

**STATE OF MCHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

Office of Financial and Insurance Regulation

Enforcement Case No. 09-7147

Agency No. 09-072-L

Petitioner

v

Mark A. Kodlowski
System ID No. 154447

And

The Reputable Agency, Inc.
System ID No. 81248

Respondents

_____ /

Issued and entered
on 9/24, 2010
Stephen R. Hilker
Chief Deputy Commissioner

CONSENT ORDER AND STIPULATION

A. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Mark A. Kodlowski (Respondent) is a licensed resident insurance producer authorized to transact the business of insurance in this state.
2. The Reputable Agency, Inc. (RPA) is a licensed insurance agency authorized to transact the business of insurance in the State of Michigan. Mark A. Kodlowski and RPA are referred to herein as "Respondents."
3. At all times pertinent to the matter herein, Mark A. Kodlowski was the sole shareholder and President of The Reputable Agency, Inc.

3. At all times pertinent to the matter herein, Mark A. Kodlowski was sole shareholder and President of the Reputable Agency, Inc.
4. Respondents knew or had reason to know that Section 1207(2) of the Code, MCL 500.1207(2), provides in pertinent part, "An agent shall use reasonable accounting methods to record funds received in his or her fiduciary capacity including the receipt and distribution of all premiums due each of his or her insurers."
5. Respondents violated Section 1207(2) of the Code, MCL 500.1207(2), as described below:

STATEMENT OF FACTUAL ALLEGATIONS

6. On or about March 16, 2007, Respondent RPA completed an application for commercial property and general liability insurance coverage with Nautilus Insurance Company. The premium required for the aforementioned policy was \$14,055.30.
7. On or about March 16, 2007, P.M entered into a premium finance agreement with the Premium Financing Specialists, Inc. (PFSI), to finance the abovementioned insurance premium for the commercial property and general liability coverage in the amount of \$14,055.30. Pursuant to the agreement, P.M was required to provide a down payment in the amount of \$4,192.
8. However, on April 20, 2007 P.M issued a check in the amount of \$3,207.75, payable to the RPA as a down payment on the premium for commercial property and general liability insurance coverage.
9. On April 20, 2007, the above-mentioned check was deposited into the Reputable Agency, Inc.'s business bank account.
10. On June 13, 2007, Nautilus Insurance Company cancelled P.M's commercial property and general liability policy due to the nonpayment of the premium in the amount of \$14,055.30.
11. Respondents subsequently rewrote the policy through another insurance carrier and forwarded the premium payment in the amount of \$3,207.75 it received from P.M. on April 20, 2007, to that insurer.
12. Contrary to MCL 500.1207(2), Respondents' failed to use reasonable accounting methods to record funds they received in their fiduciary capacity as agents of P.M., which resulted in a failure to timely remit P.M's commercial lines policy premium payment.
13. By engaging in the foregoing conduct, Respondent violated MCL 500.1207(2).

B. ORDER

Based on the findings of fact and conclusions of law above and Respondents' stipulation, it is **ORDERED** that:

1. Respondents shall immediately cease and desist from operating in such a manner as to violate Section 1207(2) of the Code, MCL 500.1207(2).
2. Respondent Mark A. Kodlowski shall take all steps necessary to establish procedures under which all checks received from insureds as payment of insurance premiums shall, prior to deposit, reflect the insurer's name and policy number of the policy(s) for which payment is being tendered.
3. Respondent Mark A. Kodlowski shall hold all premium moneys separate from other funds in accordance with the following:
 - (a) If Respondent does not make immediate remittance of premium to insurers, Respondent shall not deposit premiums in office operating accounts but shall keep the moneys in a separate account from which disbursement may not be made other than for payment of premium to insurers, the return of premiums to the insured or the transfer of commissions or the withdrawal of voluntary deposits.
 - (b) The deposit of a premium collection in a separate bank account shall not be construed as co-mingling by the Respondent of the net premium and of the commission portion of the premium.
 - (c) The premium account balance shall include funds sufficient to pay premiums collected and any amount delinquent or in dispute with the insurers. Upon reconciliation of delinquent or disputed accounts, excess moneys remaining in the premium bank account may be withdrawn as if they had been voluntary deposits.
 - (d) The premium account shall be reconciled not less than once a month. The reconciliation shall ascertain the actual cash balance in the account and compare it with the sum of the premiums collected by the Respondent and paid to insurers each month. The reconciliation may be done electronically or by any other appropriate method and shall be done not more than 45 business days after receipt of the bank statement.
4. Respondent shall keep an accurate account of premiums collected and deposited into the premium account and premiums paid to insurance carriers from the premium account.

5. Respondents shall pay to the State of Michigan, through OFIR, a civil fine of \$1,500. Respondents shall further pay the fines within 30 days of the invoice date as indicated on the OFIR invoice.

Dated: 9/29/12



Stephen R. Hilker
Chief Deputy Commissioner

C. STIPULATION

1. Respondents have read and understand the consent order above. Respondents agree that the Chief Deputy Commissioner has jurisdiction and authority to issue this consent order pursuant to the Insurance Code. Respondents waive the right to a hearing in this matter if this consent order is issued. Respondents understand that this stipulation and consent order will be presented to the Chief Deputy Commissioner for approval and the Chief Deputy Commissioner may or may not issue this consent order. Respondents waive any objection to the Commissioner deciding this case following a hearing in the event the consent order is not approved. Respondents neither admit nor deny the findings of fact and conclusions of law set forth in the above consent order and agree to the entry of this order.
2. Respondent Mark Kodlowski further agrees to hold all premium moneys separate from other funds in accordance with the following:
 - (a) If Respondent does not make immediate remittance of premium to insurers, Respondent agrees not to deposit premiums in office operating accounts but will keep the moneys in a separate account from which disbursement may not be made other than for payment of premium to insurers, the return of premiums to the insured or the transfer of commissions or the withdrawal of voluntary deposits.
 - (b) The deposit of a premium collection in a separate bank account shall not be construed as co-mingling by the Respondent of the net premium and of the commission portion of the premium.
 - (c) The premium account balance shall include funds sufficient to pay premiums collected and any amount delinquent or in dispute with the insurers. Upon reconciliation of delinquent or disputed accounts, excess moneys remaining in the premium bank account may be withdrawn as if they had been voluntary deposits.
 - (d) The premium account shall be reconciled not less than once a month. The reconciliation shall ascertain the actual cash balance in the account and compare it with the sum of the premiums collected by the Respondent and paid to insurers each month. The reconciliation may be done electronically or by any other appropriate

method and shall be done not more than 45 business days after receipt of the bank statement.

3. Respondent agrees to keep an accurate account of premiums collected and deposited into the premium account and premiums paid to insurance carriers from the premium account.
4. Respondents agree to pay the State of Michigan, through OFIR, a civil fine of \$1,500. Respondents agree to further pay the fines within 30 days of the invoice date as indicated on the OFIR invoice.

Dated: 9-14-10

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The Reputable Agency, Inc.



By: MARK KODLOWSKI

Its: PRESIDENT



Mark A. Kodlowski

The Office of Financial and Insurance Regulation staff approves this stipulation and recommends that the Chief Deputy Commissioner issue the above consent order.



Marlon F. Roberts

Staff Attorney

Dated: 9/17/2010