

**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. 17-14782
Agency No. 18-054-L**

Petitioner,

v

Drake Everett Garner
System ID No. 0056694

Everett Agency, Inc.
System ID No. 0096140

Respondents.
_____ /

Issued and entered
on APRIL 24, 2019
by Randall S. Gregg
Senior Deputy Director

FINAL DECISION

I. Background

Drake Everett Garner and Everett Agency, Inc. (Respondents) are licensed as an individual and agency insurance producers. The Department of Insurance and Financial Services (DIFS) received information that Respondents failed in a timely manner to turn over money held in its fiduciary capacity to the insurers, misappropriated or converted money received in the course of doing business, used fraudulent or dishonest practices or demonstrated incompetence or untrustworthiness, acted as an agent for an insurer without an appointment, and failed to respond to requests from DIFS investigators. After investigation and verification of the information, on May 30, 2017, DIFS issued a Notice of Opportunity to Show Compliance (NOSC) alleging that Respondents had provided justification for revocation of licensure and other sanctions pursuant to Sections 1239(1) and 1244(1)(a-d) of the Michigan Insurance Code (Code), MCL 500.1239(1) and 500.1244(1)(a-d). Respondents replied to the NOSC, but failed to show compliance with the Code.

On December 13, 2018, DIFS issued an Administrative Complaint and Order for Hearing which was served upon Respondents at the address he is required to maintain with DIFS. The Order for Hearing required Respondents 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 Respondents planned to attend the hearing, or (3) request an adjournment. Respondents failed to respond or take any action.

On March 21, 2019, DIFS Staff filed a Motion for Final Decision. Respondents did not file a reply to the motion. Given Respondents' 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. Drake Everett Garner (System ID No. 0056694) (Respondent Garner) is a licensed resident insurance producer with qualifications in casualty and property, life, accident and health, and variable annuities.
2. Everett Agency, Inc. (System ID No. 0096140) (Respondent Everett Agency) is a licensed resident insurance agency producer with qualifications in casualty and property, life, and accident and health. At all pertinent times, Respondent Garner was the designated responsible licensed producer (DRLP) for Everett Agency Inc. Drake Everett Garner and Everett Agency, Inc. are herein collectively referred to as Respondents.
3. On or about May 5, 2016, Respondent Garner received \$3,840.00 from ASF for the premium payment for Conifer Insurance Company (Conifer), Policy No. [REDACTED]. The policy provided commercial liquor liability coverage for ASF.
4. On or about May 26, 2016, Conifer sent a Notice of Intent to Cancel to ASF for non-payment of premium. The notice stated that \$1,044.00 was past due. The notice further stated that the policy will cease on June 26, 2016, if payment was not received. The notice was also sent to Respondents.
5. On or about June 22, 2016, Respondent Garner remitted \$1,044.00 to Conifer for payment on Policy No. [REDACTED]. This was the first payment made by Respondent Garner even though he received the premium payment of \$3,840.00 from ASF on May 5, 2016.
6. On or about July 8, 2016, Conifer sent another Notice of Intent to Cancel to ASF for non-payment of premium. The notice stated that \$391.71 was past due and an additional \$391.71 was due, totaling \$783.42. The notice further stated that the policy will cease on August 8, 2016, if payment was not received. The notice was also sent to Respondents.
7. On or about August 3, 2016, Respondent Garner remitted \$783.42 to Conifer for payment on Policy No. [REDACTED]. This was the second payment made by Respondent Garner even though he received the premium payment of \$3,840.00 from ASF on May 5, 2016.
8. As of August 17, 2016, only \$1,827.42 of the \$3,840 collected from ASF by Respondent Garner had been remitted to Conifer for Policy No. [REDACTED]. The remaining \$2,012.58 in premium paid by ASF and received by Respondent Garner is unaccounted for.

9. On August 5, 2016, DIFS Staff sent an email to Respondent Garner requesting that he contact DIFS to schedule a meeting to discuss the commercial liability insurance policy for ASF, Policy No. [REDACTED]. Respondent Garner did not respond to the email.
10. On September 15, 2016, DIFS Staff mailed a letter to Respondent Garner requesting that he provide documents regarding four insurance policies, including, but not limited to, Conifer Policy No. [REDACTED] (for ASF) and Selective Insurance Company Policy No. [REDACTED] (for S Market).
11. On September 21, 2016, DIFS Staff telephoned Respondent Garner and left a voicemail message requesting that he contact DIFS to schedule a telephone conference to discuss the information and records described in the DIFS letter mailed September 15, 2016.
12. On September 21, 2016, Respondent Garner left a voicemail message for DIFS Staff stating that he did not have any of the documents requested because they had been stolen by his staff. Respondent Garner has not otherwise responded to DIFS' requests for information and documents.
13. On or about April 15, 2015, Respondent Garner received \$3,600.00 from L.S. (LS) on behalf of S Market for the full premium payment for Selective Insurance Company (Selective), Policy No. [REDACTED]. The policy provided commercial liability coverage for S Market.
14. Despite the fact that LS paid the full premium to Respondent Garner, Respondent Garner did not turn over or remit \$3,600.00 in a timely manner to Selective. As a result, Selective sent monthly bills to LS demanding payment. Furthermore, LS also received pending cancellation notices from Selective due to non-payment and incurred late fees.
15. Respondent Garner made the following payments to Selective on the following dates: \$906.00, May 21, 2015; \$926.00, July 29, 2015; \$906.00, November 6, 2015; and \$926.00 on February 26, 2016. Due to the untimely manner in which Respondent Garner turned over or remitted money received from LS, S Market incurred late fees of \$40 and \$24 in installment fees, and its liability policy was in danger of cancellation.
16. At all pertinent times, Respondents did not have an appointment with Selective Insurance Company (Selective). Instead, Respondents used the agency code and producer code belonging to another agency and insurance.
17. As licensees, Respondents knew or had reason to know that Section 249 of the Code, MCL 500.249, provides that a licensee is required to respond to DIFS' requests to produce records and information.
18. Respondents violated Section 249 of the Code, MCL 500.249, and provided justification for sanctions pursuant to Section 1239(1)(b) of the Code, MCL 500.1239(1)(b), by failing to respond to DIFS' requests to meet regarding insurance business matters, and/or by failing to provide records and information requested by DIFS Staff.
19. As licensees, Respondents knew or had reason to know that Section 1207(1) of the Code, MCL 500.1207(1), provides that 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 which it is owed is prima facie evidence of a violation of the agent's fiduciary responsibility.

20. Respondents violated Section 1207(1) of the Code, MCL 500.1207(1), and provided justification for sanctions pursuant to Section 1239(1)(b), MCL 500.1239(1)(b), by failing to turn over in a timely manner the money he received from ASF and LS to the insurers.
21. As licensees, Respondents knew or had reason to know that Section 1208a(1) of the Code, MCL 500.1208a(1), provides that an insurance producer cannot sell, solicit or negotiate an insurer's policies or bind coverage with that insurer unless the insurance producer becomes an appointed agent of that insurer.
22. Respondents violated Section 1208a(1) of the Code, MCL 500.1208a(1), and provided justification for sanctions pursuant to Section 1239(1)(b) of the Code, MCL 500.1239(1)(b), by soliciting, negotiating, preparing, and completing a commercial liability application and policy on behalf of Selective Insurance Company without being its appointed agent.
23. As licensees, Respondents knew or had reason to know that Section 1239(1)(d) of the Code, MCL 500.1239(1)(d), provides that the Director may take action against an insurance producer who improperly withholds, misappropriates, or converts any money or property received in the course of doing insurance business.
24. Respondents provided justification for sanctions, pursuant to Section 1239(1)(d) of the Code, MCL 500.1239(1)(d), when they improperly withheld, misappropriated, or converted money received in the course of doing insurance business as described in paragraphs 11-16 and paragraphs 21-23.
25. As licensees, Respondents knew or had reason to know that Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), provides that the Director may take action against an insurance producer who uses fraudulent, coercive, or dishonest practices, or demonstrates incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Michigan or elsewhere.
26. Respondents provided justification for sanctions, pursuant to Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), when they used fraudulent and/or dishonest practices and demonstrated incompetence, untrustworthiness and financial irresponsibility in the conduct of business by:
 - a. Failing in a timely manner to turn over money received from an insured in a fiduciary capacity to the insurer;
 - b. Allowing insurance policies to fall into pre-cancellation status and incur late fees due to their failure to remit insurance premiums;
 - c. Withholding, misappropriating or converting money received from an insured; and
 - d. Selling, soliciting, or negotiating an insurance policy as an unappointed agent.
27. As licensees, Respondents knew or had reason to know that Section 1239(3) of the Code, MCL 500.1239(3), provides that the license of a business entity may be suspended, revoked, or refused if

the Director finds that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation and the violation was neither reported to the Director nor corrective action taken.

28. Respondent Garner, as owner and DRLP of Respondent Everett Agency, knew or should have known that the activities conducted as described above were in violation of the Code and that on behalf of Respondent Everett Agency he was required to report the violations to the Director or take corrective action, but did neither.
29. Based upon the actions listed above, Respondents have committed acts that provide justification for the Director to order the payment of a civil fine, the refund of any overcharges, that restitution be made to cover losses, damages or other harm attributed to Respondents' violation or violations of the Code, and/or other licensing sanctions, including revocation of licensure.
30. DIFS Staff have made reasonable efforts to serve Respondents and have complied with MCL 500.1238(2).
31. Respondents have received notice and have been given an opportunity to respond and appear and have not responded nor appeared.
32. Respondents are in default and the Petitioner is entitled to have all allegations accepted as true.

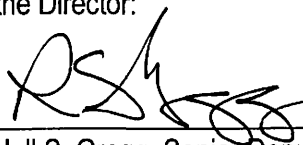
III. Order

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

1. Respondents shall cease and desist from violating the Code.
2. Respondents shall pay to the State of Michigan, through DIFS, administrative and civil fines in the amount of \$4,000.00. Respondents shall pay the fine by the due date, as indicated on DIFS' invoice.
3. Respondents shall pay restitution in the amount of \$2012.58 for the premium paid by ASF but not remitted to Conifer.
4. Respondent Drake Everett Garner's resident insurance producer license (System ID No. 0056694) is **SUSPENDED** for 6 months, commencing the day following the issuance of this Final Decision. Respondent Garner's license shall be reinstated after that period has expired only if the following conditions have been met:

- a. The fine provided for in Paragraph 2 has been fully paid.
 - b. No additional violations of the Code or other applicable law have occurred.
 - c. Full restitution has been paid.
5. Pursuant to Section 1239(3) of the Code, MCL 500.1239(3), the insurance agency license of Respondent Everett Agency, Inc. (System ID No. 0096140) is **SUSPENDED** for 6 months, commencing the day following the issuance of this Final Decision. Respondent Everett Agency's license shall be reinstated after that period has expired only if the following conditions have been met:
- a. The fine provided for in Paragraph 2 has been fully paid.
 - b. No additional violations of the Code or other applicable law have occurred.
 - c. Full restitution has been paid.

Anita G. Fox, Director
For the Director:



Randall S. Gregg, Senior Deputy Director