0029484

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

IN THE MATTER OF:	)	
	)	
CHARLES L. ELLIOTT,	)	No.: 08-136
	)	
Respondent.	)	
	)	
	)	

CONSENT ORDER

The Tennessee Insurance Division ("Division"), and Charles L. Elliott, ("Respondent") hereby stipulate and agree, to the entry of this Consent Order subject to the approval of the Commissioner of Commerce and Insurance ("Commissioner") as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Consent Order by the Commissioner.

2. This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts/or omissions not specifically addressed in this Consent Order or for acts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

FINDINGS OF FACT

1. The Tennessee Insurance Law, as amended, Tennessee Code Annotated (hereinafter referred to as "Tenn. Code Ann."), Title 56 (hereinafter referred to as the "Law") places the responsibility for the administration of the Law on the Commissioner of Commerce and Insurance.

2. Respondent is a citizen of Tennessee and a resident of Hixson, with his mailing address being 6215 Glenridge Lane, Hixson, Tennessee 37343. Respondent was first issued an insurance producer license by the Commissioner on June 16, 1978, and at all times relevant to the events herein, has been licensed by the Division to sell insurance in this state as an insurance producer, license number 29484.

3. Respondent shared an ownership interest with Mr. Llew Boyd ("Mr. Boyd"), in an insurance agency, Southern Insurance Associates, LLC ("SIA"), which was established on January 1, 2003. During the time period relevant to the events herein described, Respondent and Mr. Boyd were engaged in a dissolution of SIA which was at times acrimonious.

4. SIA maintained two (2) bank accounts at First Tennessee Bank: an operating account, number 172705688, which was used to pay the company's expenses, including salaries and other bills; and an escrow account, number 172705695, was strictly used to segregate funds held in a fiduciary capacity by the agency so as not to be comingled with operating funds. Disbursements from the escrow account consisted of payments to insurance carriers for premiums and to SIA for commissions earned.

5. On or about September 27, 2007, Respondent wrote the following three (3) checks from SIA's escrow account:

a. Check number 3014 to Valleybrook Golf and Country Club in the amount of One Thousand, One Hundred Fifty Dollars and ninety cents ($1,150.90) for dues.

b. Check number 3015 to Charles Elliott in the amount of One Thousand Two Hundred Thirty-Five Dollars and twenty-five cents ($1,235.25) for two (2) weeks salary.

c. Check number 3016 to American Express in the amount of Eight Thousand Seven Hundred Seventy Six Dollars and nine cents ($8,776.09) for a past due bill.

6. The Department's investigation reveals that payment was stopped on these three (3) checks, and the expenses for which the checks were written were subsequently paid by Respondent.

7. On or about October 31, 2007, Respondent and Mr. Boyd entered an Equity Interest Purchase Agreement ("Purchase Agreement") which was closed on November 16, 2007, whereby all the assets of SIA were sold to Mr. Boyd for the purchase price of Seventy Five Thousand Dollars ($75,000) and Respondent would have no further interest in the assets of the agency, except for certain specifically excluded assets, including Respondent's book of business and computer records of Respondent's book of business which was not delivered as contemplated by the Purchase Agreement.

8. In November 2007, Respondent attempted to obtain information regarding SIA's client and business data from Applied Systems, Inc. ("Applied Systems"), a software developer that maintained SIA's client and business data through an online system, called DorisOnline.

9. On or about November 28, 2007, Respondent faxed a letter, printed on Southern Insurance Associates, LLC, letterhead, listing SIA's current address and signed by Respondent, identifying himself as the "CEO," to Applied Systems, requesting that "a complete backup of my Doris Information System" be sent to his home address for confidential reasons, and included a phone number where he could be reached to pay the charges by credit card.

CONCLUSIONS OF LAW

10. TENN. CODE. ANN. § 56-6-112(a)(8) provides, that the Commissioner may place on probation, suspend, revoke, or levy a civil penalty in accordance with TENN. CODE ANN. § 56-6-112(e), or take any combination of such actions, if she finds that an insurance producer used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business in this state or elsewhere.

11. The facts stated in Paragraphs 1-8, above, demonstrate that Respondent demonstrated financial irresponsibility by writing three (3) checks totaling Eleven Thousand One Hundred Sixty Two Dollars and twenty-four cents ($11,162.24) from his agency's escrow account, in an attempt to utilize funds for his salary and other personal expenses that were intended to be to be held in a fiduciary capacity.

12. The facts in Paragraphs 1-8, above, further demonstrate that Respondent used fraudulent, coercive, and dishonest practices by misrepresenting himself as an officer of SIA in a letter sent to Applied Systems, and attempting to obtain SIA's business and client data and after his ownership interest in the agency had been terminated.

13. Based upon the Findings of Fact cited above and the Conclusions of Law contained herein, the Commissioner considers the actions of the Respondent to be in violation of TENN. CODE ANN. § 56-6-112(a)(8) and to provide grounds for imposition of sanctions set forth TENN. CODE ANN. § 56-6-112(a) and (e).

14. Respondent hereby admits to the Findings of Fact, above, and further admits that the Conclusions of Law, above, are fair and reasonable. In order to avoid any further expenses or costs associated with litigating this matter, hereby desires to enter into this Consent Order.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and the waiver by the Respondent of his rights to a hearing and appeal under the Tennessee Insurance Law, Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. § 4-5-101, *et seq.*, and the admission by the Respondent of the jurisdiction of the Commissioner, the Commissioner finds that the Respondent has agreed to the entry of this Order and that this Order is appropriate, and in the public interest.

IT IS ORDERED, pursuant to TENN. CODE ANN. § 56-6-112 that:

1. Respondent shall pay a civil penalty in the amount of four thousand dollars ($4,000). The penalty shall be due upon entry of this order. Failure to pay the civil penalty by October 1, 2009 shall constitute grounds for automatic revocation without conducting a hearing pursuant to TENN. CODE ANN. § 4-5-101, *et seq.*

2. Respondent shall be subject to a three (3) year probation that shall commence upon entry of this order. During the probationary period, any further actions determined to be violations of TENN. CODE ANN. § 56-6-112, shall be considered violation of this Consent Order which will provide grounds for revocation of Respondent's insurance producer license.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signatures affixed below, the Respondent affirmatively states that he has freely agreed to the entry of this Consent Order, that he has been advised that he may consult legal counsel in this matter, has had the opportunity to consult with legal counsel and chose to do so, that he waives his right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

SO ORDERED.

Entered this the 20th day of July, 2009.

Leslie A. Newman, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

Larry C. Knight
Assistant Commissioner for Insurance
Department of Commerce and Insurance
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Fourth Floor, Davy Crockett Tower
Nashville, Tennessee 37243

Charles L. Elliott 6/18/09
Charles L. Elliott
Respondent

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6/18/09
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