

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

In the matter of:

William E. Lowder,
System ID No. 0029115

Enforcement Case No. 12-11487

Issued and entered
this 19th day of July 2012
by Randall S. Gregg
Deputy Commissioner

FINAL DECISION

I. BACKGROUND

Respondent William E. Lowder is a licensed resident insurance producer. In September 2011, the Office of Financial and Insurance Regulation (OFIR) received information that the Respondent had misappropriated nearly \$500,000.00 from one of his clients. OFIR investigated the complaint and on March 23, 2012, Respondent's insurance producer license was summarily suspended. The Order of Summary Suspension offered the Respondent an opportunity to show compliance with respect to the allegations. The order required the Respondent to file an answer by April 13, 2012. Respondent failed to file an answer.

On May 8, 2012, OFIR staff filed a Motion for Final Decision. Respondent did not file a reply to the motion. Given Respondent's failure to answer, OFIR staff's motion is granted. The factual allegations stated in the Order of Summary Suspension, being unchallenged, are accepted as true. Based on the information provided in the Order of Summary Suspension, the Commissioner makes the following findings of fact and conclusions of law.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In 1997, Respondent began a financial advisor/insurance agent relationship with (Complainant), an elderly woman, who held significant assets in various annuities, certificates of deposit, money market and other financial accounts. Between November 2006 and February 2008, Respondent advised Complainant to surrender or withdraw money from certain annuities and other investments. Respondent completed the necessary forms to facilitate the withdrawals and submitted the forms to the appropriate financial institution. The applications were signed by both Respondent and Complainant. Respondent completed more than a dozen such withdrawals.

2. The funds were deposited in Complainant's checking account and checks were then written to Respondent. Although the checks were signed by Complainant, the other information on the checks (the payee and amount payable) was completed by Respondent. At the time, Complainant did not have the mental capacity to fully understand her actions. In 2009, she was declared legally incompetent.
3. Respondent endorsed each of Complainant's checks and deposited the funds into accounts he controlled. In total, nearly \$500,000.00 of Complainant's money was transferred from her account to Respondent's bank accounts. A review of Respondent's bank account shows that Respondent used Complainant's money to make cash gifts to his wife, to fund his personal trust account, and to pay his personal and business expenses.
4. As a licensed resident producer, Respondent knew or had reason to know that section 1207(1) of the Michigan Insurance Code, MCL 500.1207(1), provides:

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.
5. Respondent further knew or had reason to know that section 1239(1) of the Insurance Code, MCL 500.1239(1), provides that the Commissioner may suspend or revoke an insurance producer's license for:
 - Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.
 - Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
6. Respondent breached his fiduciary duty to Complainant when he misappropriated her money for his own personal benefit and gain. Respondent's conduct was fraudulent and dishonest. His conduct violated the Michigan Insurance Code provisions cited above.
7. Respondent's actions are grounds for the Commissioner to revoke Respondent's insurance licenses and to order Respondent to pay restitution to Complainant.

III. ORDER

Based on the Respondent's conduct and the applicable law cited above, it is ordered that:

1. Respondent shall cease and desist from violating sections 1207(1) and 1239(1) of the Michigan Insurance Code.
2. Respondent shall pay restitution to
3. All insurance licenses of Respondent William E. Lowder are revoked.

R. Kevin Clinton
Commissioner

For the Commissioner:



Randall S. Gregg
Deputy Commissioner