State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

October 4, 2016

Commissioner Julie Mix McPeak
Tennessee Department of Commerce & Insurance
Office of Legal Counsel
12th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243-5065

Jesse D. Joseph, Esq.
Assistant General Counsel-Litigation
Tennessee Department of Commerce and Insurance
Office of Legal Counsel
8th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, TN 37243-0569

David R. Jackson
3845 Parade Drive
Clarksville, TN 37040

RE: In the Matter of: David Russell Jackson Docket No. 12.04-138542J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

RECEIVED
OCT 06 2016
DEPT. OF COMMERCE AND INSURANCE
LEGAL OFFICE

BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

DAVID RUSSELL JACKSON **DOCKET NO. 12.04-138542J**

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **October 19, 2016.**

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472.** PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

TENNESSEE INSURANCE DIVISION, **Petitioner,** **vs.** **DAVID RUSSELL JACKSON,** **Respondent.**	**Docket No. 12.04-138542J** **TID No. 16-044**

INITIAL ORDER AND ORDER OF DEFAULT

This contested case hearing was held September 9, 2016, before Thomas G. Stovall, Administrative Judge, sitting for the Commissioner of the Tennessee Department of Commerce and Insurance. Jesse D. Joseph, Assistant General Counsel, represented the Petitioner. This matter was heard upon the Petitioner's Motion for Default and Motion to Deem Service Sufficient, due to the failure of the Respondent to appear or to be represented at the hearing after receiving due notice thereof.

The record indicates that at all times relevant to this formal proceeding, Respondent's address of record in the Division's files has been 3845 Parade Drive, Clarksville, TN 37040, and to date, Respondent has not reported to the Division's Agent Licensing Section any change of address.

The record reflects that on June 27, 2016, in accordance with the address information for Respondent contained within the Division's records, the Division used the 3845 Parade Drive address to send to Respondent a mandatory notice under Tenn. Code Ann. § 4-5-320(c), along with a draft copy of the Notice of Hearing and Charges ("NOHC"), by first class and certified mail return receipt requested no. 7014 1200 0001

7187 6890. The certified mail envelope containing this June 27, 2016 notice letter sent pursuant to Tenn. Code Ann. § 4-5-320(c), was returned to sender marked "unclaimed."

Moreover, as is set forth in the Petitioner's Motion to Deem Service Sufficient filed in this matter on August 30, 2016, the Division, through counsel for the State, used the 3845 Parade Drive address in Clarksville as the address for attempted service of the actual NOHC filed on July 13, 2016. According to the Certificate of Service for this document (p. 9), the Division served Respondent with the NOHC on July 13, 2016 via certified mail return receipt requested no. 7015 0640 0003 9607 3131, and via first class mail.

The certified mail envelope for this July 13, 2016 service attempt was returned to the Department's Office of Legal Counsel in early August July 2016 with a United States Postal Service yellow sticker notation that the item was "unclaimed." Notably, the first class mailings of both the Tenn. Code Ann. § 4-5-320(c) notice letter sent on June 27, 2016, and of the NOHC sent on July 13, 2016, were not returned to sender.

It is clear from the copies of the unclaimed certified mail envelopes that the address was valid and the envelopes were properly addressed with no typographical errors contained thereon. The Court also notes that its Prehearing order sent by first class mail on July 20, 2016 to Respondent at the 3845 Parade Drive address in Clarksville, TN was also not returned to sender.

Finally, the Petitioner has demonstrated that Respondent actually accepts and signs for certified mail at the 3845 Parade Drive address in Clarksville, given that he signed the green certified mail return receipt card for item no. 7014 1200 0001 7187 7200

on August 29, 2016, which was the certified mail service copy of the affidavit of Kimberly Biggs sent to Respondent on August 25, 2016.

Based on the affidavit of Ms. Biggs, the Respondent's address information on record with the Division, the properly addressed certified return receipt mail sent June 27, 2016 enclosing the Tenn. Code Ann. § 4-5-320(c) notice letter and draft copy of the NOHC, the properly addressed certified return receipt mail sent July 13, 2016 enclosing the actual filed NOHC, Respondent's signature evidencing receipt of other certified mail at his listed address on August 29, 2016, and the provisions of Tenn. Code Ann. §§ 56-6-107(g), and 56-6-112(f) & (g), it appears as if the Division has taken the necessary steps as are deemed reasonable and required under the law in its attempt to serve Respondent and to obtain his signature acknowledging service of the NOHC.

The Division has served the Respondent by certified mail on July 13, 2016 with a copy of the NOHC at his listed address of record in the files of the Department in accordance with Tenn. Code Ann. § 56-6-112(f), even though there has been no return receipt signed by the Respondent as to this service. Since the Department has a statute that allows service by certified mail without specifying the necessity for a return receipt (Tenn. Code Ann. § 56-6-112(f)), and a statute that requires the licensee to keep his or her address information current (Tenn. Code Ann. § 56-6-107(g)), pursuant to Tenn. Comp. R. & Regs. 1360-04-01-.06(3), the service of the NOHC was complete upon placing the NOHC in the mail on June 13, 2016 in the manner specified in the statute. The Tennessee Court of Appeals reached this same result in *William Wyttenbach v. Board of Tennessee Medical Examiners, et al.*, No. M2014-02024-COA-R3-CV (Tenn.

Ct. App. March 15, 2016), where service was considered sufficient by certified mail even without a signed return receipt by the Respondent.

It is determined that Petitioner properly served the NOHC the Respondent in accordance with Tenn. Code Ann. § 56-6-112(f). Based on the failure of the Respondent to appear for the September 9, 2016 hearing, pursuant to Tenn. Code Ann. § 4-5-309 and Tenn. Comp. R. & Regs. 1360-04-01-.15, the Respondent was held in default. Pursuant to Tenn. Comp. R. & Regs. 1360-04-01-.15(2)(b), the hearing was conducted as an uncontested proceeding.

FINDINGS OF FACT

1. Title 56 of the Tennessee Code Annotated ("Tenn. Code Ann."), specifically Tenn. Code Ann. §§ 56-1-202 and 56-6-112 (the "Law"), places the responsibility of the administration of the Law on the Commissioner of the Department of Commerce and Insurance ("Commissioner"). The Division is the lawful agent through which the Commissioner discharges this responsibility.

2. David Russell Jackson ("Respondent") is a licensee of the Division who is responsible for being compliant with the insurance laws and regulations of the State of Tennessee. Respondent holds a Tennessee insurance producer license, number 0991822, which became active on February 19, 2008.

3. Respondent's insurance producer license expires on September 30, 2016, and according to the Division's official agent licensing records as of the time of the hearing, Respondent's mailing address listed with the Division at all relevant times is 3845 Parade Drive, Clarksville, TN 37040.

4. Respondent held an active non-resident insurance producer license issued by the Kentucky Department of Insurance effective January 11, 2011, and was licensed to sell supplemental insurance in the Commonwealth of Kentucky.

5. From on or about January 11, 2011, through January 29, 2015, the exact dates being unknown, Respondent, while affiliated with Assurant Health, an affiliate of Time Insurance Company, created and submitted various dental, vision, and "bridge" insurance policies for various individuals living in the Commonwealth of Kentucky. These individuals did not request these policies and did not authorize these policies to be issued in their names. Respondent received commissions from the sale of these fraudulent policies totaling approximately $114,000.

6. By the summer of 2015, all but $25,526.61 of these commissions were repaid to Assurant Health due to a clawback provision that was triggered when policies are canceled due to non-payment of premiums.

7. In order to hide the existence of these unauthorized insurance policies from the unwitting policyholders, Respondent obtained P.O. Box 32, Guthrie, KY 42234, so that mail correspondence for these policies could be sent to the P.O. Box rather than to the policyholders' home mailing addresses.

8. On July 22, 2015, the U.S. Attorney for the Western District of Kentucky filed a one (1) Count Information against Respondent charging him with mail fraud in violation of 18 U.S.C. § 1341 regarding his actions as set forth above.

9. Respondent and the United States also entered into a Plea Agreement filed with the Court on August 19, 2015, in which Respondent pled guilty to Count 1 of this Information. Respondent did not report to the Commissioner this federal criminal

prosecution within thirty (30) days after his initial pretrial hearing date, nor did he ever make such a report.

10. On November 24, 2015, the U.S. District Court for the Western District of Kentucky entered its judgment of conviction against Respondent and sentenced him to three (3) years' supervised probation for this felony offense. Additionally, the Court ordered Respondent within this Judgment to pay a $100 assessment, and to pay a portion of the $25,526.61 in restitution to Assurant Health by way of minimum monthly installments of $50 over a thirty-four (34) month period.

11. In furtherance of this fraudulent scheme, in or about October and November of 2014, Respondent submitted one hundred forty-seven (147) insurance applications to Assurant Health on behalf of forty-nine (49) individuals who all shared the same residential address (221 S. Ewing Street, Guthrie, KY), same mailing address (P.O. Box 32, Guthrie KY), and same email address (longsstockyard@yahoo.com). Policies issued by Assurant Health for these fraudulent applications became effective in December 2014.

12. On December 23, 2014, Management with Assurant Health spoke with Respondent by phone regarding the insureds Respondent had submitted the one hundred forty-seven (147) applications for, and Respondent claimed that these applications were for temporary employees of three (3) separate businesses owned by the Long brothers (stockyard, farming, and trucking). Respondent indicated the reason the employees' addresses were listed as the employer's address, was because the workers were temporary. Respondent also told Assurant Health's Management that the Longs owned the P.O. Box.

13. At least one of the forty-nine (49) individuals for whom Respondent submitted a fraudulent insurance application to Assurant Health, J.M., was deceased in October or November 2014, having died in 2012.

CONCLUSIONS OF LAW

1. In accordance with Tenn. Comp. R. & Regs. 1360-04-01-.02(7) and 1360-04-01-.15(3), the Petitioner has proven by a preponderance of evidence that the facts alleged in the NOHC pertaining to Respondent Davis Russell Jackson are true and that the issues raised therein should be resolved in its favor.

2. Tenn. Code Ann. §§ 56-6-112(a)(2), (a)(6), (a)(7), & (a)(8) provide:

> The 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 this section or take any combination of those actions, for any one (1) or more of the following causes:
>
> ...
>
> (2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;
>
> ...
>
> (6) Having been convicted of a felony;
>
> (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]
>
> ....

3. The Division has shown by a preponderance of the evidence that the Respondent was convicted of a felony; that he admitted to mail fraud in the conduct of his insurance business; that his practices were in fact fraudulent and dishonest; and that he has violated

the laws of the Commissioner due to such actions, in violation of Tenn. Code Ann. §§ 56-6-112(a)(2), (a)6), (a)(7), and (a)(8).

4. Tenn. Code Ann. § 56-6-112(g) provides, in pertinent part:

> (g) If . . . the commissioner finds that any person required to be licensed, permitted, or authorized by the division of insurance pursuant to this chapter has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, 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.

5. It is determined that the proof adduced at hearing provides adequate grounds for the revocation of Respondent's Tennessee insurance producer license, and for the imposition of a civil penalty against Respondent in the total amount of three thousand dollars ($3,000), or one thousand dollars ($1,000) for each of the three above violations of Tenn. Code Ann. § 56-6-112(a)(2), (a)(4), and (a)(8).

6. Tenn. R. Civ. P. 54.04(1) and Tenn. Comp. R. & Regs. 1360-04-01-.01(1) respectively, provide as follows:

> 54.04. Costs. -
>
> (1) Costs included in the bill of costs prepared by the clerk shall be allowed to the prevailing party unless the court otherwise directs, but costs against the state, its officers, or its agencies shall be imposed only to the extent permitted by law.

1360-04-01-.01(3) SCOPE.

(3) In any situation that is not specifically addressed by these rules, reference may be made to the Tennessee Rules of Civil Procedure for guidance as to the proper procedure to follow, where appropriate and to whatever extent will best serve the interests of justice and the speedy and inexpensive determination of the matter at hand.

7. It is further determined pursuant to the above authorities that the hearing costs incurred by the Division to the Administrative Procedures Division of the Secretary of State, and to the court reporter in this matter, should be assessed against the Respondent.

8. However, due to the financial obligations to pay restitution imposed against Respondent while on supervised pursuant to his federal conviction, Respondent should be given additional time to pay civil penalties and costs incurred in this proceeding.

IT IS, THEREFORE, ORDERED that:

1. The Respondent's Tennessee insurance producer license (No. 0991822) **be and hereby is, REVOKED**, due to his actions in violations of Tenn. Code Ann. §§ 56-6-112(a)(2), (a)(6), (a)(7), and (a)(8), as described above.

2. The Respondent **is ASSESSED** a civil penalty of five thousand dollars ($5,000), based on his violations of the four (4) statutory provisions cited above. Respondent shall pay said civil penalty to the Tennessee Department of Commerce and Insurance within three (3) years after the date this Initial Order becomes a Final Order.

3. The Respondent, and any and all persons who may assist him in any of the aforementioned violations of Tenn. CODE Ann. § 56-6-112, **shall CEASE and DESIST** from any such activities.

4. The Division shall file its Itemized Assessed Bill of Costs including the Administrative Procedures Division costs, and those of the court reporter, within fifteen (15) days after the filing of the Initial Order in this matter, and said costs shall be incorporated within the Initial Order.

4. The Respondent is **ASSESSED all such costs** incurred by the Division herein pursuant to Tenn. R. Civ. P. 54.04(1) and RULE 1360-04-01-.01(3), and shall pay same within one hundred eighty (180) days after the date this Initial Order becomes a Final Order, for which execution may issue if necessary.

This Initial Order entered and effective this 4TH day of OCTOBER, 2016.

Thomas G. Stovall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 4TH day of OCTOBER, 2016.

J. Richard Collier, Director
Administrative Procedures Division

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.