

**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. 13-11750

Agency No. 13-020-L

Petitioner,

v

Melissa Deann Landers

System ID No. 0571360

Respondent.

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**Issued and entered
on October 10, 2013
by **Randall S. Gregg**
Deputy Director**

FINAL DECISION

I. Background

Melissa Deann Landers (hereinafter Respondent) is a licensed resident insurance producer. The Department of Insurance and Financial Services (DIFS) received information that Respondent had misappropriated insurance premium and had embezzled from her employer. After investigation and verification of the information, on May 22, 2013, DIFS issued a Notice of Opportunity to Show Compliance alleging that Respondent had provided justification for revocation of licensure and other sanctions pursuant to Sections 1239(1)(d), (g), (h) and 1244(1)(a-c) of the Michigan Insurance Code (Code), MCL 500.1239(1)(d), (g), (h) and 500.1244(1)(a-c). Respondent failed to reply to the Notice.

On July 16, 2013, 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 August 27, 2013, 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.
2. On or about July 24, 2012, KL, owner of the Hillsdale, Michigan Look Insurance Agency franchise (Look), conducted an unscheduled audit of Look where Respondent was a manager responsible for the day-to-day operations of the agency. The audit found that the daily net receipts, showing the amount customers paid throughout the day, did not match with the daily end-of-day deposit that Respondent made into the agency bank account. Following the audit, KL confronted Respondent about the missing premium funds. Respondent admitted to taking the premium funds and converting the funds to her personal use. Respondent also signed statements confirming the allegations. Respondent was allowed to terminate her employment as long as she agreed to repay the funds she misappropriated.
3. On or about July 28, 2012, the ongoing audit revealed that over \$5,000 in premium funds had been embezzled by Respondent.
4. On or about September 10, 2012, Respondent was charged with felony embezzlement-agent or trustee-\$1000 or more but less than \$20,000. MCL 750.174(4)(a).
5. On or about September 11, 2012, final numbers from the audit revealed that a total of \$16,732.34 in premium funds had been embezzled by Respondent.
6. On or about October 2, 2012, Respondent pled nolo contendere to the following crime in Hillsdale County District Court, District 2B: misdemeanor embezzlement-agent or trustee-\$200 or more but less than \$1,000. MCL 750.174(3)(a). Respondent was sentenced to the following: 30 days jail (work release allowed, but not babysitting), restitution of \$16,732.34 (\$750 monthly payment), plea to be vacated if full amount is not paid, and potential probation violation if a monthly payment is not made.
7. As a licensee, Respondent knew or had reason to know that Section 1207(1) of the Code, MCL 500.1207(1), provides that:

(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.

8. Respondent violated Section 1207(1) of the Code by taking cash payments that were made to Look and provided to her by Look customers in her fiduciary capacity as their insurance agent and using that cash for her personal expenses instead of presenting the payments to her employer.
9. As a licensee, Respondent knew or had reason to know that Section 1247(2) of the Code, MCL 500.1247(2), provides that:

(2) Within 30 days after the initial pretrial hearing date, an insurance producer shall report to the commissioner any criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

10. Respondent violated Section 1247(2) of the Code by failing to report to DIFS her felony charge and subsequent misdemeanor nolo contendere plea.
11. As a licensee, Respondent knew or had reason to know that Section 1239(1) of the Code, MCL 500.1239(1), provides 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:

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud.

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

12. Respondent has provided justification for sanctions, pursuant to Section 1239(1)(d) and (h) of the Code, MCL 500.1239(1)(d) and (h), by taking cash payments that were made to

Look and provided to her by Look customers in the course of doing insurance business, using that cash for her personal expenses, and issuing false receipts to several of her customers over a period of months thus demonstrating dishonest practices, untrustworthiness, and financial irresponsibility in the conduct of business.

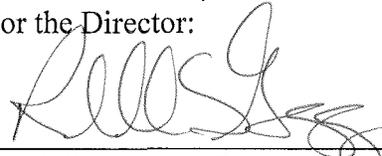
13. Respondent has provided justification for sanctions, pursuant to Section 1239(1)(g), MCL 500.1239(1)(g), by making a nolo contendere plea to misdemeanor embezzlement and thus having been found to have committed fraud.
14. Respondent violated MCL 500.1207(1) and MCL 500.1247(2).
15. DIFS' Staff has made reasonable efforts to serve Respondent and has complied with MCL 500.1238.
16. Respondent has received notice and has been given an opportunity to respond and appear and has not responded or appeared.
17. 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's Michigan resident insurance producer license (System ID No. 0571360) is **REVOKED**.

R. Kevin Clinton, Director
For the Director:



Randall S. Gregg, Deputy Director