

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
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. 11-11319

Andrew Smith
System ID # 0435746
Respondent

For the Petitioner:

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

For the Respondent:

Andrew Smith

Issued and entered
this 14th day of October 2011
by R. Kevin Clinton
Commissioner

FINAL DECISION

I. BACKGROUND

Respondent Andrew Smith is a resident insurance producer authorized to transact the business of insurance in Michigan. In October 2010, the Office of Financial and Insurance Regulation (OFIR) received information that Respondent had misappropriated insurance premiums and engaged in other fraudulent conduct in connection with the sale of automobile insurance. OFIR investigated the complaint and initiated a compliance action. Respondent was provided an opportunity to address the allegations but he did not participate in the informal compliance conference offered by OFIR staff.

On August 18, 2011, OFIR chief deputy commissioner Annette Flood issued an Administrative Complaint and Order for Hearing which was sent to Respondent. The administrative complaint set forth detailed allegations that Respondent had failed to comply with sections 1207 and 1239(1)(h) of the Michigan Insurance Code, MCL 500.1207 and 500.1239(1)(h).

The order for hearing required Respondent to take one of the following actions within 21 days: agree to a resolution of the case, file an answer to the allegations with a statement that Respondent plans to attend the hearing, or request an adjournment. Respondent failed to take any of these actions.

On September 28, 2011, OFIR staff filed a Motion for Final Decision. Respondent did not file a reply to the motion. Given Respondent's failure to answer, Petitioner's motion is granted. The administrative complaint, being unchallenged, is accepted as true. Based on the administrative complaint, the Commissioner makes the following findings of fact and conclusions of law.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Section 1207(1) of the Michigan Insurance Code requires an agent to be "a fiduciary for all money received or held by the agent in his or her capacity as an agent." Further, "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."
2. Section 1239(1)(h) of the Insurance Code, allows the Commissioner to revoke an insurance producer's license for using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
3. Section 1244(1) of the Insurance Code allows the Commissioner to impose civil fines and license revocation for insurance producers who violate any provision of chapter 12 of the Insurance Code.
4. At all times pertinent to this case, Respondent was an authorized agent for Allstate Insurance Company. Respondent's contract with Allstate required him to remit all client premiums to Allstate on the same day Respondent collected the premiums. In 2009 and 2010, Respondent collected insurance premiums from several Allstate policyholders and failed to timely remit those funds to Allstate. On two occasions the money was remitted several months late. On two other occasions, Respondent kept the money for his own use, failing to remit the funds at all.
5. By failing to remit the premium payments to Allstate as required by his agreement with the insurer, Respondent violated section 1207(1) of the Insurance Code and engaged in

fraudulent and dishonest practices prohibited by section 1239(1)(h) of the Insurance Code.

III. ORDER

Pursuant to sections 1207(1), 1239(1), and 1244(1) of the Michigan Insurance Code, it is ordered that:

1. The insurance producer license of Respondent Andrew Smith is revoked.
2. Respondent shall pay a civil penalty of \$2,000.00.



R. Kevin Clinton
Commissioner