

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. 10-768-L
Docket No. 2010-261

Michael Brooks
Respondent

For the Petitioner:

For the Respondent:

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

Michael Brooks


Issued and entered
this ~~8th~~ day of February 2011
by Ken Ross
Commissioner

FINAL DECISION

I. Background

On February 23, 2010, Chief Deputy Commissioner Stephen R. Hilker issued an Order Referring Complaint for Hearing and Order to Respond in this case. The Complaint set forth detailed allegations that Respondent had failed to maintain the standards of the Michigan Insurance Code (MCL 500.100, *et seq.*).

Specifically, Respondent was convicted in 2008 of five counts of 4th Degree Criminal Sexual Conduct relating to sexual contact with individuals under the age of 16. Section 1239(1)(h) of the Michigan Insurance Code, MCL 500.1239(1)(h), provides for the revocation of an insurance producer license where the licensee engages in any “fraudulent, coercive, or

dishonest practices.” The complaint alleges that sexual contact with a minor is a coercive practice since a minor is incapable of consenting to such activity.

The Complaint also alleged that Respondent failed to report the prosecution to the Commissioner as required by section 1247(2) of the Insurance Code, MCL 500.1247(2).

The case was assigned to the State Office of Administrative Hearings and Rules for hearing before an administrative law judge (ALJ).

On March 23, 2010, OFIR staff (Petitioner) filed a motion for summary decision with respect to the 1239(1)(h) portion of the Complaint. The motion was followed by oral argument, the exchange of briefs, and the introduction of exhibits by both parties.

In an August 5, 2010 opinion and order the ALJ granted the Petitioner’s motion. The order was affirmed in the ALJ’s August 20, 2010 proposal for decision (PFD). Having prevailed with respect to the section 1239(1)(h) allegations, Petitioner indicated that the section 1247(2) allegations would not be pursued.

Neither party filed exceptions to the PFD. 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).

The PFD included a recommendation that the Commissioner revoke the Respondent’s insurance producer license.

The factual findings in the PFD are in accordance with 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.

II. Findings of Fact and Conclusions of Law

The facts relevant to this case are not in dispute:

1. Respondent Michael Brooks holds a Michigan resident producer license.
2. In October 2008, Respondent was convicted of five misdemeanor counts of criminal sexual conduct 4th degree, MCL 750.520e(1)(a). This offense is defined in the Michigan Penal Code:

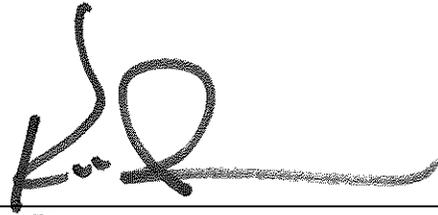
A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exist:

- (a) That other person is at least 13 years of age but less than 16 years of age, and the actor is 5 or more years older than that other person.
3. Section 1239(1)(h) of the Michigan Insurance Code. MCL 500.1239(1)(h) provides that the Commissioner may revoke the insurance producer license of an individual who uses “fraudulent, coercive, or dishonest practices.” This statutory provision does not limit the prohibited practices to conduct which occurs in the marketing of insurance or in a licensee’s business activities generally.
4. The Respondent’s actions were coercive in nature because the minors, by virtue of their age, were legally incapable of consenting to the sexual activity. Nonconsensual sexual activities involving minors are coercive in nature.
5. Under section 1239(1)(h) of the Insurance Code, Respondent’s conduct warrants the revocation of his insurance producer license.

III. Order

1. Based on the conduct described above and in accordance with section 1239(1)(h) of the Michigan Insurance Code, Respondent’s insurance producer license is revoked.

2. The allegation that Respondent violated section 1247(2) of the Insurance Code is dismissed.

A handwritten signature in black ink, appearing to read 'K. Ross', written over a horizontal line.

Ken Ross
Commissioner

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of	Docket No.	2010-261
Office of Financial and Insurance Regulation, Petitioner	Agency No.	10-768-L
v	Agency:	Office of Financial and Insurance Regulation
Michael J. Brooks, Respondent	Case Type:	Sanction Revocation

Issued and entered
this 20th day of August, 2010
by Lauren G. Van Steel
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Appearances: Elizabeth V. Bolden, Attorney at Law, appeared as representative for the Office of Financial and Insurance Regulation, Petitioner. Michael J. Brooks, Respondent, appeared on his own behalf.

This proceeding under the Michigan Insurance Code, 1956 PA 218, as amended, MCL 500.100 *et seq.* (hereafter "Insurance Code") commenced with the issuance by the State Office of Administrative Hearings and Rules of a Notice of Hearing following the filing of an Order Referring Complaint for Hearing and Order to Respond by the Chief Deputy Commissioner, dated February 23, 2010, and a Request for Hearing on March 2, 2010. The Complaint set forth allegations under Sections 1247 and 1239(1)(h) of the Insurance Code. On March 23, 2010, a Notice of Hearing was issued, scheduling a contested case hearing for May 4, 2010.

On April 27, 2010, Petitioner filed a "Request for Adjournment" and "Petitioner's Hearing Brief and Motion for Summary Decision." The Motion for Summary

Decision concerned Count II of the Complaint regarding Section 1239(1)(h) of the Insurance Code. On April 29, 2010, the undersigned issued an Order Granting Adjournment and Order Scheduling Hearing on Motion for Summary Decision.

On May 4, 2010, the hearing was held as scheduled on Petitioner's motion. Petitioner's Exhibits 1, 3 and 4, and Respondent's Exhibits A and B were admitted into the record.

At the conclusion of the motion hearing, the record was ordered held open until May 28, 2010, for the filing of a copy of pertinent court transcripts from the underlying criminal court proceedings and certain Commissioner final orders that were cited by counsel on the record.

On May 21, 2010, Petitioner filed "Petitioner's Supplemental Brief to Motion for Summary Decision." Attached to the Supplemental Brief was a copy of a transcript of the Preliminary Examination before the Honorable Richard E. Conlin, District Judge, held in the matter of the *People v Michael John Brooks*, Washtenaw County Circuit Court, File No. CRW-07-2035-FH, dated January 16 and 22, 2008.

On May 27, 2010, the undersigned issued an Order Extending Record and Scheduling Briefs. The record was ordered held open until June 30, 2010, for the filing of the additional court transcripts. The record was further held open for the filing of hearing briefs until July 9, 2010, and any reply briefs until July 23, 2010.

On May 27, 2010, Petitioner filed a document entitled, "Petitioner's Exhibits 5 and 6," with a copy of the transcript of a Plea Hearing before the Honorable Archie C. Brown in the matter of the *People v Michael John Brooks*, Washtenaw County Circuit Court, File No. 07-2035-FH, dated August 6, 2008, as Petitioner's proposed Exhibit 5, and a copy of the transcript of a Sentencing before the Honorable Archie C.

Brown, dated October 1, 2008, as Petitioner's proposed Exhibit 6.

On June 9, 2010, Petitioner filed "Petitioner's Supplemental Brief" (with a proposed "Exhibit 7" which is a copy of a portion of the August 6, 2008 Plea Hearing transcript previously submitted as Petitioner's proposed Exhibit 5).

On July 12, 2010, Petitioner filed "Petitioner's Reply to Respondent's July 8, 2010 Filing." On July 13, 2010, Respondent filed "Respondent's Response to Petitioner's Supplement Brief." On July 19, 2010, Respondent filed "Respondent's Response to Petitioner's Supplement Brief Dated July 12." On July 22, 2010, Petitioner filed "Petitioner's Reply to Respondent's July 19, 2010 Filing." On July 27, 2010, Petitioner filed a copy of correspondence directed to the Washtenaw County Circuit Court.

On August 5, 2010, the undersigned issued an Opinion and Order Granting Petitioner's Motion for Summary Decision and Order Scheduling Hearing. The Order granted the motion for summary decision as to Count II of the Complaint and scheduled a contested case hearing for September 9, 2010, on the remaining Count I of the Complaint.

On August 9, 2010, Petitioner filed "Petitioner's Motion for Proposal for Decision on Count II." The motion states in part that, "[u]pon issuance of the Proposal for Decision, the Petitioner abandons Count I of its Complaint, as Count II disposes the remaining issues in this contested case." Respondent did not file a response to Petitioner's motion within seven days of the date of service, as provided for in Rule 13 of the administrative rules for "Insurance Bureau Hearing Procedures," 1979 ACS, R 500.2113.

In accordance with the undersigned's rulings at the motion hearing held on May 4, 2010, and in the undersigned's Opinion and Order Granting Petitioner's Motion for Summary Decision issued on August 5, 2010, the following exhibits offered by Petitioner are admitted as evidence into the record:

1. Petitioner's Exhibit No. 1 is a copy of a Complaint – Felony, dated November 2, 2007, in the 14A1 Judicial District and 22nd Judicial Circuit Courts.
2. (Petitioner's proposed Exhibit No. 2 was not admitted, as stated on the record at the May 4, 2010 motion hearing.)
3. Petitioner's Exhibit No. 3 is a copy of an Internet Criminal History Access Tool (ICHAT), Michigan State Police record, dated September 30, 2009.
4. Petitioner's Exhibit No. 4 is a copy of a Michigan Public Sex Offender Registry, Offender Detail for Michael John Brooks, dated October 6, 2009.
5. Petitioner's Exhibit No. 5 is a copy of a transcript of a Plea Hearing, dated August 6, 2008, Washtenaw County Circuit Court, Case No. 07-2035-FH.
6. Petitioner's Exhibit No. 6 is a copy of a transcript of a Sentencing dated October 1, 2008, Washtenaw County Circuit Court, Case No. 07-2035-FH.
7. Petitioner's Exhibit No. 7 is a copy of an excerpt of a transcript of a Plea Hearing dated August 6, 2008, Washtenaw County Circuit Court, Case No. 07-2035-FH.
8. Petitioner's Exhibit No. 8 is a copy of a transcript of a Preliminary Examination before District Judge Richard E. Conlin, dated January 16 and 22, 2008, Washtenaw County Circuit Court, Case No. CRW-07-2035-FH.

The following exhibits offered by Respondent are admitted as evidence into the record:

1. Respondent's Exhibit A is an Internet copy of the Michigan Court of Appeals' decision in *People v Harns*, Case No. 199055, January 30, 1998.
2. Respondent's Exhibit B is a copy of an article by Jason L. Byrne, "Unintended Consequences – How a Criminal Plea Can Result in the Loss of Insurance Coverage," Michigan Bar Journal, dated December 1, 2007.

In that the time period allowed under the rules for a response to "Petitioner's Motion for Proposal for Decision on Count II" has expired, the record in this matter is now closed.

ISSUE AND APPLICABLE LAW

The issues initially presented by Counts I and II of the Complaint are whether Respondent has acted in violation of Sections 1247 and/or 1239(1)(h) of the Insurance Code, which provide as follows:

Sec. 1247. (1) An insurance producer shall report to the commissioner any administrative action taken against the insurance producer in another jurisdiction or by another governmental agency in this state within 30 days after the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

(2) Within 30 days after the initial pretrial hearing date, an insurance producer shall report to the commissioner any criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents. MCL 500.1247.

Sec. 1239. (1) In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

* * *

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere. MCL 500.1239(1)(h).

As noted above, however, Petitioner indicated in its "Motion for Proposal for Decision on Count II," filed on August 9, 2010, that upon issuance of the Proposal for Decision, Petitioner "abandons Count I of its Complaint . . ." Therefore, the only remaining issue to be addressed in this Proposal for Decision is under Count II of the Complaint, being Section 1239(1)(h) of the Insurance Code, *supra*.

FINDINGS OF FACT

Based on the entire record in this matter, including the admitted exhibits, the following findings of fact are established:

1. At all times pertinent to this matter, Michael J. Brooks, Respondent, was an insurance agent licensed as a resident insurance producer in the state of Michigan.
2. Respondent is currently 49 years old (DOB [REDACTED]). [Pet. Exh. 1].
3. On or about November 2, 2007, Respondent was initially charged with four felony counts of Criminal Sexual Conduct in the 2nd Degree, in the 14A1 District Court, 22nd Judicial Circuit (Washtenaw County Circuit Court). [Pet. Exh. 1].
4. The allegations concerned Respondent's alleged criminal sexual conduct between the years of 1995 and 2007 with two minor victims who were at least 13 years but less than 16 years of age. [Pet. Exh. 1].

5. On January 16 and 22, 2008, a Preliminary Examination was conducted by the Honorable Richard E. Conlin, District Judge. The original Information or Complaint was amended on the record. [Pet. Exh. 8, pp 176-186; Pet. Exh. 5, p 10].
6. At the conclusion of the Preliminary Examination, Judge Conlin bound the matter over for trial in circuit court. [Pet. Exh. 8].
7. On or about October 1, 2008, Respondent pled *nolo contendere* to and was thereby convicted of five misdemeanor counts of Criminal Sexual Conduct – 4th Degree under MCL 750.520e(1)(a). Respondent pled *nolo contendere* to Counts 9, 15, 16, 17 and 18 of the amended Complaint before the Honorable Archie C. Brown in the Washtenaw County Circuit Court. The court dismissed the balance of the charges as part of the plea agreement. [Pet. Exh. 4; Pet. Exh. 6, p 33; Pet. Exh. 7, p 14].
8. MCL 750.520e(1)(a) provides that a person is guilty of Criminal Sexual Conduct in the 4th degree if he or she engages in sexual contact with another person and the other person is at least 13 years of age but less than 16 years of age, and the actor is five or more years older than that other person.
9. On September 24, 2008, Respondent was sentenced by Judge Brown to 255 days in the Washtenaw County Jail (with 14 days credit), payment of restitution, court costs and fees, and five years of court probation. [Pet. Exh. 4; Pet. Exh. 6, p 33].
10. One of the conditions of Respondent's court probation is that he is required to register with the Michigan State Police as a sex offender. [Pet.

Exh. 4].

11. As an insurance licensee, Respondent knew or should have known that Section 1239(1)(h) of the Insurance Code provides that using "fraudulent, coercive, or dishonest practices" is grounds for license sanctions, including suspension or revocation.
12. Respondent's conduct, upon which his conviction of five counts of Criminal Sexual Conduct in the 4th Degree is based, constitutes "coercive" practices within the meaning of the Insurance Code. The minor victims, being less than 16 years of age, were under the legal age of consent for sexual contact in the state of Michigan.

CONCLUSIONS OF LAW

Petitioner, as the complaining party, has the burden of proof in this matter to show by a preponderance of the evidence that Respondent has violated the Insurance Code as set forth in the Complaint, such that grounds exist for the imposition of a sanction. Under Rule 11, summary decision may be granted where there is no genuine issue as to any material fact and the moving party is therefore entitled to a decision in that party's favor as a matter of law. 1979 ACS 13, R 500.2111.

In this matter, the undersigned Administrative Law Judge has granted Petitioner's motion for summary decision, as set forth in the Opinion and Order Granting Petitioner's Motion for Summary Decision, dated August 5, 2010. It is concluded that there is no genuine issue of material fact, as record evidence conclusively establishes that Respondent has engaged in "coercive" practices within the meaning of MCL 500.1239(1)(h). Petitioner is entitled to a decision in its favor. Respondent is therefore subject to sanctions under Sections 150, 1239 and 1244 of the Insurance Code, being

MCL 500.150; MCL 500.1239; and MCL 500.1244, as set forth in the Complaint.

PROPOSED DECISION

Based on the above findings of fact and conclusions of law, the undersigned Administrative Law Judge proposes the following to the Commissioner:

1. That the above findings of fact and conclusions of law be adopted in the Commissioner's final decision and order in this matter;
2. That the Commissioner revoke Respondent's resident insurance producer license and any other pending or current license issued to Respondent under the jurisdiction of the Commissioner; and
3. That the Commissioner order any other sanction authorized by law that the Commissioner deems appropriate to the established facts and conclusions of law.

EXCEPTIONS

Any Exceptions to this Proposal for Decision should be filed in writing with the Office of Financial and Insurance Regulation, Division of Insurance, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty (20) days of issuance of this Proposal for Decision. An opposing party may file a response within ten (10) days after exceptions are filed.


Lauren G. Van Steel
Administrative Law Judge