

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

Office of Financial and Insurance Regulation,
Petitioner

v

Taletha McClendon,
Respondent

Case No. 12-881-L
Docket No. 12-000966-OFIR

For the Petitioner:

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

For the Respondent:

Taletha McClendon


Issued and entered
this 7th day of November 2012
by R. Kevin Clinton
Commissioner

FINAL DECISION

I. Background

On June 7, 2012, Chief Deputy Commissioner Annette E. Flood issued an Order Referring Complaint for Hearing in this case which included detailed allegations that Respondent had violated sections 1207(1), 1239(1), and 1244(1)(h) of the Michigan Insurance Code, MCL 500.1207(1); 500.1239(1); and 500.1244(1), by failing to remit premiums she had collected from her customers to an insurer she represented.

A hearing was held on September 17, 2012. The Administrative Law Judge issued a Proposal for Decision (PFD) on September 27, 2012. 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. At all times pertinent to this case, Respondent was a licensed resident insurance producer. Respondent was appointed to represent Farmers Insurance Group.

2. Respondent knew or should have known that using fraudulent and dishonest practices when conducting insurance business in this state or elsewhere is a violation of section 1239(1)(h) of the Michigan Insurance Code.

3. Respondent knew or should have known that failing to remit insurance premiums collected on behalf of an insurer is a violation of section 1207(1) of the Michigan Insurance Code.

4. Respondent knew or should have known that using fraudulent or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business constitutes good reason to revoke an insurance producer license under section 1244(1) of the Insurance Code.

5. In August 2010, Respondent accepted a premium payment check of \$1,028.14 from a client. She failed to report the payment to Farmers Insurance Group and kept the money for her own personal use. Between October 2010 and March 2011, Respondent collected \$2,480.25 in cash from several of her clients for Farmers Insurance Group coverage. Respondent failed to remit those funds to Farmers as required under her contract with Farmers.

6. Respondent's conduct is dishonest, a violation of her fiduciary obligations as a licensed insurance producer, and inconsistent with the standards of section 1244(1) of the Insurance Code.

III. Order

1. Based on the conduct described above and in accordance with the Insurance Code provisions cited above, Respondent's insurance producer license is revoked.

2. Respondent shall pay restitution of \$3,508.39 to Farmers Insurance Group.



R. Kevin Clinton
Commissioner

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:	Docket No.:	12-000966-OFIR
Office of Financial and Insurance Regulation, Petitioner	Case No.:	12-881-L
v	Agency:	Office of Financial & Insurance Regulation
Taletha M. McClendon, Respondent	Case Type:	OFIR/OFIS-Insurance
	Filing Type:	Appeal

Issued and entered
this 27th day of September, 2012
by:
C. David Jones
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

On or about June 7, 2012 Petitioner issued a Complaint against Respondent and an Order Referring Complaint for Hearing.

On June 12, 2012 a Notice of Hearing for July 25, 2012 at 9:00 a.m. at 611 W. Ottawa St., Lansing was sent.

On July 17, 2012 an Order Granting Request for Telephone Testimony by Matthew Carr, Petitioner's witness, was issued.

On July 19, 2012 an order Denying Adjournment was issued. However, on July 26, 2012, an order Granting Adjournment was issued, which rescheduled the hearing for September 17, 2012 at 9:00 a.m.

On September 17, 2012 the hearing commenced as scheduled. Attorney William R. Peattie represented Petitioner. Respondent represented herself.

The following witnesses testified:

Matthew Carr, Senior Auditor for Farmers Insurance, for Petitioner;

Taletha McClendon, Respondent, for Respondent.

The following exhibits were admitted into evidence:

Petitioner's Exhibit A: Audit Report of Farmers Insurance;
Respondent's Exhibit A: Handwritten Sheet Concerning Premiums;
Respondent's Exhibit B: ACA Cash Entry Correction Form.

ISSUES AND APPLICABLE LAW

The applicable law in this case is the Insurance Code of 1956; 1956 PA 218, as amended; MCL 500.100 *et seq.*

The issues are as follows:

1. By failing to remit premiums to Farmers Insurance, did Respondent violate Section 1207(1) of the Insurance Code, MCL 500.1207(1)?
2. Did Respondent improperly withhold, misappropriate, or convert money received in the course of business, in violation of Section 1239(1)(d) of the Insurance Code, MCL 500.1239(1)(d)?
3. Did Respondent use fraudulent, coercive, or dishonest practices or demonstrate incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in violation of Section 1239(1)(h) of the Insurance Code, MCL 500.1239(1)(h)?

FINDINGS OF FACT

1. Respondent is a licensed insurance producer. On August 28, 2007 she was hired by Farmers Insurance Group as an agent (independent contractor). On March 3, 2011 Farmers terminated her contract for embezzlement.
2. Respondent operated her business in offices in Mt. Clemens she shared with another licensed agent (Ms. [REDACTED]). Respondent had no employees. Although at hearing she testified she had two employees, when she met with the Farmers' Investigator on February 9, 2011 she mentioned no employees to him, and no employees were present in the office. This office was subsequently closed.
3. Farmers required its agents to comply with the following procedure in collecting premiums from customers. The customer could pay in cash or by check, or both. Upon payment, the agent was required to go online and enter the payment information in a software program, using the agent's ID and password. The software program was known as the ACA program. For each entry, the program issued an ACA number. The agent was then required, within 24 hours, to deposit the entire premium payment in an authorized deposit-only bank account of Farmers. The agent was not allowed to keep any of the premium as commission, but Farmers sent the agent monthly commission payments.

4. If Farmers did not receive the premium payment in the bank account within seven days, it sent the agent a notice. If the agent did not reply, Farmers sent the agent another notice after 14 days. If the agent still did not reply, Farmers referred the matter to its fraud department.

5. Farmers discovered Respondent had entered several premium payments on the ACA system, but never made the deposits. Farmers sent Respondent notices she did not reply to, so Farmers referred the matter to its fraud department.

6. Mr. Matthew Carr, a senior auditor, and another Farmers' official met with Respondent at her office on February 9, 2011. Mr. Carr audited her records and cash. Then, and subsequently, he concluded that for eight ACA transactions (but not for some others), Respondent had not deposited a total of \$2,480.25 in cash received from October 2010 to March 2011 by Respondent for premiums (Petitioner's Exhibit 1, page 10). On two of these, Respondent also received checks, but at some point Farmers received the checks. Mr. Carr asked Respondent for an explanation.

7. Respondent made a statement to Mr. Carr, which he typed out and showed to her (Petitioner's Exhibit 1, page 7). Respondent admitted not depositing premiums, said she used the cash for personal expenses, and did not have the money on hand. She described a number of personal crises that prompted her to use the premiums for herself.

8. Respondent refused to sign the statement, indicating she was not comfortable doing so.

9. Subsequently, Farmers also discovered that Respondent, in August 2010, accepted a \$1,028.14 check from a customer, but had not entered it in the ACA system or deposited it in Farmers' bank account.

10. Roughly during the time Respondent did not deposit the cash, she had some crises in her life. At hearing, Respondent testified that her crises were separation from her husband, foreclosure on her home, a vehicle that did not work, and a cousin who was shot in the head, so she got custody of the children. In her statement to Mr. Carr, she added that her home was vandalized and a family member stole money from her.

11. In August 2010, Respondent accepted a \$1,028.14 check from a customer but did not enter it in the ACA system or deposit it in Farmers' bank account. She used the money for personal reasons.

12. From October 2010 to March 2011 Respondent accepted \$2,480.25 on eight accounts, and entered eight ACA transactions, but did not deposit the cash in Farmers' bank account. She used the money for personal reasons.

13. For a period of time, Respondent tried to cover up her actions by using

current premium payments to cover old premiums, trying to make it appear that she had just delayed depositing the money.

14. Respondent's explanations at hearing are not credible. For three of the eight ACA transactions (ACA 1005, ACA 1105, and ACA 0211) she testified the money was deposited to Farmers account, but she had no verification of the claim. The computer printouts (Petitioner's Exhibit 1 at end) are not verification. For the other transactions, she admitted the money was not deposited, but blamed the other agent in the office and her alleged staff, although she admitted to Mr. Carr that she used the money herself, and the entries in the ACA system were made with her ID and password. At hearing she testified she did not come to her office from October 6, 2010 to February 2011, but in her statement to Mr. Carr she merely said she did not come as much as she used to. In her statement to Mr. Carr, she admitted depositing premium checks into her personal account, and the insured told the District Office she gave the \$1,028.14 check to Respondent.

15. Respondent owes Farmers \$3,508.39 for premiums she received but did not forward to Farmers. Respondent has made no payments.

CONCLUSIONS OF LAW

A. Fiduciary for Money Received

Petitioner has accused Respondent of violating the following:

- 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.

MCL 500.1207(1)

The weight of evidence on record establishes Respondent violated the above. From October 2010, to March 2011 she received \$2,480.25 for insurance premiums in cash for which she was a fiduciary. She failed to turn the money over to Farmers in a timely manner. Respondent's testimony at hearing that it was the fault of her alleged staff or the agent she shared offices with is not credible. It conflicts with her admissions on February 9, 2011. There is no credible evidence she had any staff. The ACA entries were made with her ID and password. She admitted to Mr. Carr essentially that she did come to her office from October 2010 to February 2011. Her personal crises explain her motivation. Also, she herself tried to cover up the nonpayment by using current premium payments to cover old premiums.

The weight of evidence establishes Respondent violated the above by accepting a

\$1,028.14 premium check in August 2010, but not entering it into the ACA system or depositing it in Farmers' bank account. She used the money for personal reasons. Respondent denied this at hearing, but on February 9, 2011 she admitted to Mr. Carr depositing premium checks into her personal account. The weight of evidence indicated she had no staff who could have taken the check. Also the insured told the district office she gave the check to Respondent.

B. Improper Use of Money Received

Petitioner has accused Respondent of violating the following:

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.

MCL 500.1239(1)(d)

The weight of evidence on record establishes a violation of the above. All the funds she kept were for premiums, and therefore received in the course of doing insurance business. She improperly withheld the money from Farmers, misappropriated it for her own uses, and converted it for her needs. (see above discussion).

C. Conduct of Business

Petitioner accused Respondent of violating the following:

(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: . . .

(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)

The weight of evidence on record establishes that Respondent violated the above. Her actions in holding onto premiums (and trying to conceal it from Farmers) were fraudulent, and dishonest, and demonstrated incompetence, untrustworthiness, and financial irresponsibility.

Actually even if I accepted Respondent's testimony blaming her alleged staff and other agent, I would also find a violation of this. The actions continued from August 2010 to March 2011, a period of about eight months. For her not to discover and stop the practices over so long a period demonstrates incompetence and financial irresponsibility.

D. Sanctions

In reference to sanctions, the law provides as follows:

(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: . . .

MCL 500.1239(1)

(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.

MCL 500.1244(1)

Petitioner has requested that Respondent be ordered to pay restitution to Farmers and have her license revoked. I agree. Respondent carried on her diversion of premiums for about eight months, and tried to conceal it from Farmers

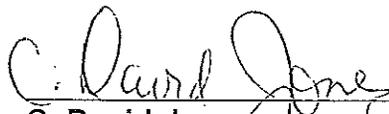
PROPOSED DECISION

Based on the above Findings of Fact and Conclusions of Law, I recommend the following decision:

1. Respondent violated MCL 500.1207(1);
2. Respondent violated MCL 500.1239(1)(d);
3. Respondent violated MCL 500.1239(1)(h); and
4. The appropriate sanction is restitution to Farmers in the amount of \$3,508.39, and revocation of Respondent's License.

EXCEPTIONS

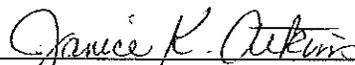
If a party chooses to file Exceptions to the Proposal for Decision, the Exceptions must be filed within twenty (20) days after the Proposal for Decision is issued and entered. If an opposing party chooses to file a Response to the Exceptions, it must be filed within five (5) days after the Exceptions are filed. All Exceptions and Responses to Exceptions must be filed with the Office of Financial and Insurance Regulation, Department of Licensing and Regulatory Affairs, Ottawa State Office Building, 611 West Ottawa, Third Floor, P. O. Box 30220, Lansing, Michigan 48909, and with the opposing party.



C. David Jones
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 below this 27th day of September, 2012.



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