

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

Office of Financial and Insurance Regulation
Petitioner

v

Case No. 10-771-L
Docket No. 2010-470

Millard F. Hildreth, Jr.
Respondent

For the Petitioner:

Marlon F. Roberts
Office of Financial and Insurance Regulation
P.O. Box 30220
Lansing, MI 48909-7720

For the Respondent:

Millard F. Hildreth, Jr.


22750 Woodward Ave., Ste. 306
Ferndale, MI 48220

Issued and entered
this 7th day of September 2010
by Ken Ross
Commissioner

FINAL DECISION

I. Background

On April 27, 2010, Chief Deputy Commissioner Stephen R. Hilker issued an Administrative Complaint, Order for Hearing, and Notice of Hearing in this case which was sent to Respondent at the addresses above. The Administrative Complaint set forth detailed allegations that Respondent had violated provisions of the Michigan Insurance Code (MCL 500.100, *et seq.*) by failing to remit premiums to an insurer for which he acted as a producer. Further, Respondent failed to return the premium payment to his client when the client requested that the money be refunded.

A hearing was held on June 9, 2010. Respondent failed to attend the hearing and a default judgment was granted. The Administrative Law Judge issued a Proposal for Decision (PFD) dated June 23, 2010. Neither party filed exceptions. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v. Public Service Comm* 136 Mich App 52 (1984).

II. Findings of Fact and Conclusions of Law

The factual findings in the PFD are in accordance with the preponderance of the evidence and the conclusions of law are supported by reasoned opinion. Those findings and conclusions are adopted. The PFD is attached and made part of this final decision. The findings and conclusions most pertinent to this Final Decision are stated below:

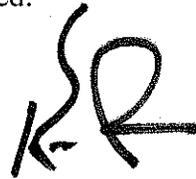
1. Respondent Millard F. Hildreth, Jr. holds a Michigan resident producer license.
2. In February 2009, Respondent collected \$1,928.25 from a client, Hair Designs North, for a health insurance policy to be issued by American Community Mutual Insurance Company. Respondent failed to remit the funds to the insurer and also failed to return the premiums to his client when the client requested a refund.
3. Failure to remit money held in a fiduciary capacity is a violation of sections 1207(1) and 1239(1)(d) of the Michigan Insurance Code. MCL 500.1207(1) and 1239(1)(d).
4. The Commissioner finds that Respondent violated sections 1207(1) and 1239(1)(d) of the Insurance Code. By his conduct, Petitioner engaged in dishonest practices and demonstrated untrustworthiness prohibited by section 1239(1)(h) of the Insurance Code. MCL 500.1239(1)(h).

5. Respondent's conduct demonstrates a failure to serve the public in an honest and trustworthy manner. Such conduct warrants the imposition of a severe licensing sanction. The Commissioner concludes that Respondent is not qualified to hold a Michigan insurance producer license.

III. Order

Based on the conduct described above and in accordance with section 1244 of the Michigan Insurance Code, MCL 500.1244:

1. Respondent shall pay restitution of \$1,928.25 to [REDACTED] Hair Designs North.
2. Respondent's insurance producer license is revoked.



Ken Ross
Commissioner

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

**In the matter of
Office of Financial and Insurance
Regulation,
Petitioner**

**v
Millard F. Hildreth, Jr.,
Respondent**

Docket No. 2010-470

Agency No. 10-771-L

**Agency: Office of Financial and
Insurance Regulation**

Case Type: Sanction/Revocation

**Issued and entered
this 23rd day of June, 2010
by Renée A. Ozburn
Administrative Law Judge**

**RECEIVED
JUN 24 2010
OFIR/OGC**

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

On April 27, 2010, the Office of Financial and Insurance Regulation (OFIR/Petitioner) issued an Order Referring Complaint for Hearing and Order to Respond with an attached Complaint alleging violations of the Michigan Insurance Code of 1956, as amended, (Code) MCL 500.100 *et seq.*, by Millard Hildreth, Jr. (Respondent). On May 4, 2010, a Notice of Hearing was issued scheduling a formal administrative hearing for June 9, 2010, at 9:00 a.m., in Lansing, Michigan. The Order Referring Complaint and Notice of Hearing were mailed to the Respondent's last known addresses of record. The Notice of Hearing informs parties that failure to appear for a hearing may result in a default judgment or decision against the non-appearing party.

On June 9, 2010, at the time scheduled for hearing, Attorney Marlon Roberts appeared and was ready to proceed on behalf of OFIR. Millard Hildreth, Jr. did not appear and was not represented. The undersigned Administrative Law Judge deemed that the Respondent had been duly served with notice, and the hearing could proceed in his absence pursuant to Section 72 of the Administrative Procedures Act, 1969 PA 306, as amended, (APA) MCL 24.201 *et seq.* Mr. Roberts motioned to default Respondent pursuant to Section 78 of the APA. The undersigned Administrative Law Judge granted a default. A default judgment constitutes a decision that allegations in the Complaint are true as alleged.

ISSUES AND APPLICABLE LAW

The issue is whether the Respondent violated Code Sections 1239(1)(b),(d) and (h) and 1207(1) which provide:

Sec. 1239.

(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:

(b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

(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.

Sec. 1207.

(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. An agent shall not accept payment of a premium for a medicare supplemental policy or certificate in the form of a check or money order made payable to the agent instead of the insurer. Upon receiving payment of a premium for a medicare supplemental policy or certificate, an agent shall immediately provide a written receipt to the insured.

FINDINGS OF FACT

1. At all times pertinent to the complaint in this matter, Millard Hildreth, Jr. (Respondent) was a licensed resident producer authorized to conduct the business of insurance in the State of Michigan.

2. As a licensed insurance producer, Respondent knew or had reason to know that Section 1239(1) of the Code, MCL 500.1239(1) provides,

“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:

(b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

(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.

3. Respondent knew or had reason to know that Section 1207(1) of the Code states in pertinent part:

“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...”

4. On February 3, 2009, [REDACTED], [REDACTED] Hair Designs North, delivered a check in the amount of \$1,928.25 to Mr. Hildreth as payment for a health insurance policy through American Community Mutual Insurance Company.

5. Mr. Hildreth deposited [REDACTED] check into his bank account on February 3, 2009.

6. Within a week of delivering the check to Mr. Hildreth, [REDACTED] contacted Mr. Hildreth by telephone and requested that Mr. Hildreth cancel the policy. Mr. Hildreth informed [REDACTED] that due to insurance company computer problems, [REDACTED] reimbursement would be delayed.

7. Subsequently, American Community Mutual informed [REDACTED] that it never received his premium payment from Mr. Hildreth.

8. On April 8, 2009, [REDACTED] filed a complaint with the Office of Financial and Insurance Regulation.

9. Mr. Hildreth has failed to reimburse [REDACTED] the \$1,928.25 paid to Mr. Hildreth for the purpose of securing insurance coverage.

CONCLUSIONS OF LAW

Petitioner bears the burden of proving, by a preponderance of the evidence, that the Respondent violated the Code as alleged, and that grounds exist for imposing sanctions. Having granted a default judgment, the undersigned Administrative Law judge concludes that the aforementioned findings of fact describe conduct indicating that Respondent has violated insurance laws, engaged in fraudulent and dishonest practices reflecting untrustworthiness and financial irresponsibility and improperly withheld, misappropriated or converted property received in the course of doing insurance business in violation of Code Section 1239(1)(b),(d) and (h). Further, Respondent has failed to timely remit money held in his fiduciary capacity as an agent in violation of Code Section 1207(1).

PROPOSED DECISION

The Petitioner recommends, and the undersigned Administrative Law Judge concurs, that the Commissioner should revoke Respondent's insurance producer's license and order Respondent to make restitution to [REDACTED] in the amount of \$1,928.25.

EXCEPTIONS

The parties may file Exceptions to this Proposal for Decision within 20 days after it is issued. Exceptions should be addressed to the Office of Financial and Insurance Regulation, 611 West Ottawa Street, 3rd Floor, P.O. Box 30220, Lansing, Michigan 48909; Attention: Dawn Kobus.


Renee A. Ozburn
Administrative Law Judge