

**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. 15-12450
Agency Case No. 15-048-L**

Petitioner,

v

Michael Ray Sims

System ID No. 0306592

Respondent.

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Issued and enter
on March 24, 2016
by Randall S. Gregg
Deputy Director

FINAL DECISION

I. Background

Respondent Michael Ray Sims (Respondent) is a licensed insurance producer. On December 18, 2014, the Department of Insurance and Financial Services (DIFS) received a complaint from Farm Bureau Life Insurance Company concerning the cancellation/surrender of an annuity and use of another insurance producer's insurance company appointments to sell annuities. After investigation and verification of the information, on July 30, 2015, 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 MCL 500.1244(1)(a-d). Respondent failed to reply to the NOSC.

On December 16, 2015, DIFS issued an Administrative Complaint and Order for Hearing which was served upon Respondent at the address he was 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 respond or take any action.

On March 9, 2016, 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 Facts 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. The NOSC contained the following Statement of Factual Allegations:
 - a. At all relevant times, Respondent was a licensed insurance producer in the state of Michigan with qualifications in accident and health, life, and variable annuities.
 - b. Since July 10, 2013, Respondent has not had an active appointment with an insurance company.
 - c. At all relevant times, Julie Ann Parker (Parker) was a licensed insurance producer in the state of Michigan with qualifications in accident and health, and life.

COUNT I

- d. On or about June 19, 2012, Policy number (Policy P150) was issued with Farm Bureau Life Insurance Company of Michigan (Farm Bureau) by another insurance producer. Farm Bureau received \$138,600.00 in premiums to fund Policy P150. Policy P150 lists L.S. as the owner. Policy P150's maturity date is June 19, 2022.
- e. In November 2014, J.S., wife of L.S., met with Respondent concerning the purchase of a new insurance Policy and the possible surrender of Policy P150.
- f. On or about December 5, 2014, J.S. completed and submitted a distribution form requesting the surrender of Policy P150.
- g. By surrendering Policy P150, before June 19, 2022, L.S. would incur about a \$7,000.00 surrender fee.
- h. On or about December 18, 2014, the DIFS Office of Consumer Services received a complaint from B.D. (Complainant), Manager of Life Consumer Service with Farm Bureau.

- i. The Complaint alleged that on December 12, 2014, Respondent called Farm Bureau posing as L.S. to collect additional information about Policy P150 and trying to expedite the distribution request.
- j. Respondent admits to calling Farm Bureau about the distribution request, but denies that he posed as L.S.
- k. On or about December 15, 2014, Policy number (Policy 2727) was issued with Fidelity and Guaranty Life Insurance Company (F&G). F&G received \$65,000.00 in premium to fund Policy 2727. Policy 2727 lists J.S. as the owner and annuitant. Policy 2727's maturity date is December 15, 2039.
- l. Ms. Parker is listed as the insurance producer of record for Policy 2727.
- m. On or about December 17, 2014, Farm Bureau contacted J.S. concerning her distribution request and the surrender fee. Soon thereafter, J.S. submitted a Power of Attorney Form, on behalf of her husband, and on or about December 28, 2014, Farm Bureau sent a \$138,600.00 check to J.S.
- n. Respondent suggested that J.S. tell Farm Bureau to send the distribution check directly to her and then deposit the check in her Chemical Bank account.
- o. On December 30, 2014, J.S. deposited the Farm Bureau's \$138,600.00 check into her Chemical Bank account. On the same day J.S. withdrew \$138,600.00 from her bank account with Chemical Bank via a cashier's check to fund Policy 0263 with F&G. As a result, J.S. may have suffered tax consequences by not having the money transferred directly to F&G.
- p. On or about January 8, 2015, Policy number (Policy 0263) was issued with F&G. F&G received \$264,600.00 in premium to fund Policy 0263. Policy 0263 lists J.S. as the owner and annuitant. Policy 0263's maturity date is January 8, 2040.
- q. Ms. Parker is listed as the insurance producer of record for Policy 0263.
- r. Question 19 of Policy 0263's suitability acknowledgement form indicated the source of funds for Policy 0263 was not a life insurance Policy or annuity, however, \$138,600.00 from Policy P150 was used to partially fund Policy 0263.
- s. On January 23, 2015, DIFS Staff spoke with J.S. J.S. stated that Respondent explained to her the terms and conditions of the two policies and helped her complete the applications for the F&G policies. Further, she stated that she did not meet with Ms. Parker until after the two policies were written and submitted to F&G.

- t. At all relevant times Ms. Parker was appointed by F&G.
- u. At no relevant time was Respondent appointed by F&G.
- v. As a licensee, Respondent knew or had reason to know that Section 1208a(1) of the Code, MCL 500.1208a(1), states, in pertinent part, that “[a]n insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer.”
- w. Respondent violated Section 1208a(1) of the Code, MCL 500.1208a(1), because at no relevant time was Respondent appointed by F&G and, therefore, he did not have the authority to act on behalf of F&G to sell an insurance Policy.
- x. As a licensee, Respondent knew or had reason to know that Section 1239(1)(b) of the Code, MCL 500.1239(1)(b), allows the Director to place on probation, suspend, revoke, or levy a civil fine under Section 1244 or any combination thereof, for “[v]iolating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.”
- y. As a licensee, Respondent knew or had reason to know that Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), allows the Director to place on probation, suspend, revoke, or levy a civil fine under Section 1244 or any combination thereof, for “[u]sing fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.”
- z. Respondent used fraudulent or dishonest practices and demonstrated incompetence, untrustworthiness in the conduct of insurance business by knowingly selling annuities from F&G without a proper appointment, without adequate knowledge of F&G products to recommend the annuities, and without being in compliance with F&G's standards for product training.
- aa. As a licensee, Respondent knew or had reason to know that Section 4160(1) of the Code, MCL 500.4160(1) states: “[a] producer shall not solicit the sale of an annuity unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training.”
- bb. Respondent violated Section 4160 of the Code, MCL 500.4160, because he did not have an appointment with F&G, therefore could not have adequate knowledge of F&G's products to recommend the annuity and he could not be in compliance with F&G's standards for product training.
- cc. Based upon the actions listed above, Respondent has committed acts that provide justification for the Director to order the payment of a civil fine attributed to

Respondent's violations of the Code, and/or licensing sanctions under 1244(1) of the Code, MCL 500.1244(1), for the Respondent's violations of the Code.

COUNT II

- dd. On or about September 16, 2011, Policy number (Policy 1146) was issued with Aviva Life and Annuity Company/Athene Annuity and Life Company (Athene). Athene received \$178,242.75 in premium to fund Policy 1146. Policy 1146 listed R.R. as the annuitant. Policy 1146's maturity date was September 16, 2037. Policy 1146 offered a 9.00% premium bonus. The bonus funds were not scheduled to vest until the 8th year of Policy 1146, at which time 25.00% of the bonus would vest. An additional 25.00% of the bonus would vest over each additional year until the 11th year, at which time 100% of the bonus would be vested. Policy 1146 had an eleven year surrender period, starting at 12.00% the first year and decreasing to 4.00% by the tenth year.
- ee. On October 12, 2014, R.R. passed away. Due to R.R.'s death, M.R., wife of R. R., could withdraw funds from Policy 1146 without incurring a surrender fee.
- ff. On or about December 8, 2014, M.R. met with Respondent and subsequently requested that \$144,294.00 be transferred from Policy 1146 to F&G. On or about January 20, 2015, Athene issued check number 016577 for \$145,850.20 to F&G.
- gg. On or about January 12, 2015, M.R. met with Respondent and requested \$47,000.00 be transferred from Policy 1146 to American Equity. On or about January 20, 2015, Athene issued check number 016578 for \$47,000.00 to American Equity.
- hh. On or about January 23, 2015, Policy number (Policy 2536) was issued by American Equity. American Equity received \$47,000.00 in premium to fund Policy 2536. Policy 2536's maturity date was January 23, 2058. Policy 2536 offered an 8.00% premium bonus. The bonus funds weren't scheduled to vest until the 4th year of Policy 2536, at which time 8.33% of the bonus would vest. An additional 8.33% of the bonus would vest over each additional year until the 15th year, at which time 100% of the bonus would be vested. Policy 2536 had a ten year surrender period, starting at 12.5% the first year and decreasing to 4.00% by the tenth year.
- ii. At no relevant time was Respondent appointed by American Equity, yet at all relevant times Ms. Parker was appointed by American Equity and Ms. Parker is listed as the producer of Policy 2536. Ms. Parker's signature appears on the application and suitability acknowledgement form for Policy 2536. Ms. Parker attested that she presented all sales materials; she accurately recorded all information on the documents as it was given by M.R., and she made the recommendation to M.R. to purchase Policy 2536.

- jj. Ms. Parker would have received \$2,820.00 in commission from Policy 2536, but M.R. cancelled the Policy on February 11, 2015, during the “free-look” period, alleging that Respondent overestimated her liquidity on the suitability form.
- kk. On or about February 1, 2015, Policy number (Policy 9979) was issued by F&G utilizing the \$145,850.00 received from Athene. Policy 9979 lists M.R. as the owner and annuitant. Policy 9979’s maturity date is February 1, 2044. Policy 9979 offers an 8.00% bonus based off of all premiums applied to the Policy within the first year of the Policy’s existence. The bonus funds are vested over 14 years. Policy 9979 has a fifteen year surrender period, starting at 14.75% the first year and decreasing to 2.00% by the 13th year and zero percent on the final year.
- ll. At no relevant time was Respondent appointed by F&G, yet at all relevant times Ms. Parker was appointed by F&G and Ms. Parker is listed as the insurance producer on Policy 9979. Ms. Parker’s signature appears on the application and suitability acknowledgement form for Policy 9979. Ms. Parker attested that she witnessed all signatures, that F&G disclosure materials were presented to M.R., she carefully reviewed the suitability information, and that she discussed the advantages and disadvantages of the replacement/exchange with M.R.
- mm. On or about February 3, 2015, Ms. Parker received an \$11,668.02 commission payment from F&G for Policy 9979.
- nn. On February 9, 2015, DIFS Staff met with M.R., H.R., (daughter) and R.R. (son). M.R. stated she was contacted by Respondent soon after publication of her husband’s death. M.R. stated that she met with Respondent four times to discuss annuities. She stated that Ms. Parker was only at one of the four meetings. M.R. stated Ms. Parker was introduced as new to the business and Respondent explained the terms and conditions of the F&G and the American Equity policies. M.R. stated Respondent failed to explain how the bonus for the American Equity Policy would vest over time; rather Respondent explained the bonus as automatically being available for use.
- oo. H.R. and R.R. stated they were at the third meeting with Respondent. H.R. stated that Respondent explained the terms and conditions of the F&G and American Equity policies. Ms. Parker was not at this meeting.
- pp. As a licensee, Respondent knew or had reason to know that Section 1208a(1) of the Code, MCL 500.1208a(1), states that “[a]n insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer.”

- qq. At no relevant time was Respondent appointed by F&G or American Equity and, therefore, he did not have the authority to act on behalf of F&G and American Equity to sell an insurance Policy.
- rr. As a licensee, Respondent knew or had reason to know that Section 1239(1)(b) of the Code, MCL 500.1239(1)(b), allows the Director to place on probation, suspend, revoke, or levy a civil fine under Section 1244 or any combination thereof, for “[v]iolating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.”
- ss. As a licensee, Respondent knew or had reason to know that Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), allows the Director to place on probation, suspend, revoke, or levy a civil fine under Section 1244 or any combination thereof, for “[u]sing fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.”
- tt. Respondent used fraudulent or dishonest practices and demonstrated incompetence, untrustworthiness in the conduct of insurance business by knowingly selling annuities from F&G and American Equity without a proper appointment and without adequate knowledge of F&G and American Equity products to recommend the annuities and without being in compliance with F&G's and American Equity's standards for product training.
- uu. As a licensee, Respondent knew or had reason to know that Section 2005 of the Code, MCL 500.2005 states: [a]n unfair method of competition and an unfair or deceptive act or practice in the business of insurance means the making, issuing, circulating, or causing to be made, issued, or circulated, an estimate, illustration, circular, statement, sales presentation, or comparison which by omission of a material fact or incorrect statement of a material fact does any of the following:
- (i) (a) Misrepresents the terms, benefits, advantages, or conditions of an insurance Policy.
- ***
- (ii) (f) Makes a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of an insurance Policy.
- vv. Respondent violated Section 2005 of the Code, MCL 500.2005 by misrepresenting that the bonus for the American Equity Policy would automatically be available for use rather than vest over time.
- ww. As a licensee, Respondent knew or had reason to know that Section 2018 of the Code, MCL 500.2018 states: “[A]n unfair method of competition and an unfair or

deceptive act or practice in the business of insurance include making false or fraudulent statements or representations on or relative to an application for an insurance policy for the purpose of obtaining a fee, commission, money, or other benefit from an insurer, agent, broker, or individual.”

- xx. Respondent violated Section 2018 of the Code, MCL 500.2018 by misrepresenting that the bonus for the American Equity Policy would automatically be available for use rather than vest over time and overestimating M.R.’s liquidity on the suitability form.
- yy. As a licensee, Respondent knew or had reason to know that Section 4160(1) of the Code, MCL 500.4160(1) states: “[a] producer shall not solicit the sale of an annuity unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training.”
- zz. Respondent did not have an appointment with F&G and, therefore, could not have adequate knowledge of F&G’s products to recommend the annuity and he could not be in compliance with F&G’s standards for product training.
- aaa. By explaining the bonuses associated with Policies 9979 and 2536 as being automatically vested into Policies 9979 and 2536, when the bonuses have a vesting period, Respondent misrepresented the terms and conditions of Policies 9979 and 2536 to M.R., with the intent to induce M.R. to exchange Policy 1146 for Policies 9979 and 2536, a violation of MCL 500.2005(a) and MCL 500.2005(f).
- bbb. Based upon the actions listed above, Respondent has committed acts that provide justification for the Director to order the payment of a civil fine attributed to Respondent’s violations of the Code, and/or licensing sanctions under 1244(1) of the Code, MCL 500.1244(1), for the Respondent’s violations of the Code.

COUNT III

- ccc. On October 1, 2014, DIFS and Respondent entered into a Stipulation to Entry of Order and Order Accepting Stipulation.
- ddd. The Order Accepting Stipulation found that Respondent violated Section 1208a(1) of the Code, MCL 500.1208a(1), when he solicited the purchase of American Equity annuity products without being properly appointed by American Equity and he violated Section 249 of the Code, MCL 500.249, by failing to respond to a direct request for examination of accounts, records, and documents relating to the American Equity annuity solicitations and sales.

- eee. Specifically, on or about March 19, 2013, DIFS had received a consumer complaint that alleged Respondent solicited the purchase of American Equity annuity products that were not suitable for the complainant's needs. DIFS' investigation also revealed Respondent solicited, sold and negotiated an American Equity annuity contract when he was not properly appointed by American Equity and then used another agent's producer credentials, but was not registered as a solicitor for that agent. The complainant stated that Respondent solicited the purchase of the American Equity annuity and then gave the annuity contract to another insurance producer who was appointed with American Equity to sign the annuity contract as the agent of record.
 - fff. Respondent was ordered to immediately cease and desist from operating in such a manner as to violate Sections 249 and 1208a(1) of the Code, MCL 500.249 and MCL 500.1208a(1) and ordered to pay a civil fine of \$1,000 within 30 days of the Order Accepting Stipulation.
 - ggg. As a licensee, Respondent knew or had reason to know that Section 1239(1)(b) of the Code, MCL 500.1239(1)(b), allows the Director to place on probation, suspend, revoke, or levy a civil fine under Section 1244 or any combination thereof, for "[v]iolating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner."
 - hhh. Respondent violated the Stipulation to Entry of Order and Order Accepting Stipulation by continuing to violate Section 1208a of the Code, MCL 500.1208a, by using Ms. Parker's appointments with F&G and American Equity to write business when he was not appointed to represent F&G or American Equity.
 - iii. Based upon the actions listed above, Respondent has committed acts that provide justification for the Director to order the payment of a civil fine attributed to Respondent's violation of the Code, and/or licensing sanctions under 1244(1) of the Code, MCL 500.1244(1), for the Respondent's violation of the Director's Order and the Code.
3. As a licensee, Respondent knew or had reason to know that Section 1208a(1) of the Code, MCL 500.1208a(1), states, in pertinent part, that "[a]n insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer."
 4. Respondent has provided justification for discipline because at no relevant time was Respondent appointed by F&G or American Equity and, therefore, he did not have the authority to sell an F&G insurance Policy.
 5. As a licensee, Respondent further knew or had reason to know that Section 1239(1)(b) of the Code allows the Director to place on probation, suspend, revoke an insurance producer's license or levy a civil fine under Section 1244 or any combination thereof, for

“[v]iolating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.”

6. Respondent has provided justification for discipline by violating the October 1, 2014, Stipulation to Entry of Order and Order Accepting Stipulation by continuing to violate Section 1208a of the Code, MCL 500.1208a, by using Ms. Parker's appointments with F&G and American Equity to write business when he was not appointed to represent F&G or American Equity.
7. As a licensee, Respondent further knew or had reason to know that Section 1239(1)(h) of the Code allows the Director to place on probation, suspend, or revoke an insurance producer's license or levy a civil fine under Section 1244 of the Code for: “[u]sing fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.”
8. Respondent has provided justification for discipline by using fraudulent or dishonest practices and demonstrating incompetence, untrustworthiness in the conduct of insurance business by knowingly selling annuities from F&G and American Equity without a proper appointment and without adequate knowledge of F&G and American Equity products to recommend the annuities and without being in compliance with F&G's and American Equity's standards for product training.
9. As a licensee, Respondent knew or had reason to know that Section 2005 of the Code, MCL 500.2005 states: [a]n unfair method of competition and an unfair or deceptive act or practice in the business of insurance means the making, issuing, circulating, or causing to be made, issued, or circulated, an estimate, illustration, circular, statement, sales presentation, or comparison which by omission of a material fact or incorrect statement of a material fact does any of the following:
 - (i) (a) Misrepresents the terms, benefits, advantages, or conditions of an insurance Policy.

 - (ii) (f) Makes a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of an insurance Policy.
10. Respondent has provided justification for discipline by misrepresenting that the bonus for the American Equity Policy would automatically be available for use rather than vest over time.

11. As a licensee, Respondent knew or had reason to know that Section 2018 of the Code, MCL 500.2018 states: “[A]n unfair method of competition and an unfair or deceptive act or practice in the business of insurance include making false or fraudulent statements or representations on or relative to an application for an insurance Policy for the purpose of obtaining a fee, commission, money, or other benefit from an insurer, agent, broker, or individual.”
12. Respondent has provided justification for discipline by misrepresenting that the bonus for the American Equity Policy would automatically be available for use rather than vest over time and overestimating M.R.’s liquidity on the suitability form.
13. As a licensee, Respondent knew or had reason to know that Section 4160(1) of the Code, MCL 500.4160(1) states: “[a] producer shall not solicit the sale of an annuity unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer’s standards for product training.”
14. Respondent has provided justification for discipline because he did not have an appointment with F&G and, therefore, could not have adequate knowledge of F&G’s products to recommend the annuity and he could not be in compliance with F&G’s standards for product training.
15. DIFS Staff have made reasonable efforts to serve Respondent and have complied with MCL 500.1238(2).
16. Respondent has received notice and has been given an opportunity to respond and appear and has not responded nor 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. Pursuant to MCL 500.150, 500.1208a(1), 500.1239(1)(b) and (h), 500.2005, 500.2018, 500.4160(1), and 500.1244(1)(d), Respondent’s resident insurance producer license (System ID No. 0306592) is **REVOKED**.

Patrick M. McPharlin, Director
For the Director:



Randall S. Gregg, Deputy Director