

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

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

Nor-Mar Agency, Inc.  
System ID No.0007443

Enforcement Case No. 10-7762

Respondent  
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Issued and entered  
on 9/24/, 2010  
by Stephen R. Hilker  
Chief Deputy Commissioner

CONSENT ORDER AND STIPULATION

**A. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. At all times pertinent to the matter herein, Nor-Mar Agency, Inc. (Respondent) was a licensed resident producer with qualifications in Life, Casualty, Accident and Health and is authorized to transact the business of insurance in this state. Martin H. Zehnder is the designated licensed producer of the Respondent.
2. At all times pertinent to the matter herein, Respondent was a corporation organized in the State of Michigan with a business location of 7410 Greenleaf Court, Frankenmuth, MI 48734.
3. At all times pertinent to the matter herein, Martin H. Zehnder was an officer and shareholder of Zehnder Chevrolet, Inc., a duly organized corporation in the State of Michigan. Zehnder Chevrolet, Inc. was located at 511 North Main Street, Frankenmuth, MI 48734. Zehnder Chevrolet, Inc. was previously known as Zehnder Chevrolet Buick, Inc. Zehnder Chevrolet Buick, Inc. filed with the Michigan Department of Energy, Labor & Economic Growth, Bureau of Commercial Services, a certificate of amendment to its articles of incorporation on April 30, 2008, amending its name to Zehnder Chevrolet, Inc.
4. Respondent 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 or levy a civil fine under Section 1244 ... for using fraudulent, coercive, or dishonest practices or demonstrating incompetence,

untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.”

5. Respondent knew or had reason to know that Section 1207(1) of the Code, MCL 500.1207(1), provides in pertinent part that, “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.”
6. Respondent knew or had reason to know that Section 4503(g)(i) of the Code, MCL 500.4503(g)(i), provides that, “A fraudulent insurance act includes, but is not limited to, acts or omissions committed by any person who knowingly, and with an intent to injure, defraud, or deceive [d]iverts, attempts to divert, or conspires to divert funds of an insurer or of other persons in connection with ... [t]he transaction of insurance....”
7. Respondent has committed grounds for revocation, probation, suspension, and/or the levy of civil fines based on the conduct described below.

#### COUNT I

8. On January 27, 2010, OFIR received a complaint from M.B. alleging that on June 4, 2007, she completed an Arch Insurance Company GAP Insurance Policy Application for a 2007 Chevrolet Cobalt she purchased from Zehnder Chevrolet Buick, Inc.
9. The complainant provided OFIR with an installment sale contract which indicated that the complainant financed the premium payment for the GAP insurance policy in the amount of \$595.
10. On or about October 2, 2009, M.B. paid off the loan on her vehicle to which the GAP policy applied and subsequently contacted Arch Insurance Company (Arch) for a pro-rata refund pursuant to the terms of her GAP Insurance Policy. According to the GAP insurance policy, M.B. was entitled to a pro-rata refund if she paid off the loan early to which the GAP policy applied. Arch informed M.B. that it had searched its records and found no record of a policy sale or related premium for the vehicle she purchased from Zehnder Chevrolet Buick, Inc. on June 4, 2007.
11. M.B. contacted Mr. Zehnder to inquire about a refund of her GAP premium and informed him that Arch indicated that she did not have GAP coverage because her application for GAP coverage was never submitted to Arch. Mr. Zehnder advised M.B. that she did not have insurance coverage through Arch because her policy was self insured. Respondent issued refund checks to M.B. in the amount of 594.46. Before depositing the checks into her account for payment, M.B. contacted the bank upon which the checks were drawn and found that Respondent did not have sufficient funds in the account to cover the checks.

12. On or about December 31, 2009, M.B. contacted Arch and advised Arch of her discussion with Mr. Zehnder. On or about January 4, 2010, and January 14, 2010, M.B. provided Arch with documentation regarding the GAP policy sale, refund calculation and a letter regarding the vehicle loan payoff. On January 19, 2010, Arch issued a premium refund check to M.B. in the amount of \$595.
13. By failing to remit an application for insurance and the premium payment it collected to Arch Insurance Company, Respondent has violated Sections 1239(1), 4503, and 1207(1) of the Code.

#### COUNT II

14. On or about April 24, 2008, B.B. completed an Arch Insurance Company GAP Insurance Policy Application for a 2005 Chevrolet Trailblazer she purchased from Zehnder Chevrolet Buick, Inc. Pursuant to the installment sale contract, B.B. financed the premium payment in the amount of \$595 for the GAP insurance policy.
15. Arch Insurance Company found no record of a policy sale or related premium for the vehicle B.B. purchased from Zehnder Chevrolet Buick, Inc. on April 24, 2008. By failing to remit an application for insurance and the premium payment it collected to Arch Insurance Company, Respondent has violated Sections 1239(1), 4503 and 1207(1) of the Code.

#### COUNT III

16. On or about December 16, 2006, S.L. completed an Arch Insurance Company GAP Insurance Policy Application for a 2007 Buick Rainier she purchased from Zehnder Chevrolet Buick, Inc. Pursuant to the installment sale contract, S.L. financed the premium payment in the amount of \$595 for the GAP insurance policy.
17. Arch Insurance Company found no record of a policy sale or related premium for the vehicle S.L. purchased from Zehnder Chevrolet Buick, Inc. on December, 16, 2006. By failing to remit an application for insurance and premium payment it collected to Arch Insurance Company, Respondent has violated Sections 1239(1), 4503, and 1207(1) of the Code.

#### COUNT IV

18. On or about March 31, 2007, G.S. completed an Arch Insurance Company GAP Insurance Policy Application for a 2007 Chevrolet Tahoe he purchased from Zehnder Chevrolet Buick, Inc. Pursuant to the installment sale contract G.S. financed \$595 in premium payment in order to obtain the GAP policy.
19. Arch Insurance Company found no record of a policy sale or related premium for the vehicle G.S. purchased from Zehnder Chevrolet Buick, Inc. on March 31, 2007. By failing to remit an application for insurance and premium payment it collected to Arch Insurance Company, Respondent has violated Sections 1239(1), 4503 and 1207(1) of the Code.

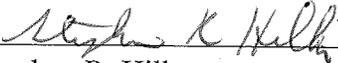
COUNT V

20. On or about January 9, 2009, L.F. completed a MIC Property and Casualty Insurance Corporation GAP Insurance Policy Application for a 2003 Buick Park Avenue she purchased from Zehnder Chevrolet Buick, Inc. Pursuant to the installment sale contract, L.F. financed \$599 in premium payment in order to obtain the GAP policy.
21. On June 4, 2010, Respondent issued a check in the amount of \$1,180.11 to L.F. The check included a GAP insurance premium refund in the amount of \$599. L.M. deposited the check into her bank account. However, Respondent's financial institution returned the check without payment due to an "Uncollect Hold."
22. By engaging in the foregoing conduct, Respondent has violated Section 1239(1) of the Code.

**B. ORDER**

Based on the findings of fact and conclusions of law above and Respondent's stipulation, it is **ORDERED** that:

1. Respondent shall CEASE and DESIST from violating MCL 500.1239, MCL 500.1207, and MCL 500.4503.
2. Forthwith, Respondent shall CEASE and DESIST from engaging in any activity requiring licensure under the Michigan Insurance Code and deliver to the Chief Deputy Commissioner, its resident producer license certificate within five days of the date of entry of this Order.
3. Respondent's resident producer license issued pursuant to the provisions of the Michigan Insurance Code is hereby **REVOKED**.
4. Respondent shall make restitution to all insured's or other claimants to cover incurred losses, damages, or other harm attributable to the acts of the Respondent found to be in violation of the Insurance Code. The restitution shall not only include individuals harmed by the Respondent identified in Section A of the Consent Order and Stipulation but also any and all insured's or other claimants identified after the date of this order.

  
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Stephen R. Hilker  
Chief Deputy Commissioner

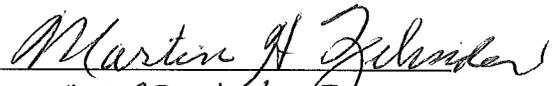
Dated: 9/24/10

### C. STIPULATION

Respondent has read and understands the consent order above. Respondent agrees that the Chief Deputy Commissioner has jurisdiction and authority to issue this consent order pursuant to the Code. Respondent waives the right to a hearing in this matter if this consent order is issued. Respondent understands that this stipulation and consent order will be presented to the Chief Deputy Commissioner for approval and the Chief Deputy Commissioner may or may not issue this consent order. Respondent waives any objection to the Commissioner deciding this case following a hearing in the event the consent order is not approved. Respondent agrees to abide by the above consent order. Respondent admits to the Findings of Fact and Conclusions of Law set forth above and consents to the entry of this order.

**Nor-Mar Agency, Inc.**

Dated: 9-8-2010

  
By: MARTIN H. ZEHNDER  
Its: SECTY,

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

Dated: 9/14/2010

  
Marlon F. Roberts  
Staff Attorney