

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

Terrell L. Smith
System ID No. 0067282

Enforcement Case No. 10-11108

and,

Excalibur Agency, Inc.
System ID No. 0025391

Respondents.

_____ /

Issued and entered
On 4-30 2012
By Annette E. Flood
Chief Deputy Commissioner

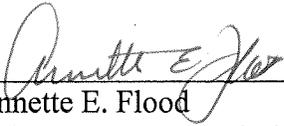
**ORDER OF SUMMARY SUSPENSION
AND
OPPORTUNITY FOR HEARING,
NOTICE OF INTENT TO REVOKE**

Pursuant to Section 1242 of the Michigan Insurance Code (Code), MCL 500.1242, and Section 92 of the Michigan Administrative Procedures Act (APA), MCL 24.292, and based upon the attached **FINDINGS**, including that the public health, safety and welfare require emergency action,

IT IS THEREFORE ORDERED that:

1. The insurance producer license(s) and authority of Respondents are **SUMMARILY SUSPENDED**.
2. A copy of this Order shall be immediately served upon Respondents. As to any such Respondent, this Order shall be effective upon the date of service.
3. If requested by Respondents, a hearing on this matter shall be held within a reasonable time, but not later than 20 calendar days after service of this Order, unless Respondents request a later date. The hearing shall address the following issues:
 - a) Whether the suspension should be continued or withdrawn,
 - b) Whether Respondents' insurance producer licenses should be revoked.

4. If a hearing is requested, an administrative law judge from the Michigan Administrative Hearing System shall preside over any such hearing.
5. The Commissioner retains jurisdiction of the matters contained herein and the authority to issue such further Order(s) as shall be deemed just, necessary and appropriate.



Annette E. Flood
Chief Deputy Commissioner

FINDINGS

1. Respondent Terrell L. Smith and Respondent Excalibur Agency (Agency) are licensed resident insurance producers in the state of Michigan. Respondent Smith is, and has been, the designated resident licensed producer for Respondent Agency.
2. The current enforcement action arose out of a complaint received on or about April 23, 2010 alleging that Respondents produced at least three fraudulent certificates of insurance given to three building contractors to present to their construction company employer for required workers compensation insurance and general liability coverage. The contractors described Respondent Smith's home office as the place where coverage was purchased.
3. On May 13, 2010, OFIR staff traveled to Respondents' last known address. The address was a residence and Respondent Smith was not available. The staff explained the nature of the complaint received and left contact information.
4. On May 15, 2010, OFIR staff received a facsimile from B. Smith who identified himself as Respondent Smith's son. B. Smith denied any and all allegations of the complaint and alleged, among other things, that another individual was using the Agency's name to produce false certificates of insurance.
5. On May 18, 2010, OFIR staff sent Respondents a written letter requesting a response to the allegation that Respondents produced the three fraudulent certificates of insurance.
6. On May 25, 2010, OFIR staff received a written letter from B. Smith, purporting to act on behalf of Respondent Smith and Respondent Agency. B. Smith denied all allegations of wrongdoing.
7. On June 15, 2010, OFIR staff received a written letter from Respondent Smith. In this response, Respondent indicated, among other things, that he had hired a private investigator, that an individual named Jimmy was responsible for the production of the alleged false certificates of insurance, that Respondents were not involved in the production of the alleged false certificates of insurance, and that Respondents could not have been involved in the production of the alleged false certificates of insurance as

Respondent Smith was temporarily residing in Florida at the time the certificates were produced.

8. OFIR staff scheduled a meeting with Respondents at OFIR offices in Lansing on July 7, 2010. On the day of the scheduled meeting, Respondent Smith called OFIR staff and indicated that he was unable to attend the scheduled meeting due to health issues.
9. On October 8, 2010, OFIR staff sent Respondents a written letter requesting that all agency files be made open for an onsite review at a mutually acceptable time.
10. On October 21, 2010, OFIR staff received a letter from Respondents dated October 18, 2010, indicating, among other things, that no agency files and records would be made available for any review or examination. In his letter to _____, Deputy Commissioner, Respondent Smith stated:

Well, _____, it would appear that you are a person that enjoys fishing, and indeed we, who live in MI are very blessed to have thousands of Lakes, Rivers, Creeks, and Ponds to go fishing in, BUT THE ONE PLACE YEA SHALL NEVER GO FISHING IN, IS MY AGENCY OR MY FILES...And pursuant to the rights of all American citizens to be free from illegal search and seizures, you neither have the right or legal power in your position to search my office for a possible violation without a court order.

If you have any sense at all, and care about your future, you better send me a letter Thanking me for providing the help needed to get to the truth, that a contractor working with the three men in Question was the person responsible for the production of the fraudulent certificates and you are Sorry for any misunderstanding between myself and _____. And the file is being closed with The finding that myself and my agency are cleared of any wrong doing. And something you should be aware of, two months ago my Doctor told me I had developed a heart Condition, and since I do not smoke or drink, nor eat bad foods, he has diagnosed the source of my heart problems to stress. And the only the source of stress in my life is your department and Their misconduct and lying. My lawyer wants to move forward with a lawsuit, and sue _____ and anyone else who has been involved in creating all this stress. He said punitive damages could be several million.

11. Respondent Smith repeatedly refused to allow OFIR staff to exam the books and records of Respondent Agency. Moreover, Respondent Smith repeatedly frustrated OFIR staff's ongoing investigative efforts regarding the three alleged false certificates of insurance.

18. On or around May 8, 2011, OFIR staff received the Affidavit of _____, which included the following statement regarding the fraudulent certificates issued to the contractors and a business card they had been given:

[The] certificates named the producer as Excalibur and the contact person as Terry Smith. The business card presented with the certificates was for Excalibur Agency located on Olympia in Redford Township, Terrell Smith, President. The certificates however, reflected Excalibur's address as being located on Galleria in Southfield and on 12 Mile in Farmington.

* * *

I was very familiar with the carriers and costs associated with the companies named on the certificates so I contacted the companies by phone....neither of the certificates that were issued are legitimate.

* * *

I tried to contact Terrell Smith directly and he did return my call the next day....When I spoke to him about the bogus certificates, he stated that a man of Arabic descent who used to work for him, _____, must have stolen his information and must be writing the bogus certificates. I responded that this was not true as I was told by the [contractors] how they had purchased the certificates from Terrell Smith, describing the home, the location of the office to the left of the house's front hallway and describing what Terrell Smith looked like. Smith tried again to blame it on the former employee and said that he was just a sick old 74 year old and someone must have done this to him, but I told him he was not telling the truth and that he sold these bogus certificates.

19. On or about May 19, 2011, OFIR staff received the affidavit of the president of the construction company who indicated she had also personally contacted the insurance companies and was also told that the policy numbers belonged to other businesses and not to the contractors named on the certificates. She further stated:

I also contacted Mr. Terrell Smith from Excalibur Agency, Inc, the writer of the certificates whose business card was given to the 3 subcontractors when they purchased the insurance from him. When I told him on the phone that the policy numbers were fraudulent, he responded that the policies simply had not gotten into the system yet and that the "policy numbers" were not actually policy numbers but "binder numbers."

20. On June 9, 2011, OFIR staff visited Respondent Smith's home office to examine the records. No files and records were produced. Respondent Smith then claimed that no physical records are maintained.
21. On September 9, 2011, OFIR received an affidavit from one of the contractors noted in paragraph 16 above, contradicting the information in the affidavit that Respondent

supplied to OFIR, refuting the prior claims of Respondent Smith, and corroborating the allegations contained in OFIR's NOSC.

22. In a letter dated February 21, 2012 to OFIR _____, received by OFIR on March 1, 2012, Respondent Smith, contrary to his prior claim to OFIR investigators that no records were kept, advised that he did have such records, stating:

[T]here was no reason or probably[sic] cause to Go Fishing in my records in the hopes that your office might turn up something that Could justify this investigations continuing long after they knew the person they should be looking for. I told them to take their request to a judge and show proof and probably cause and obtain a search warrant, and I would be willing comply, but failure to follow the law would Not be rewarded by my permission to go fishing in my records for something or anything you might consider not proper.

23. Respondent knew or had reason to know that Section 200 of the Code, MCL 500.200, empowers the Commissioner of the Office of Financial and Insurance Regulation to execute the insurance laws of the State of Michigan and to perform such other duties as may be required by law.
24. Respondent knew or had reason to know that Section 249 of the Code, MCL 500.249, provides that the Commissioner may initiate proceedings to examine the accounts, records, documents and transactions pertaining to any insurance agent, surplus line agent, general agent, adjuster, public adjuster or counselor for the purpose of ascertaining compliance with the insurance laws of the State of Michigan.
25. Respondent knew or had reason to know that Section 1239(1)(h) of the Code, allows the Commissioner to place on probation, suspend, or revoke an insurance producer's license or levy a civil fine for "Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere."
26. Respondent Smith's continually abusive, threatening, and coercive correspondence and tactics directed at clients, industry colleagues and OFIR staff present a danger to the public welfare and call into question Respondents' ability to serve the public as a trustworthy producer.
27. By holding a resident producer license, Respondent Smith is subject to the examination and investigation of the Commissioner of the Office of Financial and Insurance Regulation, including all books and records, in order to ascertain compliance with the insurance laws of this state. Respondent Smith's refusal to produce his business records in compliance with repeated requests by OFIR staff demonstrates untrustworthiness in the conduct of business.
28. Respondent Smith's failure to keep business records demonstrates incompetence, untrustworthiness and financial irresponsibility in the conduct of business.

29. Respondent Smith's changing stories of the origin of the fraudulent certificates - first, that they came from "Jimmy," then from " _____," and, finally, his suggestion that the certificates were not fraudulent, but that the policy numbers stated on them were actually binder numbers - demonstrate untrustworthiness in the conduct of business.

30. Repeated allegations of the issuance of fraudulent certificates of insurance by Respondents over the course of several years, combined with Respondent Smith's failure to open his books and records and the attestation of the combined affidavits presented in this case demonstrate Respondent has engaged in fraudulent and dishonest practices that threaten the public welfare.



Annette E. Flood
Chief Deputy Commissioner