order.

#### Section 1226(3)

Insurance Code Section 1226(3) states that an adjuster is prohibited from charging the insured a rate for his or her adjusting services which exceeds 10% of the amount paid by the insurer in settlement of the loss. A preponderance of the evidence established that Respondent kept \$10,825.31 of insurance proceeds for himself, over and above the 10% he was entitled to under his adjuster's agreement. Therefore, Respondent has violated Section 1226(3).

Section 1242(3)

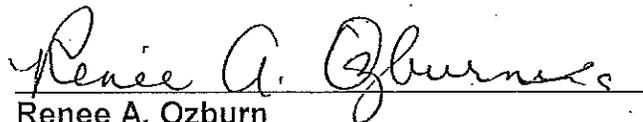
Insurance Code Section 500.1242(3) states that the commissioner may refuse to grant or renew a license to act as an adjuster if it is determined by a preponderance of the evidence, that it is probable that the business or primary occupation of the applicant will give rise to coercion, indirect rebating of commissions, or other practices in the sale of insurance that are prohibited by law. The evidence established that Respondent used misleading tactics which, in essence, covertly coerced homeowners to hire his relatives to do fire repair work. Respondent and his brother used subterfuge to keep their true connection hidden from the homeowners. Respondent knew this was in violation of Insurance Code provisions as evidenced by a 1998 Consent Order and Stipulation in which Respondent specifically admitted committing the same violation of using his adjusters license in conjunction with a fire repair contractor he was connected with. The evidence also established that Respondent kept monies over and above the legal amount he was entitled to after convincing homeowners that he was the best person to handle disbursement of insurance proceeds during the pendency of the fire repair work. Finally, Respondent failed to pay or appeal a judgment in excess of \$10 million dollars involving insurance fraud perpetrated during recovery efforts after the Katrina Hurricane disaster. This fraudulent conduct by Respondent constitutes a failure to act in a fair, honest and open manner as a licensed adjuster and a pattern of practicing in a manner prohibited by law. Therefore, Respondent has violated Section 1242(3) constituting grounds for license revocation.

PROPOSED DECISION

The undersigned Administrative Law Judge proposes that the Director issue a Final Order 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