STATE OF MICHIGAN

DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

Office of Financial and Insurance Regulation,
Petitioner

v

Marla Bond,
Respondent

Enforcement Case No. 10-779-L

For the Petitioner:

William Peattie
Office of Financial and Insurance Regulation
P.O. Box 30220
Lansing, MI 48909-7720

For the Respondent:

Marla Bond
[redacted]

Issued and entered
this 23rd day of November 2010
by Ken Ross
Commissioner

FINAL DECISION

I. Background

On August 3, 2010, Chief Deputy Commissioner Stephen R. Hilker issued an Order Referring Complaint for Hearing, and Order to Respond in this case which was sent to Respondent at the address above. The Complaint set forth detailed allegations that Respondent had violated sections 1207 and 1239 of the Michigan Insurance Code, MCL 500.1207 and 500.1239, by failing to remit fiduciary funds to the business to which the funds were owed and by forging signatures on documents Respondent submitted to an insurer.

A hearing was held on September 15, 2010. Respondent failed to attend the hearing and a default judgment was granted. The Administrative Law Judge issued a Proposal for Decision (PFD) on September 16, 2010. Neither party filed exceptions. Michigan courts have long

recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v. Public Service Comm* 136 Mich App 52 (1984).

II. Findings of Fact and Conclusions of Law

The factual findings in the PFD are in accordance with the preponderance of the evidence and the conclusions of law are supported by reasoned opinion. Those findings and conclusions are adopted. The PFD is attached and made part of this final decision. The findings and conclusions most pertinent to this Final Decision are stated below:

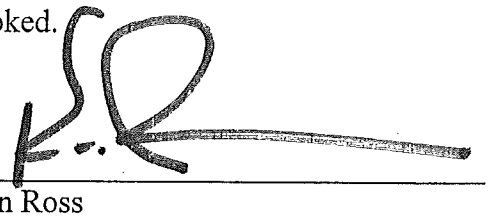
1. Respondent Marla Bond is a licensed insurance producer with qualifications in casualty, property, and surety insurance.
2. On January 12, 2008, A-1 Bail Bonds Agency, Inc contracted with Respondent to post surety bonds.
3. Between May 8, 2008 and July 4, 2008, Respondent collected $4,575.00 in cash from customers, but failed to deposit this amount into the operating account of A-1 Bail Bonds Agency, Inc.
4. Respondent forged the name of another insurance producer on thirty (30) surety bonds submitted to Lexington National Insurance Corporation.
5. By this conduct, Respondent violated sections 1207 and 1239 of the Michigan Insurance Code.

III. Order

Based on the conduct described above and in accordance with section 1244 of the Michigan Insurance Code, MCL 500.1244, it is ordered that:

1. Respondent shall pay restitution of $4,575.00 to A-1 Bail Bond Agency, Inc.

2. Respondent's insurance producer license is revoked.



Ken Ross
Commissioner

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of	Docket No.	2010-782
Office of Financial and Insurance Regulation, Petitioner	Agency No.	10-779-L
v	Agency:	Office of Financial & Insurance Regulation
Marla Bond, Respondent	Case Type:	Sanction

_____/

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Issued and entered
this 16th day of September, 2010
by James L. Karpen
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Appearances: William Peattie, Attorney at Law, appeared on behalf of the Petitioner, Office of Financial and Insurance Regulation. Neither Respondent Marla Bond, nor an attorney on Respondent's behalf, appeared at the hearing.

This case stems from an August 3, 2010 Complaint which alleges that Respondent violated provisions of the Michigan Insurance Code of 1956 (Code), 1956 PA 218, as amended, MCL 500.100 *et seq.* The Notice of Hearing (Notice) dated August 10, 2010, was mailed to the parties' last known addresses. The Notice informed the parties that if either party failed to appear at a scheduled hearing, a default may be entered pursuant to Sections 72 and 78 of the Administrative Procedures Act of 1969, (APA), 1969 PA 306, as amended, MCL 24.201 *et seq.* The hearing was held as scheduled on September 15, 2010.

At the hearing, Petitioner's counsel requested that Petitioner be allowed to proceed in Respondent's absence pursuant to Section 72 of the APA and that a default be granted on behalf of Petitioner pursuant to Section 78 of the APA.

Section 72 of the APA states in pertinent part:

> (1) If a party fails to appear in a contested case, after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

Further, Section 78 of the APA states in pertinent part:

> (2) Except as otherwise provided by law, disposition may be made of a contested case by ... default ... .

The Petitioner's motion for default was granted. As a result of the default, the factual allegations contained in the Complaint are deemed true.

During the hearing, no exhibits were accepted in the record. No witnesses testified at the hearing. At the hearing Petitioner moved to dismiss the allegation in the Statement of Factual Allegations that Respondent violated Section 1207(2) of the Code. Petitioner's motion was granted.

ISSUES AND APPLICABLE LAW

The issues in this case are whether Respondent violated Sections 1207(1) and 1239(1)(d), (h), and (j) of the Code as alleged in the Statement of Factual Allegations. These sections of the Code are as follows:

Sec. 1207.

> (1) 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. An agent shall not accept payment of a premium for a medicare supplemental policy or certificate in the form of a check or money order made payable to the agent instead of the insurer. Upon receiving payment of a premium for a medicare supplemental policy or

certificate, an agent shall immediately provide a written receipt to the insured.

Sec. 1239.

(1) 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:

* * *

(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.

* * *

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction.

FINDINGS OF FACT

1. Respondent, Marla Bond, is a licensed insurance producer with qualifications in casualty, property, and surety, under the Code.

2. On or about October 20, 2008, the Petitioner's Office of Financial and Insurance Regulation received a complaint from A-1 Bail Bond Agency, Inc.

3. A-1 Bail Bonds Agency, Inc. alleges that on or about January 12, 2008, they contracted with Respondent to post several surety bonds.

4. A-1 Bail Bonds Agency, Inc. alleged that between May 8, 2008 and July 4, 2008, Respondent collected $4,575 in cash from approximately 10 customers, but failed to deposit this money into the operating account of A-1 Bail Bonds Agency, Inc.

5. A-1 Bail Bonds Agency, Inc further alleges that Respondent has refused to return a total of 27 powers of attorney from Accredited Surety and Casualty.

6. On or about October 19, 2009, Petitioner received a complaint from Smith Bonds and Surety, an agent for Lexington Insurance Corporation alleging that Respondent forged [redacted] name, to approximately thirty (30) surety bond execution reports.

7. On or about June 29, 2010, Smith Bonds and Surety sent Petitioner a signed and notarized letter from [redacted] stating that she "never executed a bond power for Lexington National. Any signature that states my name, on any bond power, is fraudulent".

CONCLUSIONS OF LAW

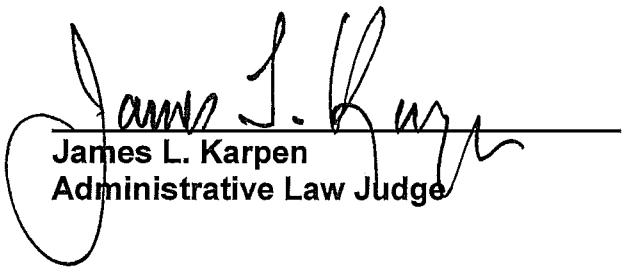
The Principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleadings and Practice §60.48, at 230 (2d ed. 1994). The burden of proof is upon the Petitioner to prove, by a preponderance of the evidence that grounds exist for the imposition of sanctions upon the Respondent. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. Smith v Lansing School Dist, 428 Mich 248; 406 NW2d 825 (1987). As reflected in the factual findings, Petitioner has established by a preponderance of the evidence that Respondent violated Sections 1207(1) and 1239 (1)(d), (h), and (j) of the Code.

PROPOSAL FOR DECISION

Sections 1239 and 1244 of the Code allow the Commissioner to revoke Respondent's insurance producer's license due to the violations of the Code noted above. I recommend that Respondent's license be revoked. I further recommend that Respondent be ordered to make restitution to A-1 Bail Bond Agency, Inc., in the amount of $4,575.

EXCEPTIONS

If a party chooses to file Exceptions to the Proposal for Decision, the Exceptions must be filed within 30 days after service of the Decision. All Exceptions must be filed with the **Office of Financial and Insurance Services,** Division of Securities, Ottawa State Office Building, 611 W. Ottawa, 3rd Floor, P.O. Box 30220, Lansing, Michigan 48909, Attention: Dawn Kobus. Exceptions must be served on all parties.



James L. Karpen
Administrative Law Judge