

**STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

**Before the Commissioner of the Office of Financial and Insurance Regulation**

In the matter of:

**Bosquett & Company**  
System ID No. 005124

**Enforcement Case No. 08-5775**  
**Agency No. 09-050-L**

and

**Dave D. Fischer**  
System ID No. 0085095

Respondents

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**ORDER OF SUMMARY SUSPENSION  
AND  
OPPORTUNITY FOR HEARING**

Issued and entered  
On August 11, 2009  
by Stephen R. Hilker  
Chief Deputy Commissioner

**BACKGROUND**

The staff of the Office of Financial and Insurance Regulation (OFIR) has petitioned the Chief Deputy Commissioner of the Office of Financial and Insurance Regulation for an Order of Summary Suspension. Based on the staff's Petition for Summary Suspension, the Chief Deputy Commissioner finds and concludes that, if the facts set forth in staff's Petition are true, then:

1. The alleged conduct of Respondents is illegal and in violation of the Michigan Insurance Code as follows:
  - a. At all times pertinent to the matter herein, Respondent Bosquett & Company was an insurance agency licensed to conduct the business of insurance in the State of Michigan.
  - b. At all times pertinent to the matter herein, Respondent Dave D. Fischer ("Fischer") was a licensed insurance producer, licensed to conduct the business of insurance in the State of Michigan.

- c. Respondent Fischer is the owner and President of Bosquett & Company. Bosquett & Company and Fischer are referred to herein as "Respondents."
- d. As licensees, Respondents knew or had reason to know that Section 1207(1) of the Code, MCL 500.1207(1), provides that an agent shall be a fiduciary for all moneys 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.
- e. As licensees, Respondents further knew or had reason to know that Section 1239(1)(b) of the Code, MCL 500.1239(1)(b), provides that the Commissioner may place on probation, suspend, or revoke an insurance producer's license for violating any insurance laws.
- f. As licensees, Respondents further knew or had reason to know that Section 1239(1)(d) of the Code, MCL 500.1239(1)(d), provides that the Commissioner may place on probation, suspend, or revoke an insurance producer's license for improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.
- g. As licensees, Respondents further knew or had reason to know that Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), provides that the Commissioner may place on probation, suspend, or revoke an insurance producer's license for using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
- j. On September 26, 2008, [REDACTED] paid premiums to Respondents in the amount of \$3,000.00. However, Respondents failed to remit the premiums causing the cancellation of [REDACTED] insurance policy due to nonpayment of premiums in the amount of \$3,000.00.
- k. On November 25, 2008, [REDACTED] [REDACTED] paid premiums to Respondents in the amount of \$1,181. However, Respondents failed to remit the premiums causing the cancellation of [REDACTED] [REDACTED] insurance policy due to non-payment of premium in the amount of \$1,181.
- l. In January 2009, Respondents received premiums in the amount of \$14,216.25 on behalf of [REDACTED]. On February 1, 2009, [REDACTED] received a Notice of Cancellation from [REDACTED] because Respondents failed to remit premiums due in the amount of \$14,216.25.
- m. On or about June 2, 2009, OFIR received a complaint from [REDACTED], [REDACTED]. According to the complaint, [REDACTED] paid premiums in the amount of

\$31,309.00 to Bosquett & Company for its worker compensation, commercial package and umbrella policies.

- n. Respondent failed to timely remit the premiums to [REDACTED], which resulted in [REDACTED] issuing notices of cancellation of the insureds' worker compensation, commercial package and umbrella policies.
- o. On or about February 11, 2009, Respondents received premium payments relating to policies of insurance for [REDACTED].
- p. On or about July 15, 2009, OFIR received information, which indicates that policies of insurance relating to [REDACTED] was cancelled for non-payment of premiums despite the fact the insured had paid its premiums in full to Respondents.
- q. In addition, on or about June 17, 2009, [REDACTED] and the [REDACTED], suspended Respondents agency agreements due the Respondents' repeated failure to timely remit premiums to [REDACTED] and the [REDACTED].
- r. On or about April 3, 2009, Respondents received premiums in the amount of \$10,000 for a policy of insurance relating to [REDACTED].
- s. Respondents failed to timely remit the premiums causing cancellation of [REDACTED] policy of insurance with [REDACTED] for non-payment of premiums on or about July 13, 2009.
- t. On or about April 20, 2009, Respondents received premiums in the amount of \$3,411 for a policy of insurance relating to [REDACTED]. Respondents failed to remit the premiums causing cancellation of [REDACTED]'s the policy of insurance with [REDACTED] for non payment of premium on or about June 25, 2009.
- u. On or about April 27, 2009, [REDACTED] renewed its [REDACTED] policy of insurance and paid Respondents premiums in the amount of \$55,000.
- v. Respondents failed to timely remit the premiums for the [REDACTED] policy to [REDACTED] causing [REDACTED] to issue a Notice of Cancellation on July 17, 2009, to [REDACTED].
- w. On or about September 26, 2008, [REDACTED] renewed its [REDACTED] policy of insurance and paid Respondents premiums in the amount of \$41,168.00 on September 19, 2008.
- x. Respondents failed to timely remit the premiums for the [REDACTED] policy to [REDACTED] causing [REDACTED] to issue a Notice of Cancellation on August 11, 2009, to [REDACTED]. Respondents had

deposited the check in the amount of \$41,168.00 into Bosquett & Company's checking account on September 23, 2008.

- y. Due to Respondents violating Sections 1207(1), 1239(1) of the Code, MCL 500.1207(1), and MCL 500.1239(1), and the potential that Respondents will continue to violate the Code and cause harm to the public, the Commissioner needs to take emergency action to protect the public by issuing an Order of Summary Suspension.
2. The alleged activities of the Respondents present a serious and immediate threat to the public's health, safety and welfare, and emergency action is clearly required to protect the public's interest. Respondents have violated their fiduciary duty by receiving premium payments from insurance consumers, leading these consumers to believe they had insurance coverage when, in fact, they did not, and by failing to remit the premiums to the insurers to whom they are owed as set forth in the Petition For Summary Suspension, which is attached and incorporated by reference. This activity also exposes insurers to substantial financial loss in the event that claims are submitted by insurance consumers for whom no premiums were received.
3. The immediate harm to the public presented by the continuing operation of Respondents, as alleged, is much greater than the potential harm to Respondents, which might be occasioned by summary action against Respondents' licenses and authority. Specifically, insurance consumers and insurers are at risk of substantial financial loss due to Respondents' failure to remit payment.
4. Due process requirements of the Michigan Insurance Code and the Administrative Procedures Act require that a licensee subject to summary disciplinary action be provided with an opportunity for immediate hearing. A summary suspension of Respondents' insurance producer licenses and authority is authorized by Section 92 of the Administrative Procedures Act of 1969, as amended, being MCL 24.292 and in Section 1242(4) of the Code, MCL 500.1242(4).

### ORDER

Therefore, it is **ORDERED** that:

1. All insurance producer licenses and authority of Respondents Bosquett & Company and Dave D. Fischer are hereby **SUMMARILY SUSPENDED**, effective upon service of this Order on Respondents Bosquett & Company and Dave D. Fischer.
2. If requested, a hearing on this matter shall be held within a reasonable time, but not later than 20 days after service of this Order, unless Respondents request a later date. The hearing shall address the following issues: a) the factual allegations set forth in the Staff's Petition for Summary Suspension, b) the continuation of this Order of Summary Suspension, c) the revocation of the insurance producer licenses of Bosquett & Company and Dave D. Fischer, and d) the assessment of such fines and

restitution as may be authorized under the Insurance Code provisions applicable to this matter.

3. An administrative law judge from the State Office of Administrative Hearings and Rules shall preside over the hearing, if a hearing is requested.
4. A copy of this Order shall be served upon Respondents immediately. This Order of Summary Suspension is effective upon the date of such service.

The Commissioner specifically retains jurisdiction of the matters contained herein and the authority to issue such further Order(s) as he shall deem just, necessary and appropriate.

### **RIGHTS AND PROCEDURES IN DIVISION OF INSURANCE HEARING**

If requested, the hearing will be held under the legal authority and jurisdiction granted the Commissioner of Financial and Insurance Regulation by the Michigan Insurance Code, and in accordance with provisions of the Administrative Procedures Act of 1969, as amended ("APA"), MCL 24.201 et seq., Procedure for Conducting Hearings Held by the Commissioner of Financial and Insurance Regulation, Administrative Code 1979, R 500.2101 et seq., and other procedural provisions of Michigan law that are appropriate.

**COUNSEL:** A party has the right to be represented by counsel. If a party is represented, counsel is directed to file an appearance promptly with the administrative law judge. Appearances shall contain the counsel's full name, address, and telephone number. The address provided will be the official address for service of documents regarding this matter. When a party chooses to proceed without counsel, he or she will be held to the same standards as an attorney, including a reasonable knowledge of the rules of evidence as applied in nonjury circuit court civil cases, applicable provisions of the APA, and other relevant laws and procedures.

**FAILURE TO APPEAR:** If a party fails to appear at the hearing, and the hearing, has not been adjourned, the party in attendance may be permitted to proceed with its case and the Commissioner may issue a decision without the participation of the absent party. Failure to appear may also result in a final decision entered against the Respondent by default. If so, the allegations in the Complaint will be taken as true. Substantial penalties for the alleged misconduct, including fines and license revocation, may be ordered.


**ADJOURNMENTS:** No hearing shall be adjourned or continued, except upon an order of the Commissioner or the administrative law judge. All motions and requests for an adjournment, or a continuance, shall be in writing and shall concisely state the reasons why an adjournment or continuance is necessary. No motion or request for an adjournment or a continuance will be considered unless it is filed at least 5 days prior to the hearing date, except upon order of the Commissioner or the administrative law judge. This exception will be granted only upon a showing, that for reasons not within the control of the party making, the motion or request, the motion or request could not be filed within the time limit.

**DISCOVERY:** The parties may wish to meet with each other to exchange information and materials relevant and materials relevant to the hearing. The offices of the Insurance Bureau are available for this purpose. All records of a party relating to the subject matter of this hearing, which are not exempt from discovery, shall be made immediately available to every other party for inspection and copying.

**MOTIONS:** A party may file a motion with the administrative law judge at any stage in the case. All prehearing motions shall be in writing, shall be sent to each party with proof of service, and shall include the specific action requested and reasons for the action. A party may file a response to the motion within 7 days after receiving the motion.

**EXHIBITS AND WITNESSES:** A party has the right to call witnesses and to introduce physical and documentary evidence. Each party may cross-examine the witnesses called by the opposite party. An opportunity for redirect and recross-examination will also be provided. A party may submit rebuttal evidence. Each party may question or contest the admissibility of any exhibit. When an objection is raised the admission or an exhibit, the grounds for the objection shall be stated.

**DECISION AND APPEAL:** Unless the Commissioner immediately proceeds to a final decision in accordance with Section 81 of the APA, MCL 24.281, the administrative law judge for a case will issue a Proposal for Decision when the hearing and transcripts are completed. The parties will usually be given 30 days to file exceptions to the Proposal for Decision. However, in cases involving summary suspension or matters of significant social and economic impact, the time period for filing exceptions may be shortened to meet the circumstances of a particular case. After the 30 days have elapsed, the Commissioner will issue a Final Decision. A Final Decision issued by the Commissioner may be appealed as provided in the applicable provisions of Michigan law.

  
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Stephen R. Hilker  
Chief Deputy Commissioner