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BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE

TENNESSEE INSURANCE DIVISION,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No.: 12.01-078124J
	)	
NORMA JAYNE FRANCISCO,	)	
	)	
Respondent.	)	

NOTICE OF DEFAULT AND INITIAL ORDER

This matter came to be heard on April 25, 2006, before Tom Stovall, an Administrative Judge assigned to the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Commerce and Insurance in Nashville, Tennessee. Shawn Kiser Hawk, Staff Attorney, Department of Commerce and Insurance, represented the Tennessee Insurance Division. The Respondent, Norma Jayne Francisco, was not present at the hearing, nor did an attorney appear on her behalf.

The Division moved to hold Respondent in default for her failure to appear. In support of the motion, the Division introduced evidence that the original and amended petitions and notices of the hearing were mailed to Respondent at her address of record in accordance with Tenn. Code Ann. § 56-6-112(g); Respondent submitted a response to the original petition in October 2005; and subsequently, Respondent's motion by telephone conference for continuance of the hearing date was granted, and the hearing was ordered on February 1, 2006 to be continued to this date and time as agreed to by the parties during such telephone conference with the Administrative Judge. Accordingly, for good cause shown, the Division's motion for DEFAULT was GRANTED.

NOTICE OF DEFAULT

NOTICE IS HEREBY GIVEN THE RESPONDENT THAT THE RESPONDENT HAS BEEN HELD IN DEFAULT FOR FAILURE TO APPEAR AT A HEARING ON THE MERITS AFTER RECEIVING ADEQUATE NOTICE. T.C.A. § 4-5-309. THE RESPONDENT HAS FIFTEEN (15) DAYS FROM THE EFFECTIVE DATE OF THIS ORDER TO REQUEST THAT THIS FINDING OF DEFAULT BE SET ASIDE. THIS REQUEST MUST BE RECEIVED IN THE OFFICE OF THE SECRETARY OF STATE, ADMINISTRATIVE PROCEDURES DIVISION, 8TH FLOOR, WILLIAM R. SNODGRASS BUILDING, 312 8TH AVENUE NORTH, NASHVILLE, TENNESSEE 37243-0307, WITHIN THAT FIFTEEN (15) DAY PERIOD. THE REQUEST TO HAVE THE FINDING OF DEFAULT SET ASIDE SHOULD INCLUDE THE REASON TO JUSTIFY THE RESPONDENT'S FAILURE TO ATTEND. IF SUFFICIENT REASONS ARE GIVEN, THE ORDER MAY BE SET ASIDE AND A NEW HEARING SCHEDULED. IF THE RESPONDENT DOES NOT REQUEST THE DEFAULT TO BE SET ASIDE OR OTHERWISE APPEAL THE ACCOMPANYING INITIAL ORDER, THEN THE INITIAL ORDER WILL BECOME A FINAL ORDER SUBJECT TO COURT REVIEW. ANY QUESTIONS REGARDING THIS NOTICE OF DEFAULT OR THE STEPS NECESSARY TO HAVE IT SET ASIDE SHOULD BE SUBMITTED TO THE ADMINISTRATIVE JUDGE SIGNING THIS ORDER BY LETTER OR BY TELEPHONE AT 615-741-0518.

INITIAL ORDER

The subject of this hearing was the proposed revocation of the Respondent's insurance producer license in Tennessee and the imposition of a civil penalty. After consideration of the testimony of witnesses, argument of counsel, and the record in this matter, it is the determination of this Administrative Judge that the Respondent's insurance producer license should be **REVOKED** and that the Respondent should be ordered to pay a **civil penalty** to the Department in the amount of **five thousand dollars ($5,000)**. This decision is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Commissioner of the Department of Commerce and Insurance for the State of Tennessee has jurisdiction pursuant to the Tennessee Insurance Law (hereinafter referred to as the "Law"), Tennessee Code Annotated, Title 56; specifically Tenn. Code Ann. §§ 56-1-202 and 56-6-112; and that the Law places the responsibility for administration of its provisions on the Commissioner.

2. The Division is the lawful agent through which the Commissioner administers the Law and is authorized to bring this action.

3. The Respondent is a citizen and resident of the State of Tennessee, residing in Claiborne County and having a mailing address of record of Post Office Box 121, Cumberland Gap, Tennessee 37724.

4. The Respondent has an insurance producer license, numbered 888457, issued on or about April 28, 2003.

5. In or around September 2004, Respondent received three (3) payments totaling fifty dollars and thirty-eight cents ($50.38) from Sharon Partin, a citizen and resident of Harrogate, Tennessee, to pay for an insurance policy, and Respondent failed to forward the payments to Monumental Life Insurance Company or any other insurance company.

6. In or around September 2004, Respondent received thirty-six dollars and ten cents ($36.10) from Dewey Partin, a citizen and resident of Harrogate, Tennessee, to pay for an insurance policy, and Respondent failed ~~for~~ To (TCS) forward the payment to Monumental Life Insurance Company or any other insurance company.

7. In or around September 2004, Respondent received fourteen dollars and sixty-five cents ($14.65) from Cody Partin, a citizen and resident of Harrogate, Tennessee, to pay for an

insurance policy, and Respondent failed for forward the payment to Monumental Life Insurance Company or any other insurance company.

8. In or around September 2004, Respondent received fifteen dollars and seventy cents ($15.70) from Hanna Partin, a citizen and resident of Harrogate, Tennessee, to pay for an insurance policy, and Respondent failed ~~for~~ to (TGS) forward the payment to Monumental Life Insurance Company or any other insurance company.

9. Between June 2004 and September 2004, Respondent received numerous payments from citizens and residents of the Commonwealth of Kentucky totaling approximately one thousand four hundred sixty-four dollars and fifty-three cents ($1,464.53) to pay for numerous insurance policies, and Respondent failed to forward the payments to Monumental Life Insurance Company or any other insurance company.

10. On or about September 21, 2004, Respondent left the employ of Monumental Life Insurance Company.

11. On or about December 30, 2004 and again on or about February 8, 2005, Monumental Insurance Company demanded in writing to Respondent reimbursement of money.

12. On or about April 18, 2005, Respondent submitted to the Petitioner a renewal application for her insurance producer license wherein she falsely declared that no demand had been made against her for overdue monies by an insurer, insured or producer.

13. On October 25, 2005, the Executive Director of the Kentucky Office of Insurance issued an Order revoking Respondent's insurance agent's license based on Respondent's surrender of her license under threat of disciplinary action.

CONCLUSIONS OF LAW

14. In this and all other civil enforcement actions brought by the Tennessee Department of Commerce of Insurance, the Department has the burden of proving that the Respondent engaged in activity that is in violation of Tennessee law and/or the Department rules. *See Moseley v. Tennessee Dept. of Commerce and Ins.*, 167 S.W. 3d 308 (Tenn. Ct. App. 2004).

15. Tenn. Code Ann. § 56-6-112(a)(8) provides, in pertinent part, that the Commissioner may revoke a license issued under this part or may levy a civil penalty in accordance with subsection (e) or take any combination of such actions if she finds that a licensee has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

16. Tenn. Code Ann. § 56-6-112(a)(4) provides, in pertinent part, that the Commissioner may revoke a license issued under this part or may levy a civil penalty in accordance with subsection (e) or take any combination of such actions, if she finds that a licensee has improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business.

17. Tenn. Code Ann. § 56-6-116 provides, in pertinent part, that any money which an insurance producer receives for soliciting, negotiating or selling insurance shall be held in a fiduciary capacity, and shall not be misappropriated, converted or improperly withheld, and that any violation of this section shall be considered grounds for the revocation of the insurance producer's license and shall subject the insurance producer to the sanctions and penalties set forth in Tenn. Code Ann. § 56-6-112.

18. The Division has proven by a preponderance of the evidence that Respondent violated Tenn. Code Ann. §§ 56-6-112(a)(4), 112(a)(8), and 116 when she failed to forward numerous premium payments to Monumental Insurance Company or any other insurance company.

19. Tenn. Code Ann. § 56-6-112(a)(1) provides, in pertinent part, that the Commissioner may revoke a license issued under this part or may levy a civil penalty in accordance with subsection (e) or take any combination of such actions for providing incorrect, misleading, incomplete or materially untrue information in the license application.

20. The Division has proven by a preponderance of the evidence that Respondent provided incorrect, misleading, incomplete and materially untrue information in her license application when she falsely represented on her insurance producer renewal application that no insurer, insured, or producer had made any demand upon her for overdue monies in violation of Tenn. Code Ann. § 56-6-112(a)(1).

21. Tenn. Code Ann. § 56-6-112(a)(2) provides, in pertinent part, that the Commissioner may revoke a license issued under this part or may levy a civil penalty in accordance with subsection (e) or take any combination of such actions, if she finds that a licensee has violated any law, rule, regulation, or order of the Commissioner demonstrate or of another state's Commissioner.

22. The Division has proven by a preponderance of the evidence that Respondent violated a law, rule, regulation or order of the Kentucky Office of Insurance when she failed to forward numerous premium payments to the insurance company and surrendered her license under threat of disciplinary action.

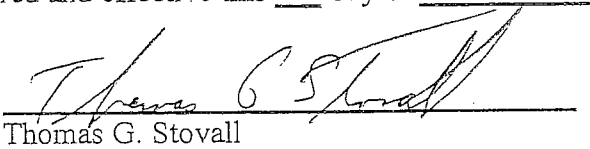
23. Therefore, the Division has proven by a preponderance of the evidence that Respondent violated Tenn. Code Ann. §§ 56-6-112(a)(1), 112(a)(2), 112(a)(4), 112(a)(8) and

116 constituting grounds for an order revoking the Respondent's insurance producer license and assessing a civil penalty in accordance with Tenn. Code. Ann. §56-6-112(e).

It is therefore **ORDERED** that the insurance producer license number 888457 issued to Norma Jayne Fancisco, be **REVOKED**.

It is further **ORDERED** that a civil penalty be assessed against the Respondent in the amount of **Five Thousand Dollars ($5,000)** and that the cost of this action be assessed against the Respondent.

This Initial Order entered and effective this 12 day of June, 2006.



Thomas G. Stovall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 12 day of June, 2006.

Charles C. Sullivan, II, Director
Administrative Procedures Division