TN agent # 0633000
NPN-745408

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

TENNESSEE INSURANCE DIVISION, Petitioner,	)	
vs.	)	No. 08-140
DAVID BRIAN UTHE Respondent.	)	

CONSENT ORDER

The Insurance Division of the Department of Commerce and Insurance of the State of Tennessee (the "Division") and David Brian Uthe ("Respondent") hereby stipulate and agree, 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 shall have no force and effect until such acceptance is evidenced by its entry by the Commissioner.

2. The Commissioner has determined that the resolution set forth in this Consent Order is fair and reasonable, and in the best public interest.

3. This Consent Order is executed by Respondent for the purpose of avoiding further administrative action with respect to this cause. It is agreed that in the event that this Consent Order is not accepted by the Commissioner, 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.

4. Respondent understands and fully agrees that this Consent Order will in no way preclude additional proceedings by the Commissioner against Respondent for acts or omissions not specifically addressed in this Consent Order or for facts or omissions that do not arise from the facts or transactions specified herein. Respondent further understands and agrees that this Consent Order may be used and taken in consideration by the Commissioner, or other Commissioner, Department or Board to revoke or refuse issuance of any license currently held by Respondent or for which the Respondent may in the future apply.

5. 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 Commissioner of the Department of Commerce and Insurance for the State of Tennessee (the "Commissioner") has jurisdiction pursuant to the Tennessee Insurance Law (the "Law"), TITLE 56 of the Tennessee Code, and the Law places 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 for the protection of the public.

3. Respondent is a citizen and resident of Tennessee, residing at 775 Green Oaks Lane, Collierville, Tennessee 38017 and has been licensed by the Division to sell insurance in Tennessee, having been issued license number 633000 in 1980.

4. In January 2004, Respondent sent an invoice to Independent Stone, a Tennessee partnership, stating that insurance premiums for general liability coverage under a policy issued

by Assurance Company of America ("Zurich") were three thousand five hundred nineteen dollars ($3,519), and that premiums for workers' compensation coverage issued by Technology Insurance Company ("TIC") were sixteen thousand nine hundred eleven dollars ($16,911). The total amount billed by Respondent, twenty thousand four hundred thirty dollars ($20,430), was eleven thousand four hundred fourteen dollars ($11,414) more than the actual premiums charges which were actually due for such coverage.

5. Respondent collected six thousand three hundred six dollars and fifty cents ($6,306.50) more from Independent Stone than the premium charges for coverage placed by Respondent.

6. Zurich cancelled Independent Stone's general liability policy effective January 10, 2005, because Respondent failed to remit six hundred sixteen dollars ($616) of the premiums he previously collected.

7. Respondent failed to remit two hundred fifty dollars ($250) paid to him by Jerry Blevins ("Mr. Blevins") on April 7, 2005, for Mr. Blevins' share of the premiums due for Independent Stone's 2004 general liability coverage which then remained unpaid.

8. In August, 2004, Respondent misrepresented to Mr. Blevins that general liability and workers' compensation coverage had been placed on behalf of J. B. Marble and Granite ("JBMG").

9. In January, 2005, the Respondent failed to remit ten thousand seven hundred twenty-seven dollars ($10,727) which he received from Mr. Blevins in payment of premium for JBMG's general liability coverage.

10. Respondent paid medical expenses from May through June 2005, on behalf of an employee of JBMG, John Basil, who sustained a work-related injury. Respondent's failure to place workers' coverage exposed JBMG to additional liability under the Tennessee law.

11. Respondent faxed an application and assigned risk supplement to the Tennessee Workers' Compensation Insurance Plan ("TWCIP") on May 27, 2005, which contained the forged signature of Mr. Blevins.

12. Respondent faxed a Certificate of Liability Insurance to Mr. Blevins dated June 7, 2005, which represented the fact that general liability and workers' compensation coverage had been placed for JBMG when such coverage had not, in fact, been placed.

13. For each month during the period October 2003 through March 2004, Respondent collected premium payments of four hundred eight dollars ($408) made by Jose Trinidad Hernandez ("Mr. Hernandez") for workers' compensation coverage which was never placed.

14. Respondent collected monthly premium payments of six hundred thirty ($630) from Mr. Hernandez each month from April 2004 through January 2008; however, general liability coverage was not placed.

15. Respondent sent Mr. Hernandez a Certificate of Liability Insurance dated December 20, 2007, which stated that Hernandez had commercial general liability coverage issued by Northfield Insurance Company ("Northfield") for the coverage period March 11, 2007 through March 11, 2008 when such coverage had not, in fact, been placed.

16. Respondent provided four (4) Certificates of Liability Insurance to Lenox Homes, LLC ("Lenox"), which stated that Mr. Hernandez had continuous general liability coverage for the period March 11, 2004 through March 11, 2008, under policies issued by Centralia Insurance Group ("Centralia") when such coverage had not, in fact, been placed.

17. On February 20, 2008, Respondent faxed to Hernandez a letter prepared on a Northland Insurance Company ("Northland") letterhead which stated that Mr. Hernandez had insurance coverage and no losses, when such coverage had not, in fact, been placed.

18. Respondent collected thirty-one thousand four hundred twenty-eight dollars ($31,428) from Mr. Hernandez for insurance coverage, of which amount only eight thousand eight hundred thirty-one dollars ($8,831), for workers' compensation coverage, was remitted to an insurer.

CONCLUSIONS OF LAW

1. TENN. CODE ANN. § 56-6-112(a) provides that "[t]he commissioner may place on probation, suspend, revoke or refuse to issue or renew 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 any one or more of the following causes:

> (2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;
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> . . . . .
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> (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
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> . . . . .
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> (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
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> . . . . .
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> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
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> . . . . .
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> (10) Forging another's name to an application for insurance or to any document related to an insurance transaction.
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> . . . . .

2. TENN. CODE ANN. § 56-53-103(a) provides in pertinent part that any person who commits, or participates in any of the following acts with an intent to induce reliance, has committed an unlawful insurance act:

> (1) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, by or on behalf of an insured, claimant or applicant to an insurer, insurance professional or a premium finance company in connection with an insurance transaction or premium finance transaction, any information which the person knows to contain false representations,

or represents the falsity of which the person has recklessly disregarded, as to any material fact, or which withholds or conceals a material fact, concerning any of the following:

(A) The application for, rating of, or renewal of, any insurance policy;

(B) A claim for payment or benefit pursuant to any insurance policy;

(C) Payments made in accordance with the terms of any insurance policy; or

(D) The application for the financing of any insurance premium.

. . . .

3. TENN. CODE ANN. § 56-6-116 provides as follows:

Fiduciary duty. – 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. Any violation of this section shall be considered grounds for the denial, suspension, or revocation of insurance producer's license and shall subject the insurance producer to the sanctions and penalties set forth under §56-6-112.

4. Based upon the Findings of Fact cited above and the Conclusions of Law contained herein, the Commissioner considers the actions of Respondent to be in violation of TENN. CODE ANN. § 56-6-112(a)(2), (4), (8), and (10); § 56-6-116; and § 56-53-103(a). Respondent is therefore subject to sanctions set forth in TENN. CODE ANN. §56-6-112(a).

5. Respondent does not deny the Findings of Fact stated in paragraphs 1-18, above and understands that such Findings subject him to sanctions pursuant to TENN. CODE ANN. §56-6-112(a). Respondent hereby acknowledges the Commissioner's authority to administer the Law and concedes that the Commissioner's interpretation of the statutes cited in the Conclusions of Law is reasonable and enforceable. Therefore, Respondent, in order to avoid any further expenses or costs associated with litigating this matter, hereby agrees to entry of this Consent Order.

ORDER

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

IT IS ORDERED, pursuant to TENN. CODE ANN. § 56-6-112(a), that the insurance producer license held by Respondent, David Brian Uthe, license numbered 633000, is hereby **REVOKED**. Respondent agrees to cease soliciting or negotiating insurance and conduct no further business for which a license is required under the Law.

This Consent Order represents the complete and final resolution and discharge of administrative remedies available to the Commissioner under TENN. CODE ANN. § 56-6-112 against Respondent for violations of the Law arising out of the Findings of Fact set forth in paragraphs 1-8 above. This Order shall not, however, preclude a third party from pursuing civil remedies or criminal action against Respondent which may otherwise be available.

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, Respondent affirmatively states that he has freely agreed to the entry of the Consent Order, that he has been advised of his right to legal counsel and had the opportunity to consult with legal counsel, has reviewed the Findings of Fact and Conclusions of Law contained herein, waives his right to a hearing on the matters specified in this Consent Order and 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. In signing this Consent Order, the parties affirm their agreement to be bound by the terms of such Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in the Consent Order, are binding upon them.

SO ORDERED.

ENTERED this the 2 day of February, 2009.

Leslie A. Newman, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

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