

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:

Brian Gray,
System ID No. 0286779

And

Enforcement Case No. 11-11271

Sparty Bear, Inc.,
System ID No. 087486; Agency ID # 0040046

Respondents

Issued and entered
this 15th day of March 2012
by Randall S. Gregg
Deputy Commissioner

FINAL DECISION

I. BACKGROUND

Respondent Brian Gray is a licensed resident insurance producer. Respondent Sparty Bear, Inc. is a licensed insurance agency. In September 2010, the Office of Financial and Insurance Regulation (OFIR) received information that the Respondents had engaged in fraudulent conduct in connection with the sale of workers' compensation insurance. OFIR investigated the complaint and issued a notice of opportunity to show compliance to the Respondents stating factual allegations that the Respondents had violated sections 1207 and 1239 of the Michigan Insurance Code, MCL 500.1207 and 500.1239. Respondents failed to reply to the notice.

On October 27, 2011, OFIR issued an Administrative Complaint and Order for Hearing (Administrative Complaint) which was sent to Respondents. The Order for Hearing required Respondents to take one of the following actions within 21 days: agree to a resolution of the case, file an answer to the allegations with a statement that Respondents plan to attend the hearing, or request an adjournment. Respondents failed to take any of these actions.

On November 22, 2011, OFIR staff filed a Motion for Final Decision. Respondents did not file a reply to the motion. Given Respondents' failure to answer, Petitioner's motion is granted. The Administrative Complaint, being unchallenged, is accepted as true. Based on the Administrative Complaint, the Commissioner makes the following findings of fact and conclusions of law.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In September 2009, _____ engaged Respondents to secure workers' compensation insurance on its behalf. Respondents obtained the insurance from _____ through the _____.
2. On January 12, 2010, _____ paid Respondents a \$10,923.90 premium for the insurance. Respondents failed to remit _____ payment to the insurer.
3. On February 26, 2010, _____ cancelled _____ insurance policy for nonpayment of premium.
4. On August 5, 2010, Respondents remitted the \$10,923.90 premium to _____, more than six months after it was received and more than five months after the policy was cancelled.
5. Section 1207(1) of the Michigan Insurance Code, MCL 500.1207(1), provides that 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."
6. By failing to timely turn over the premium money received and held in a fiduciary capacity, Respondents violated MCL 500.1207(1).
7. Section 1239(1) of the Insurance Code, MCL 500.1239(1), provides:

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.

8. Respondents improperly withheld money received in the course of doing insurance business. Respondents' conduct demonstrated fraudulent and dishonest practices. Further, Respondents' conduct demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in this state. Such conduct supports the revocation of the Respondents licenses to conduct the business of insurance in this state.

III. ORDER

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

1. Respondents shall cease and desist from violating sections 1207(1) and 1239(1) of the Michigan Insurance Code.
2. All insurance licenses of Brian Gray and Sparty Bear, Inc. are revoked.

R. Kevin Clinton
Commissioner

For the Commissioner:



Randall S. Gregg
Deputy Commissioner