

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

PAUL J. GARCEAU JR.
System ID No. 0078013

Enforcement Case No. 15-12800

APEX WEALTH MANAGEMENT
System ID No. 0040727

KELLY SUE STROUP-GARCEAU
System ID No. 0519975

Respondents.

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Issued and entered
on December 7, 2015
by Teri L. Morante
Chief Deputy Director

**ORDER OF SUMMARY SUSPENSION, NOTICE OF OPPORTUNITY FOR HEARING,
AND NOTICE OF INTENT TO REVOKE**

Pursuant to the Section 1242 of the Michigan Insurance Code (Code), MCL 500.1242, and Section 92 of the Michigan Administrative Procedures Act (APA), MCL 24.292, and based upon the attached FINDINGS, including that protection of the public health, safety and welfare requires emergency action,

IT IS THEREFORE ORDERED that:

1. The insurance licenses and authorities of Respondents are **SUMMARILY SUSPENDED**.
2. A copy of this Order shall be immediately served upon Respondents. This order shall be effective as to any such Respondent upon the date of service.
3. If requested by Respondents, a hearing on this matter shall be held within a reasonable time, but not later than 20 calendar days after service of this Order, unless Respondents request a later date. The hearing shall address the following issues:
 - a. Whether the suspension should be continued or withdrawn.
 - b. Whether Respondents' licenses should be revoked.

4. If a hearing is requested, an administrative law judge from the Michigan Administrative Hearing System shall preside over any such hearing.
5. The Director retains jurisdiction of the matters contained within and the authority to issue such further Orders as shall be deemed just, necessary, and appropriate.


Teri L. Morante
Chief Deputy Director

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Pursuant to Executive Order 2013-1 the Director has assumed the statutory authority and responsibility, granted to the Commissioner by the Insurance Code of 1956, MCL 500.100 *et seq.*, to exercise general supervision and control over persons transacting the business of insurance in Michigan.
2. At all relevant times Respondent Paul J. Garceau Jr. (Garceau) was a licensed resident insurance producer with qualifications in accident, health, life, and variable annuities. In addition, Respondent Garceau is the Designated Responsible Licensed Producer (DRLP) of Respondent Apex. Respondent Garceau is also identified as the resident agent of Respondent Apex on Profit Corporation Information Updates filed with the State of Michigan Department of Licensing and Regulatory Affairs.
3. At all relevant times Respondent Apex Wealth Management (Apex) was a licensed resident agency producer with qualifications in accident, health, life, and variable annuities.
4. On or about December 1, 2012, Respondent Kelly Sue Stroup-Garceau's (K. Garceau) insurance producer license became inactive for failing to complete her continuing education requirements. Respondent K. Garceau was the Vice President of Respondent Apex.
5. Based upon the information as set forth below, protection of the public health, safety, and/or welfare requires emergency action.

COUNT I

6. On September 25, 2008, Respondents withdrew \$54,000 from R and CW's ING USA annuity without the knowledge or consent of R and CW and also caused them to incur \$6,000 in surrender fees effectively closing the annuity. According to a DIFS investigation, the money was deposited into bank accounts owned and controlled by Respondents.

7. An additional \$42,831.61 was thereafter withdrawn without approval from R & CW's Alliance annuity and deposited into Respondents' personal account on July 15, 2009.
8. Between 2013 and 2014, Respondents paid R and CW a total of \$56,618.70 in purported annuity payments designed to disguise the unauthorized withdrawals. The payments were made from bank accounts owned and controlled by Respondents.
9. R and CW were under the mistaken belief that the annuities continued in place and the payments were being withdrawn from the annuities.
10. As insurance producers, Respondents knew or should have known that Section 1239(1) of the Code, MCL 500.1239(1), provides in relevant part:

(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.

* * *

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

11. Withdrawing annuity money without the knowledge or permission of the annuitant constitutes improperly withholding, misappropriating, and converting money received in the course of doing insurance business and provides justification for licensing sanctions and civil fines against Respondents under Section 1239(1)(d) of the Code, MCL 500.1239(1)(d).
12. Withdrawing annuity money without the knowledge or permission of the annuitant constitutes fraudulent, coercive, and dishonest practices and demonstrates incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in this state and provides justification for licensing sanctions and civil fines against Respondents under Section 1239(1)(h) of the Code, MCL 500.1239(1)(h).

COUNT II

13. In a similar fashion as described above, over the course of several years Respondents withdrew funds from clients' investments without permission, convinced clients to surrender or reinvest funds in existing investments, and convinced clients to purchase "additional investments." However, Respondents instead misappropriated and converted the monies. Instead of investing the money as clients directed, Respondents placed it into bank accounts owned and controlled exclusively by Respondents. Respondents then took personal withdrawals of money from the accounts and made partial payments to clients in an attempt to deceive clients into believing that the payments they were receiving were from actual investments.
14. The following is a representative sample of Respondents' unlawful conduct:
 - a. In 2014, Respondents convinced BD to surrender an annuity in the amount of \$56,400.43 and reinvest the money with another insurer. The money was instead deposited into Respondents' bank accounts. Fraudulent paperwork was delivered to BD appearing to show the money had been reinvested as directed. After requesting a return of the money, BD was only paid \$373.85 from Respondents.
 - b. In 2009, Respondents convinced MS to invest \$123,400.54. The money was deposited into Respondents' bank accounts and not invested. MS requested and received \$81,528.00 between 2009 and 2015 and was provided a statement from Respondents showing a balance remaining of \$41,913.08. The money was never invested and, as of August 2015, Respondents' bank accounts are either closed or do not contain enough money to cover the amount due.
 - c. Between 2008 and 2015, Respondents took possession of checks in the amount of \$25,200.00, \$4,750.00, and \$84,403.27 from D and KB for investment purposes. The money was deposited into Respondent's bank accounts and not invested. Between 2010 and 2014, Respondents made payments to D and KB in an amount totaling \$36,242.57. In 2015, Respondents admitted to the daughter of D and KB that they had taken the money and the remaining balance was gone.
 - d. In 2014, Respondents were given \$60,000.00 to invest on behalf of SP. The money was deposited into Respondents' bank accounts and not invested. When asked about the investment, Respondents stated the money would be returned. No money was returned to SP.
 - e. In 2010, Respondents were given a check in the amount of \$35,444.07 to invest for JB. The money was deposited into Respondents' bank accounts and not invested. JB was paid a total of \$12,000.00 between 2013 and 2014.
 - f. Between 2009 and 2013 Respondents were given \$176,663.61 to invest on behalf of W and AS. The money was deposited into Respondents' bank accounts and not invested. Fraudulent paperwork was delivered to W and AS appearing to show the money

had been reinvested as directed. W and AS have received a total of only \$1,274.53 from Respondents.

15. As insurance producers, Respondents knew or should have known that Section 1239(1) of the Code, MCL 500.1239(1), provides in relevant part:

(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.

* * *

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

16. Respondents' actions as described above constitute improperly withholding, misappropriating, and converting money received in the course of doing insurance business and provides justification for licensing sanctions and civil fines under Section 1239(1)(d) of the Code, MCL 500.1239(1)(d).
17. Respondents actions as described above constitute fraudulent, coercive, and dishonest practices and demonstrate incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in this state and provides justification for licensing sanctions and civil fines under Section 1239(1)(h) of the Code, MCL 500.1239(1)(h).
18. Respondents knew or should have known that Section 1207(1) of the Code, MCL 500.1207(1), provides, in part:
- (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.

19. Respondents received all of the money described above in their capacity as insurance producers. Respondent had a duty to invest the money as directed. By failing and refusing to invest the money as directed, Respondents violated Section 1207(1) of the Code, MCL 500.1207(1).
20. Respondents' actions demonstrate a pattern of behavior constituting a serious threat to the public.
21. The alleged conduct of Respondents indicates that a summary suspension of licensure is appropriate and necessary in order to protect the public from further financial damage and other harm and to protect the public interest.
22. The alleged conduct of Respondents indicates that Respondents do not possess the requisite character and fitness to be engaged in the business of insurance, and further indicates that Respondents do not command the confidence of the public nor warrant the belief that Respondents will comply with the law.