

**STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Department of Insurance and Financial Services

**Enforcement Case No. 14-12113
Agency No. 14-066-L**

Petitioner,

v

Cecil W. Cagle

System ID No. 0054026

Respondent.

_____ /

Issued and entered
on February 17th, 2015
by **Randall S. Gregg**
Deputy Director

FINAL DECISION

I. Background

Cecil W. Cagle (hereinafter Respondent) is a licensed resident producer. The Department of Insurance and Financial Services (DIFS) received information that Respondent had provided justification for sanctions, pursuant to Section 1239(1)(b) of the Michigan Insurance Code (Code), MCL 500.1239(1)(b), by failing to respond to repeated correspondence from DIFS Staff as required by law. Additionally, Respondent provided justification for sanctions, pursuant to Section 1239(1)(b) of the Code, MCL 500.1239(1)(b), by failing to remit premium payments to the insurer to which they were owed. Finally, Respondent provided justification for sanctions, pursuant to Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), by using fraudulent and dishonest practices and by demonstrating untrustworthiness and financial irresponsibility in the conduct of business by collecting premium payments from customers and failing to remit the full amount of those payments.

After investigation and verification of the information, on November 5, 2014, DIFS issued a Notice of Opportunity to Show Compliance (NOSC) alleging that Respondent had provided justification for revocation of licensure and other sanctions pursuant to Sections 1239(1) and 1244(1)(a-d) of the Michigan Insurance Code (Code), MCL 500.1239(1) and 500.1244(1)(a-d). Respondent failed to reply to the NOSC.

On December 15, 2014, DIFS issued an Administrative Complaint and Order for Hearing which was served upon Respondent. The Order for Hearing required Respondent to take one of the following actions within 21 days: (1) agree to a resolution of the case, (2) file a response to the allegations with a statement that Respondent planned to attend the hearing, or (3) request an adjournment. Respondent failed to take any of these actions.

On January 30, 2015, DIFS staff filed a Motion for Final Decision. Respondent did not file a reply to the motion. Given Respondent's failure to respond, Petitioner's motion is granted. The Administrative Complaint, being unchallenged, is accepted as true. Based upon the Administrative Complaint, the Director makes the following Findings of Fact and Conclusions of Law.

II. Findings of Fact and Conclusions of Law

1. Pursuant to Executive Order 2013-1, all authority, powers, duties, functions, and responsibilities of the Commissioner of the Office of Financial and Insurance Regulation (Commissioner) have been transferred to the Director of DIFS.
2. At all relevant times, Respondent was a licensed resident producer with qualifications in accident and health, casualty, life, property and variable annuities, and his license is still currently active.
3. United Insurance of America (hereinafter United) is an insurer in Michigan, authorized to issue life insurance, disability insurance and annuities. United is a home service life insurance company, meaning its agents make monthly visits to customers to collect premiums. Oftentimes, the agents collect cash. United has a recording system in place to track premium payments. When an agent collects a premium payment, the payment is to be recorded in a premium receipt book that stays with the customer. The payment is also recorded in an electronic device that records it in company records.
4. On May 31, 2012, Respondent signed a Field Representative's Agreement. Page one, paragraph IV(A) of the agreement requires Respondent to "immediately remit to the Company, premiums."
5. On or about August 13, 2012, United appointed Respondent as its agent.
6. Between November 23, 2012, and April 28, 2013, Respondent collected a total of \$540.00 from customer JJ (\$90 per month). The payments were intended to pay off a loan JJ had taken against the cash value of her policy with United. However, Respondent failed to remit any of the payments to United.
7. Between January 2013 and May 2013, Respondent collected a monthly payment of \$88.72 from customer MS. The actual monthly premium due was \$72.71. However, Respondent collected an additional \$80.05 over the five month period and failed to remit that portion of the payment to United.

8. On March 2, 2013, Respondent collected a \$132.47 premium payment from customer LSJ. The payment was recorded in LSJ's receipt book, but no portion of the payment was remitted to United. On May 1, 2013, Respondent collected another \$132.47 payment from LSJ. This time Respondent failed to record the payment in LSJ's receipt book and again no portion of the payment was remitted to United.
9. On April 2, 2013, Respondent collected a \$40.00 premium payment from customer BT. The receipt for BT reflects the \$40.00 that Respondent collected. However, of the \$40.00 collected, Respondent only remitted \$22.44.
10. Also on April 2, 2013, Respondent collected a \$43.50 premium payment from customer BJ. Respondent failed to record the payment in BJ's receipt book and no portion of the payment was remitted to United.
11. On April 4, 2013, Respondent collected a \$257.61 premium payment from customer AP. Respondent failed to record the payment in AP's receipt book and no portion of the payment was remitted to United.
12. On May 1, 2013, Respondent collected a \$50.81 premium payment from customer LW. Respondent failed to record the payment in LW's receipt book and no portion of the payment was remitted to United. However, Respondent did complete a Temporary Field Receipt showing receipt of the \$50.81 payment.
13. On May 2, 2013, Respondent collected a \$107.12 premium payment from customer AM. Respondent failed to record the payment in AM's receipt book. However, Respondent did complete a Temporary Field Receipt showing receipt of the \$107.12 payment. Of the \$107.12 collected, Respondent only remitted \$53.56.
14. On August 9, 2013, DIFS Staff received a complaint from United stating that an audit it had conducted on Respondent's "book of business" revealed that Respondent had failed to remit \$2,982.60 in premium payments to United. United subsequently updated its complaint to DIFS to state that Respondent had failed to remit a total of \$3,332.10 in premium payments to United.
15. On March 21, 2014, a letter of inquiry was sent by DIFS Staff to Respondent at [REDACTED], requesting a response by March 31, 2014. The address was Respondent's address registered with the Michigan Office of the Secretary of State and the most recent that could be found. Respondent did not respond to the letter.
16. On April 16, 2014, DIFS' investigator contacted Respondent's father by telephone requesting that Respondent contact him. Respondent did not contact the investigator.

17. On May 15, 2014, letters were sent to additional addresses found for Respondent requesting a response by May 22, 2014. No response was received.
18. On May 22, 2014, DIFS Staff sent a letter of inquiry to Respondent's registered business address of record (per DIFS' database and the National Insurance Producer Registry database) requesting a response by May 30, 2014. No response was received.
19. As a licensee, Respondent knew or had reason to know that Section 249(a) of the Code, MCL 500.249(a), states that:

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.

20. Respondent violated Section 249(a) when he failed to respond to repeated requests for information.
21. As a licensee, Respondent knew or had reason to know that Section 1238(1) of the Code, MCL 500.1238(1), states that:
 - (1) When applying for a license to act as an agent, solicitor, counselor, or adjuster, the applicant shall report his or her mailing and electronic mail address to the commissioner. An agent, solicitor, counselor, or adjuster shall notify the commissioner of any change in his or her mailing or electronic mail address within 30 days after the change. The commissioner shall maintain the mailing and electronic mail address of each agent, solicitor, counselor, or adjuster on file.
22. Respondent violated Section 1238(1) when he failed to update his address as required.
23. As a licensee, Respondent knew or had reason to know that Section 1207(1) of the Code, MCL 500.1207(1) states that:

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.

24. Respondent violated MCL 500.1207(1) when he failed to remit premium payments owed to United.
25. As a licensee, Respondent knew or had reason to know that Sections 1239(1)(b) and (h) of the Code, MCL 500.1239(1)(b) and (h) state that:

(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.

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

26. Respondent has provided justification for sanctions, pursuant to Section 1239(1)(b) of the Code, MCL 500.1239(1)(b), by failing to respond to DIFS' inquiry pursuant to Section 249(a) of the Code, MCL 500.249(a), and/or by failing to update his address pursuant to Section 1238(1) of the Code, MCL 500.1238(1).
27. Respondent has also provided justification for sanctions, pursuant to Section 1239(1)(b) of the Code, MCL 500.1239(1)(b), by violating MCL 500.1207(1), by failing to remit premium payments to United.
28. Respondent has provided justification for sanctions, pursuant to Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), by using fraudulent and dishonest practices and by demonstrating untrustworthiness and financial irresponsibility in the conduct of business by collecting premium payments from customers and failing to remit the full amount of those payments to United.

29. Based upon the actions listed above, Respondent has committed acts that provide justification for the Director to order the payment of a civil fine, and/or other licensing sanctions, including revocation of licensure.
30. On November 5, 2014, a NOSC was mailed by first class mail to Respondent at his official business address of record as he had reported it to DIFS. The mail was returned marked "no such address." The mail was also sent to two additional personal addresses. One was returned and marked "return to sender – temporarily away – unable to forward." The mail sent to Respondent at his address on [REDACTED] Road was not returned, but no response was received.
31. The Michigan Secretary of State database was searched and the [REDACTED] Road address was verified.
32. A Google search found that the address Respondent had reported as his official business address had an incorrect zip code and the NOSC was resent to the newly updated business address. No response was received.
33. On December 15, 2014, true copies of an Administrative Complaint, Order for Hearing and Notice of Hearing were mailed by first class mail to Respondent at his business address. The mail was returned to DIFS marked "return to sender, not deliverable as addressed, unable to forward." The Administrative Complaint, Order for Hearing and Notice of Hearing were also sent to Respondent at his home address on [REDACTED] Road. No response was received.
34. DIFS Staff searched other databases for alternative addresses and no new addresses were found.
35. DIFS Staff has made reasonable efforts to serve Respondent and has complied with MCL 500.1238(2) and R 792.10113(1).
36. Respondent has received notice and has been given an opportunity to respond and appear and has not responded or appeared.
37. Respondent is in default and the Petitioner is entitled to have all allegations accepted as true.

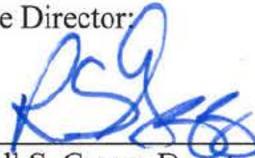
III. Order

Based upon the Respondent's conduct and the applicable law cited above, it is ordered that:

1. Respondent shall cease and desist from violating the Code.
2. Respondent shall immediately cease and desist from engaging in the business of insurance.

3. Respondent has violated MCL 500.249(a) and MCL 500.1207(1), and has provided justification for sanctions pursuant to MCL 500.1239(1)(b) and (h). Pursuant to MCL 500.1244(1)(d), Respondent's resident insurance producer license (System ID No. 0054026) is **REVOKED**.

Annette E. Flood, Director
For the Director:



Randall S. Gregg, Deputy Director