Agent # 0689302

COPY

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

TENNESSEE INSURANCE DIVISION, **Petitioner**	)	
vs.	)	**No. 12.01-073682J**
GREGORY BROOKS, **Respondent**	)	

FINAL ORDER

The Respondent Gregory Brooks initiated this appeal of the Initial Order entered by John Hicks, Administrative Judge for the Secretary of State, Administrative Procedures Division on October 2, 2006. The Initial Order held that Tennessee Insurance Division had established that Respondent was "demonstrably incompetent, untrustworthy, or financially irresponsible" under TENN. CODE ANN. § 56-6-155(a) (10) and that Respondent's license should be revoked and Respondent should be assessed a civil penalty in the amount of one thousand dollars ($1,000) per violation for each of ten violations. Respondent appealed the Initial Order to the Commissioner of the Department of Commerce and Insurance on October 17, 2006. In accordance with an Amended Scheduling Order entered on November 28, 2006, the parties submitted briefs in support of, and in opposition to, this appeal.

Upon the review of the record in this matter, the Commissioner finds as follows:

FINDINGS OF FACT

1. The Findings of Fact contained in the Initial Order are supported by the record of this action, and are adopted by reference for purposes of this Final Order. The parties agree on many of the relevant facts. Those facts that are disputed by Respondent are contradicted by testimony of others or his previous testimony.

CONCLUSIONS OF LAW

1. The Commissioner of the Department of Commerce and Insurance has jurisdiction over this action pursuant to the Tennessee Insurance Law, Title 56 of Tennessee Code Annotated. This matter was brought pursuant to TENN. CODE ANN. § 56-6-155 (1997). That statute provides:

> (a) The commissioner may suspend, revoke or refuse to issue or renew a license under this part for any one (1) or more of the following causes:
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> (10) Being demonstrably incompetent, untrustworthy, or financially;
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> (b) In addition to or in lieu of any denial, suspension, or revocation of a license hereunder, the commissioner may assess a civil penalty against any person violating this part in an amount not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each violation.

2. Title 28 of Tennessee Code Annotated, Limitation of Actions, does not apply to actions brought by the State of Tennessee, unless otherwise expressly provided. TENN. CODE ANN. § 28-1-113. There is no such provision relevant to this action and the statute of limitations does not apply to this action.

3. The record of this matter demonstrates that the Insurance Division met its burden of proof by a preponderance of the evidence, pursuant to TENN. CODE ANN. §§ 56-6-155(a) (10), that Mr. Brooks, in the conduct of affairs under his insurance license, was demonstrably incompetent, untrustworthy, and financially irresponsible.

4. Respondent admits that he sold viatical settlement contracts issued by Liberte Capital on at least two occasions and by Mutual Benefits on at least one occasion. He admits that he sold promissory notes issued by Addmac/Nouveau Entertainment on at least four occasions and Chemical Trust Corporation on at least three occasions. These actions by the Respondent violated TENN. CODE ANN. § 48-2-109. Respondent unlawfully engaged in the sale of securities in this State without being registered to do so. This unlawful behavior is financially irresponsible under TENN. CODE ANN. §§ 56-6-155(a) (10). Respondent's conduct put the investments of others at risk and resulted in losses to others. Respondent's contention that his violation of TENN. CODE ANN. § 48-2-109 was not willful does not mitigate against a finding that such behavior is financially irresponsible. Respondent profited from each security sold and Tennessee investors were harmed by Respondent's conduct.

5. Respondent's contention that viatical settlement agreements were not securities in Tennessee at the time that he sold them is without merit. TENN. CODE ANN. § 45-2-102, effective January 2001, clarified that viatical settlement agreements are securities. However, the list of instruments that constitutes securities is not exhaustive and does not limit the scope of the Commissioner's jurisdiction to those listed. The Commissioner has the authority and discretion to determine what instruments are securities within the meaning of TENN. CODE ANN. § 45-2-102. Prior to January, 2001, the Commissioner had entered Orders holding that viatical settlement agreements are securities within the meaning of TENN. CODE ANN. § 45-2-102. These

Orders establish that viatical settlement agreements were securities at the time that Respondent sold them. The Legislature's subsequent clarification does not impact the meaning of the Act prior to its passage nor does it prove that viatical settlements were not securities prior to January 2001. Thus, Respondent's sale of the viatical settlements constituted a violation of TENN. CODE ANN. § 45-2-102.

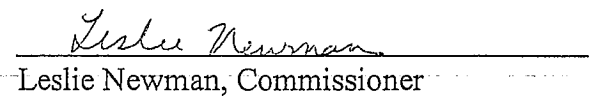
5. Respondent's actions placed the investments of a number of individuals at risk. These actions, in violation of TENN. CODE ANN. § 45-2-102, establish that Respondent was demonstrably incompetent, untrustworthy, and financially irresponsible.

6. These violations demand a substantial penalty. Therefore, the Commissioner holds that these facts require a $1,000 fine per violation and revocation of Respondent's insurance producer license. It should be noted that the Respondent has the ability to apply again for his insurance provider license one year after the entry of the final order in this matter.

7. After considering all the circumstances, the nature of the violations committed by Mr. Brooks, and the entire record of this matter, **IT IS CONCLUDED THAT THE APPROPRIATE RESOLUTION OF THIS MATTER IS A REVOCATION OF MR. BROOKS' INSURANCE PRODUCER LICENSE. IN ADDITION, A CIVIL PENALTY OF ONE THOUSAND ($1,000.00) PER VIOLATION FOR A TOTAL OF TEN THOUSAND DOLLARS ($10,000.00) IS ASSESSED AGAINST MR. BROOKS, AS WELL AS THE COSTS OF THIS ACTION.**

IT IS SO ORDERED.

This 23rd day of April, 2007.



Leslie Newman, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order has been filed in the Administrative Procedures Division, Office of the Secretary of State, and sent via U.S. mail to the following: Larry D. Perry, Attorney for Respondent, 11464 Saga Lane, Knoxville, TN 37931-2819, and the Tennessee Insurance Division, Tennessee Department of Commerce and Insurance, 500 James Robertson Pkwy, Nashville, Tennessee 37243 on this 23rd day of April, 2007.

NOTICE OF RECONSIDERATION AND APPEAL PROCEDURES

Within fifteen (15) days after the Final Order is entered, a party may file a Petition for Reconsideration of the Final Order, in which the Petitioner shall state the specific reasons why the Final Order was in error. If no action is taken within twenty (20) days of filing of the Petition for Reconsideration, the Petitioner is deemed denied. TENN. CODE ANN. § 4-5-317.

A party may also petition the agency for a stay of the Final order within seven (7) days after entry of the Final Order. TENN. CODE ANN. § 4-5-316.

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 Davidson County Chancery Court within sixth (60) days after the entry of the 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 for Reconsideration. 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. TENN. CODE ANN. §§ 4-5-322 and 4-5-317.