

**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. 13-11888

Agency No. 14-020-L

Petitioner,

v

John Anthony Bertuca

System ID No. 0026584

Respondent.

_____ /

Issued and entered
on July 16th, 2014
by **Randall S. Gregg**
Deputy Director

FINAL DECISION

I. Background

John Anthony Bertuca (hereinafter Respondent) is a licensed resident insurance producer with qualifications in life, accident and health, property, casualty and variable annuities. The Department of Insurance and Financial Services (DIFS) received information that on August 26, 2013, Respondent was convicted of willfully and dishonestly filing false income tax returns, a felony. Respondent failed to report his felony conviction to DIFS. After investigation and verification of the information, on February 7, 2014, 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 May 4, 2014, 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 June 26, 2014, 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. On or about August 26, 2013, United States District Judge Robert Holmes Bell entered Judgment in the United States District Court for the Western District of Michigan, Case #1:12-CR-265, finding Respondent guilty of filing a false income tax return in violation of 26 USC 7206(1), a felony punishable by imprisonment for 3 years resulting in a sentence of imprisonment for a total term of 12 months and 1 day. Respondent is currently incarcerated in federal prison in Wisconsin.
3. More specifically, Respondent failed to disclose on his income tax return filed with the Internal Revenue Service that during tax year 2008 he had earned interest income in the amount of \$150,000 and rental income of \$161,500, despite knowing that he had earned that income and that he was required to include it on his income tax return.
4. Filing a false income tax return includes, as a required element, that a person willfully commit an act of dishonesty, specifically: that the person willfully make and subscribe any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter.
5. Willfully filing a false income tax return and not reporting more than \$300,000 in income is a dishonest practice and demonstrates untrustworthiness, incompetence and financial irresponsibility in the management of Respondent's business affairs.
6. As a licensed resident insurance producer, Respondent knew or had reason to know that Section 1239(1)(f) and (h) of the Code, MCL 500.1239(1)(f) and (h), provides:

(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:

(f) Having been convicted of a felony.

...

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere

7. As a licensee, Respondent knew or had reason to know that Section 1247(2) of the Code, MCL 500.1247(2), provides that within 30 days after the initial pretrial hearing date, an insurance producer shall report to the Director any criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.
8. Respondent has provided justification for discipline, pursuant to Section 1239(1)(f) of the Code, MCL 500.1239(1)(f), because he was convicted of a felony for willfully and dishonestly filing false income tax returns.
9. Respondent has provided justification for sanctions, pursuant to Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), by having been found guilty of Filing False Income Tax Returns, which includes, as a required element, a dishonest act. Further, filing false income tax returns and not reporting more than \$300,000 in earned income demonstrates untrustworthiness, incompetence and financial irresponsibility in the management of Respondent's business affairs.
10. Respondent violated Section 1247(2) of the Code, MCL 500.1247(2), by failing to report the criminal proceedings commenced against him in the United States District Court for the Western District of Michigan.
11. DIFS' staff has made reasonable efforts to serve Respondent and has complied with MCL 500.1238.
12. Respondent has received notice and has been given an opportunity to respond and appear and has not responded or appeared.
13. Respondent is in default and the Petitioner is entitled to have all allegations accepted as true.

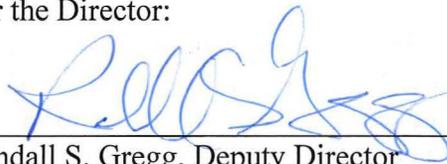
III. Order

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 license is **REVOKED**.

Annette E. Flood, Director
For the Director:



Randall S. Gregg, Deputy Director