

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

In the matter of:

Douglas C. Bottger,  
Petitioner,

v

Case No. 12-891-L  
Docket No. 12-001750-OFIR

Office of Financial and Insurance Regulation,  
Respondent.

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

**FINAL DECISION**

**I. BACKGROUND**

This case concerns the application of Douglas Bottger (Petitioner) for an insurance solicitor license filed with the Office of Financial and Insurance Regulation.<sup>1</sup> The license was denied because the Petitioner's insurance producer license had been revoked in 1996.

Petitioner challenged the license denial and requested a hearing. An order for a contested case hearing was issued. A hearing was held on January 28, 2013. On March 27, 2013, the administrative law judge issued a Proposal for Decision (PFD) recommending that the license denial be affirmed.

The Petitioner did not file exceptions to the PFD. 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. The findings and recommendation in the PFD are adopted and made a part of this final decision.

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<sup>1</sup> Pursuant to Executive Order 2013-1, the Office of Financial and Insurance Regulation is now known as the Department of Insurance and Financial Services. During the pendency of this case all authority, powers, duties, functions, and responsibilities of the Commissioner of the Office of Financial and Insurance Regulation were transferred to the Director of the Department of Insurance and Financial Services. See Executive Order 2013-1, effective March 18, 2013.

## II. FINDINGS OF FACT

In 1996, the Petitioner was convicted of seven misdemeanor counts of "Theft by Deception." This was established at hearing and not disputed by the Petitioner. The Director therefore adopts the factual findings in the PFD.

## III. CONCLUSIONS OF LAW

Section 1214 of the Michigan Insurance Code, MCL 500.1214, provides in pertinent part:

(1) An application for a license to act as a solicitor shall be made to the commissioner and shall be accompanied by a notice of appointment from the sponsoring licensed insurance producer. The application and the notice of appointment shall be on forms prescribed by the commissioner.

\* \* \*

(3) After examination, investigation, and interrogatories, the commissioner shall license an applicant if the commissioner determines that the applicant meets all of the following:

\* \* \*

(e) Is honest and trustworthy.

\* \* \*

(g) Possesses good moral character to act as a solicitor.

The Petitioner's offense demonstrates dishonesty. This conduct precludes the Petitioner receiving an insurance license unless the Petitioner can demonstrate that he has undergone rehabilitation and is now honest and trustworthy and possesses the good moral character to act as a solicitor. Where the misconduct involved mishandling money entrusted to him, the Petitioner should be able to establish that he has demonstrated honesty and reliability in handling fiduciary funds. The Petitioner has offered no such proofs. The mere passage of time is insufficient to establish rehabilitation.

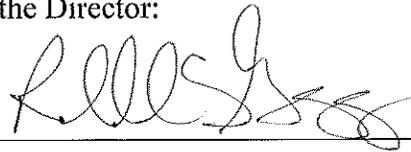
The Director concludes that the Petitioner has not demonstrated that he possesses the qualities of honesty, trustworthiness, and good moral character required by section 1214(3) of the Insurance Code. The conclusion to that effect in the PFD is grounded in the hearing record and is properly reasoned. The Director therefore adopts the conclusions of law in the PFD.

**IV. ORDER**

The refusal to issue an insurance solicitor license to Douglas Bottger is upheld.

R. Kevin Clinton  
Director

For the Director:

A handwritten signature in cursive script, appearing to read "Randall S. Gregg", written over a horizontal line.

Randall S. Gregg  
Special Deputy Director

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

RECEIVED

IN THE MATTER OF:

MAR 27 2013

Docket No.: 12-001750-OFIR

Douglas C. Bottger,  
Petitioner

OFIR/OGU

Case No.: 12-891-L

v

Agency: Department of Insurance  
and Financial Services

Office of Financial and Insurance  
Regulation,  
Respondent

Case Type: DIFS-Insurance

Filing Type: Intent to Deny  
Refusal to License

Issued and entered  
this 27<sup>th</sup> day of March 2013  
by Renee A. Ozburn  
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

In May 2012, Douglas Bottger (Petitioner) filed an Individual License Application with the Office of Financial and Insurance Regulation (Respondent/OFIR) seeking licensure as an insurance solicitor. On June 19, 2012, OFIR issued a Notice of License Denial and Opportunity for Hearing. Mr. Bottger requested a hearing.

A hearing was held on January 28, 2013. Mr. Bottger appeared without representation. Attorney William Peattie appeared for OFIR. Mr. Bottger testified on his own behalf. Jill Huisken testified on behalf of OFIR.

ISSUES AND APPLICABLE LAW

The June 19, 2012, Notice of License Denial cites the Michigan Insurance Code (Code), 1956 PA 218, as amended, MCL 500.100 *et seq.*, Sections 1214(3)(e) & (g) as the basis for OFIR's refusal to grant a solicitor's license to Mr. Bottger. Section 1214(3)(e)&(g) states as follows:

Sec. 1214.

(3) After examination, investigation, and interrogatories, the commissioner shall license an applicant if the commissioner determines that the applicant meets all of the following:

(e) Is honest and trustworthy.

(g) Possesses good moral character to act as a solicitor.

### SUMMARY OF EXHIBITS

There were no Petitioner Exhibits.

Respondent Exhibits:

- Exhibit 1 On-line Individual License Application (modified)
- Exhibit 2 On-line Individual License Application
- Exhibit 3 Final Order dated 10/7/96
- Exhibit 4 OFIR letter to Mr. Bottger dated 4/24/12
- Exhibit 5 Reference Letters
- Exhibit 6 OFIR Good Moral Character Review & Recommendation
- Exhibit 7 Notice of License Denial dated June 19, 2012

### FINDINGS OF FACT

1. Douglas Bottger's is 66 years of age. He began his career in insurance sales in the late 1970's. He became licensed as an insurance producer for property and casualty insurance.
2. In the early 1980's Mr. Bottger formed Industrial and Commercial Underwriters, Inc. (ICU) with partner [REDACTED].
3. In the Spring of 1996, ICU was sued by Peterson American Corporation, a large ICU client, because of a failure to properly remit premiums. The client paid ICU \$89,000. Through its agency contract with the client, ICU was obligated to remit \$69,000 of that payment to Protection Mutual Insurance Company on behalf of the client. Mr. Bottger believes that ICU timely remitted \$59,000, but acknowledges holding back \$10,000 to pay ICU's legal fees related to a lawsuit that did not involve either Peterson American or Protection Mutual.

4. Mr. Bottger informed his partner [REDACTED] that he was leaving the business in September 1996. ICU offices were closed and Mr. Bottger had no further contact with the agency or insurance business. ICU's mail was forwarded to Mr. Barber.
5. On October 7, 1996, the Commissioner of Insurance issued a Final Decision in the matter of "Douglas C. Bottger and Industrial and Commercial Underwriters, Inc. Case No. 96-0005-L." This decision indicates that Mr. Bottger was defaulted when he failed to respond or file answers to allegations in a Notice of Hearing and Order to Respond issued earlier. The Final Decision concluded that Mr. Bottger violated Section 1207(1), 1204(4) and 1242(2) of the Code by failing to properly remit premiums totaling \$69,290. The Final Decision Ordered that Mr. Bottger and ICU cease and desist from further violation and all insurance licenses of Mr. Bottger and ICU were revoked. (Exhibit 3)
6. Mr. Bottger did not learn that his license had been revoked in October 1996 until he attempted to get his producers license renewed or reinstated in December 2011. Between 1996 when he left ICU and 2011, Mr. Bottger was basically retired although he did perform some work as a driver for a trucking company.
7. OFIR informed Mr. Bottger that he would need to take classes and pass a test to be considered for (re)licensure. Mr. Bottger took and passed the property and casualty producers/solicitor's examination on January 18, 2012. On February 24, 2012, OFIR informed Mr. Bottger that a producer's license was denied because of the 1996 license revocation. (Exhibit 3)
8. In talking with OFIR after his producer license application was denied, Mr. Bottger was informed that a solicitor's license might satisfy the requirements of Expeditors Insurance Group, the employer who he would work for as a solicitor. However, when Mr. Bottger submitted his online application for a solicitor's license (Exhibits 1 & 2) on April 16, 2012, OFIR's Licensing Manager Jill Huisken was not satisfied with his answers regarding the previous fiduciary problems that lead to his 1996 license revocation. Therefore, she requested that Mr. Bottger provide three reference letters and evidence of rehabilitation.
9. Mr. Bottger submitted a reference from Expeditors Insurance Group President [REDACTED] indicating that Mr. Bottger had been an excellent insurance agent for Mr. Prock from 1988 to 1996 and [REDACTED] was seeking to hire Mr. Bottger as a solicitor with no financial responsibilities. [REDACTED] indicates that he is aware of Mr. Bottger's "problems relating to 1996". Another reference was from [REDACTED] of Dorchen/Martin Associates, Inc. who indicates that he has known Mr. Bottger for more than 40 years and used him as his insurance agent for many years. [REDACTED]

opines that Mr. Bottger is of good moral character and able to serve the public fairly and honestly. A third reference was submitted by [REDACTED] a limited real estate appraiser who has known Mr. Bottger for more than 50 years. Mr. Bottger was [REDACTED] insurance agent in the late 1980's during which time [REDACTED] found him to be knowledgeable and helpful. [REDACTED] has stayed in touch with Mr. Bottger and opines that he is honest and sincere, although [REDACTED] acknowledges knowing very little about the difficulties that lead to the 1996 license revocation. (Exhibit 5)

10. Ms. Huisken determined that the reference letters did not provide information about Mr. Bottger's current fiduciary capabilities. Further, Mr. Bottger did not provide any additional evidence showing that he had handled fiduciary responsibilities between October 1996 and 2012 in a manner that would establish rehabilitation of his business reputation or fiduciary skills.
11. In a written explanation of the circumstances leading to the 1996 revocation, Mr. Bottger acknowledges that he and his partner failed to properly remit premiums held in a fiduciary capacity. In his explanation he states "We did not convert monies for our personal use, only in our effort to save the agency." He indicates that he and his partner "were sure we could eventually pay Protection Mutual from future renewal commissions." He acknowledges that they should have handled things differently and regrets any financial harm Protection Mutual may have suffered. (Exhibit 3)
12. Ms. Huisken determined that Mr. Bottger had not met the qualifications to be licensed as a solicitor because solicitor's collect premiums for insurance producers, which involves serving as a fiduciary. Further, once licensed as a solicitor, OFIR can not restrict the fiduciary role assigned to a solicitor by the producer. Ms. Huisken opined that in the absence of evidence that Mr. Bottger had shown rehabilitation, there were still concerns about his honesty and trustworthiness.

### 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). Petitioner Douglas Bottger has the burden of proving that he meets the qualifications for a solicitor's license.

The evidence established that Mr. Bottger violated his fiduciary duties when he was licensed as an insurance producer by knowingly and purposely withholding premiums he and his agency held in a fiduciary capacity and failing to properly remit them in a timely manner. Mr. Bottger's belief that withholding the money owed to an insurer was somewhat justified to save his agency which needed the money to pay legal fees for an

unrelated matter, indicates a failure to comprehend fiduciary responsibility. An insurance producer or solicitor that believes it is justifiable to borrow one client's money without permission to pay bills owed to an unrelated client indicates an absence of trustworthiness required by Insurance Code Section 1214 (3)(e).

For purposes of the Code, 'good moral character' is defined as the propensity to serve the public in the licensed area in a fair, open and honest manner. Mr. Bottger's interpretation of the circumstances leading to violation of his fiduciary duties, included an opinion that the monies withheld were 'not used for personal use, only in an effort to save the agency', fails to comprehend that using the money of another company without authority or disclosure for the purpose of saving his company, was actually converting it for personal use of his agency. This constitutes a failure to satisfy the fair, open and honest criteria of Section 1214 (3)(g).

In the interim years between 1996 and 2012, Mr. Bottger may have recognized the error of his decision process in 1996, but he has no tangible or material evidence of any rehabilitation because he has no history of handling substantive fiduciary obligations in a trustworthy, honest or open manner since 1996.

Therefore, Mr. Bottger has failed to show that he meets the qualifications for licensure as a solicitor pursuant to Code Section 1214 (3)(e) & (g).

### PROPOSED DECISION

The undersigned Administrative Law Judge proposes that the Commissioner affirm the Notice of License Denial.

### 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.

  
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Renee A. Ozburn  
Administrative Law Judge