

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. 14-12241

Agency No. 15-044-L

Petitioner,

v

Robert K. Themm

System ID No. 0068548

Respondent.

Issued and entered
on April 13, 2017
by Randall S. Gregg
Deputy Director

FINAL DECISION

I. Background

Robert K. Themm (hereinafter Respondent) is a licensed resident insurance producer. The Department of Insurance and Financial Services (DIFS) received information that Respondent used fraudulent, coercive, or dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of insurance business. After investigation and verification of the information, on January 12, 2015, DIFS issued a Notice of Opportunity to Show Compliance (NOSC) alleging that Respondent 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), MCL 500.1247(1) and (2), and 500.1244(1)(a-d). Respondent failed to reply to the NOSC.

On August 27, 2015, DIFS issued an Administrative Complaint and Order for Hearing which was served upon Respondent at the address he is required to maintain with DIFS. 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 respond or take any action.

On January 31, 2017, 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. At all pertinent times involved herein, Respondent was a licensed resident producer. On July 1, 2016, Respondent's license was suspended for education. Respondent's license was made inactive on October 1, 2016.
2. This action is brought pursuant to MCL 500.1239(5) which provides:

(5) In addition to the penalties under this section, the commissioner may enforce the provisions of and impose any penalty or remedy authorized by this act against any person who is under investigation for or charged with a violation of this act even if the person's license or registration has been surrendered or has lapsed by operation of law.
3. On or about November 5, 2011, Respondent borrowed \$4,000.00 from DM, an insurance client of Respondent.
4. Under the terms of the agreement, Respondent was obligated to return the principal, plus 8% interest, by January 5, 2012. To date, Respondent has repaid DM only \$2,400.00.
5. On or about October 1, 2011, Respondent solicited \$2,500.00 from DM to purportedly enter into a joint purchase of at least one antique metal coin.
6. The total amount of the purchase price of the coin was \$5,000.00. Respondent told DM that each side would contribute half the purchase price to the transaction. The coin was to be purchased, held for an undetermined period of time while its value appreciated, then sold for a profit.
7. Unbeknownst to DM, Respondent never purchased the coin. Instead, Respondent used DM's \$2,500.00 to pay his bills and personal expenses. Respondent has not repaid the \$2,500.00.
8. Had there not been an insurance producer/client relationship, Respondent would not have been in a position to solicit and accept money from DM for the alleged purchase of the coin.
9. In 2013, DM sued Respondent in the 75th District Court for the remaining balance of \$1,600.00 from the \$4,000 loan. A judgment was entered and Respondent was ordered to pay \$1,729.76 to DM, representing the outstanding balance of the loan, plus costs and attorney fees.
10. Respondent has failed or refused to satisfy this judgment.
11. As a licensed insurance producer, Respondent knew or should have known that borrowing money from a client demonstrates financial irresponsibility and untrustworthiness in the conduct of business because it creates a conflict of interest between the needs of the client and those of the insurance producer. The insurance producer can no longer act in the best interest of the client due to the producer's financial needs being intrinsically tied to the client. Additionally, the producer is impermissibly using confidential financial information about the client to determine the client's ability to lend money.

12. As a licensed resident producer, Respondent knew or had reason to know that Section 1239(1) of the Code provides, in part:

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:

* * *

(b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

* * *

(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.

13. By soliciting and receiving money from a client and converting that money for personal use, Respondent has provided justification for sanctions pursuant to MCL 500.1239(1)(d) and (h).
14. On March 14, 2014, Respondent was permanently barred from association with any Financial Industry Regulatory Authority (FINRA) member in any capacity due to his solicitation of money from DM for the alleged purchase of the coin as an investment and his subsequent provision to FINRA of false, misleading, and incomplete statements, failure to provide certain records, borrowing money from customers contrary to his member firm's written procedures, and willful failure to disclose the civil judgment against him.
15. Respondent failed to notify the Director of FINRA's action.
16. As a licensed insurance producer, Respondent knew or should have known that Section 1247(1) of the Code provides:
- (1) An insurance producer shall report to the commissioner any administrative action taken against the insurance producer in another jurisdiction or by another governmental agency in this state within 30 days after the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

17. Respondent violated Section 1247(1) when he failed to provide the required notice and documents regarding the permanent FINRA bar, providing justification for sanctions pursuant to MCL 1239(1)(b).
18. On January 12, 2015, Respondent pled guilty to misdemeanor larceny by conversion for his solicitation of \$2,500.00 from DM for the alleged purchase of the antique coin and was sentenced to six months in jail.
19. Respondent failed to notify the Director regarding the above criminal action.
20. As a licensed insurance producer, Respondent knew or should have known that Section 1247(2) of the Code provides:

(2) Within 30 days after the initial pretrial hearing date, an insurance producer shall report to the commissioner 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.
21. Respondent violated Section 1247(2) when he failed to report the criminal proceedings and provide the required documents, providing justification for sanction pursuant to MCL 500.1239(1)(b).
22. On January 12, 2015, a Notice of Opportunity to Show Compliance (NOSC) was mailed by first class mail to Respondent at the following address of record he is required to keep on file with DIFS: [REDACTED] Saginaw, MI 48609 [REDACTED].
23. The mail was not returned by the United States Postal Service, but DIFS did not receive a response to the NOSC.
24. On August 27, 2015, copies of an Administrative Complaint, Order for Hearing and Notice of Hearing were mailed by first class mail to Respondent at the following address of record he is required to keep on file with DIFS: [REDACTED] Saginaw, MI 48609 [REDACTED].
25. In paragraph 3 of the Order for Hearing, the Respondent was 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, or 3) file a request for an adjournment. Paragraph 5 states that failure to make the required filing shall constitute the default of Respondent. Respondent did not comply.
26. The mail was not returned by the United States Postal Service and DIFS did not receive a response to the Administrative Complaint.
27. DIFS Staff have made reasonable efforts to serve Respondent and have complied with MCL 500.1238(2).
28. Respondent has received notice and has been given an opportunity to respond and appear and has not responded nor appeared.
29. Respondent is in default and the Petitioner is entitled to have all allegations accepted as true.

30. Based upon the above actions, Respondent has committed acts that are grounds for the Director to order payment of a civil fine, order restitution be made to cover losses, damages, or other harm attributed to Respondent's conduct, and order licensing sanctions, including revocation, pursuant to Section 1239(5) of the Code and Section 1244(1) of the Insurance Code. MCL 500.1239(5) and 500.1244(1).

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. Pursuant to MCL 500.249, MCL 500.1247(1) and (2), MCL 500.1239(1)(b), (d) and (h), and MCL 500.1244(1)(d), Respondent's resident insurance producer license (System ID No.) is **REVOKED**.

Patrick M. McPharlin, Director
For the Director:



Randall S. Gregg, Deputy Director