

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Department of Insurance and Financial Services

Enforcement Case No. 13-11767

Agency No. 13-027

Petitioner,

v

Amy Sue Truscott
System ID No. 0361485

Respondent.

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Issued and entered
on JANUARY 16, 2014
by Randall S. Gregg
Special Deputy Director

FINAL DECISION

I. Background

Amy Sue Truscott (hereinafter Respondent) is a licensed resident insurance producer. The Department of Insurance and Financial Services (DIFS) received information that Respondent failed to remit premium funds to insurers. After investigation and verification of the information, on July 23, 2013, DIFS issued a Notice of Opportunity to Show Compliance alleging that Respondent had provided justification for revocation of licensure and other sanctions pursuant to Sections 1239(1) and 1244(1)(a-c) of the Michigan Insurance Code (Code), MCL 500.1239(1) and 500.1244(1)(a-c). Respondent failed to reply to the Notice.

On October 14, 2013, DIFS issued an Administrative Complaint and Order for Hearing which was served upon Respondent. The Order for Hearing required Respondent to take one of the following actions within 21 days: (1) agree to a resolution of the case, (2) file a response to the allegations with a statement that Respondent planned to attend the hearing, or (3) request an adjournment. Respondent failed to take any of these actions.

On November 25, 2013, DIFS' staff filed a Motion for Final Decision. Respondent did not file a reply to the motion. Given Respondent's failure to respond, Petitioner's motion is granted. The Administrative Complaint, being unchallenged, is accepted as true. Based upon the

Administrative Complaint, the Director makes the following Findings of Fact and Conclusions of Law.

II. Findings of Fact and Conclusions of Law

1. Pursuant to Executive Order 2013-1, all authority, powers, duties, functions, and responsibilities of the Commissioner of the Office of Financial and Insurance Regulation (Commissioner) have been transferred to the Director of the Department of Insurance and Financial Services (Director).
2. Amy Truscott (Truscott), System ID 0361485, is a licensed resident insurance producer authorized to transact the business of insurance in Michigan with qualifications in property and Casualty.
3. Insure Inc. (*d/b/a* Rogers Insurance Agency) (RIA), System ID 85648, located at 544 River Street Ontonagon, MI 49953, is an active licensed resident insurance producer agency in the state of Michigan with qualifications in Accident and Health, Casualty, Life, and Property. Truscott serves as RIA's vice president.
4. Truscott owns one-half of RIA.
5. On or about March 15, 2012, DIFS' staff received a statutorily required notification from Richard Hartson, Senior Corporate Investigator for The Hanover Insurance Group, parent company of Citizens Insurance, alleging irresponsible conduct on the part of RIA, Truscott and her partner while handling two customers' insurance transactions.
6. Hartson's investigation detailed that Truscott falsified the declaration sheet for a homeowner's insurance policy being paid for by the children of a deceased Citizens policyholder, RM. The declaration sheet had been falsified for the sole purpose of defrauding RM's children and/or the insurer. Although the children submitted a \$589.00 premium payment to RIA that Truscott accepted, and the premium was forwarded to Citizens for payment, Citizens did not renew the policy and returned the premium to RIA for Truscott to disburse to RM's children. Citizens declared the policy nonrenewable after the policy ended in August 2008 because RM had died during the 2007-2008 policy period.
7. RM's children were not aware their father's policy had not been renewed, nor did they receive the returned premium from RIA. After inquiring with Truscott about the policy and requesting proof that the policy existed, they received a falsified declaration sheet from Truscott. Truscott did not admit to sending the false declaration sheet; however, Truscott was in charge of the RM transaction. She did not return the premium received to RM's children.
8. In a separate transaction, Citizens refunded a premium payment of \$603.56 by check made payable to and addressed to GR and PR dated, June 15, 2011. The refund check

was endorsed by "Insure Inc." and deposited into RIA's bank account on September 20, 2011. Truscott managed RIA's bank deposits and withdrawals. Truscott did not forward the \$603.56 to GR and PR in a timely manner after receiving the refund check.

9. Instead, Truscott led GR and PR to believe their refund premium was applied to another policy issued by Hastings Insurance Company. GR and PR later discovered that no policy had been issued by Hastings and they were uninsured for a period of 3 months.
10. A DIFS' investigation of Truscott's business activities revealed numerous accounting discrepancies and Code violations.
11. More specifically, on or about March 9, 2011, Inland Systems, Inc. paid RIA \$13,987.00 as payment in full for a commercial general liability policy issued by Mt. Hawley Insurance Company. Truscott accepted Inland's payment. On March 10, 2011, Inland System's check was deposited into an account held by Insure Inc./RIA. By August 16, 2011, Mt. Hawley had not received payment from Truscott or RIA. It was not until June 2012, more than a year later, that Mt. Hawley received payment for Inland Systems from RIA, submitted by Truscott.
12. On or about October 29, 2011, EH paid RIA \$783.00 as payment in full for a personal automobile insurance policy issued by Hanover Insurance Company. Truscott received the payment, but failed to remit the full payment to Hanover. Instead, two receipts were generated by Truscott documenting receipt of the premium funds, and neither was for the \$783.00 to show payment in full. The first receipt was made on or about November 29, 2011 for \$315.00. The second receipt was made on or about December 20, 2011, for \$468.00. The first payment RIA made on EH's policy was on November 29, 2011, for \$315.00. The second payment was made on December 20, 2011, for \$468.
13. This was not the first instance where Truscott took money as payment in full for insurance coverage issued by various insurance companies, but did not remit the premium in full. Instead, funds were received by Truscott and not properly documented as being received on the day they were paid. Truscott did not forward the full payment to the insurance company. Instead, Truscott falsified receipts and made partial payments on policies that should have been paid in full. In total, DIFS' staff uncovered more than 30 separate instances where Truscott failed to remit the full premium received.
14. For example, on October 24, 2011, RIA/Truscott received a \$601.00 cash payment from TG as payment in full for a personal automobile insurance policy issued by Hastings Mutual Insurance Company. Truscott failed to remit the full payment to Hastings. Instead, Truscott made two separate payments on TG's policy. The first payment was made on November 8, 2011, for \$249.00 and the second payment was made on January 27, 2012.

15. In another transaction, on February 9, 2011, RIA/Truscott received a \$1,467.00 check from DH as payment in full for a personal automobile insurance policy issued by Citizens Insurance Company. Truscott failed to remit the premium received from DH to the insurance company. Truscott documented the payment as received on November 20, 2011, and not on February 9, 2011. Yet, even on November 20, 2011, when Truscott documented receiving the funds, Truscott did not remit the premium received from DH.

16. As a resident insurance producer, Respondent knew or had reason to know that Section 1207(1) of the Insurance Code (the Code), MCL 500.1207(1), states 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.

17. As a resident insurance producer, Respondent knew or had reason to know that Section 1239 of the Code, MCL 500.1239, provides in part:

(1) In addition to any other powers under this act, 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, and the commissioner shall refuse to issue a license under section 1205 or 1206a, 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.

18. Respondent has provided justification for discipline by improperly withholding and failing to turn over insurance premiums, which she held in a fiduciary capacity, to the named carrier and insureds when received.

Respondent has also provided justification for discipline by demonstrating incompetence, untrustworthiness and financial irresponsibility in the conduct of business when she failed to turn over premiums to Hanover, Citizens, Mt. Hawley and Hastings (the Insurers) when received.

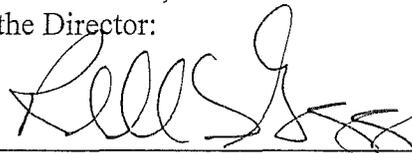
19. Respondent has also provided justification for discipline by using dishonest practices and demonstrating incompetence, untrustworthiness and financial irresponsibility in the conduct of business when she falsified insurance receipts and other documents.
20. DIFS' Staff has made reasonable efforts to serve Respondent and has complied with MCL 500.1238.
21. Respondent has received notice and has been given an opportunity to respond and appear and has not responded or appeared.
22. Respondent is in default and the Petitioner is entitled to have all allegations accepted as true.

III. Order

Based upon the Respondent's conduct and the applicable law cited above, it is ordered that:

1. Respondent shall cease and desist from violating the Code.
2. Respondent shall immediately cease and desist from engaging in the business of insurance.
3. Respondent's resident insurance producer's license System ID No. 0361485 is **REVOKED**.

Annette E. Flood, Director
For the Director:



Randall S. Gregg, Special Deputy Director