

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. 17-14811

Agency No. 18-090-L

Petitioner,

v

Joseph M. Szykula

System ID No. 0175883

Motorcity Bonding & Insurance Agency Inc

System ID No. 0034851

Respondents.

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Issued and entered
on February 12, 2019
by **Randall S. Gregg**
Deputy Director

FINAL DECISION

I. Background

Joseph M. Szykula (Respondent Szykula) is a licensed resident insurance producer. Motorcity Bonding & Insurance Agency Inc. (Respondent Motorcity) is a licensed resident producer agency. The Department of Insurance and Financial Services (DIFS) received information that Respondents failed to remit bond payments and failed to report criminal prosecution as required by the Code. After investigation and verification of the information, on March 5, 2018, 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 failed to reply to the NOSC.

On October 4, 2018, DIFS issued an Administrative Complaint and Order for Hearing which was served on October 5, 2018, upon Respondents at the addresses they are 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. Respondent failed to respond or take any action.

On January 11, 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

9. At all relevant times, Joseph Szykula (Respondent Szykula) was a licensed resident insurance producer with qualifications in limited lines property & casualty, and surety & fidelity. Respondent Szykula has been licensed since March 12, 2003.
10. At all relevant times, Motorcity Bonding & Insurance Agency, Inc. (Respondent Motorcity) was a licensed resident producer agency with qualifications in limited lines property & casualty. Respondent Szykula is the Designated Responsible Licensed Producer (DRLP) and owner of Respondent Motorcity. Respondent Motorcity has been licensed since November 4, 2003.
11. Collectively, Respondent Szykula and Respondent Motorcity shall be referred to as Respondents.
12. On December 23, 2016, Respondent Motorcity submitted seven checks signed by Respondent Szykula to [REDACTED] that were returned as Non-Sufficient Funds totaling \$12,995.00.
 - a. Check #170 was made payable to [REDACTED] in the amount of \$3,469.00 for Premium Report #30.
 - b. Check #171 was made payable to [REDACTED] in the amount of \$1,388.00 for [REDACTED] owed to [REDACTED] on Report #30.
 - c. Check #172 was made payable to [REDACTED] in the amount of \$938.00 for Premium Report #29.
 - d. Check #173 was made payable to [REDACTED] in the amount of \$375.00 for [REDACTED] owed to [REDACTED] on Report #29.
 - e. Check #174 was made payable to [REDACTED] in the amount of \$3,625.00 for Premium Report #27.
 - f. Check #175 was made payable to [REDACTED] in the amount of \$1,450.00 for [REDACTED] owed to [REDACTED] on Report #27.
 - g. Check #177 was made payable to [REDACTED] in the amount of \$1,750.00
13. On January 1, 2017, Respondent Szykula sent a Western Union money transfer to [REDACTED] in the amount of \$5,000.00. Respondent still owed [REDACTED] \$7,995.00.

14. On January 10, 2017, [REDACTED] filed a police report with the Hendricks County Sheriff Department in Indiana for check deception.
15. On January 19, 2017, Respondent Szykula was charged with eight counts of Check Deception in the Hendricks Superior Court in Hendricks County, Indiana, Case File 32D04-1701-F6-000076. The specific charges included the following:
 - a. Five counts of Check Deception, amount of check is between \$750 and \$50,000.00, a felony;
 - b. Three counts of Check Deception under \$750.00, a misdemeanor;
16. On February 22, 2017, Respondent Szykula failed to appear for the initial hearing in Case File 32D04-1701-F6-000076. A summons was re-issued to Respondent Szykula and the hearing was rescheduled to March 22, 2017. On March 22, 2017, Respondent Szykula again failed to appear for the initial hearing in this case. On March 23, 2017, the Hendricks Superior Court issued a Warrant or Writ of Attachment for the Body of a Person for Respondent Szykula arising from his failure to appear to the hearings.
17. Respondent Szykula never reported to DIFS the criminal charges and court proceedings initiated against him in Case File 32D04-1701-F6-000076.
18. On January 19, 2017, a DIFS investigator sent an email to Respondent Szykula requesting that he respond to his inquiries regarding the complaints DIFS received regarding the failure to remit premiums for bonds written. The DIFS investigator sent subsequent emails on January 31, 2017, and March 24, 2017. The DIFS investigator sent letters of inquiry to Respondent Szykula to his address on file with DIFS on February 8, 2017. The DIFS investigator also called the phone numbers for Respondents Motorcity and Szykula on February 6, 2017. The phone numbers on file with DIFS for Respondents Szykula and Motorcity were disconnected.
19. Respondents never responded to any of the inquiries made by DIFS between January 19, 2017, and March 24, 2017.
20. As licensees, Respondents knew or had reason to know that Section 249 of the Code, MCL 500.249, requires that licensees respond to inquiries from DIFS Staff. By failing to respond to DIFS' inquiries, Respondents have violated Section 249 of the Code.
21. As licensees, Respondents knew or had reason to know that Section 1207(1) of the Code, MCL 500.1207(1), provides that "[a]n 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." By failing to remit bond payments, Respondents violated their fiduciary duties under Section 1207(1).
22. As a licensee, Respondent Szykula knew or had reason to know that Section 1247(2) of the Code, MCL 500.1247(2), requires an insurance producer to report to DIFS any criminal prosecution taken

against him in any jurisdiction within 30 days after the initial pretrial hearing date. By failing to report to DIFS the criminal prosecution of Case Number 32D04-1701-F6-000076 in Hendricks Superior Court, Respondent Szykula violated Section 1247(2) of the Code.

23. As licensees, Respondents knew or had reason to know that Section 1239(1)(b) of the Code, MCL 500.1239(1)(b), provides that they may be sanctioned for "[v]iolating any insurance laws." By violating Sections 249 and 1207(1) as outlined above, Respondents have provided justification for sanctions, pursuant to Section 1239(1)(b). Additionally, by violating Section 1247(2) as outlined above, Respondent Szykula has provided justification for sanctions, pursuant to Section 1239(1)(b).
24. As licensees, Respondents knew or had reason to know that Section 1239(1)(d) of the Code, MCL 500.1239(1)(d), provides that they may be sanctioned for "[i]mproperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business." By failing to remit bond payments, Respondents improperly withheld or misappropriated money received in the course of doing insurance business and, thus, provided justification for sanctions, pursuant to Section 1239(1)(d).
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 they may be sanctioned for "[u]sing fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere." By submitting fraudulent checks as payment for bonds Respondents have demonstrated untrustworthiness in the conduct of business in this state and, thus, provided justification for sanctions, pursuant to Section 1239(1)(h) of the Code.
26. On March 5, 2018, a Notice of Opportunity to Show Compliance was mailed by first class mail to Respondents at the following addresses on file:

Joseph Szykula, [REDACTED];
Joseph Szykula, 39 Church St., Mt. Clemens, MI 48043; and
Motorcity Bonding & Insurance Agency Inc., 39 Church St., Mt. Clemens, MI 48043.
27. On October 5, 2018, true copies of an Administrative Complaint, Order for Hearing and Notice of Hearing were mailed by first class mail to Respondents at the following addresses of record on file with DIFS:

Joseph Szykula, [REDACTED];
Joseph Szykula, 39 Church St., Mt. Clemens, MI 48043; and
Motorcity Bonding & Insurance Agency Inc., 39 Church St., Mt. Clemens, MI 48043.
28. DIFS has not received a response from the Respondent.
29. In paragraph 3 of the Order for Hearing, the Respondents were ordered to do one of the following within 21 days of the date of the Order: 1) agree to a resolution with the opposing party, 2) file a response to the allegations in the Administrative Complaint and file a statement that Respondents plan to attend the hearing as scheduled, or 3) file a request for an adjournment. Paragraph 5

states that failure to make the required filing shall constitute the default of Respondents in this contested case.

30. Respondents has failed to take any of the actions required by paragraph 3 of the Order. See Petitioner's Exhibit 1, Affidavit of Christy Capelin.
31. DIFS Staff have made reasonable efforts to serve Respondents and have complied with MCL 500.1238(2).
32. Respondents have received notice and have been given an opportunity to respond and appear and have not responded nor appeared.
33. Respondents are 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. Respondents shall **CEASE** and **DESIST** from violating the Code.
2. Respondents shall immediately **CEASE** and **DESIST** from engaging in the business of insurance.
3. Pursuant to MCL 500.249, MCL 500.1239(1)(b),(e) and (h), and MCL 500.1244(1)(d), Respondent Szykula's resident insurance producer license (System ID No. 0175883) and Respondent Motorcity's resident insurance producer agency license (System ID No. 0034851) are **REVOKED**.

Anita G. Fox, Director

For the Director:



Randall S. Gregg, Deputy Director