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THE STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE INSURANCE DIVISION, **Petitioner.**	)	
vs.	)	**TID No. 13-071** **Docket No. 12.01-125878J**
DEBORAH LEE HORNE, **Respondent.**	)	

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came to be heard before the Administrative Law Judge ("ALJ") Joyce Carter-Ball, assigned by the Secretary of State, Administrative Procedures Division ("APD"), to sit for the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"). Lauren V. Dantche, Assistant General Counsel, represented the Insurance Division of the Tennessee Department of Commerce and Insurance ("Division") in this matter. Respondent, Deborah Lee Horne ("Horne") appeared by telephone, and was not represented by an attorney.

The subject of this hearing was the proposed revocation of Horne's Tennessee Resident Insurance Producer License No. 0833212 ("License"), and a request for monetary penalties in response to Horne's alleged violations of Tenn. Code Ann. §§ 56-6-112(a)(4), (5), (7), (8), 56-6-116, and 56-8-104(1)(A). After consideration of the argument of counsel and the record in this matter, it is determined that Horne's License is **REVOKED** and she is **ORDERED** to pay a One Hundred Thousand Dollar ($100,000) civil penalty. This decision is based upon the below Findings of Fact and Conclusions of Law.

SUMMARY OF THE EVIDENCE

One (1) witness testified at the hearing on behalf of the Division: Wanda Collins, alleged victim named in the Notice of Charges. Nine (9) exhibits were entered into evidence: Exhibit 1,

Nautilus Insurance Company Commercial Lines Policy Declaration Page; Exhibit 2, Acord Certificate of Liability Insurance for Nautilus General Liability Policy NN061095; Exhibit 3, Acord Certificate of Liability Policy for Carolina Casualty Worker's Compensation Policy BNUWC0404563; Exhibit 4, Nautilus Coverage Denial Letter to Messiah Bond Service; Exhibit 5, Affidavit of Kimberly Biggs entered effectively into evidence as live witness testimony; Exhibit 6, Affidavit of Marlese Poulsen entered effectively into evidence as live witness testimony; Exhibit 7, Affidavit of Ken Miller entered effectively into evidence as live witness testimony; Exhibit 8, certified Citizens Tri-County Bank Records for an account in the name of Bruce Allen Horne DBA The Brothers Keeper Insurance Company; Exhibit 9, certified copy of an indictment and resulting best interest plea against Horne issued by the Tennessee Marion County Circuit Court.

PROPOSED FINDINGS OF FACT

1. On or around January 2011, alleged victims William Dick and Wanda Collins ("the Dicks") began a professional relationship with Horne and her agency, The Brothers Keeper Insurance Agency ("BK"), acting as the Dicks' Insurance Agent.

2. On or about February 7, 2011, the Dicks issued a check to Horne written to BK in the amount of Five Hundred Thirty-Five Dollars ($535) as payment of the annual premium for an insurance policy on a church building owned by the Dicks. The Dicks never received a receipt from Horne, nor a copy of the policy. On or about February 15, 2011, the check was deposited into BK's agency account. An insurance policy to cover the Dicks' church building was never purchased by Horne.

3. On or about February 17, 2011, the Dicks issued a check to Horne written to BK in the amount of Three Hundred Seventy-Five Dollars and Fifty Cents ($375.50) for a

commercial general liability policy for their business, Abel Heat and Air ("Abel"). Horne did not provide the Dicks with a receipt, but on a later date did provide a standard Acord Certificate of Liability Insurance ("Acord") indicating coverage had been purchased from Nautilus Insurance Company ("Nautilus"), policy number NN061095.

4. On or about May 18, 2011, the Dicks provided Horne with a check in the amount of Six Hundred Fifty-One Dollars ($651) payable to BK. A portion of the check, Three Hundred Fifty Dollars ($350), was issued by the Dicks for worker's compensation insurance for Abel. The remaining funds issued were to go towards other policies previously purchased by the Dicks through Horne. The Dicks never received a policy from Horne, but were later issued an Acord Certificate of Liability Insurance dated May 18, 2011. The Acord indicated that Abel had worker's compensation coverage through Carolina Casualty Insurance Company ("Carolina"), policy number BNUWC0404563, and indicated by notation that the policy was paid in full.

5. On or about September 12, 2011, the Dicks' church building, believed to be insured through Horne, suffered damage due to a construction-related occurrence. The Dicks filed an insurance claim with Horne, and quickly became alarmed due to Horne's subsequent behavior.

6. The Dicks demanded Horne provide a copy of the commercial general liability insurance policy covering the church building from Horne, as they had not yet received one. Horne provided the Dicks with a copy of a commercial general liability policy purporting to be issued from Nautilus, policy number NC862795. The Declaration page indicated the policy was a renewal, when it should have been the initial purchase. In addition, the premium quoted on the

face of the Declaration page exceeded the Five Hundred Thirty-Five Dollars ($535) in premiums the Dicks had been quoted for the policy and had been paid to Horne.

7. The Dicks contacted Nautilus directly to inquire about the insurance policy taken out on their church. It was determined that the Dicks did not, nor ever had, an insurance policy with Nautilus. Nautilus informed the Dicks that the document given to them by Horne for Nautilus policy number N862795 had expired in 2009 and belonged to a different insured.

8. On or about October 20, 2011, the Dicks received a letter, purporting to be from Nautilus, denying their claim for the damage done to their church building. The Dicks forwarded the letter to Nautilus, and the company confirmed the letter was not issued by Nautilus.

9. It was later concluded through an inquiry made by the Division to Nautilus that neither Horne nor BK, had a contractual agreement with Nautilus to sell the company's products at the time of the alleged sale.

10. The Dicks continue to suffer the loss of the moneys paid for the three (3) insurance policies never purchased by Horne, totaling One Thousand Two Hundred Sixty Dollars and Fifty Cents ($1,260.50). In addition, the Dicks have incurred a total of Forty-Eight Thousand Dollars ($48,000) in loss for the damage to the church building that was not covered by insurance due to Horne's misappropriation of premiums, failure to purchase a policy, and continued misrepresentation that a policy for the building was purchased and in affect.

PROPOSED CONCLUSIONS OF LAW

11. 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:

....

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

....

(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 [.]

12. Tenn. Code Ann. § 56-8-104(1)(A) of the Unfair Trade Practices Act provides, in pertinent part, that it is an unfair trade practice in the business of insurance for any person to make, issue, circulate, or cause to be made, issued or circulated, any estimate, illustration, circular or statement, sales presentation, omission or comparison that misrepresents the benefits, advantages, conditions or terms of any policy.

13. Tenn. Code Ann. § 56-6-116 provides, in pertinent part, that any money that 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 such violations are grounds for the suspension or revocation of the insurance producer's license and shall subject the insurance producer to sanctions and penalties under Tenn. Code Ann. § 56-6-112.

14. 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.

15. 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.

16. The Division met its burden of proof by a preponderance of the evidence that Horne misappropriated premiums on or about February 15, 2011 for Five Hundred Thirty-Five Dollars made to her as payment for a general liability policy for a church building owned by the Dicks in violation of Tenn. Code Ann. §§ 56-6-112(a)(4) and 56-6-116. A commercial general liability policy for the church was never purchased with the money given to Horne, and the Dicks were not reimbursed for the amount paid.

17. The Division met its burden of proof by a preponderance of the evidence that Horne provided the Dicks with a fraudulent insurance document falsely representing that the Dicks had a commercial general liability policy for their church building through Nautilus Insurance Company, policy number NC862795 when such policy was not purchased for nor belonged to the Dicks in violation of Tenn. Code Ann. §§ 56-6-112(a)(5), (7), (8) and 56-6-104(1)(A).

18. The Division met its burden of proof by a preponderance of the evidence that Horne misappropriated premiums on or about February 17, 2011 for Three Hundred Seventy-Five Dollars and Fifty Cents ($375.50) paid by the Dicks for the purchase of a commercial general liability policy for their business, Abel, in violation of Tenn. Code Ann. §§ 56-6-112(a)(4) and 56-6-116. A commercial general liability policy for Abel was never purchased with the money given to Horne, and Horne has not reimbursed the Dicks for the amount paid.

19. The Division has met its burden of proof by a preponderance of the evidence that Horne provided the Dicks with a fraudulent insurance document that falsely represented the Dicks had a commercial general liability policy for Abel through Nautilus Insurance Company, policy number NN061095 when in fact no such policy was purchased for nor owned by the Dicks in violation of Tenn. Code Ann. §§ 56-6-112(a)(5), (7), (8) and 56-6-104(1)(A).

20. The Division has met its burden of proof by a preponderance of the evidence that Horne misappropriated premiums on or about May 19, 2011 for Three Hundred Fifty Dollars ($350) paid by the Dicks for the purchase of a worker's compensation policy for their business, Abel, in violation of Tenn. Code Ann. §§ 56-6-112(a)(4) and 56-6-116. The worker's compensation policy paid for by the Dicks to Horne was never purchased, and Horne has not reimbursed the Dicks for the amount paid.

21. The Division has met its burden of proof by a preponderance of the evidence that Horne provided the Dicks with a fraudulent insurance document that falsely represented the Dicks had worker's compensation insurance for their business, Abel, through Carolina Casualty, policy number BNUWC0404563 when in fact no such policy was purchased nor owned by the Dicks in violation of Tenn. Code Ann. §§ 56-6-112(a)(5), (7), (8) and 56-6-104(1)(A).

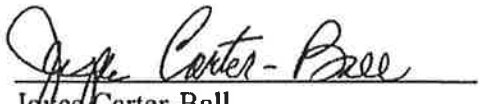
22. The Division has met its burden of proof that on numerous occasions Horne engaged in dishonest and fraudulent conduct in order to conceal her misappropriation of premiums including, but not limited to, the issuance of a fraudulent letter purporting to be from Nautilus Insurance Company denying coverage for the damages suffered to the church building owned by the Dicks in violation of Tenn. Code Ann. § 56-6-112(a)(8).

23. The Division has met its burden of proof by a preponderance of the evidence that due to Horne's fraudulent misrepresentations and misappropriation of premiums, for three (3) separate insurance policies, the Dicks continue to suffer a total loss of One Thousand Two Hundred Dollars and Sixty Cents ($1,200.60) in premiums paid for policies never purchased and Forty-Eight Thousand Dollars ($48,000) in structural damage to their church building that Horne falsely misrepresented to have general liability insurance coverage through Nautilus Insurance Company. To date Horne has not provided the Dicks with any compensation for their loss. In addition, the Division has met its burden of proof by a preponderance of the evidence that the fraudulent conduct engaged in by Horne and the misappropriation of premiums exposed the Dicks to an immeasurable amount of risk.

It is therefore **ORDERED** that the resident insurance producer license number 0833212 issued to Deborah Lee Horne, be **REVOKED** and Horne be **ORDERED** to pay One Thousand Dollars ($1,000) for each violation stated above, for a total of One Hundred Thousand Dollars

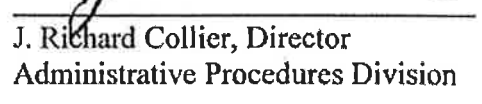
($100,000), the maximum statutory penalty, as each day of continued violation, beginning in February 2011 to the current date, constitutes a separate violation.

This Initial Order entered and effective this 11TH day of SEPT, 2014.



Joyce Carter-Ball
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 11TH day of SEPT, 2014.



J. Richard Collier, Director
Administrative Procedures Division

Respectfully Submitted,

Nancy S. Jones,
General Counsel

By:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Proposed Findings of Fact and Conclusions of Law have been sent to Respondent Deborah Lee Horne via electronic mail and U.S. regular mail at the below listed addresses, this 4th day of September, 2014.

Deborah Lee Horne
442 West Francis Springs Road
Whitwell, TN 37394

P.O. Box 2182
Jasper, TN 37347

Debbierector1717@gmail.com

Lauren V. Dantche

Lauren V. Dantche

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.