

**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. 14-12195
Agency No. 15-026-L**

Petitioner,

v

David M. Gottschalk
dba **Dave Gottschalk & Associates**
dba **American Financial Group**
System ID No. 0154815

Respondent.

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Issued and entered
on June 12, 2015
by Randall S. Gregg
Deputy Director

FINAL DECISION

I. Background

David M. Gottschalk dba Dave Gottschalk & Associates dba American Financial Group (AFG) (hereinafter Respondent) was a licensed resident insurance producer. The Department of Insurance and Financial Services (DIFS) received information that Respondent collected money from clients and instead of using the money for the purposes for which it was intended, converted it to his personal use. After investigation and verification of the information, on December 8, 2014, DIFS issued a Notice of Opportunity to Show Compliance (NOSC) alleging that Respondent had provided justification for revocation of licensure and other sanctions pursuant to Sections 1239(1) and 1244(1)(a-d) of the Michigan Insurance Code (Code), MCL 500.1239(1) and 500.1244(1)(a-d). Respondent failed to respond to the NOSC.

On April 1, 2015, DIFS issued an Administrative Complaint and Order for Hearing which was served upon Respondent at the address he is required to maintain with DIFS. 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 May 28, 2015, 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 of the Department of Insurance and Financial Services (Director).
2. At all relevant times, Respondent David M. Gottschalk (System I.D. No. 0154815) (Respondent) was a licensed resident insurance producer. At all relevant times, Respondent conducted business as AFG. DIFS inactivated Respondent's producer license on October 1, 2011, due to his failure to comply with the continuing education requirements of the Code. AFG was dissolved on July 15, 2013.

COUNT I

3. On or about May 20, 2011, DIFS received a complaint from M.P. and T.P. alleging that Respondent surreptitiously stole over \$135,000 which had been provided to the Respondent for the purpose of purchasing long-term care insurance.
4. DIFS' investigation revealed the following:
 - a. Respondent was M.P.'s financial advisor for a number of years.
 - b. M.P., for many years, attempted to obtain long-term care insurance with Respondent's assistance. In April of 2011, Respondent contacted M.P. and advised that he had found a company that would provide long-term care insurance. However, M.P. would be required to quickly move funds into a new money market account to secure the insurance.
 - c. On or about April 25, 2011, M.P. issued a check from a Revocable Living Trust in the amount of \$20,000.00 payable to AFG. Respondent subsequently deposited the check into his AFG Bank of America account.
 - d. On or about April 27, 2011, M.P. issued a check from an account belonging to M.P. and T.P. in the amount of \$115,474.98, payable to AFG. Respondent subsequently deposited the check into his AFG Bank of America account.
 - e. Respondent neither used the money he collected from M.P. to purchase long-term care insurance nor returned the money to M.P.

5. As a licensee, Respondent knew or had reason to know that Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), provides that the Director may suspend or revoke an insurance producer's license for using fraudulent or dishonest practices or for demonstrating untrustworthiness in the conduct of business in this state or elsewhere.
6. Respondent provided justification for sanctions, pursuant to Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), by accepting money from M.P. to purchase insurance and failing to use the money for said purpose.
7. Based upon the actions listed above, Respondent has committed acts that provide justification for the Director to order the payment of a civil fine, the refund of any overcharges, that restitution be made to cover losses, damages or other harm attributed to Respondent's violation or violations of the Code, and/or other licensing sanctions, including revocation of licensure.

COUNT II

8. In August 2011 DIFS received a complaint from B.W. alleging that Respondent surreptitiously stole over \$500,000.00 provided to him for the purpose of investing in a financial product. Respondent was B.W.'s financial advisor for a number of years.
9. DIFS investigation revealed the following:
 - a. On or about August 11, 2010, B.W. issued a check in the amount of \$150,000.00 and payable to AFG from an account belonging to B.W. and T.W. Respondent subsequently deposited the check into his AFG Bank of America account.
 - b. On or about August 12, 2010, B.W. purchased a cashier's check payable to AFG in the amount of \$9,000.00. Respondent subsequently deposited the check into his AFG Bank of America account.
 - c. On or about December 6, 2010, B.W. issued a check in the amount of \$23,646.67 and payable to AFG from an account belonging to B.W. and T.W. Respondent subsequently deposited the check into his AFG Bank of America account.
 - d. On or about December 6, 2010, B.W. issued a check in the amount of \$30,000.00 and payable to AFG from an account belonging to B.W. and T.W. Respondent subsequently deposited the check into his AFG Bank of America account.
 - e. On or about January 12, 2011, B.W. issued a check in the amount of \$5,612.80 and payable to AFG from an account belonging to B.W. and T.W. Respondent subsequently deposited the check into his AFG Bank of America account.

- f. On or about January 13, 2011, B.W. issued a check in the amount of \$5,574.48 and payable to AFG from an account belonging to B.W. and T.W. Respondent subsequently deposited the check into his AFG Bank of America account.
 - g. B.W. believed that Respondent was investing the money issued to AFG. However, Respondent failed to invest the money on B.W.'s behalf and instead converted it to his personal use.
10. As a licensee, Respondent knew or had reason to know that Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), provides that the Director may suspend or revoke an insurance producer's licensure for using fraudulent, or dishonest practices or demonstrating untrustworthiness, in the conduct of business in this state or elsewhere.
11. Respondent has provided justification for sanctions, pursuant to Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), by accepting money from B.W. for investment purposes and failing to invest said money accordingly.
12. Based upon the actions listed above, Respondent has committed acts that provide justification for the Director to order the payment of a civil fine, the refund of any overcharges, that restitution be made to cover losses, damages or other harm attributed to Respondent's violation or violations of the Code, and/or other licensing sanctions, including revocation of licensure.
13. On December 8, 2014, a Notice of Opportunity to Show Compliance was mailed by first class mail to Respondent at the following addresses: 30100 Telegraph Road, #337, Bingham Farms, Michigan 48025; 30100 Telegraph Road, #414, Bingham Farms, Michigan 48025; [REDACTED], and [REDACTED]. The mail was returned to DIFS.
14. DIFS' Staff searched the following databases for alternative addresses:
 - a. Westlaw People Finder.
15. On April 1, 2015, true copies of an Administrative Complaint, Order for Hearing and Notice of Hearing were mailed by first class mail to Respondent at the following address: [REDACTED].
16. All of DIFS' mailings to Respondent's addresses have been returned.
17. DIFS Staff have made reasonable efforts to serve Respondent and have complied with MCL 500.1238(2).
18. Respondent has received notice and has been given an opportunity to respond and appear and has not responded or appeared.

19. 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. Pursuant to MCL 500.1239(1) (h), and MCL 500.1244(1)(d), Respondent's resident insurance producer license (System ID No.) is **REVOKED**.

Patrick M. McPharlin, Director
For the Director:



Randall S. Gregg, Deputy Director