

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. 15-965-L  
Docket No. 15-040102-DIFS

Chavonne Simmons,

Respondent.

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For the Petitioner:

Elizabeth V. Bolden (P69865)  
Dept. of Insurance and Financial Services  
530 W. Allegan Street, 8<sup>th</sup> Floor  
Lansing, MI 48933

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For the Respondent:

Chavonne Simmons

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Issued and entered  
this 5<sup>th</sup> day of October 2015  
by Randall S. Gregg  
Special Deputy Director

FINAL DECISION

The Administrative Law Judge issued a Proposal for Decision dated August 24, 2015. She recommended that the Director issue a final decision consistent with the Findings of Fact and Conclusions of Law as outlined in her Proposal for Decision. 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. Neither party filed 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 Com'n*, 136 Mich.App. 52 (1984).

**ORDER**

Therefore, it is ORDERED that:

1. The PFD is adopted and made part of this final decision.
2. Respondent shall pay to the State of Michigan a civil fine of \$10,000.00.
3. The insurance producer license of Respondent is REVOKED.

Patrick M. McPharlin  
Director

For the Director:



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Randall S. Gregg  
Special Deputy Director

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 15-040102

Department of Insurance and  
Financial Services,  
Petitioner

Case No.: 15-965-L

v

Agency: Department of  
Insurance and  
Financial Services

Chavonne Simmons,  
Respondent

Case Type: DIFS-Insurance

Filing Type: Sanction

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Issued and entered  
this 24<sup>th</sup> day of August 2015  
by Renee A. Ozburn  
Administrative Law Judge

PROPOSAL FOR DECISION

On April 1, 2015, 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 alleging that Chavonne Simmons (Respondent) violated the Michigan Insurance Code (Code), 1956 PA 218, as amended; MCL 500.100 *et. seq.*

A Notice of Hearing was issued on June 23, 2015, scheduling a hearing for August 11, 2015. The Notice was mailed to Respondent at her last known address of record. On August 11, 2015, 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 Petitioner's allegations against Respondent are true as alleged in the Order of Summary Suspension, Notice of Opportunity for Hearing issued on April 1, 2015.

**ISSUES AND APPLICABLE LAW**

The April 1, 2015, Order of Summary Suspension, Notice of Opportunity for Hearing and Notice of Intent to Revoke alleges that Respondent violated MCL 500.1207(1) & (2), MCL 500.1208a(1) and MCL 500.1239(1)(d),(e) & (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

(2) An agent shall use reasonable accounting methods to record funds received in his or her fiduciary capacity including the receipt and distribution of all premiums due each of his or her insurers. An agent shall record return premiums received by or credited to him or her which are due an insured on policies reduced or canceled or which are due a prospective purchaser of insurance as a result of a rejected or declined application. Records required by this section shall be open to examination by the commissioner.

Sec. 1208a.

(1) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

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.

### SUMMARY OF EXHIBITS

#### Petitioner Exhibits:

- Exhibit 1 DIFS Information re: Respondent's Insurance License History
- Exhibit 2 Receipt re: Consumer B.W.
- Exhibit 3 Fraudulent Certificate of Insurance re: Consumer B.W.
- Exhibit 4 Email from Michigan Department of State to DIFS dated 12/2/14
- Exhibit 5 Fraudulent Certificate of Insurance re: Consumer S.K.
- Exhibit 6 (3) Fraudulent Certificates of Insurance re: Consumer R.D.
- Exhibit 7 Email from Michigan Department of State to DIFS dated 1/20/15
- Exhibit 8 Fraudulent Certificate of Insurance re: Consumer C.J.
- Exhibit 9 Email from Michigan Department of State to DIFS dated 12/8/14 and Fax from Respondent to Michigan Department of State dated 1/5/15
- Exhibit 10 Correspondence from Respondent to DIFS dated 5/1/15

### FINDINGS OF FACT

1. At all times relevant to this matter, Respondent Chavonne Simmons (System ID No. 0650373) has been a licensed resident insurance producer with qualifications in casualty, life and property and was authorized to transact the business of insurance in Michigan.
2. Allegiance Insurance Agency VII, Inc. (System ID No. 0039113) *d/b/a* Advasure Insurance Agency (Advasure) is a licensed resident insurance producer agency with qualifications in property and casualty and is authorized to transact the business of insurance in Michigan. Its principal place of business is 13600 E. 8 Mile Rd., Ste. C, Detroit, MI 48205.

3. On or about December 2, 2014, the Michigan Department of Insurance and Financial Services (DIFS) began an investigation into Respondent's business activities after receiving information from a branch office of the Michigan Secretary of State (SOS) regarding receipt of fraudulent State of Michigan Certificates of No-Fault Insurance issued by Respondent Simmons.
4. On November 13, 2014, [REDACTED] (B.W.) visited Advasure to purchase insurance for his vehicle. Respondent Simmons assisted with his transaction and solicited the purchase of a 6-month policy offered through Everest National Insurance Company (Everest).
5. Respondent Simmons verbally told B.W. that \$210 was needed as a down payment. B.W. paid \$210 in cash to Respondent Simmons/Advasure. Respondent Simmons provided B.W. with a receipt of payment showing that "\$210" cash was paid for "Arrowhead Insurance" for Policy/Contract "XXXXX9321."
6. In exchange for the premium paid, Respondent Simmons provided B.W. with a State of Michigan Certificate of No-Fault Insurance indicating B.W.'s vehicle was insured with "Everest National Insurance Company" under policy number "XXXXX9321" with an effective date of "11/13/2014" and expiration date of "05/13/2015". The certificate listed the agency/company issuing the certificate as "Advasure" with the telephone number of "313-521-0300". B.W. used the certificate to register his vehicle with the SOS.
7. In December 2014, the SOS cancelled B.W.'s registration and plates after learning B.W.'s insurance was invalid. B.W. provided the SOS with the certificate of insurance Respondent Simmons had given him and the SOS representative attempted to verify the information. The SOS representative contacted Advasure at the telephone number on the certificate and the agent told the representative the policy was issued by Advasure for B.W. and that the policy was in force. However, when the SOS representative contacted the insurer, he was told that while the policy had a valid policy number, it was not for B.W. or B.W.'s vehicle. The SOS refused to accept B.W.'s proof of insurance.
8. A DIFS investigator met with Respondent Simmons at Advasure to discuss B.W.'s insurance transaction and to obtain records that are required by statute to be kept by the Respondent and Advasure documenting the insurance transaction. Respondent was not able to provide a signed insurance application, nor was she able to produce

receipts detailing how much insurance premium had been paid by B.W. and/or received by Advasure.

9. DIFS' investigation revealed that at no time did Everest receive an insurance application or premium payment for B.W. His vehicle was not insured and all the information contained on the certificate of insurance provided to him was false and fraudulently created by Respondent Simmons and Advasure.
10. In a second transaction reported by the SOS, on November 18, 2014, in exchange for a premium payment, Respondent Simmons issued a State of Michigan Certificate of No-Fault Insurance indicating that [REDACTED] (S.K.) vehicle was insured with "Everest National Insurance Company" under policy number "XXXXX9327" with an effective date of "11/18/2014" and an expiration date of "05/18/2015". The certificate listed "Advasure" as the agency/company issuing the certificate with the telephone number of "313-521-3000". S.K. used the certificate to register his vehicle with the SOS.
11. The SOS representative contacted Advasure at the telephone number on the certificate and the agent told the SOS representative the policy was issued by Advasure for S.K. and that the policy was in force. However, when the SOS representative contacted the insurer, he was told that while the policy was a valid policy number, it was not for S.K. or S.K.'s vehicle.
12. DIFS investigator met with Respondent Simmons at Advasure to discuss S.K.'s insurance transaction and to obtain records that are required by statute to be kept by the Respondent and Advasure documenting the insurance transaction. Respondent was not able to provide a signed insurance application, nor was she able to produce receipts detailing how much insurance premium had been paid by S.K. and/or received by Advasure.
13. DIFS' investigation revealed that at no time did Everest receive an insurance application or premium payment for S.K. His vehicle was not insured and all the information contained on the certificate of insurance provided to him was false and fraudulently created by Respondent Simmons and Advasure.
14. On or about November 13, 2014, Advasure issued three (3) State of Michigan Certificates of No-Fault Insurance to [REDACTED] (R.D.) purporting to insure a Lincoln, a Mercedes and a Corvette under policy number "XXXXX9322". R.D. visited a SOS branch office and used the

certificates to register all three of his vehicles. The SOS later issued plate cancellations for all three vehicles after determining the insurance was invalid.

15. On January 17, 2015, R.D. visited the SOS to inquire about the plate cancellations and to provide the certificates of insurance he had received from Advasure. The SOS representative contacted Advasure at the telephone number on the certificates to verify policy information. The SOS representative spoke with Respondent Simmons who indicated that she wrote policy XXXXX9322 for R.D. and that the policy was valid on dated he registered his vehicles.
16. A DIFS investigator met with Respondent Simmons at Advasure to discuss R.D.'s insurance transaction and to obtain records that are required by statute to be kept by the Respondent and Advasure documenting the insurance transaction. Respondent was not able to provide a signed insurance application, nor was she able to produce receipts detailing how much insurance premium had been paid by R.D. and/or received by Advasure.
17. DIFS' investigation revealed that at no time did Everest receive an insurance application or premium payment for R.D. for the period effective 11/13/2014 – 05/13/2015. R.D. His vehicles were not insured and all the information contained on the certificate of insurance provided to him was false and fraudulently created by Respondent Simmons and Advasure.
18. On November 29, 2014, Advasure issued a State of Michigan Certificates of No-Fault Insurance to [REDACTED] (C.J.) indicating C.J.'s vehicle was insured with "Everest National Insurance Company" under policy number "XXXXX62231" with an effective date of "11/29/2014" and an expiration date "05/29/2015". The certificate listed the agency/company issuing the certificate as "Advasure" with the address of "13600 E. 8 Mile Rd."
19. C.J. used the certificate of insurance to register his vehicle, but later received a plate cancellation from the SOS for having an invalid proof of insurance.
20. The SOS representative contacted Advasure and spoke with Respondent Simmons. She told the representative that the policy was issued by Advasure for C.J. and that the policy was in force. However, when the SOS representative contacted the insurer, he was told that while the policy was a valid policy number, it was not for C.J. or C.J.'s vehicle.

21. To further assist C.J. at the SOS, Respondent Simmons faxed to the SOS a statement on Advasure letterhead that read:

"On December 1, 2014, CJ had an active insurance policy which was purchased on 11/29/2014 for a 1997 GMC Suburban. The policy was still in effecton (sic) 12/1/2014. /s/ Chavonne Simmons"

None of these statements were true.

22. DIFS' investigation revealed that at no time did Everest receive an insurance application or premium payment for C.J. His vehicle was not insured and all the information contained on the certificate of insurance provided to him was false and fraudulently created by Respondent Simmons and Advasure.
23. Respondent Simmons knew or should have known that only a licensed insurance producer appointed by an insurer can act as an agent of the insurer and bind coverage for that insurer pursuant to MCL 500.1208a(1).
24. Respondent Simmons solicited automobile insurance policies and purportedly bound coverage for Everest National Insurance Company without being properly appointed by Everest.
25. Respondent Simmons knew or should have known that pursuant to MCL 500.1207(1) an agent is a fiduciary for all money received or held by the agent in his or her capacity as an agent and failure to, in a timely manner, turn over money held in a fiduciary capacity to the person or insurer to which it is owed, is prima facie evidence of a violation of the agent's fiduciary responsibility.
26. Respondent Simmons accepted funds in her capacity as an agent and failed to remit those funds in a timely manner to the persons or entities to which they were owed.
27. Respondent Simmons knew or should have known that pursuant to MCL 500.249, for the purposes of ascertaining compliance with provisions of the insurance laws of the state, the Director, as often as deemed advisable, may initiate proceedings to examine the accounts, records, documents and transactions pertaining to any insurance agent.

28. Respondent Simmons also knew or should have known that pursuant to MCL 500.1207(2) an agent shall use reasonable accounting methods to record funds received in his or her fiduciary capacity including the receipt and distribution of all premiums due each of his or her insurers. An agent must record return premiums received by or credited to him or her which are due and insured on policies reduced or canceled or which are due a prospective purchaser of insurance as a result of a rejected or declined application. Records required by this section must be open to examination by the Director.
29. Respondent Simmons failed to produce accounts, records, documents and transactions pertaining to insurance transactions for examination by the Director pursuant to MCL 500.249.
30. Respondent Simmons failed to use reasonable accounting methods to record premium funds received in her fiduciary capacity.
31. Respondent Simmons failed to provide accurate receipts to insureds detailing distribution of the money received.
32. Respondent Simmons knew or should have known that pursuant to MCL 500.1239(1)(d), the Director may take action against an insurance producer who improperly withholds, misappropriates or converts any money or property received in the course of carrying out the business of insurance.
33. Respondent Simmons improperly converted money received as payment for insurance premiums when she diverted money meant for insurance premiums for other uses.
34. Respondent Simmons knew or should have known that pursuant to MCL 500.1239(1)(e) the Director may take action against an insurance producer who intentionally misrepresents the terms of an actual or proposed insurance contract or application for insurance.
35. Respondent Simmons provided consumers with fraudulent certificates that intentionally misrepresented the terms of insurance coverage.
36. Respondent Simmons knew or should have known that pursuant to Section 1239(1)(h) the Director may take action against an insurance producer who uses dishonest and/or fraudulent practices.

37. Respondent used dishonest and fraudulent practices when she:
  - a. Accepted premium funds without ensuring that all the funds accepted from customers that were intended for the payment of insurance premium were remitted to insurers for that purpose;
  - b. Failed to reconcile receipts representing that all of the insureds' premium payments were applied to insurance when they were not;
  - c. Falsified receipts and other insurance documents;
  - d. Failed to use reasonable accounting methods to record funds received in a fiduciary capacity;
  - e. Failed to used reasonable account methods to record funds received on behalf of the agency;
  - f. Failed to provide records of receipts and distributions of all premiums due each of her insurers;
  - g. Failed to maintain the accounts, records, documents and transactions pertaining to insurance business for examination by the Director;
  - h. Fraudulently issued certificates of insurance;
  - i. Concealed her misconduct from insureds, insurers and the SOS by providing false information;
  - j. Failed to remit premium funds to insurers; and
  - k. Failed to return premium funds to insureds when the funds were not used for intended purposes.
38. Respondent Simmons knew or should have known that pursuant to MCL 500.1239(1)(h) the Director may take action against an insurance producer who demonstrates incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.
39. Respondent Simmons demonstrated incompetence, untrustworthiness and financial irresponsibility in the conduct of business in this state when she:

- a. Accepted premium funds without ensuring that all the funds accepted from customers that were intended for the payment of insurance premium were remitted to insurers for that purpose;
  - b. Failed to reconcile receipts representing that all of the insureds' premium payments were applied to insurance when they were not;
  - c. Falsified receipts and other insurance documents;
  - d. Failed to use reasonable accounting methods to record funds received in a fiduciary capacity;
  - e. Failed to used reasonable account methods to record funds received on behalf of the agency;
  - f. Failed to provide records of receipts and distributions of all premiums due each of her insurers;
  - g. Failed to maintain the accounts, records, documents and transactions pertaining to insurance business for examination by the Director;
  - h. Fraudulently issued certificates of insurance;
  - i. Concealed her misconduct from insureds, insurers and the SOS by providing false information;
  - j. Failed to remit premium funds to insurers; and
  - k. Failed to return premium funds to insureds when the funds were not used for intended purposes.
40. Respondent Simmons' actions demonstrate a pattern of behavior constituting a serious threat to the public.
41. Respondent Simmons does not possess the requisite character and fitness to be engaged in the business of insurance, and further does not command the confidence of the public or warrant a belief that Respondent will comply with the law in the future.

**CONCLUSIONS OF LAW**

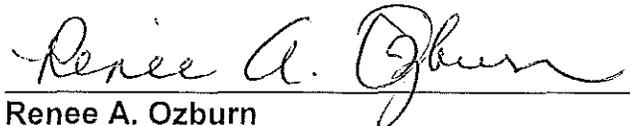
Petitioner bears the burden of proving that Respondents violated the Code as alleged in the April 1, 2015 Order of Summary Suspension, Notice of Opportunity for Hearing and Notice of Intent to Revoke. Pursuant to the above default Findings of Fact, the Petitioner has established that Respondent violated Insurance Code Sections 1207(1) & (2), 1208a(1) and 1239(1)(d),(e) & (h), as alleged.

**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 twenty-one (21) days after it is issued. An opposing party may file a response within fourteen (14) days after initial Exceptions are filed. All Exceptions and Responses to Exceptions must be filed with the Department of Insurance and Financial Services, Ottawa State Office Building, 3<sup>rd</sup> Floor, P.O. Box 30220, Lansing, Michigan 48909; Attention: Dawn Kobus, and served on all parties to the proceeding.

  
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Renee A. Ozburn  
Administrative Law Judge