

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

CRAIG L. WHATLEY
System ID No. 0027025

ENFORCEMENT CASE NO. 13-11696

THOMAS L. WHATLEY AGENCY, INC.
System ID No. 0005540

Respondents.

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Issued and entered
on January 21, 2013
By **Annette E. Flood**
Chief Deputy Commissioner

**ORDER OF SUMMARY SUSPENSION, NOTICE OF OPPORTUNITY FOR HEARING,
AND NOTICE OF INTENT TO REVOKE**

Pursuant to the Section 1242 of the Michigan Insurance Code (Code), MCL 500.1242, and Section 92 of the Michigan Administrative Procedures Act (APA), MCL 24.292, and based upon the attached FINDINGS, including that public health, safety and welfare requires emergency action,

IT IS THEREFORE ORDERED that:

1. The insurance producer's licenses and authorities of Respondents are **SUMMARILY SUSPENDED**.
2. A copy of this Order shall be immediately served upon Respondents. This order shall be effective as to any such Respondent upon the date of service.
3. If requested by Respondents, a hearing on this matter shall be held within a reasonable time, but not later than 20 calendar days after service of this Order, unless Respondents request a later date. The hearing shall address the following issues:
 - a. Whether the suspension should be continued or withdrawn.
 - b. Whether Respondents' licenses should be revoked.

4. If a hearing is requested, an administrative law judge from the Michigan Administrative Hearing System shall preside over any such hearing.
5. The Commissioner retains jurisdiction of the matters contained within and the authority to issue such further Orders as shall be deemed just, necessary, and appropriate.


Annette E. Flood
Chief Deputy Commissioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commissioner of the Office of Financial and Insurance Regulation (OFIR) is statutorily charged with the authority and responsibility to exercise general supervision and control over persons transacting the business of insurance in Michigan pursuant to the Insurance Code of 1956 ("Code"), MCL 500.100 *et seq.*
2. At all relevant times, Respondent Craig L. Whatley was a licensed resident producer with qualifications in Property, Casualty, Life, Accident and Health, and Variable Annuities and was authorized to transact the business of insurance in Michigan.
3. At all relevant times, Respondent Thomas L. Whatley Agency, Inc. was a licensed resident agency with qualifications in Property, Casualty, Life, Accident and Health, and Variable Annuities and was authorized to transact the business of insurance in Michigan.
4. At all relevant times, Respondent Craig L. Whatley was the President of Respondent Thomas L. Whatley Agency, Inc. Respondent Craig L. Whatley and Respondent Thomas L. Whatley Agency, Inc. are hereafter referred to as Respondents.
5. Based upon the information as set forth below, protection of the public health, safety, and/or welfare requires emergency action.
6. On May 17, 2012, OFIR and the Respondents entered into a Consent Order and Stipulation in which Respondents admitted to fiduciary violations under Sections 1207(1), 1239(1)(d), and 1239(1)(h) of the Code, MCL 500.1207(1), 1239(1)(d), and 1239(1)(h) and were ordered to cease and desist from further violations of the Code.
7. On or about February 6, 2013, OFIR received a complaint from C alleging that Respondents failed to remit insurance premium to the insurance company.
8. Complainant C alleges that on July 19, 2012 he paid Respondents \$3,500.00 for business liability insurance coverage for his company.
9. On or about July 20, 2012, Respondents deposited Complainant's \$3,500.00 check in their First Place Bank account.

10. Respondents failed to remit the \$3,500.00 in insurance premium to the insurance company and Complainant C did not receive the purchased insurance coverage.
11. Respondents have not refunded the \$3,500.00 to Complainant C .
12. On or about November 14, 2012, OFIR received a complaint from T concerning Respondents' failure to remit insurance premium to Michigan Basic Property Insurance Association (MBPIA).
13. On or about September 8, 2011, Respondent Whatley sent Bayview Loan Servicing, LLC, Complainant T 's mortgage servicer, a letter/invoice requesting \$2,434.00 from Complainant's escrow account to pay for home owners insurance from MBPIA for the period of August 18, 2011 to August 18, 2012.
14. On or about September 14, 2011, Bayview Loan Servicing, LLC paid Respondents \$2,434.00. On September 19, 2012, Respondents deposited the check in their First Place Bank account.
15. Respondents did not remit the \$2,434.00 in insurance premium to the MBPIA.
16. MBPIA did not issue an insurance policy on Complainant's home due to Respondents' failure to remit the insurance premium received from Bayview Loan Servicing, LLC.
17. On or about November 10, 2011, Complainant T sent Bayview Loan Servicing, LLC a copy of an insurance policy from MBPIA for the period of November 5, 2011 to November 5, 2012. Complainant T requested that Bayview Loan Servicing, LLC send payment of \$1,784.00 to Respondents.
18. On or about November 15, 2011, Bayview Loan Servicing, LLC paid Respondents \$1,784.00 for home owners insurance from MBPIA.
19. MBPIA has no record of this insurance policy nor did they receive the \$1,784.00 from Respondents.
20. In April and May 2012, Complainant T requested a refund from Respondents for insurance premium payments received from Bayview Loan Servicing, LCC.
21. On or about October, 31, 2012, Respondents sent Complainant T a check for \$1,784.00.
22. Respondents' check was returned by Complainant's bank for non-sufficient funds. Respondents have not issued a valid \$1,784.00 check to Complainant T .
23. On or about December 13, 2012, Complainant T purchased home owners insurance from Allstate Insurance Company through another insurance producer.

24. Respondents have not refunded the \$4,218.00 to Complainant T .
25. On or about November 5, 2012, OFIR received a complaint from B , on behalf of her real estate management company, alleging that Respondents failed to remit insurance premium to Nautilus Insurance Company.
26. Complainant B alleges that on April 29, 2012 she paid Respondents \$1,000.00 and on June 17, 2012 she paid \$806.00 for general liability & errors and omissions insurance coverage with Nautilus Insurance Company.
27. Respondents deposited Complainant's two checks in their First Place Bank account and the checks cleared on May 7, 2012 and June 18, 2012 respectively.
28. On or about June 28, 2012, Respondents sent a \$1,635.68 check to JM Wilson Corporation, the surplus lines broker for this policy.
29. Respondents' \$1,635.68 check was returned for non-sufficient funds.
30. On or about July 27, 2012, Complainant B received a Notice of Cancellation of Insurance from Nautilus Insurance Company, due to non-payment of insurance premium to JM Wilson Corporation.
31. Respondents also received a copy of the Notice of Cancellation of Insurance. Respondent Whatley told JM Wilson Corporation he was sending a cashier's check to replace the prior NSF check.
32. JM Wilson Corporation never received a replacement premium check from Respondents for Complainant's insurance policy.
33. Nautilus Insurance Company cancelled Complainant's policy on August 9, 2012.
34. On or about November 2, 2012, OFIR received a complaint from F , on behalf of his company, alleging that Respondents failed to remit insurance premium to Endurance American Specialty Insurance Company.
35. Complainant F alleges that on March 12, 2012 he paid Respondents \$1,734.43 for property and general liability insurance coverage with Endurance American Specialty Insurance Company.
36. On March 12, 2012, Respondents gave Complainant F a receipt acknowledging receipt of \$1,734.43.
37. On or about March 15, 2012, Respondents deposited Complainant's \$1,734.43 check in their First Place Bank account.

38. Respondents failed to remit the insurance premium to Endurance American Specialty Insurance Company and Complainant F did not receive the purchased insurance coverage.
39. Respondents have not refunded the \$1,734.43 to Complainant F .
40. As licensees, Respondents knew or had reason to know that Section 1207(1) of the Code, MCL 500.1207(1) provides that “An 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.”
41. Respondents failed to remit \$11,258.43 in insurance premium received in their capacity as agents to the insurers to which it was owed.
42. As licensees, Respondents further knew or had reason to know that Section 1239(1)(b) of the Code, MCL 500.1239(1)(b) allows the Commissioner to place on probation, suspend, revoke, or levy a civil fine under Section 1244 or any combination thereof, for “Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state’s insurance commissioner.”
43. Respondents actions listed above, show that Respondents are in violation of the May 17, 2012 Consent Order and Stipulation.
44. As licensees, Respondents further knew or had reason to know that Section 1239(1)(d) of the Code, MCL 500.1239(1)(d) allows the Commissioner to place on probation, suspend, revoke, or levy a civil fine under Section 1244 or any combination thereof, for “Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.”
45. Respondents have improperly withheld, misappropriated or converted insurance premium money received in the course of doing insurance business.
46. As licensees, Respondents further knew or had reason to know that Section 1239(1)(h) of the Code, MCL 500.1239(1)(h) allows the Commissioner to place on probation, suspend, revoke, or levy a civil fine under Section 1244 or any combination thereof, for “Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.”
47. Respondents are using fraudulent or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business.
48. Based upon the actions listed above, Respondents have committed acts that provide justification for the Commissioner to order the payment of a civil fine, refund of any

overcharges, that restitution be made to insureds to cover losses, damages or other harm attributed to Respondents' violation of the Code, and/or licensing sanctions under Section 1244(1) of the Code.

49. Respondents' actions demonstrate a pattern of behavior constituting a serious threat to the public.
50. The alleged conduct of Respondents indicates that a summary suspension of licensure is appropriate and necessary in order to protect the public from further financial damage and other harm and to protect the public interest.
51. The alleged conduct of Respondents indicates that Respondents do not possess the requisite character and fitness to be engaged in the business of insurance, and further indicates that Respondents do not command the confidence of the public nor warrant the belief that Respondents will comply with the law.
52. Due process requirements of the Code and the Administrative Procedures Act require that the Respondents, subject to summary disciplinary action, be provided with an opportunity for a prompt hearing on the order for summary suspension. A summary suspension of Respondents' license is authorized by Section 92 of the Michigan Administrative Procedures Act of 1969, as amended, MCL 24.292, and Section 1242(4) of the Code, MCL 500.1242(4).