

**STATE OF MICHIGAN  
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

**Before the Director of the Department of Insurance and Financial Services**

In the matter of:

**Mourer-Foster, Inc.**  
System ID No. 005088

Enforcement Case No. 14-11838

**John T. Foster**  
System ID No. 0065654

Respondents.

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Issued and entered  
on April 25, 2017  
by Teri L. Morante  
Chief Deputy Director

**ORDER ACCEPTING STIPULATION**

Based upon the Stipulation to Entry of Order and the files and records of the Department of Insurance and Financial Services (DIFS) in this matter, the Chief Deputy Director finds and concludes that:

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 (DIFS).
2. The Chief Deputy Director has jurisdiction and authority to adopt and issue this Order Accepting Stipulation in this proceeding pursuant to the Michigan Administrative Procedures Act of 1969 (APA), as amended, MCL 24.201 *et seq.*, and the Michigan Insurance Code of 1956 (Code), MCL 500.100 *et seq.*
3. All required notices have been issued in this case, and the notices and service thereof were appropriate and lawful in all respects.
4. Acceptance of the Stipulation to Entry of Order is reasonable and in the public interest.
5. All applicable provisions of the APA have been met.
6. At all relevant times, Respondent Mourer-Foster, Inc. (Mourer-Foster) was a licensed insurance producer/agency in the state of Michigan with qualifications in Accident and

Health, Life, Property, Casualty, Surety, Variable Annuities, and Limited Lines Property & Casualty and a surplus lines producer.

7. At all pertinent times, Respondent John T. Foster (Foster) was a licensed insurance producer with qualifications in Accident and Health, Life, Property, Casualty, Surety, Variable Annuities, and Limited Lines Property & Casualty and a surplus lines producer.
8. Respondent Foster is the designated responsible licensed producer (DRLP) for Respondent Mourer-Foster. Respondent Mourer-Foster and Respondent Foster are hereafter referred to as Respondents.
9. In 2005, the then Office of Financial and Insurance Regulation (OFIR) conducted an investigation of Respondents in response to a complaint filed by a former employee alleging that Respondents failed to timely return premiums and Respondents did not have an accounting system to track and properly credit accounts and return excess premiums to policyholders.
10. On January 4, 2007, OFIR issued a Consent and Stipulation Order (2007 Order) against Respondents. In addition to imposing a \$3,000.00 market conduct fee against Respondents, the 2007 Order instructed Respondents to (1) immediately cease and desist from operating in such a manner as to violate Sections 1207(1) & (2), 1239(1)(h), and 2008(3) of the Michigan Insurance Code (Code); (2) to update the customer credit balance return policy; and (3) to provide staff training on best practices and computer entry procedures to ensure applicant/insured premiums or refunds are timely paid or returned to the applicant/insured.
11. In apparent response to OFIR's 2005 investigation, Respondents updated the customer credit balance return policy to deter mishandling of return premiums. The updated policy requires the Accounting Department to review any customer credit balance aged over 31 days in the Accounts Receivable (AR) report. The policy further states that AR credit over 50 days old will automatically be returned to the consumer in the absence of any offsetting balances due from another line of business or a related party and the producer has not been advised of a pending audit or similar circumstances that would require the payment of additional premium by the insured.
12. On August 8, 2012, DIFS' Market Conduct staff emailed a notification of an upcoming audit to Respondent Foster, as the DRLP of Respondent Mourer-Foster. On September 7, 2012, an entrance meeting was conducted at Mourer-Foster's business location with Ed Tobin, Respondent Mourer-Foster's Agency Controller, to discuss the audit.
13. DIFS Market Conduct staff has alleged that no process was in place to ensure compliance with Respondents' updated credit balance policy or the 2007 Order.
14. Further, DIFS Market Conduct staff alleged that Respondents were not complying with the 2007 Order or with the fiduciary and accounting requirements of Section 1207(1) and (2) of the Code, MCL 500.1207(1) and (2).

Now, therefore, based upon the Stipulation to Entry of Order and the facts surrounding this case, **IT IS ORDERED THAT:**

15. Respondents shall comply with the Code, including but not limited to Section 1207(1) & (2) of the Code, MCL 500.1207(1) & (2), and shall operate in a manner that avoids sanctions under Section 1239(1)(b), (d) & (h) of the Code, MCL 500.1239(1)(b), (d), & (h).
16. Respondents shall collectively pay a market conduct fee of Twenty-Five Thousand Dollars (\$25,000.00). Upon issuance and entry of this Order, DIFS will send an invoice to Respondents and Respondents shall pay the fee by the due date printed on the invoice.
17. Respondents shall update company policies to require contemporaneous computer entries documenting accounts where customers have verbally agreed to have Respondents hold a credit balance and entries clearly denoting affiliated companies where customers have agreed that a debit balance may justifiably offset an affiliated credit balance.
18. Within 30 days of the entry of this Order, Respondents will hire the independent certified public accountant (CPA) firm, Gallagher, Flintoff & Klein, PLC, to conduct an audit of Respondent Mourer-Foster, Inc.'s insurance and accounting records from January 1, 2013 to March 31, 2017, in order to review and determine Respondents' compliance with the requirements of Section 1207(1) & (2) of the Code, MCL 500.1207(1) & (2), the 2007 Order and their own customer credit balance return policy. Gallagher, Flintoff & Klein, PLC's audit shall also encompass Respondent Mourer-Foster, Inc.'s surplus lines business. The audit shall start within 30 days of hiring Gallagher, Flintoff & Klein, PLC.
19. Respondents are solely responsible for all costs associated with this audit and all future audits.
20. Gallagher, Flintoff & Klein, PLC shall be considered a designee of the Director and, therefore, Respondent Mourer-Foster, Inc. shall provide Gallagher, Flintoff & Klein, PLC with full and unabated access to its insurance and accounting work records. Any restrictions and limitations to access to these records shall be considered a violation of Section 249 of the Code, MCL 500.249.
21. Upon completion of the audit, Gallagher, Flintoff & Klein, PLC shall send their report directly to the Market Conduct Section of DIFS on or before the date(s) presented to Respondents.
22. DIFS shall review the report and based on the information contained therein, the Director may take administrative action which may result in an order that Respondents refund money to insureds, assess a monetary penalty, or any other appropriate sanctions available under the Code.

23. Gallagher, Flintoff & Klein, PLC shall provide the Market Conduct Section of DIFS with quarterly audit reports concerning Respondents' compliance with Section 1207 of the Code, MCL 500.1207, for the first year after the completion of the audit report referenced in paragraph No. 21.
24. Thereafter, for calendar years 2018 to 2022, Gallagher, Flintoff & Klein, PLC shall provide the Market Conduct Section of DIFS with an annual report concerning Respondents' compliance with Section 1207 of the Code, MCL 500.1207. At the sole discretion of the Director, the annual audit report filing requirement may be shortened as determined by Respondents' compliance with Section 1207 of the Code, MCL 500.1207.
25. DIFS shall review the quarterly and annual reports and based on the information contained therein, the Director may take administrative action which may result in an order that Respondents refund money to insureds, assess a monetary penalty, or any other appropriate sanctions available under the Code.
26. Failure to comply with all terms and requirements in this Order shall result in the summary suspension of all licenses possessed by Respondents at the time of the summary suspension. Further, DIFS shall commence an action to revoke all licenses possessed by Respondents at the time of the violation.
27. Should Respondents fail to pay the market conduct fee in accordance with the terms of this Order, an administrative action will commence to determine if Respondents have, in fact, failed to pay the market conduct fee, and, if so, the market conduct fee will immediately increase to Fifty Thousand Dollars (\$50,000.00) and shall be immediately due in full.
28. The Chief Deputy Director retains jurisdiction over the matters contained herein and has the authority to issue further orders as shall be deemed just, necessary, and appropriate in accordance with the Code. Failure to abide by the terms and provisions of the Stipulation to Entry of Order and this Order may result in the commencement of additional proceedings.

Dated: 4/25/17

  
Teri L. Morante  
Chief Deputy Director

**STATE OF MICHIGAN  
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

**Before the Director of the Department of Insurance and Financial Services**

In the matter of:

**Mourer-Foster, Inc.**  
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**John T. Foster**  
System ID No. 0065654

Respondents.

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**STIPULATION TO ENTRY OF ORDER**

John T. Foster and Mourer-Foster, Inc. (Respondents) stipulate to the following:

1. On or about March 3, 2014, the Department of Insurance and Financial Services (DIFS) served Respondents with a Notice of Opportunity to Show Compliance (NOSC) alleging that Respondents had failed to comply with several provisions of the Michigan Insurance Code of 1956 (Code), MCL 500.100 *et seq.*
2. Specifically, the NOSC contained multiple Counts alleging that Respondents failed to act as fiduciaries for money received and held by Respondents in their capacity as insurance producers and failed to use reasonable accounting methods to record funds received in their fiduciary capacity, including the receipt and distribution of all premiums in a timely manner due to an insurer, and failed to have reasonable accounting methods to timely refund a premium which is due an insured, as required by Section 1207 of the Code, MCL 500.1207.
3. On or about December 22, 2016, DIFS filed a complaint against Respondents which contained the same Counts as contained in the NOSC and specifically alleged violations of Sections 1207(1) & (2) of the Code, MCL 500.1207(1) & (2).
4. At all relevant times, Respondent Mourer-Foster, Inc. (Mourer-Foster) was a licensed insurance producer/agency in the State of Michigan with qualifications in Accident and Health, Life, Property, Casualty, Surety, Variable Annuities, and Limited Lines Property & Casualty and a surplus lines producer.
5. At all pertinent times, Respondent John T. Foster (Foster) was a licensed insurance producer with qualifications in Accident and Health, Life, Property, Casualty, Surety, Variable Annuities, and Limited Lines Property & Casualty and a surplus lines producer.

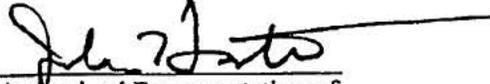
6. Respondent Foster is also the designated responsible licensed producer (DRLP) for Respondent Mourer-Foster.
7. Respondents neither admit nor deny the allegations contained in the NOSC and the complaint that they failed to act as fiduciaries for money received and held in their capacity as insurance producers, failed to use reasonable accounting methods to record funds received in their fiduciary capacity, and failed to timely refund money due an insured.
8. Respondents have had an opportunity to review this Stipulation to Entry of Order and the proposed Order Accepting Stipulation and have the same reviewed by legal counsel.
9. Respondents understand and agree that this Stipulation to Entry of Order will be presented to the Chief Deputy Director for approval.
10. The Chief Deputy Director may, in her sole discretion, decide to accept or reject this Stipulation to Entry of Order. If the Chief Deputy Director accepts the Stipulation to Entry of Order, Respondents waive the right to a hearing in this matter and consent to the entry of the Order Accepting Stipulation. If the Chief Deputy Director does not accept the Stipulation to Entry of Order, Respondents waive any objection to the Director holding a formal administrative hearing and making his decision after such hearing.
11. Respondents agree that they will comply with the Code, including but not limited to Section 1207(1) & (2) of the Code, MCL 500.1207(1) & (2), and will not undertake any actions giving rise to justification for sanctions pursuant to Section 1239(1)(b), (d), and (h) of the Code, MCL 500.1239(1)(b), (d), and (h).
12. Respondents agree to collectively pay a market conduct fee of Twenty-Five Thousand Dollars (\$25,000.00).
13. Respondents agree that the amount of the market conduct fee has been negotiated in return for the avoidance of further proceedings and certain promises and conditions, which include the timely payment of said market conduct fee. Should Respondents fail to pay the market conduct fee in accordance with the terms of the Order Accepting Stipulation, the parties agree that an administrative action will commence to determine if Respondents have, in fact, failed to pay the market conduct fee, and, if so, Respondents agree that the market conduct fee will immediately increase to Fifty Thousand Dollars (\$50,000.00) and shall be immediately due in full.
14. Respondents agree to update company policies to require contemporaneous computer entries documenting accounts where customers have verbally agreed to have Respondents hold a credit balance and entries clearly denoting affiliated companies where customers have agreed that a debit balance may offset an affiliated credit balance.
15. Within 30 days of the entry of the Order Accepting Stipulation, Respondents will hire the independent certified public accountant (CPA) firm, Gallagher, Flintoff & Klein, PLC, to conduct an audit of Respondent Mourer-Foster, Inc.'s insurance and accounting records

from January 1, 2013 to March 31, 2017, in order to review and determine Respondents' compliance with the requirements of Section 1207(1) & (2) of the Code, MCL 500.1207(1) & (2), Orders previously issued by DIFS or any of its predecessor agencies, and Respondents' own customer credit balance return policy. Gallagher, Flintoff & Klein, PLC's audit shall also encompass Respondent Mourer-Foster, Inc.'s surplus lines business. The audit shall start within 30 days of hiring Gallagher, Flintoff & Klein, PLC.

16. Respondents agree that they are solely responsible for all costs associated with the Gallagher, Flintoff & Klein, PLC audit and all future audits.
17. Respondents agree that Gallagher, Flintoff & Klein, PLC shall be considered a designee of the Director and, therefore, Respondent Mourer-Foster, Inc. shall provide the firm with full and unabated access to its insurance and accounting work records. Any restrictions and limitations to access to these records shall be considered a violation of Section 249 of the Code, MCL 500.249.
18. Respondents agree that all reports and results of this audit and all future audits will be provided to DIFS by Gallagher, Flintoff & Klein, PLC on or before the date(s) presented to Respondents.
19. Respondents agree that failure to comply with all terms and requirements in the Order Accepting Stipulation shall result in the summary suspension of all licenses possessed by Respondents at the time of the summary suspension. Further, DIFS shall commence an action to revoke all licenses possessed by Respondents at the time of the violation.
20. Respondents agree that the Chief Deputy Director retains jurisdiction over the matters contained herein and has the authority to issue further orders as shall be deemed just, necessary, and appropriate in accordance with the Code. Failure to abide by the terms and provisions of the Order Accepting Stipulation may result in the commencement of additional proceedings.

  
John T. Foster  
System ID No. 0065654

4-25-2017  
Date

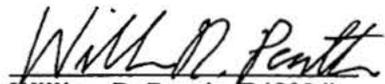
  
Authorized Representative of  
Mourer-Foster, Inc.  
System ID No. 0005088

4.25.2017  
Date

Printed Name: John T. Foster

Title: President

DIFS Staff approve this Stipulation and recommend that the Chief Deputy Director issue the Order Accepting Stipulation.

  
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William R. Peattie (P48004)  
DIFS Staff Attorney

4/25/17  
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Date