

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Serena Smith
System ID 0800894
Unlicensed

Enforcement Case No. 17-14874

Respondent.

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Issued and entered
on October 24, 2017
by Teri L. Morante
Chief Deputy Director

**ORDER TO CEASE AND DESIST WITH STATEMENT OF FINDINGS
AND NOTICE OF OPPORTUNITY FOR HEARING**

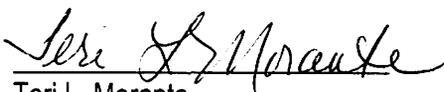
Pursuant to Section 251 of the Michigan Insurance Code (Code), MCL 500.251, and after reviewing evidence of the conduct described in the attached Statement of Findings, and

WHEREAS, the Director of the Department of Insurance and Financial Services finds that immediate action is necessary and appropriate in the public interest for the protection of the public health, safety, and welfare, and consistent with the purposes fairly intended by public policy and provisions of the Code,

IT IS THEREFORE ORDERED THAT:

1. The Respondent shall immediately **CEASE AND DESIST** from all activities in violation of the Code as described in the Statement of Findings.
2. A copy of this Order shall be immediately served upon Respondent. As to any Respondent, this Order shall be effective upon the date of service.
3. Respondent will have 30 calendar days after the service of this Order to contest it by requesting a hearing. Within 10 calendar days after receiving the request, the hearing process shall commence. This Order shall remain in effect until further order of the Director. Any request for a hearing should be addressed to the Department of Insurance and Financial Services, Attention: Judy V. Deshazor, Hearings Coordinator, P.O. Box 30220, Lansing, MI 48909-7720 or faxed to 517-284-8843.
4. Any such hearing held shall address the following issues:
 - a. The facts set forth in the Statement of Findings.

- b. The continuation of the Order to Cease and Desist.
 - c. Restitution to be paid by the Respondent(s).
5. If a hearing is requested, an administrative law judge from the Michigan Administrative Hearing System shall preside over any such hearing.
 6. The Director retains jurisdiction of the matters contained herein and the authority to issue such further Orders as shall be deemed just, necessary, and appropriate.
 7. Pursuant to Section 251(6) of the Code, MCL 500.251(6), a person who violates or otherwise fails to comply with an Order to Cease and Desist is subject to one or more of the following:
 - a. Payment of a civil fine of not more than \$1,000 for each violation not to exceed an aggregate civil fine of \$30,000. However, if the person knew or reasonably should have known the conduct was in violation of the cease and desist order, the person shall be subject to a civil fine of not more than \$25,000 for each violation not to exceed an aggregate civil fine of \$250,000.
 - b. Suspension or revocation of the person's license or certificate of authority.
 - c. Complete restitution, in the form, amount, and within the period determined by the Director, to all persons in Michigan damaged by the violation or failure to comply.



Teri L. Morante
Chief Deputy Director

Dated: October 24, 2017

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STATEMENT OF FINDINGS

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 have been transferred to the Director of the Department of Insurance and Financial Services (DIFS).
2. Pursuant to Section 251(1) of the Code, MCL 500.251(1), the Director is empowered to issue a cease and desist order if the Director finds any of the following:
 - (a) A person is conducting transactions of insurance for which a certificate of authority is required by this act without having obtained a certificate of authority.
 - (b) A person is acting as an insurance agent, solicitor, adjuster, or counselor without a license as required by this act.
 - (c) A person is engaged in an act or practice in the business of insurance for which authority from or notification to the commissioner is required by this act and the person has not received authority or given notification.
 - (d) A person authorized to engage in the business of insurance under this act is engaged in conduct that presents an immediate danger to public health, safety, or welfare. MCL 500.251(1).
3. Under Section 1201a of the Code, MCL 500.1201(a), it is a violation for a person to sell, solicit, or negotiate insurance in this state for any line of insurance without first obtaining a license or qualification for that line. MCL 500.1201a(1).
 - a. "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers. MCL 500.1201(k).

- b. "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company. MCL 500.1201(l).
 - c. "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company. MCL 500.1201(m).
4. Under Section 1208a(1) of the Code, MCL 500.1208a(1), an insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. MCL 500.1208a(1).
5. Under Section 4503 of the Code, MCL 500.4503, fraudulent insurance acts are defined as follows:

A fraudulent insurance act includes, but is not limited to, acts or omissions committed by any person who knowingly, and with an intent to injure, defraud, or deceive:

(a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer or any agent of an insurer, or any agent of an insurer, reinsurer, or broker any oral or written statement knowing that the statement contains any false information concerning any fact material to an application for the issuance of an insurance policy.

(g) Diverts, attempts to divert, or conspires to divert funds of an insurer or of other persons in connection with any of the following:

(i) The transaction of insurance or reinsurance.

(ii) The conduct of business activities by an insurer.

(iii) The formation, acquisition, or dissolution of an insurer.

6. Under Section 4511 of the Code, MCL 500.4511, a person who commits a fraudulent insurance act is guilty of a felony as follows:

(1) A person who commits a fraudulent insurance act under section 4503 is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$50,000.00, or both, and shall be ordered to pay restitution as provided in section 1a of chapter IX of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 769.1a of the Michigan Compiled Laws, and in the crime victim's rights act, Act No. 87 of the Public Acts of 1985, being sections 780.751 to 780.834 of the Michigan Compiled Laws.

7. DIFS Staff received information about possible unlicensed activity by Serena Smith (Respondent). A review of DIFS' records revealed that Respondent is not licensed under the Code.
8. After an investigation, DIFS Staff concluded that Respondent has engaged in activities regulated by the Code, without the requisite license, and has violated the insurance laws of this state.
9. On December 12, 2016, Respondent met with CW (Complainant) in the Fairlane Town Center parking lot and provided her with a certificate of no-fault automobile insurance and a receipt for payment for auto insurance through Titan Insurance Company (Titan), policy No. [REDACTED]3744. Complainant paid \$450 to Respondent in exchange for policy No. [REDACTED]3744. The receipt for the transaction was from LA Insurance Agency (LA Insurance) #185.
10. On December 20, 2016, Complainant filed a police report with the Detroit Police Department, case # [REDACTED], which was investigated by Detective LL.
11. On December 21, 2016, Complainant filled out an Insurance Complainant Form stating that Respondent provided her with insurance that was "illegal" and "under someone else's name."
12. On December 27, 2016, DIFS Staff sent a letter of inquiry to Titan and to LA Insurance concerning Complainant's allegations.
13. On December 30, 2016, Titan responded to DIFS' letter of inquiry. Titan stated:
 - a. The documents were fraudulent;
 - b. "LA Insurance Agency #185," which is listed on Complainant's receipt, does not exist. The address provided on Complainant's receipt is the address for LA Insurance Agency #120;
 - c. Titan received numerous similar complaints concerning fraudulent insurance sales;
 - d. Titan is confident the transaction was not conducted by any of their agencies.
14. On January 12, 2017, LA Insurance replied to DIFS letter of inquiry. LA Insurance stated:
 - a. LA Insurance had no record of coverage for the Complainant;
 - b. "LA Insurance Agency #185" is not an active agency. The address provided on Complainant's receipt is the address for LA Insurance Agency #120;
 - c. Respondent was not an agent, officer, or affiliated with LA Insurance; and
 - d. The use of LA Insurance by the Respondent was fraudulent.
15. By selling, soliciting, and negotiating insurance in the state of Michigan without a license, Respondent has violated MCL 500.1201(a), and MCL 500.1208a(1).

16. By knowingly engaging in a fraudulent insurance act with intent to defraud or deceive by creating fraudulent insurance documents and accepting premium payment, Respondent has committed a fraudulent insurance as defined by MCL 500.4503(a) and (g).
17. Based on the aforementioned findings, Respondent is acting as an insurance producer without a license as required by the Code and said conduct presents a danger to the public welfare.