

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:

Office of Financial and Insurance Regulation  
Petitioner

Enforcement Case No. 09-7489  
Agency No. 10-001-L

v

Eric S. Swider

System ID No. 0195357

Respondent

\_\_\_\_\_ /

CONSENT ORDER

I.  
RECITALS

**WHEREAS**, the Office of Financial and Insurance Regulation administers and regulates the Michigan Insurance Code (the Code), 1956 PA 218, as amended, MCL 500.100 *et seq.*, and determined that Respondent violated the Code where he failed to produce certain documents and records pursuant to Section 249 of the Code, MCL 500.249; and,

**WHEREAS**, Respondent was served with notice and afforded an opportunity for a hearing pursuant to the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.201 *et seq.*, ("APA"); and,

**WHEREAS**, Respondent failed to appear to defend against the allegations that he violated Section 249 of the Code, and as a result his insurance producer's license was revoked; and,

**WHEREAS**, Respondent has cooperated with regulators by responding to inquiries, providing documentary evidence and other materials, and immediately halting further violations of the Code; and,

**WHEREAS**, Respondent, as part of this settlement, agrees to make certain payments and disclosures; and,

**WHEREAS**, Respondent neither admits nor denies the Findings of Fact and Conclusions of Law, but has agreed to resolve these matters through this Consent Order (the "Order") in order to avoid protracted and expensive proceedings; and,

**WHEREAS**, Respondent, as evidenced by the authorized signatures on the consent to the Order below, admits the jurisdiction of OFIR, voluntarily consents to the entry of this Order and elects to permanently waive any right to a hearing and appeal under the APA and the Code with respect to this Order;

**NOW, THEREFORE**, the Chief Deputy Commissioner of OFIR, as authorized under the APA and the Code hereby enters this Order:

## II. FINDINGS OF FACT

1. Respondent Eric S. Swider is a licensed resident producer with qualifications to transact business in insurance in accident, health, casualty, life, property and variable annuities. System ID No. 0195357.
2. On or about, July 25, 2009, OFIR received information that Eric Swider and his business First Financial failed to pay commissions owing to P.L.
3. On August 12<sup>th</sup>, August 29<sup>th</sup> and September 11<sup>th</sup>, 2009, OFIR staff contacted Respondent to provide books, records and an accounting of the P.L. contract and disbursement of commission proceeds to P.L. Respondent failed to reply.
4. On April 9, 2010, the Respondent's resident insurance producer's license was revoked pursuant to MCL 500.1244 for failing to provide books, records and an accounting of the P.L. contract and the disbursement of commission proceeds to P.L.
5. On September 13, 2010, Respondent supplied OFIR staff with books, records and an accounting of the P.L. contract and the disbursement of commission proceeds to P.L.
6. As of the date of this Consent Order, no money is owed to P.L. and Respondent has demonstrated compliance with Section 249 of the Code.
7. OFIR staff conducted a search of its records and databases to determine whether Respondent has committed any actions listed in Section 1239(1) of the Code. No such records were found.
8. OFIR staff conducted a search of its records and databases and determined that Respondent successfully passed the examination required for licensure in the following areas: (1) life and variable lines November 1998, (2) property, casualty in April 1999, and (3) accident and health in January 2000.

9. OFIR staff is unaware of any license disqualifying event that would preclude Respondent from being licensed as a resident insurance producer.

### III. CONCLUSIONS OF LAW

1. Section 249(a), MCL 500.249(a), provides that, for the purposes of ascertaining compliance with the provisions of the insurance laws of the state, the commissioner may initiate proceedings to examine the accounts, records, documents and transactions pertaining to any insurance agent.
2. Section 150, MCL 500.150, provides that a person who violates any provision of this act, after being afforded an opportunity for a hearing before the commissioner pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, the Commissioner may order revocation of the person's license or certificate of authority.
3. It was appropriate to revoke Respondent's producer license in April 2010. He had failed on repeated occasions over several months to answer an official inquiry from this agency. When his conduct became the subject of an enforcement action, he failed to take advantage of the opportunity to informally resolve the matter with OFIR staff and later failed to appear for a formal administrative hearing.
4. Section 1244(2) of the Code allows the Commissioner to reopen and alter, modify, or set aside, an order issued, if, in the opinion of the commissioner, conditions of fact or of law have changed to require that action.
5. In the present matter facts have changed. On September 13, 2010, Respondent supplied OFIR staff with books, records and an accounting of the P.L. contract and the disbursement of commission proceeds to P.L. No money is owed to P.L. and according to OFIR staff Respondent demonstrated compliance with Section 249 of the Code. OFIR staff conducted a search of its records and databases and found Respondent has not committed any act listed in Section 1239(1) of the Code that would preclude him from being licensed.

### IV. ORDER

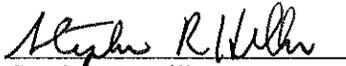
#### THEREFORE, IT IS HEREBY ORDERED:

1. The Respondent shall immediately **CEASE AND DESIST** from violating Section 249, MCL 500.249, of the Code.
2. The Respondent shall **PAY** to the State of Michigan civil penalties and fines totaling \$500.00 (five hundred dollars).

3. The Final Order of Revocation entered and issued on April 9, 2010, against Respondent is **SET ASIDE**.
4. This Consent Order concludes the investigation by OFIR and any other action that OFIR could commence under the Insurance Code as it relates to the matters between Respondent and P.L.
5. This Consent Order is entered into solely for the purpose of resolving the referenced investigation, and is not intended to be used for any other purpose, and its findings and conclusions shall not constitute admissions on the part of Respondent for any purpose. The Respondent is further prohibited from taking any action, publically or privately, creating the impression that the violations are without factual basis and failure to comply with this prohibition constitutes a material default of this Consent Order.
6. If Respondent defaults in any of his obligations set forth in this Consent Order, OFIR may vacate this Consent Order, at its sole discretion, upon 10 days notice to Respondent and his attorney of record and without opportunity for administrative hearing.
7. This Consent Order is restricted to the above-named Respondent. For any person or entity not a party to this Consent Order, this Consent Order does not limit or create any private rights or remedies against Respondent, does not limit or create liability of Respondent, or limit or create defenses of Respondent to any claims.
8. Nothing herein shall preclude the State of Michigan, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations (collectively, "State Entities"), from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief against Respondent in connection with subsequent actions or conduct deemed in violation of the Insurance Code.
9. This Consent Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of the State of Michigan without regard to any choice of law principles.

Dated this 13th day of January, 2011.

THE OFFICE OF FINANCIAL AND INSURANCE  
REGULATION

  
Stephen R. Hilker  
Chief Deputy Commissioner

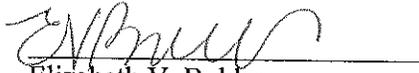
V.  
STIPULATION

I have read and understand the consent order above. I agree that the Chief Deputy Commissioner has jurisdiction and authority to issue this consent order pursuant to the Insurance Code. I waive the right to a hearing in this matter if this consent order is issued. I understand 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. I waive any objection to the Commissioner deciding this case following a hearing in the event the consent order is not approved. I admit the facts set forth in the above consent order and agree to the entry of this order.

  
Eric Swider  
System ID No.0195357

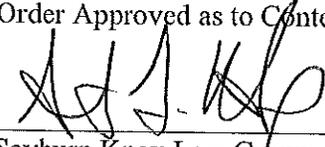
Dated: 1-10-2011

The OFIR staff approves this stipulation and recommends that the Chief Deputy Commissioner issue the above Consent Order.

  
Elizabeth V. Bolden  
OFIR Staff Attorney

Dated: Jan. 11, 2011

Order Approved as to Content and Form:

	<u>1/10/11</u>		<u>1/11/2011</u>
Seyburn Knox Law Group By: Steven L. Knox	Date	Elizabeth V. Bolden	Date