

**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. 18-15325
Agency No. 19-395-L**

Petitioner,

v

Michael Shearer
System ID No. 0649010

Respondent.
_____ /

**Issued and entered
on October 1, 2019
by Randall S. Gregg
Senior Deputy Director**

FINAL DECISION

I. Background

Michael Shearer (Respondent) is a licensed resident insurance producer. The Department of Insurance and Financial Services (DIFS) received information that Respondent misappropriated cash payments he received from customers for his personal use. After investigation and verification of the information, on October 3, 2018, DIFS served Respondent with 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) and 500.1244(1)(a-d). Respondent failed to reply to the NOSC.

On June 17, 2019, DIFS issued an Administrative Complaint and Order for Hearing which was served upon Respondent on June 19, 2019, 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 August 21, 2019, 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 relevant times, Michael Shearer (System ID No. 0649010) (Respondent) was a licensed resident insurance producer, with qualifications in accident and health, casualty, life, and property. Respondent has been licensed since July 11, 2013.
2. Respondent was appointed with State Farm Life Insurance Company, State Farm Fire and Casualty Company, and State Farm Mutual Automobile Insurance Company (collectively, State Farm) on August 19, 2013. Respondent's appointments were terminated on January 19, 2018, for withholding and misappropriating premiums received in his fiduciary capacity.
3. At all relevant times, Respondent was an employee of State Farm agent JB.
4. On September 21, 2017, JB reviewed his office's History of Altered Report and determined that from October of 2016 through August of 2017, Respondent received cash premium payments from approximately 60 insureds and subsequently withheld those payments. In some instances, Respondent repaid the premium monies to JB's office at a later date (an average of 12 days later), but in some cases this was after the insureds' due dates for payments. JB confronted Respondent with these findings and Respondent admitted to JB that he was taking the cash payments from customers and attempting to pay for the customers' payments with his credit/debit card.
5. On September 27, 2017, JB met with State Farm agency administration leader MC. During this meeting, they identified five additional cash payments that were deleted by Respondent in September 2017. In total, Respondent misappropriated \$3,194.70 while employed by JB.
6. Respondent submitted a signed statement to State Farm. Respondent admitted to altering payments in order to have liquid funds due to a personal issue in his life. Respondent stated that he attempted to use a credit/debit card to replace the payment or repay them as soon as he had cash available, but that he took so many cash payments that it became harder to track them and he lost track of some payments altogether. Respondent indicated that he was prepared to accept any decision that was reached regarding his employment with State Farm.
7. As a licensee, Respondent 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 ... by the agent in his ... capacity as an agent", and that "[f]ailure by an agent in a timely manner to turn over the money which he ... holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation" of the fiduciary duty. By failing to turn over cash payments submitted to him by his customers in a timely manner to the persons to whom they were owed, Respondent violated Section 1207(1) of the Code.

8. As a licensee, Respondent knew or had reason to know that Section 1239(1)(b) of the Code, MCL 500.1239(1)(b), provides that he may be sanctioned for violating any insurance laws. As set forth above, Respondent has violated Sections 1207(1) Code, MCL 500.1207(1), and, thus, provided justifications for sanctions, pursuant to Section 1239(1)(b) of the Code.
9. As a licensee, Respondent knew or had reason to know that Section 1239(1)(d) of the Code, MCL 500.1239(1)(d), provides that he may be sanctioned for “[i]mproperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.” By taking cash payments he received from his customers for personal use, Respondent improperly withheld and converted money he received in the course of doing insurance business, and, thus, provided justification for sanctions pursuant to Section 1239(1)(d) of the Code.
10. As a licensee, Respondent knew or had reason to know that Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), provides that he 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 taking cash payments he received from his customers for personal use, Respondent has demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in this state and, thus, provided justification for sanctions, pursuant to Section 1239(1)(h) of the Code, MCL 500.1239(1)(h).
11. Based upon the actions listed above, Respondent has committed acts that provide justification for the Director to order the payment of a civil fine, the refund of any overcharges, that restitution be made to cover losses, damages or other harm attributed to Respondent’s violation or violations of the Code, and/or other licensing sanctions, including revocation of licensure.
12. On October 3, 2018, a Notice of Opportunity to Show Compliance was mailed by first class mail to Respondent at the following address on file: [REDACTED]. No response was received.
13. On June 19, 2019, true 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 on file with DIFS: Michael Shearer, [REDACTED].
14. DIFS has not received a response from the Respondent.
15. 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 and file a statement that Respondent plans 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 Respondent in this contested case.
16. DIFS Staff have made reasonable efforts to serve Respondent and have complied with MCL 500.1238(2).
17. Respondent has received notice and has been given an opportunity to respond and appear and has not responded nor appeared.

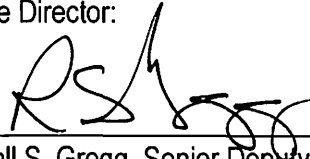
18. Respondent is in default and the Petitioner is entitled to have all allegations accepted as true.

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. Pursuant to MCL 500.249, MCL 500.1239(1)(b),(e) and (h), and MCL 500.1244(1)(d), Respondent's resident insurance producer license (System ID No. 0649010) is **REVOKED**.

Anita G. Fox, Director
For the Director:

A handwritten signature in black ink, appearing to read 'RS Gregg', is written over a horizontal line.

Randall S. Gregg, Senior Deputy Director