

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

Enforcement Case No. 09-7334

**Cherise Zulewski
and
Downriver Title Agency,
Respondents**

For the Petitioner:

**Elizabeth Bolden
Office of Financial and Insurance Regulation
P.O. Box 30220
Lansing, MI 48909-7720**

For the Respondents:

**Luke Hennings, Esq.
Staver & Associates, P.C.
20300 Superior Road, Ste 204
Taylor, MI 48180**

**Issued and entered
this 23rd day of November 2010
by Ken Ross
Commissioner**

**ORDER DENYING MOTION TO RESCIND
FINAL DECISION**

I. Background

In 2009, the staff of the Office of Financial and Insurance Regulation (OFIR) received a complaint that the Respondents had failed to properly account for more than \$600,000.00 in escrow funds which Respondents had collected from various clients. Following an investigation, OFIR staff commenced an enforcement action against the Respondents. The Respondents were sent, on numerous occasions, notices of opportunity to show compliance and notices of hearings. These notices were sent to the Respondents' addresses of record and to other addresses associated with Respondents.

When the Respondents failed to reply to any of these notices, OFIR staff filed a motion for final decision by default. This motion was granted. A final decision revoking Respondents' insurance licenses was issued on August 10, 2010.

Respondents have now requested that the revocation be rescinded because there "was a grave procedural defect" in that they were not notified of the administrative complaint and notice of hearing. Respondents assert that they have meritorious defenses to the allegations stated in the complaint. In support of that assertion, Respondent state that civil litigation based on the same allegations was dismissed in Wayne County Circuit Court in May 2008. (Exhibit A to Respondent's Motion to Rescind.)

OFIR staff has responded to Respondents' motion and has documented the various mailings of notices to the Respondents. OFIR staff asserts that any failure of service is solely attributable to the Respondents having failed to maintain a current address with OFIR as they were required to do under sections 1206(5) and 1238 of the Michigan Insurance Code.

II. Analysis

Section 1206(5) of the Michigan Insurance Code, MCL 500.1206(5), provides:

Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of legal name or address within 30 days of the change.

Section 1238 of the Michigan Insurance Code, MCL 500.1238, provides:

(1) When applying for a license to act as an agent, solicitor, counselor, or adjuster, each applicant shall report his or her mailing address to the commissioner. An agent, solicitor, counselor, or adjuster shall notify the commissioner of any change in his or her mailing address within 30 days of such change. A fee of \$3.00 shall accompany each change of address to cover costs of recording such change. A fee collected under this subsection shall be turned over to the state treasurer and credited to the

general fund of the state. The commissioner shall maintain the mailing address of each agent, solicitor, counselor, or adjuster on file.

(2) A notice of hearing or service of process may be served upon an agent, solicitor, counselor, or adjuster in any action or proceeding for a violation of this act by mailing such notice or process by first class mail to the agent's, solicitor's, counselor's, or adjuster's mailing address which has been reported to the commissioner pursuant to subsection (1).

Respondents argue that mail forwarding instructions, which they claim to have filed with the postal service, were not followed. However, mailings returned to OFIR were stamped by the postal service "unable to forward" or "no forwarding order on file" which calls into question Respondents' claims that they provided forwarding addresses to the postal service. In any case, a postal forwarding request is not a substitute for the statutory obligation of an OFIR licensee to maintain a current address with OFIR.

The Commissioner finds that Respondents have either ignored properly addressed communications from OFIR staff or have not maintained current valid addresses with OFIR as required by these statutory provisions. Whichever is true, any "procedural error" in serving notices in this case is attributable to the Respondents' own conduct.

The Commissioner also finds unpersuasive Respondents' description of potentially meritorious defenses. Even if the civil litigation between the Respondents and the insurer was resolved by dismissal in circuit court, that is no more than a mutual agreement of those parties to end their dispute. Since no trial was held, there are no findings of fact which could be relied upon to contradict or support the allegations stated in the OFIR administrative complaint.

The circuit court dismissal occurred in May 2008. Therefore, the dismissal was an event which the Respondents could have brought to the attention of OFIR well before the

Commissioner's final decision was issued in August 2010. Indeed, the dismissal occurred while the matter was being investigated by OFIR staff and before even the notice of opportunity to show compliance was issued by OFIR in July 2009.

Respondents were afforded numerous opportunities to resolve this matter before a final decision was issued by this agency. Any failure to take advantage of those opportunities is the responsibility of the Respondents. Their motion to rescind is without merit.

III. Order

The Respondents' motion to rescind the August 10, 2010 Final Decision is denied.

A handwritten signature in black ink, appearing to be 'K. Ross', written over a horizontal line.

Ken Ross
Commissioner