

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

Case No. 09-758-L
Docket No. 2009-1679

Janice M. Gordon
Respondent

For the Petitioner:

For the Respondent:

Marlon F. Roberts
Office of Financial and Insurance Regulation
P.O. Box 30220
Lansing, MI 48909-7720

Janice M. Gordon


Issued and entered
this 4th day of May 2010
by Ken Ross
Commissioner

FINAL DECISION
I. Background

On November 19, 2009, Chief Deputy Commissioner Stephen R. Hilker issued an Administrative Complaint, Order for Hearing, and Notice of Hearing in this case which was sent to Respondent at the address above. The Administrative Complaint set forth detailed allegations that Respondent had violated provisions of the Michigan Insurance Code (MCL 500.100, *et seq.*) by failing to remit premiums to an insurer for which she acted as a producer.

A hearing was held on March 2, 2010. The Administrative Law Judge issued a Proposal for Decision (PFD) dated March 17, 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

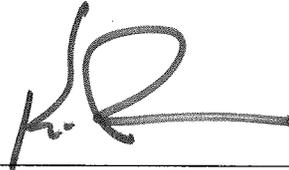
The factual findings in the PFD are in accordance with the preponderance of the evidence and the conclusions of law are supported by reasoned opinion. Those findings and conclusions are adopted. The PFD is attached and made part of this final decision. The findings and conclusions most pertinent to this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

1. Respondent Janice Gordon holds a Michigan resident producer license. The license was issued in 1998.
2. At all times pertinent to these allegations, Respondent was appointed to represent Farmers Insurance Group. Respondent's contract with Farmers required her to remit on a daily basis all the insurance premiums she collected from Farmers policyholders.
3. Between April and September 2007, Respondent collected \$8,888.81 from 23 Farmers insureds and failed to remit the money to Farmers as required by her agreement with Farmers.
4. Failure to remit money held in a fiduciary capacity is a violation of sections 1207(1) and 1239(1)(d) of the Michigan Insurance Code. MCL 500.1207(1) and 1239(1)(d).
5. Farmers audited the Petitioner's financial records and later filed a criminal complaint against Respondent. In February 2009, Respondent was convicted in Kent County circuit court of the felony of embezzlement. MCL 750.1743A.
6. The Commissioner finds that Respondent violated sections 1207(1) and 1239(1)(d) of the Insurance Code. By her conduct, Petitioner engaged in dishonest practices and demonstrated untrustworthiness prohibited by section 1239(1)(h) of the Insurance Code. MCL 500.1239(1)(h).

7. Respondent's conduct demonstrates a failure to serve the public in an honest and trustworthy manner. Such conduct warrants the imposition of a severe licensing sanction. The Commissioner concludes that Respondent is not qualified to hold a Michigan insurance producer license.

III. Order

Based on the conduct described above and in accordance with section 1244 of the Michigan Insurance Code, MCL 500.1244, Respondent's insurance producer license is revoked.

A handwritten signature in black ink, appearing to be 'KR', written over a horizontal line.

Ken Ross
Commissioner

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STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES OFIR/OGC

In the matter of

Docket No. 2009-1679

Office of Financial and Insurance
Regulation,
Petitioner

Agency No. 09-758-L

v

Janice M. Gordon,
Respondent

Agency: Office of Financial and
Insurance Regulation

Case Type: Sanction

Issued and entered
this 17th day of March, 2010
by Renée A. Ozburn
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

On November 19, 2009, the Office of Financial and Insurance Regulation (OFIR/Petitioner) issued an Order Referring Complaint for Hearing and Order to Respond. The Complaint alleges that Janice Gordon (Respondent), acting as a licensed resident insurance producer, violated the Michigan Insurance Code of 1956, as amended, (Code), MCL 500.100 *et. seq.*

A hearing was held on March 2, 2010. Attorney Marlon Roberts appeared on behalf of OFIR. Janice Gordon represented herself.

ISSUES AND APPLICABLE LAW

The issue in this matter is whether Ms. Gordon violated Code Sections 1239(1)(d) & (h) and 1207(1) and, if so, whether sanctions are applicable under Section 1244. These statutory provisions state as follows:

500.1239 Probation, suspension, or revocation of insurance producer's license; refusal to reissue; causes; civil fine; notice of license denial; hearing; license of business entity; penalties and remedies.

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.

500.1207 Agent as fiduciary; accounting methods; examination of records; remuneration of person acting as agent; placing refused coverage; use of intimidation, threats, or unlawful inducements; agent as party to contract.

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.

500.1244 Violation of chapter; hearing; serving copy of findings and cease and desist order; additional orders; reopening, altering, modifying, or setting aside order; violation of cease and desist order; notice and hearing; civil fine; suspension or revocation of license; disposition of fine.

Sec. 1244.

(1) If the commissioner finds that a person has violated this chapter, after an opportunity for a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the commissioner shall reduce the findings and decision to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from the violation. In addition, the commissioner may order any of the following:

(a) Payment of a civil fine of not more than \$500.00 for each violation. However, if the person knew or reasonably should have known that he or she was in violation of this chapter, the commissioner may order the payment of a civil fine of not more than \$2,500.00 for each violation. An order of the commissioner under this subsection shall not require the payment of civil fines exceeding \$25,000.00. A fine collected under this subdivision shall be turned over to the state treasurer and credited to the general fund of the state.

(b) A refund of any overcharges.

(c) That restitution be made to the insured or other claimant to cover incurred losses, damages, or other harm attributable to the acts of the person found to be in violation of this chapter.

(d) The suspension or revocation of the person's license.

(2) The commissioner may by order, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, an order issued under this section, if in the opinion of the commissioner conditions of fact or of law have changed to require that action, or if the public interest requires that action.

(3) If a person knowingly violates a cease and desist order under this chapter and has been given notice and an opportunity for a hearing held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the commissioner may order a civil fine of not more than \$10,000.00 for each violation, or a suspension or revocation of the person's license, or both. An order issued by the commissioner pursuant to this subsection shall not require the payment of civil fines exceeding \$50,000.00. A fine collected under this subsection shall be turned over to the state treasurer and credited to the general fund of the state.

(4) The commissioner may apply to the circuit court of Ingham County for an order of the court enjoining a violation of this chapter.

SUMMARY OF EVIDENCE

Exhibits:

Petitioner Exhibit 1	Investigation Report
Petitioner Exhibit 2	Conviction Documents
Respondent Exhibit A	Police Report

Janice Gordon was born in May 1961. She finished three years of college. In 1998, she became a licensed insurance producer. She opened the Janice Gordon Agency in Grand Rapids, Michigan. She had 2 part-time employees working at her agency. Ms. Gordon was appointed to act on behalf of Farmers Insurance Group of Companies (Farmers) as an independent contractor.

Pursuant to her contract, when a Farmers policyholder paid a new or renewal premium to Ms. Gordon, she was to issue a receipt to the customer and enter the payment into Farmers' Agents Credit Advice (ACA) computer system. She was then required to remit 100% of all premiums collected by making daily deposits of all checks and cash received into a co-banking account set up by Farmers. (Exhibit 1)

Ms. Gordon asserts that she followed the procedure for recording payments in the ACA system concurrent with receiving a payment. However, despite the clear contractual language stating that premiums were to be deposited daily, Ms. Gordon was under the impression that she had between 48 to 72 hours after collecting a premium to deposit it in the Farmers co-banking account. Further, Ms. Gordon acknowledges that over the many years of her agency relationship with Farmers, she would regularly wait 4 to 5 days to make deposits. Checks and cash were kept in an office safe or file cabinet prior to deposit. Farmers' District Manager Tom Humphreys would frequently call to remind Ms. Gordon that deposits were late according to what she entered in the ACA system.

Between April 2007 and September 2007, Ms. Gordon collected \$8,888.81 in premiums, involving 23 policyholders, and failed to remit the money to Farmers. Summaries of these Farmers' accounts are attached to Exhibit 1. Ms. Gordon acknowledges that Farmers sent monthly notices between April and September 2007 highlighting the overdue deposits. Ms. Gordon acknowledges that she ignored these notices and did not take them seriously. District Manager Humphreys also visited Ms. Gordon during this period to warn her that an official audit would be conducted. On

three occasions in September 2007, an auditor tried unsuccessfully to schedule a visit with Ms. Gordon.

On September 20, 2007, the building where Ms. Gordon's agency was located was burglarized. In a police report, (Exhibit A), Ms. Gordon reported \$200 stolen. She did not report any specific missing premium checks or cash to the police. On or about September 28, 2007, Farmers terminated Ms. Gordon's appointment. She subsequently closed the Janice Gordon Agency.

In November and December 2007, Ms. Gordon worked for Jeffrey Lake, another Farmers' agent. Since January 2008, Ms. Gordon has worked as an insurance producer for Doyle and Ogdon Insurance Advisors.

In August 2008, Ms. Gordon was arrested for failing to appear in court for an embezzlement charge related to the unremitted premiums. This is when she learned the total amount of premiums that were not remitted to Farmers in 2007. Ms. Gordon pled no contest and on February 16, 2009 she was convicted of "Embezzlement-Agent or Trustee \$200 or More, Less than \$1,000". (Exhibit 2) She was sentenced to 18 months of probation which will be completed in October 2010. She completed 100 hours of community service. She was ordered to make restitution to Farmers in the amount of \$8,888.81 at the rate of \$200 per month. At the time of the March 1, 2010 hearing, although Ms. Gordon was paying on schedule, she still owed over \$6,000.

Ms. Gordon takes full responsibility for failing to remit premiums. She asserts that she did not steal the amount but can not account for the missing \$8,888.81. She acknowledges that she was irresponsible and cavalier about fiduciary matters. The

only rationale Ms. Gordon offered as a contributing factor in her repeated failure to deposit collected premiums is her phobia about entering banks due to a past experience of being present during a bank robbery. Ms. Gordon did not provide any details of what she has done to rehabilitate herself.

Ms. Gordon believes she has learned a huge lesson from the impact of losing her agency, suffering personal financial consequences and experiencing the shame of arrest and conviction. She wants to keep her insurance producer license because it has been the primary occupation of her adult life.

FINDINGS OF FACT

1. At all times pertinent to the complaint in this matter, Janice M. Gordon was a licensed resident insurance producer authorized to conduct insurance business in the State of Michigan.
2. As a licensed insurance producer, Ms. Gordon knew that she was a fiduciary for all money received or held in her capacity as an agent for Farmers Insurance Group Companies.
3. The contract between Farmers and Ms. Gordon required that she make daily deposits of premiums collected.
4. During April 2007 through September 2007, Ms. Gordon, collected \$8,888.81 from policyholders that she failed to remit to Farmers.
5. Farmers sent Ms. Gordon numerous delayed deposit notices which she ignored.
6. In September 2007, Farmers made three unsuccessful attempts to coordinate an audit of Ms. Gordon and her agency.

7. During a burglary of Ms. Gordon's office on September 20, 2007, she reported to police a total of only \$200 in missing cash.
8. Ms. Gordon acknowledges that she failed to properly remit premiums collected on behalf of Farmers.
9. Ms. Gordon acknowledges that over the years she was appointed by Farmers she acted irresponsible in handling her fiduciary duties to the company.
10. Farmers terminated Ms. Gordon's appointment on September 28, 2007.
11. On February 16, 2009, Ms. Gordon was convicted of embezzlement and ordered to make restitution to Farmers in the amount of \$8,888.81.
12. Ms. Gordon is making scheduled restitution payments but still owes Farmers over \$6,000.
13. Ms. Gordon continues to work as an insurance producer.

CONCLUSIONS OF LAW

The Petitioner bears the burden of proving, by a preponderance of the evidence, that the Respondent violated the Insurance Code as alleged and that grounds exist for imposing sanctions.

The above Findings of Fact establish by a preponderance of the evidence that Respondent Janice Gordon failed to turn over money which she held in a fiduciary capacity to persons to whom it was owed in violation of Code Section 1207(1).

The above Findings of Fact establish by a preponderance of the evidence that Respondent Janice Gordon improperly withheld and misappropriated money she received in the course of doing insurance business in violation of Code Section 1239(1)(d).

The above Findings of Fact establish by a preponderance of the evidence that Respondent Janice Gordon had a pattern of failing to properly remit premiums which constitutes incompetence, untrustworthiness and financial irresponsibility in violation of Code Section 1239(1)(h).

The violation of Code Sections 1207(1) and 1239(1)(d) & (h) constitute grounds for imposing sanctions including fines, suspension and/or license revocation under Code Section 1244.

PROPOSED DECISION

Pursuant to the above Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge recommends that the Commissioner sanction Respondent's license as deemed appropriate for violation of the Insurance Code.

EXCEPTIONS

The parties may file Exceptions to this Proposal for Decision within 20 days after it is issued. Exceptions should be addressed to the Office of Financial and Insurance Regulation, 611 West Ottawa Street, 3rd Floor, P.O. Box 30220, Lansing, Michigan 48909; Attention: Dawn Kobus.


Renee A. Ozburn
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 17th day of March, 2010.


Shirley Dacus

State Office of Administrative Hearings and Rules

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