

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the Matter of:

DONALD J. ZIENTY  
System ID No. 434611

Enforcement Case No. 10-7558

HAMILTON INSURANCE SERVICES, LLC  
System ID No. 91162

Respondents

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CONSENT ORDER AND STIPULATION

Issued and entered,  
on December 27, 2011,  
by Annette E. Flood  
Chief Deputy Commissioner

I.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant, Donald J. Zienty (Respondent Zienty) was an Illinois resident insurance producer and a nonresident insurance producer in the State of Michigan with qualification and authorization to sell, solicit, or negotiate casualty and property insurance, until his license was suspended for compliance on January 2, 2009.
2. Respondent Zienty's last known business address was 20 E. Jackson Blvd., Suite 1050, Chicago, IL 60607.
3. At all times relevant, Hamilton Insurance Services, LLC, (Respondent Hamilton) was a licensed insurance producer in the State of Illinois from June 16, 2004 until June 16, 2006, and from July 25, 2006 until June 4, 2007.
4. Respondent Hamilton's last known business address was 20 E. Jackson Blvd., Suite 1050, Chicago, IL 60607.
5. The Office of Financial and Insurance Regulation (OFIR) database confirms that Respondent Hamilton was never granted a nonresident insurance producer's license, or

authorization to sell, solicit, or negotiate casualty, property or any other kind of insurance in the State of Michigan.

6. At all times pertinent to the matter herein, OFIR's database confirms that Respondent Hamilton was an alias for Respondent Zienty and that Respondent Zienty was an Affiliated/Agent for Respondent Hamilton.
7. At all times pertinent to the matter herein, Respondent Zienty sold, solicited, or negotiated casualty and/or property insurance in the State of Michigan through Respondent Hamilton.
8. On or about November 13, 2009, OFIR received a complaint from [REDACTED] (Complainant) alleging that it purchased an insurance policy, number [REDACTED], from Respondent Zienty and through Respondent Hamilton for which Respondent Zienty collected premiums for the insurance policy, but failed to remit the premiums to the insurance carrier.
10. The insurance policy was an excess lines policy, which was to cover Complainant for up to \$1,000,000 in pollution liability.
11. Respondent Zienty brokered the insurance policy through Maximum Independent Brokerage, Inc ("Maximum"), who purchased the policy through American International Specialty Lines Insurance Company ("AIG").
12. The insurance policy from AIG, policy number [REDACTED] was for the coverage period July 27, 2008 through July 27, 2009. The Insurance premium for the policy was \$14,278, plus taxes of \$1,626.95, for a total insurance premium of \$15,904.95
13. Complainant entered into a premium finance agreement with Imperial A. I. Credit Companies ("AICCO") to finance a portion of the insurance policy, number [REDACTED]
14. The premium finance contract confirms that Complainant made a \$5,196.45 cash down payment to Respondent Hamilton and the remaining balance of \$11,123.37 (Principal of \$10,708.50 + interest of \$414.87= \$11,123.37) was financed through AICCO.
15. On August 1, 2008, AICCO forwarded a net premium of \$10,708.50 to Respondent Zienty.
16. Between July 31, 2008 and May 8, 2009, Complainant made installment payments to AICCO.
17. On May 8, 2009, Complainant made the final installment payment to AICCO, completing all payments owed to AICCO.

18. Unbeknownst to Complainant, on September 25, 2008, the insurance policy number [REDACTED] had been cancelled by AIG for non-payment of the insurance premium.
19. Respondent Zienty collected \$15,904.95 (\$5,196.45 from Complainant and \$10,708.50 from AICCO) in insurance premiums, but failed to remit the insurance premiums to Maximum.
20. Subsequent to the policy's cancellation, Respondent Zienty made a partial payment of \$4,706 to Maximum. This amount reflects earned premium due to Maximum for the period the policy was in place, namely from July 27, 2008 until the date of cancellation on September 25, 2008.
21. Even after the partial payment of \$4,706 was paid by Respondent Zienty, an outstanding balance in the amount of \$11,198.95, in insurance premiums which Respondent Zienty collected on behalf of the Complainant, but failed to remit to Maximum, remains to be paid.
22. On December 28, 2009, AIG reinstated policy [REDACTED] back to the cancellation date of September 25, 2008. Reinstatement was based on Complainant providing AIG with documented proof that the premiums for the insurance policy had been paid to Respondent Zienty and Respondent Hamilton.
23. Respondent Zienty was responsible for collecting the insurance premiums and for remitting the premiums to Maximum. Due to Respondent Zienty's failure to remit the collected premiums to Maximum, Complainant's insurance coverage was cancelled.
24. While Respondent Zienty was a licensed nonresident agent, qualified and authorized to sell, solicit, or negotiate casualty and property insurance within the State of Michigan, as defined by Chapter 12, Section 1201 of the Michigan Insurance Code (Code); he was not licensed or authorized to sell, solicit or cancel any kind of insurance through the unlicensed agency of Respondent Hamilton.
25. Respondent Hamilton, was not licensed or authorized to sell, solicit, or negotiate any kind of insurance in the State of Michigan, in violation of Section 1201(a)(1) of the Code.
26. Respondents knew or had reason to know that Section 1239(1) of the Code, MCL 500.1239(1), states, in pertinent part, 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 ... for any 1 or more of the following causes:
  - (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.

27. Respondents knew or had reason to know that Section 1207(1) of the Code, MCL 500.1207(1), provides 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."
28. Respondents engaged in conduct that gave cause for discipline under Section 1239(1) and violated section 1207(1) of the Code, as described below:
29. Respondent Zienty was responsible for collecting the insurance premiums and for remitting the premiums to Maximum. Due to Respondent Zienty's failure to remit the collected premiums to Maximum, Complainant's insurance coverage was put in jeopardy.
30. Respondent Zienty was supposed to be the fiduciary for all money received or held by the agent in his or her capacity as an agent.
31. Respondent Zienty improperly withheld, misappropriated and/or converted insurance premiums that were due and owing to Maximum which he received in the course of doing insurance business.
32. Failure by Respondent Zienty, as a licensed insurance agent to turn over insurance premiums to Maximum, which he held in a fiduciary capacity, in a timely manner, is prima facie evidence of violation of Respondent Zienty's fiduciary responsibility.
33. By failing to turn over insurance premiums to Maximum, in a timely manner, which Respondent Zienty held in a fiduciary capacity, Respondent Zienty engaged in fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state.
34. By engaging in the foregoing conduct, Respondent Zienty engaged in conduct that gave cause for discipline under Section 1239(1) and violated section 1207(1) of the Code.
35. While Respondent Zienty was a licensed nonresident agent, qualified and authorized to sell, solicit, or negotiate casualty and property insurance within the State of Michigan; he was not licensed or authorized to sell, solicit or negotiate any kind of insurance through Respondent Hamilton, as Respondent Hamilton was not licensed or authorized to sell, solicit or negotiate any kind of insurance in the State of Michigan.
36. By Respondent Zienty having sold Complainant an insurance policy number [REDACTED] through Respondent Hamilton an unlicensed insurance agency, Respondents engaged in fraudulent, coercive, or dishonest practices or demonstrating incompetence,

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

37. By engaging in the foregoing conduct, Respondent Zienty engaged in conduct that gave cause for discipline under Section 1239(1) of the Code

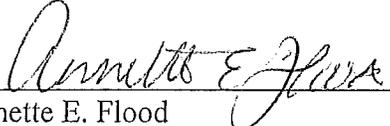
## II. ORDER

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

1. Respondents shall CEASE and DESIST from violating the Michigan Insurance Code.
2. Respondent Zienty's nonresident insurance producer license issued pursuant to the provisions of the Michigan Insurance Code is hereby REVOKED.
3. Respondents shall CEASE and DESIST from engaging in any activity requiring licensure under the Michigan Insurance Code
4. Forthwith, Respondent Zienty shall deliver to the Chief Deputy Commissioner his original nonresident insurance producer license within five days of the date of entry of this Order.

IT IS SO ORDERED

Dated: 12-27-11

  
Annette E. Flood  
Chief Deputy Commissioner

## III. STIPULATION

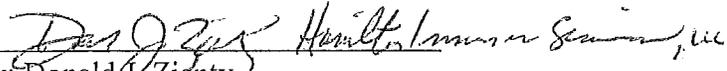
Respondents have read and understand the consent order above. Respondents agree that the Chief Deputy Commissioner has jurisdiction and authority to issue this consent order pursuant to the Insurance Code. Respondents waive their right to a hearing in this matter if this consent order is issued. Respondents 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. Respondents waive any objection to the Commissioner deciding this case following a hearing in the event the consent order is not approved. Respondents admit the findings of fact and conclusions of law set forth in the above consent order and agree to the entry of this order. Respondents admit that both parties have complied with the procedural requirements of the Michigan Administrative Procedures Act (MAPA) and

the Michigan Insurance Code (Code). Respondents have had an opportunity to review the Stipulation and Consent Order and have the same reviewed by legal counsel.

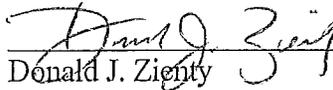
Respondents understand and intend that by signing this Stipulation, Respondents are waiving the right, pursuant to the Code, the rules promulgated thereto, and the MAPA, to a hearing before an administrative law judge, at which the OFIR would be required to prove the charges set forth by presentation of evidence and legal authority and at which Respondents would be entitled to appear to cross-examine all witnesses presented by the OFIR and to present such testimony or other evidence or legal authority deemed appropriate as a defense to said charges.

Hamilton Insurance Services, LLC

Dated: 12-13-11

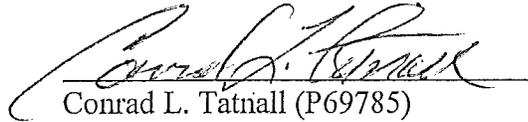
  
By: Donald J. Zienty  
Its: Member

Dated: 12-13-11

  
Donald J. Zienty

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

Dated: 12-19-11

  
Conrad L. Tatnall (P69785)  
Staff Attorney