

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

Before the Commissioner of Financial and Insurance Regulation

In the matter of:

Office of Financial and Insurance Regulation

Enforcement Case No. 10-7559

Petitioner,

v

Charles L. Bye, Jr.,
System ID No. 0187850

And

Bye Financial Group, LLC,
System ID No. 0081093

And

Bye Insurance & Financial Services, Inc.,
System ID No. 0036269

Respondents.

CONSENT ORDER AND STIPULATION

Issued and entered
on 11/24/10, 2010
by **Stephen R. Hilker**
Chief Deputy Commissioner

I.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all relevant times, Charles L. Bye, Jr. ("Respondent Bye"), System ID No. 0187850, was a licensed resident producer in the state of Michigan with qualifications in Accident and Health, Casualty, Life, Property, and Variable Annuities.
2. At all relevant times, Bye Financial Group, LLC ("Respondent Bye, LLC"), System ID No. 0081093, was a licensed resident producer, in the state of Michigan with

qualifications in Accident and Health, Casualty, Life, Property, and Variable Annuities.

3. At all relevant times, Jason P. LaValley, System ID No. 0197555, was the Designated Responsible Licensed Producer for Respondent Bye, LLC pursuant to Section 1205 of the Michigan Insurance Code (the "Code"), MCL 500.1205.
4. At all relevant times, Bye Insurance and Financial Services, Inc., ("Respondent Bye, Inc."), System ID No. 0036269, was a licensed resident producer, in the state of Michigan with qualifications in Accident and Health, Casualty, Life, Property, and Variable Annuities.
5. Respondents' principal place of business is located at 1093 Charlevoix Drive, Grand Ledge, MI 48837.
6. As licensed insurance producers, Respondents knew or had reason to know that Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), states in 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:
 - (h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
7. Section 1244(1)(a-c), MCL 500.1244(1)(a-c), provides that the Commissioner may order the payment of a civil fine of up to \$500.00 for each violation and up to \$2,500 for each violation if the Commissioner finds that the person knew or reasonably should have known that he or she was in violation of the Code. The Commissioner may also require the person to refund any overcharges and pay restitution to cover losses, damages, or other harm they may have caused by violating the Code.
8. Respondents have failed to uphold the standards as described below.

II. VIOLATIONS

1. On or about September 11, 2009, the Office of Financial and Insurance Regulation (OFIR) received a complaint from [REDACTED] who at the time was the [REDACTED] alleging Respondents were charging improper fees.
2. On October 2, 2009, OFIR Investigator McNally met with Respondents to inquire about certain fees being charged. Respondents acknowledged charging a one-time fee to new clients beginning some time in 2005 to offset costs related thereto. Respondents alleged that at the time the fee program was instituted, it was an industry practice to charge these fees. Respondents also alleged that they reasonably believed these fees were permissible.
3. According to Respondents, they charged a \$25.00 fee beginning in 2005 and directed their agents to charge this fee. Starting late in December 2007 and continuing into early January 2008, Respondents raised this fee to \$35.00.
4. Investigator McNally requested the records showing this fee. Respondents voluntarily provided records from 2007 and later. According to Respondents, they were unable to provide records from before 2007 because of a change in their computer system.
5. Respondents further provided OFIR with three spreadsheets with the records of sales from their agency in 2007, 2008, and 2009 respectively.
6. The spreadsheet for 2007 shows a \$25.00 fee being charged from January 24, 2007 to December 28, 2007. The \$25.00 fee was charged 789 times totaling \$19,725.00. The spreadsheet for 2007 also shows a \$35.00 fee being charged from December 18, 2007 to December 28, 2007. The \$35.00 fee was charged eight times totaling \$280.00. The total fees collected in 2007 totaled \$20,005.00.
7. The spreadsheet for 2008 shows a \$25.00 fee being charged from January 7, 2008 to August 22, 2008. The \$25.00 fee was charged ten times totaling \$250.00. The spreadsheet for 2008 also shows a \$35.00 fee being charged from January 2, 2008 to December 31, 2008. The \$35.00 fee was charged 812 times totaling \$28,420.00. The total fees collected in 2008 totaled \$28,670.00.
8. The spreadsheet for 2009 shows a \$35.00 fee being charged from January 5, 2009 to June 24, 2009. The \$35.00 fee was charged 260 times totaling \$9,100.00.

9. On June 11, 2007, the Office of Financial and Insurance Services (now known as the Office of Financial and Insurance Regulation) issued Bulletin 2007-09-INS, which clarified that insurance producers cannot charge certain fees to insureds. Respondents alleged that they did not receive the Bulletin at the time it was issued. Respondents also alleged that they did not receive actual notice of the contents of the Bulletin until 2009, at which time they voluntarily stopped the practice.
10. Respondents concede for settlement purposes that a violation of Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), occurred as related to certain fees described above.

III. **ORDER**

Based upon the Findings of Fact and Conclusions of Law above and Respondents' stipulation, the Commissioner **ORDERS** that:

1. Respondents shall continue to CEASE and DESIST from violating MCL 500.1239(1)(h) as related to the administrative fee at issue.
2. Respondents shall pay the State of Michigan, through OFIR, a civil penalty in the amount of \$7,500. Payment shall be made on or before 30 days of the date of entry of this ORDER.
3. Respondent Bye, Inc. has agreed to surrender its insurance producer license. Respondent Bye, Inc. shall continue to CEASE and DESIST from engaging in any activity requiring licensure under the Michigan Insurance Code, and shall deliver to the Chief Deputy Commissioner its original resident insurance producer license certificate within five days of the date of entry of this ORDER.
4. If the terms of this ORDER are not complied with, all existing OFIR licenses issued to Respondents under the Michigan Insurance Code shall be summarily REVOKED.

IT IS SO ORDERED

Dated: 11/24/10


Stephen R. Hilker
Chief Deputy Commissioner

**IV.
STIPULATION**

Respondents have read and understand the Consent Order above. Respondents agree that the Chief Deputy Commissioner has jurisdiction and authority to issue this Consent Order pursuant to the Michigan Insurance Code. Respondents waive their right to a hearing in this matter if this Consent Order is issued. Respondents understand that the Consent Order and Stipulation will be presented to the Chief Deputy Commissioner for approval and the Chief Deputy Commissioner may or may not issue this Consent Order. Respondents waive any objection to the Commissioner deciding this case following a hearing in the event the Consent Order is not approved.

For Purposes of this settlement and stipulation, Respondents admit to the Findings of Fact and Conclusions of Law set forth in the above Consent Order, and agree to the entry of the Consent Order.

Dated: 11/1/2010

Charles L. Bye, Jr.
Charles L. Bye, Jr.

Dated: 11.1.2010

Kay A Bye authorized member
Bye Financial Group, LLC.

Dated: 11/1/2010

Charles L. Bye, Jr. AUTHORIZED
OFFICER
Bye Insurance & Financial Services, Inc.

The Office of Financial and Insurance Regulation staff approves this stipulation and recommends that the Chief Deputy Commissioner issue the above Consent Order.

Dated: 11/18/10

Conrad L. Tatnall
Conrad L. Tatnall
Staff Attorney