

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

TENNESSEE INSURANCE DIVISION,)	
Petitioner,)	
)	
v.)	APD No.: 12.01-130846J
)	TID No.: 14-182
RICHARD CHRISTOPHER FERRELL,)	
Respondent)	
)	

INITIAL ORDER

This matter was heard on September 10, 2015, in Nashville, Tennessee before Rob Wilson, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”). Stephanie M. Crenshaw, Assistant General Counsel, represented the Petitioner, the Tennessee Insurance Division (“Division”), in this matter. Richard Christopher Ferrell (“Respondent”), was not present nor was an attorney present on his behalf.

NOTICE OF DEFAULT

The Division moved for default based on failure of the Respondent, or a representative on his behalf, to appear at the scheduled hearing after receiving proper notice thereof. In support of the motion, Petitioner submitted a mail receipt showing notice of the hearing and notice of Respondent’s rights was mailed via U.S. certified mail, return receipt requested, to Respondent’s address of record on April 23, 2015. On April 23, 2015, the Respondent was also mailed notice of the hearing and notice of his rights via U.S. mail. The Respondent did not sign the certified return receipt and the notice of the hearing and notice of the Respondent’s rights was returned as “unclaimed” to the Division.

The record indicates that service was legally sufficient in accordance with Tennessee Code Annotated (“Tenn. Code Ann.”) § 4-5-307 and 56-6-112(f); and Tennessee Compilation Rules and Regulations (“Tenn. Comp. R. & Regs.”) 1360-04-01-.06 and 1360-04-01-.15(c). The Respondent was held in **DEFAULT** and the Division was permitted to proceed on an uncontested basis.

INITIAL ORDER

The subject of this hearing was the proposed revocation of Respondent’s Tennessee Insurance Producer License No. 1015510 (“License”) and entry of an Order assessing civil penalties against Respondent for violations of Tenn. Code Ann. §§ 56-6-112(a)(1),(2),(3),(9), and 56-6-119(a) (2011).

After consideration of the evidence and entire record in this matter, it is determined that the Respondent’s Insurance Producer License is **REVOKED** and he is **ORDERED** to pay a civil monetary penalty of Five Thousand Dollars (\$5,000). The Respondent shall have **sixty (60) days** from the date of entry of this Initial Order to pay the civil monetary penalty.

Lastly, no insurance renewal application can be considered until civil penalties are paid in full by the Respondent.

This decision is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF THE EVIDENCE

One (1) witness testified at the hearing on behalf of the Division: Thomas E. Stoquert, III, Fraud Investigator for the Tennessee Department of Commerce and Insurance (“TDCI”). Seven (7) exhibits were entered into evidence: Exhibit 1, Collective Proof of Service; Exhibit 2, Notice to Richard C. Ferrell from the State of Maine, Docket No. INS-12-231; Exhibit 3, Statement of Richard Christopher Ferrell to TDCI, August 12, 2014; Exhibit 4, Certified Copy of Order Revoking License issued by the Commonwealth of Virginia, Case No. INS-2014-00209; Exhibit

5, Certified Copy of Order issued by the State of Oklahoma, Case No. 13-1297-DEN; Exhibit 6, Certified Copy of Notice of Opportunity for Hearing and Findings, Order and Journal Entry issued by the State of Ohio, In re: Suitability of Richard C. Ferrell, NPN #13229370; and Exhibit 7, Affidavit of Kimberly Biggs, Director of Agent Licensing for TDCI entered effectively into evidence as live witness testimony.

FINDINGS OF FACT

1. On or about June 2012, the Respondent held a valid Maine insurance producer license, number PRN197264.

2. On or about June 2012, the Respondent began advising a consumer on how to obtain a better insurance rate by falsely stating the address for the consumer and her daughter on an application for insurance.

3. During this time, the consumer's ex-husband resided in Missouri, and occasionally the consumer's daughter would visit with him in Missouri.

4. The consumer made it very clear to the Respondent that both she and her daughter resided permanently in Maine as the consumer had full custody of her daughter.

5. The Respondent insisted that the consumer could use a Missouri address as her physical address and a Maine address as her billing address on the application for insurance.

6. The consumer, having concerns about the Respondent's advisement, contacted the Maine Bureau of Insurance ("MBI").

7. On or about July 23, 2012, the consumer asked and received the Respondent's permission to record their conversation concerning the address the consumer should list on her application for insurance.

8. During the recorded conversation, the Respondent continued to insist that the consumer could use the Missouri address, despite the consumer's reservations.

9. The consumer followed up with the MBI and as a result, the Respondent's Maine non-resident insurance producer license was suspended.

10. The Respondent's Maine insurance producer license was suspended from January 14, 2013, to January 14, 2014, for demonstrating lack of fitness or trustworthiness.

11. On or about December 9, 2013, the Respondent applied to renew his insurance producer license, number 100110641, with the Oklahoma Insurance Department ("OID").

12. The second question on the application form the Respondent completed for his Oklahoma license stated, "Have you ever been named or involved as a party in an administrative proceeding including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration?" the Respondent answered, "No," to this question.

13. The OID Licensing Division conducted a background check on the Respondent and found the suspension and final order by the MBI for demonstrating lack of fitness or trustworthiness in the business of insurance in Maine. The Respondent had failed to disclose the suspension of his insurance producer license in Maine on his renewal application for his Oklahoma insurance producer license.

14. Consequently, the OID fined the Respondent with a civil penalty in the amount of three hundred dollars (\$300).

15. The Respondent also attempted to renew his Virginia insurance producer license, number 865342, and failed to disclose the suspension of his insurance producer license in Maine or the civil penalty imposed on him by the OID. On or about November 7, 2014, the Virginia Bureau of Insurance revoked the Respondent's non-resident insurance producer license.

16. On or about October 21, 2014, the Ohio Department of Insurance revoked

the Respondent's non-resident insurance producer license, number 836197, for failing to report his Maine license suspension within thirty (30) days and failing to respond, on three separate occasions, to a request for a written response concerning the suspension.

17. On or about January 28, 2014, the Respondent failed to disclose to the Division the civil penalty imposed on him by the OID within thirty (30) days of the penalty being imposed.

18. On or about October 21, 2014, the Respondent failed to disclose the revocation of his Ohio insurance producer license within thirty (30) days of the revocation; and, on or about November 7, 2014, the Respondent failed to disclose the revocation of his Virginia insurance producer license within thirty (30) days of the revocation.

APPLICABLE LAW

1. Tenn. Code Ann. § 56-6-112(a) authorizes the Commissioner to place on probation, suspend, revoke, or refuse to issue or renew a license issued under Title 56, Chapter 6, Part 1 and/or levy a monetary civil penalty for:

(1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

....

(2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud; and;

....

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory.

....

2. Tenn. Code Ann. § 56-6-119(b) states that within thirty (30) days of the initial pretrial hearing date, a producer shall report to the commissioner any criminal prosecution of the producer taken in any jurisdiction, including a copy of the initial complaint, the order resulting from the hearing, and any other relevant legal documents.

3. Tenn. Code Ann. § 56-6-112(g) provides, in pertinent part, that if after providing notice consistent with the process established by § 4-5-320(c), and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act, the Commissioner finds that any person required to be licensed, permitted, or authorized by the Division of Insurance has violated any statute, rule or order, the commissioner may order:

- (1) The person to cease and desist from engaging in the act or practice giving rise to the violation;
- (2) Payment of a monetary penalty of not more than one thousand dollars (\$1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars (\$100,000). This subdivision (g)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (g)(2), each day of continued violation shall constitute a separate violation; and
- (3) The suspension or revocation of the person's license.

4. Tenn. Code Ann. § 56-6-112(h) provides that the Commissioner shall consider the following in determining the amount of penalty to assess:

- (1) Whether the person could have reasonably interpreted such person's actions to be in compliance with the obligations required by a statute, rule or order;
- (2) Whether the amount imposed will be a substantial economic deterrent to the violator;
- (3) The circumstances leading to the violation;
- (4) The severity of the violation and the risk of harm to the public;

- (5) The economic benefits gained by the violator as a result of noncompliance;
- (6) The interest of the public; and,
- (7) The person's efforts to cure the violation.

CONCLUSIONS OF LAW

1. The Division has met its burden of proof by a preponderance of the evidence that the Respondent is in violation of Tenn. Code Ann. § 56-6-112(a)(9) for having his insurance producer license suspended in Maine and revoked in Ohio and Virginia.

2. The Division has met its burden of proof by a preponderance of the evidence that the Respondent is in violation of Tenn. Code Ann. § 56-6-112(a)(1), (2) and (3) for attempting to renew his insurance producer license in Oklahoma by providing incorrect and misleading information on the license application and violating the law of another state's commissioner.

3. The Division has met its burden of proof by a preponderance of the evidence that the Respondent violated Tenn. Code Ann. §§ 56-6-112(a)(2) and 56-6-119 (a) by failing to report the administrative actions brought against him in Oklahoma, Ohio and Virginia to the Commissioner within thirty (30) days of the final disposition of the matter.

ORDER

It is therefore **ORDERED** that the resident insurance producer license number 1015510 issued to the Respondent, is hereby **REVOKED** and the Respondent is hereby **ORDERED** to pay a civil penalty in the amount of Five Thousand Dollars (\$5,000) to the Tennessee Department of Commerce and Insurance, ATTN: Legal Division, Davy Crockett Tower, 500 James Robinson Parkway, Nashville, Tennessee 37243. This civil penalty is to be paid within sixty (60) days from the date of entry of this Order.

This INITIAL ORDER entered and effective this the 20TH day of OCT, 2015.

Rob Wilson / EPC
ROB WILSON
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 20TH day of OCTOBER, 2015.

J. Richard Collier
J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243-1102. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.