

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

Office of Financial and Insurance Regulation
Petitioner

v

Case No. 10-766-L
Docket No. 2010-262

Mark Carrier
Respondent

For the Petitioner:

Marlon F. Roberts
Office of Financial and Insurance Regulation
P.O. Box 30220
Lansing, MI 48909-7720

For the Respondent:

John McCauslin, Attorney
1899 Orchard Lake Road
Suite 203
Sylvan Lake, MI 48320

Issued and entered
this 2nd day of May 2011
by R. Kevin Clinton
Commissioner

FINAL DECISION

I. BACKGROUND

On March 5, 2010, Chief Deputy Commissioner Stephen R. Hilker issued an Order Referring Complaint for Hearing and Order to Respond in this case. The Complaint set forth detailed allegations that Respondent had violated provisions of the Michigan Insurance Code (MCL 500.100, *et seq.*).

A hearing was held on January 13, 2011. Respondent did not attend the hearing but was represented by counsel who participated in the hearing by telephone.

The Administrative Law Judge issued a Proposal for Decision (PFD) on February 28, 2011. 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 Comm* 136 Mich App 52 (1984).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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. Those findings and conclusions are adopted. The PFD is attached and made part of this final decision. The findings and conclusions most pertinent to this Final Decision are stated below:

- Respondent Mark Carrier holds a Michigan public adjuster license.
- In 2006, Respondent acted as an adjuster for _____ whose home was destroyed in a fire. Respondent failed to pay the homeowners \$39,930.95 he had obtained from the insurer, State Farm Insurance Company. Respondent falsely represented that \$35,000.00 of the proceeds were owed to him as an advance on the insurance proceeds. Respondent had paid no such advance to the homeowner. Respondent also forged _____ signature on a check issued by the insurer.
- Respondent's conduct violated sections 1224(3) and 1226(3) of the Insurance Code. Further, his conduct was a violation of a consent order he had signed in a May 1998 compliance case in which Respondent agreed to cease and desist from future violations of sections 1228(1), 1224, and 1226(3) of the Insurance Code.

Respondent's conduct demonstrates a failure to serve the public in an honest and trustworthy manner. Such conduct warrants the imposition of a severe licensing sanction. The Commissioner concludes that Respondent is not qualified to hold a Michigan public adjuster license.

III. ORDER

Based on the conduct described above and in accordance with sections 1242(2) and 1244 of the Michigan Insurance Code, MCL 500.1242(2) and 500.1244:

1. Respondent shall cease and desist from the violations identified in this Final Decision.
2. Respondent shall pay a civil fine of \$5,000.00 for the Insurance Code violations identified in this Final Decision.

3. Respondent shall pay a civil fine of \$5,000.00 for violating the 1998 cease and desist order.
4. Respondent shall pay restitution of \$39,930.95 to
5. Respondent's public adjuster license is revoked.



R. Kevin Clinton
Commissioner

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of	Docket No.	2010-262
Office of Financial and Insurance Regulation, Petitioner	Agency No.	10-766-L
v Mark G. Carrier, Respondent	Agency:	Office of Financial and Insurance Regulation
_____ /	Case Type:	Sanction Revocation

Issued and entered
this 28th day of February 2011
by Lauren G. Van Steel
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Appearances: Marlon F. Roberts, Attorney at Law, appeared on behalf of the Office of Financial and Insurance Regulation, Petitioner. John E. McCauslin, Attorney at Law, appeared on behalf of Mark G. Carrier, Respondent.

This proceeding under the Michigan Insurance Code, 1956 PA 218 as amended, MCL 500.100 *et seq.* (hereafter "Insurance Code"), commenced with the issuance by the State Office of Administrative Hearings and Rules of a Notice of Hearing dated March 23, 2010, scheduling the contested case hearing for April 22, 2010. The Notice of Hearing was issued pursuant to the Michigan Administrative Procedures Act, 1969 PA 306 as amended, MCL 24.201 *et seq.* (hereafter "APA"), following a Request for Hearing received on March 8, 2010, with an Order Referring

Complaint for Hearing and Order to Respond, dated March 5, 2010, issued by the Chief Deputy Commissioner of the Office of Financial and Insurance Regulation.

On April 13, 2010, the undersigned issued an Order Granting Adjournment at Petitioner's request, rescheduling the hearing date to June 8, 2010. On June 2, 2010, the undersigned issued an Order Granting Adjournment at Respondent's request, rescheduling the hearing date to June 14, 2010.

On June 4, 2010, Petitioner filed the Petitioner's Amended Complaint and Statement of Factual Allegations with the State Office of Administrative Hearings and Rules. On June 7, 2010, Respondent filed Respondent's Motion to Adjourn Hearing, requesting that the hearing date be adjourned in part because of both counsel's scheduling conflicts. On June 9, 2010, the undersigned issued an Order Granting Adjournment and Scheduling Telephone Prehearing Conference, setting a date for telephone prehearing conference on June 22, 2010.

On June 22, 2010, the telephone prehearing conference was held as scheduled. On June 24, 2010, the undersigned issued an Order Following Prehearing Conference, which in part set a due date of August 13, 2010 for Respondent to file a written Answer to Petitioner's Amended Complaint, and rescheduled the hearing date to September 23, 2010.

On September 24, 2010, the undersigned issued an Order Granting Adjournment at Respondent's request, rescheduling the hearing date to November 23, 2010. On November 22, 2010, the undersigned issued an Order Granting Adjournment due to a scheduling conflict, and rescheduled the hearing date to January 13, 2011.

On January 12, 2011, Respondent's Attorney filed a Request for Permission Allowing Respondent's Counsel to Appeal by Telephone.

On January 13, 2011, the hearing was held as scheduled, in accordance with the APA. Mr. Roberts appeared as Attorney on behalf of Petitioner. Mr. McCauslin appeared as Attorney on behalf of Respondent. The undersigned granted Respondent Attorney's request to appear by means of telephone, with no objection by Petitioner. Respondent did not personally appear for the hearing; Respondent's Attorney stated that Respondent was currently incarcerated for a term of years. (See also Respondent's Motion to Adjourn Hearing, dated September 22, 2010.)

At the commencement of the hearing, Respondent's Attorney moved to adjourn the hearing and to withdraw as counsel, in part based on a pending offer of settlement. Petitioner objected to the motions and indicated that its prior offer of settlement had been already withdrawn after a stated deadline had passed. The undersigned denied Respondent's motions on the record, based on a failure to show good cause to grant the motions.

The hearing proceeded with Petitioner's proofs. Petitioner did not present a witness to testify, but offered the following exhibits that were admitted into the record as evidence:

1. Petitioner's Exhibit No. 1 is a copy of a "Plea Agreement" in the matter of the *People of the State of Michigan v Mark Gregory Carrier*, Oakland County Circuit Court, State of Michigan, Case No. 2009-227720-FH, dated April 28, 2010.

2. Petitioner's Exhibit No. 2 is a copy of a "Judgment of Default" by the Civil District Court for the Parish of Orleans, State of Louisiana, in the matter of *Versai Management Corporation d/b/a Versailles Arms Apartments v Mark Carrier, Eric Carrier, and Recovery Management, Ltd.*, Case No. 08-12712, dated April 24, 2009.
3. Petitioner's Exhibit No. 3 is a copy of a Michigan Department of Corrections, Offender Tracking Information System (OTIS) printout for Mark Gregory Carrier, dated July 1, 2010.

Respondent did not offer any witnesses or exhibits at the hearing. The record in this matter was closed at the conclusion of the hearing.

ISSUES AND APPLICABLE LAW

The issues presented in this matter are whether Respondent has acted in violation of Sections 1224(3), 1226(3) and/or 1242(2) of the Insurance Code, *supra*, such that a sanction or sanctions may be applied under Sections 1242(2) and 1244 of the Insurance Code, as alleged in Petitioner's Amended Complaint and Statement of Factual Allegations filed on June 4, 2010. The cited sections of the Insurance Code provide in pertinent part:

Sec. 1224. (3) After examination, investigation, and interrogatories, the commissioner shall issue a license to an applicant if the commissioner determines that the applicant possesses reasonable understanding of the provisions, terms, and conditions of the insurance with which the applicant will deal, possesses reasonable understanding of the insurance laws of this state, intends in good faith to act as an adjuster, possesses a good business reputation, and possesses good moral character to act as an adjuster. * * *
MCL 500.1224(3).

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. MCL 500.1226(3).

Sec. 1242. (2) The commissioner, after notice and opportunity for a hearing, may suspend or revoke the license of a solicitor, insurance counselor, or adjuster who fails to maintain the standards required for initial licensing or who violates any provision of this act. MCL 500.1242(2).

Sec. 1244. (1) If the commissioner finds that a person has violated this chapter, after an opportunity for a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the commissioner shall reduce the findings and decision to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from the violation. In addition, the commissioner may order any of the following:

- (a) Payment of a civil fine of not more than \$500.00 for each violation. However, if the person knew or reasonably should have known that he or she was in violation of this chapter, the commissioner may order the payment of a civil fine of not more than \$2,500.00 for each violation. An order of the commissioner under this subsection shall not require the payment of civil fines exceeding \$25,000.00. A fine collected under this subdivision shall be turned over to the state treasurer and credited to the general fund of the state.
- (b) A refund of any overcharges.
- (c) That restitution be made to the insured or other claimant to cover incurred losses, damages, or other harm attributable to the acts of the person found to be in violation of this chapter.
- (d) The suspension or revocation of the person's license.

(2) The commissioner may by order, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, an order issued under this section, if in the opinion of the commissioner conditions of fact or of law have changed to require that action, or if the public interest requires that action.

(3) If a person knowingly violates a cease and desist order under this chapter and has been given notice and an opportunity for a hearing held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the commissioner may order a civil fine of not more than \$10,000.00 for each violation, or a suspension or revocation of the person's license, or both. An order issued by the commissioner pursuant to this subsection shall not require the payment of civil fines exceeding \$50,000.00. A fine collected under this subsection shall be turned over to the state treasurer and credited to the general fund of the state.

(4) The commissioner may apply to the circuit court of Ingham county for an order of the court enjoining a violation of this chapter. MCL 500.1244.

FINDINGS OF FACT

Based on the entire record in this matter, including the admitted exhibits, the following findings of fact are established:

1. At all pertinent times involved herein, Mark G. Carrier, Respondent, was a licensed Public Adjuster authorized to conduct business and adjust losses, or damages claims on behalf of an insured in the state of Michigan, under a policy of insurance.
2. Respondent knew or had reason to know that Section 1226(3) of the Insurance Code provides, "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."
3. Respondent knew or had reason to know that Section 1242(2) of the Insurance Code provides, "The commissioner, after notice and opportunity for a hearing, may suspend or revoke the license of a[n] . . . adjuster who fails to maintain the standards required for initial licensing or who violates

any provision of this act.”

4. Respondent knew or had reason to know that Section 1224(3) of the Insurance Code provides in pertinent part that “the commissioner shall issue a license to an applicant if the commissioner determines that the applicant possesses reasonable understanding of the provisions, terms, and conditions of the insurance with which the applicant will deal, possesses reasonable understanding of the insurance laws of this state, intends in good faith to act as an adjuster, possesses a good business reputation, and possesses good moral character to act as an adjuster.”
5. Respondent did not refute at the contested case hearing held pursuant to the APA any of the specific allegations set forth in the Statement of Factual Allegations attached to the Petitioner’s Amended Complaint, dated June 4, 2010. Respondent also did not file a written Answer to Petitioner’s Amended Complaint within the time frame ordered by the undersigned in the Order Following Prehearing Conference issued on June 24, 2010.
6. The specific allegations set forth in the Statement of Factual Allegations attached to the Petitioner’s Amended Complaint, dated June 4, 2010, are supported in part by Petitioner’s Exhibit Nos. 1 and 2, which were admitted into evidence. The specific allegations set forth in Paragraphs 1 through 37 of the Statement of Factual Allegations, dated June 4, 2010, are hereby incorporated by reference as established findings of fact in this matter.

7. As alleged in the Statement of Factual Allegations for Count I, by withholding the insured's dwelling check after it was issued by State Farm Insurance Company, Respondent failed to maintain the standards required for initial licensing under Section 1224(3) of the Insurance Code, thereby subjecting Respondent to penalty, fines, suspension and/or revocation of the adjuster license under Sections 1244 and 1242(2) of the Insurance Code.
8. As further alleged in the Statement of Factual Allegations for Count I, by withholding \$35,000.00 from the insured and falsely classifying the money owed to the insured as an advance, Respondent failed to maintain the standards required for initial licensing under Section 1224(3) of the Insurance Code, thereby subjecting Respondent to penalty, fines, suspension and/or revocation of the adjuster license under Sections 1244 and 1242(2) of the Insurance Code.
9. As alleged in the Statement of Factual Allegations for Count II, Respondent violated Section 1226(3) of the Insurance Code and failed to maintain the standards required for initial licensing under Section 1224(3) of the Insurance Code, thereby subjecting Respondent to penalty, fines, suspension and/or revocation of the adjuster for the insured license under Sections 1244 and 1242(2) of the Insurance Code.
10. As alleged in the Statement of Factual Allegations for Count III, on May 28, 1998, Commissioner E.L. Cox issued a Consent Order to Respondent, which ordered Respondent to cease and desist from operating in such

manner as to violate Sections 1228(1), 1224, and 1226(3) of the Insurance Code. Respondent has violated the Consent Order by engaging in conduct that violates Section 1226(3) of the Insurance Code and failed to maintain the standards required for initial licensing under Section 1224(3) of the Insurance Code, thereby subjecting Respondent to penalty, fines, suspension and/or revocation of the adjuster license under Sections 1244 and 1242(2) of the Insurance Code.

11. As alleged in the Statement of Factual Allegations for Count IV, Respondent failed to maintain the standards required for initial licensing and therefore is subject to penalty, fines, suspension and/or revocation of the adjuster for the insured license under Sections 1244 and 1242(2) of the Insurance Code.
12. On or about April 28, 2010, Respondent entered into a "Plea Agreement" in the matter of the *People of the State of Michigan v Mark Gregory Carrier* in the Oakland County Circuit Court, State of Michigan, Case No. 2009-227720-FH, in which Respondent stated he would enter a plea of no contest to "Count 1: Embezzlement \$100,000 or More, contrary to MCL 750.174(7); Count 2 (alternative to Count 1): Embezzlement-Jointly Held Property \$20,000 or More, contrary to MCL 750.181(5)(a)[;] Count 4: Uttering and Publishing, contrary to MCL 750.249[;] and Count 5: Uttering and Publishing, contrary to MCL 750.249." [Pet. Exh. 1].
13. In the above-described "Plea Agreement" in the Oakland County Circuit Court, Respondent stipulated that the restitution in the matter was in the

amount of \$510,996.00. The "Plea Agreement" stated that Respondent would tender a \$25,000.00 certified check to Versailles Management Corporation within seven days of his plea and that the court's sentence would include that Respondent pay the remaining \$485,996.00 of restitution by the end of the delayed sentencing period. The "Plea Agreement" further specified in part that if Respondent completed all of the terms and conditions of the delayed sentence, that the People would dismiss Count 1: Embezzlement-\$100,000 or More. [Pet. Exh. 1].

14. On or about April 24, 2009, a "Judgment of Default" was issued in the matter of *Versai Management Corporation d/b/a Versailles Arms Apartments v Mark Carrier, Eric Carrier, and Recovery Management, Ltd.* by the Civil District Court for the Parish of Orleans, State of Louisiana, Case No. 08-12712. [Pet. Exh. 2].
15. The above-described "Judgment of Default" by the Civil District Court for the Parish of Orleans found, in part, that the defendants in that matter, being Mark Carrier (Respondent herein) and Eric Carrier, had "perpetrated a fraud on the plaintiffs by forging the plaintiffs' and others endorsements on \$510,996.00 in insurance proceeds," and that they were "negligent in their performance of adjusting the plaintiffs' claims causing losses" The total damages amount set forth by the court, excluding attorney's fees and expenses, was \$10,088,295.24, including \$510,996.00 for "Insurance proceeds fraudulently converted by the defendants". [Pet. Exh. 2].

16. Following *nolo contendere* convictions in the Oakland County Circuit Court and a June 22, 2010 sentencing date, Respondent has been incarcerated with the Michigan Department of Corrections based on two sentences for a period of 4 to 14 years, and a third sentence for a period of 4 to 20 years. [Pet. Exh. 3].

CONCLUSIONS OF LAW

Petitioner, as the complaining party in this matter, has the burden of proof to show by a preponderance of the evidence that Respondent has violated the Insurance Code, *supra*, as alleged in the Petitioner's Amended Complaint and Statement of Factual Allegations, such that grounds exist for the imposition of a sanction or sanctions. As the Michigan Supreme Court has stated, "[p]roof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence." *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985).

Based on the above findings of fact, it is concluded that Petitioner has clearly established by a preponderance of the evidence that Respondent has acted in violation of Sections 1224(3), 1226(3) and 1242(2) of the Insurance Code, *supra*, being MCL 500.1224(3), MCL 500.1226(3) and MCL 500.1242(2), while engaged in the conduct of the business of insurance in the state of Michigan. As a result of these established violations, it is concluded that the Commissioner may order that a sanction or sanctions be applied against Respondent as set forth in Sections 1242(2) and 1244

of the Insurance Code, being MCL 500.1242(2) and MCL 500.1244, including civil fine, restitution and/or suspension or revocation of license.

PROPOSED DECISION

The undersigned Administrative Law Judge proposes the following to the Commissioner:

1. That the above findings of fact and conclusions of law be adopted in the Commissioner's final decision and order in this matter; and
2. That the Commissioner order any sanction or sanctions against Respondent that the Commissioner deems appropriate under the provisions of Sections 1242(2) and 1244 of the Insurance Code, *supra*.

EXCEPTIONS

Any Exceptions to this Proposal for Decision should be filed in writing with the **Office of Financial and Insurance Regulation**, Division of Insurance, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty (20) days of the issuance of this Proposal for Decision. An opposing party may file a response within ten (10) days after Exceptions are filed.



Lauren G. Van Steel
Administrative Law Judge