TN- 0646300

NPN- 1677393

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

RECEIVED
DEPT OF COMMERCE AND INSURANCE
LEGAL OFFICE

September 26, 2014

Commissioner Julie Mix McPeak
Tennessee Department of Commerce & Insurance
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Nashville, TN 37243

Gregory P. Candebat
President of Candebat Insurance & Financial Services
884 Rocky Hills Cove North
Cordova, TN 38018

RE: In the Matter of: Gregory Candebat Docket No. 12.06-112843J

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

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

The Department of State is an equal opportunity, equal access, affirmative action employer.

BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

GREGORY CANDEBAT **DOCKET NO. 12.06-112843J**

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 13, 2014.**

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 COMMERCE AND INSURANCE FOR THE STATE OF TENNESSEE

TENNESSEE INSURANCE DIVISION, *Petitioner,*	)	
v.	)	**Docket No.: 12.06-112843J**
GREGORY CANDEBAT, *Respondent.*	)	

NOTICE OF DEFAULT AND INITIAL ORDER

This matter was heard on May 12, 2014, in Nashville, Tennessee before the Honorable Ann Johnson, Administrative Law Judge ("ALJ"), assigned by the Secretary of State, Administrative Procedures Division ("APD"), to sit for the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"). James R. Witham, Assistant General Counsel, represented the Petitioner, the Tennessee Insurance Division ("Division"), in this matter. Gregory Candebat, ("Respondent"), was present by telephone conference, and was not represented by legal counsel.

PROCEDURAL HISTORY

On or about June 15, 2011, the Division filed a Petition and Notice of Hearing and Rights of Respondent for the case captioned as Tennessee Insurance Division v. Gregory Candebat with the APD. On or about August 3, 2011, the Division filed a Notice of Use of Affidavits and the affidavits of: Shirley Cannon; Fred Fields; Peggy Kingman; Robert Sandidge; Frederick Anthony; and Kimberly Biggs with the APD. On or about August 3, 2011, the Division filed its Notice of Witnesses and Exhibits with the APD. On or about June 17, 2011, ALJ Lynn M. England issued the first scheduling Order. On or about August 16, 2011, ALJ England ordered

that the case be continued so that Respondent could obtain counsel. On or about March 12, 2012, ALJ England issued a Pre-Hearing Order rescheduling the hearing date for July 17, 2012[1]. On or about July 10, 2012, ALJ England granted Respondent another continuance to seek counsel. On or about October 4, 2012, the Division filed a Notice of Substitution of Counsel with the APD. On or about January 7, 2014, the Division filed its First Amended Notice of Hearing and Rights of Respondent with the APD. On or about February 5, 2014, the Division filed Petitioner's Second Notice of Substitution of Counsel with the APD. On or about February 11, 2014, the Division filed its First Amended Notice of Witnesses and Exhibits with the APD. On or about February 18, 2014, the Division filed a Motion for Continuance with the APD, which was granted on or about February 21, 2014.

On or about February 20, 2014, the Division filed a Motion for Determination of Representation and Cease and Desist Order with the APD. On or about February 24, 2014, ALJ Steve Darnell ordered Respondent's attorney to cease and desist from acting as an attorney to any party in the above captioned matter until he obtains proper licensure. On or about April 8, 2014, the Division filed its Second Amended Notice of Witnesses and Exhibits with the APD. On or about March 20, 2014, an Order of Continuance was granted by ALJ Kim Summers. This case was subsequently transferred to ALJ Ann Johnson and was heard on May 12, 2014.

NOTICE OF DEFAULT

By agreement of the parties and the Administrative Judge, the Respondent was allowed to participate in the hearing by telephonic conference, pursuant to Tennessee Code Annotated ("Tenn. Code Ann.") § 4-5-312(c). During the Division's direct examination of Respondent, Respondent decided that he was unable to participate in the remainder of the hearing. Although the Respondent was advised of the possible adverse results of nonparticipation, he disconnected

[1] Although the Pre-Hearing Order says 2011, this appears to be a clerical error.

from the telephone conference. The Division moved for default. Pursuant to Tenn. Code Ann. § 4-5-309, Respondent was held in **DEFAULT** and the Division was permitted to proceed on an uncontested basis.

INITIAL ORDER

The subject of this hearing was the proposed revocation of Respondent's Tennessee insurance producer license and entry of an order assessing civil penalties against Respondent for violations of Tenn. Code Ann. §§ 56-6-112(a)(8) (Supp. 2007) and 56-6-112(a)(4), and (8) (2008). After consideration of the evidence, testimony, and entire record in this matter, it is determined that:

a. Respondent's insurance producer license is **REVOKED;**

b. Respondent is assessed a civil monetary penalty of **five thousand dollars ($5,000.00)** for each violation of Tenn. Code Ann. §§ 56-6-112(a)(4), and (8) (2008); and

c. Respondent is assessed a maximum civil monetary penalty of **one thousand dollars ($1,000.00)** for violating Tenn. Code Ann. §§ 56-6-112(a)(8) (Supp. 2007);

Respondent shall have **sixty (60) days** from receipt of this Initial Order to pay the above mentioned civil monetary penalties plus the Division's reasonable and necessary court reporter costs pursuant to Tennessee Rules of Civil Procedure ("TRCP") 54.04.

This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. 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 people.

2. Respondent is a citizen and resident of Tennessee, residing at 884 Rocky Hills Cove, North Cordova, Tennessee, 38018.

3. Respondent is licensed by the Division to sell insurance in this state as an insurance producer, having obtained said license, numbered 646300, in 1983.

4. Respondent is the owner and operator of Candebat Financial Services.

5. On or about August 2009, Respondent persuaded Shirley Cannon ("Cannon") to purchase automobile and homeowner's insurance with Safeco Insurance Company of America ("Safeco").

6. Respondent received a premium down payment from Cannon in return for auto and homeowners insurance coverage with Safeco.

7. Respondent failed to secure or bind automobile insurance and homeowner's insurance coverage for Cannon.

8. Nevertheless, Respondent provided Cannon with fraudulent documents evincing homeowner's insurance and automobile insurance for Cannon.

9. On or about October 24, 2008, Respondent, through Candebat Financial Services, received payment in the approximate amount of thirty-seven thousand nine hundred fourteen dollars ($37,914.00) from Dean Hill Missionary Baptist Church ("Dean Hill") to purchase a construction surety bond for a construction project.

10. Respondent failed to secure a construction surety bond.

11. Respondent failed to return the thirty-seven thousand nine hundred fourteen dollars ($37,914.00) he received from Dean Hill.

12. As a result of Respondent's failure to return the approximate amount of thirty-seven thousand nine hundred fourteen dollars ($37,914.00) he received from Dean Hill, Dean Hill and its contractor, Fred Fields, sustained monetary damages.

13. On or about 2006, Templebloc, Inc. ("Templebloc") sought a construction surety bond from Respondent and Timothy Kirk ("Kirk") for a construction project that Templebloc undertook for its client, Old St. Paul Missionary Baptist Church ("St. Paul").

14. St. Paul needed a construction surety bond for construction on its new worship center in Arkansas.

15. St. Paul paid a premium of approximately one hundred twenty-one thousand seventy-nine dollars and sixty-five cents ($121,079.65) for a construction surety bond secured through First Nation Insurance Group ("First Nation").

16. Respondent helped to secure or referred the procurement of this construction surety bond to Kirk knowing that Kirk would secure the construction surety bond through First Nation.

17. Respondent knew or should have known that First Nation was not licensed to conduct the business of insurance in Arkansas or any other jurisdiction.

18. Respondent was not licensed by the state of Arkansas to engage in the procurement or referral of construction surety bonds within the state of Arkansas.

19. Respondent's incompetent and financially irresponsible actions resulted in securing an invalid construction surety bond ultimately on behalf of St. Paul.

20. Respondent received a sales commission totaling approximately thirteen thousand four hundred fifty-three dollars ($13,453.00) for securing or referring an invalid construction surety bond through First Nation.

21. On or about December 2006, Templebloc abandoned its construction project on St. Paul's worship center.

22. As a result, St. Paul's Church was significantly monetarily damaged because there was no construction surety bond to ensure that its worship center would be built.

CONCLUSIONS OF LAW

1. In accordance with Tennessee Compilation Rules and Regulations 1360-4-1-.02(7), Petitioner bears the burden of proof in proving by a preponderance of the evidence that the facts alleged in the Petition are true and that the issues raised therein should be resolved in its favor.

2. At all times relevant hereto, prior to July 1, 2008, Tenn. Code Ann. § 56-6-112(a) provided, in pertinent part, 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:

> (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
>
> . . .
>
> (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. At all times relevant hereto, prior to July 1, 2008, Tenn. Code Ann. § 56-6-112(e) [Repealed July 1, 2008] provided that:

> With respect to any person licensed or required to be licensed under this part, and in addition to or in lieu of any applicable denial, suspension or revocation of a license, the commissioner may assess a civil penalty against such person in an amount not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each separate violation of a statute, rule or order pertaining to

the sale, solicitation or negotiation of insurance in this state. Each day of continued violation constitutes a separate violation.

4. At all times relevant hereto, from on or about July 1, 2008, until on or about June 30, 2011, Tenn. Code Ann., § 56-6-112(a) provided that, in pertinent part, "[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 § 56-2-305 or take any combination of those actions, for any one (1) or more of the following causes:

> (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
>
> . . .
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere . . ."

5. At all times relevant hereto, from on or about July 1, 2008, until on or about June 30, 2011, Tenn. Code Ann. § 56-2-305 provided, in pertinent part:

> (a) 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, compiled in title 4, chapter 5, part 3, the commissioner finds that any insurer, person, or entity required to be licensed, permitted, or authorized by the division of insurance has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:
>
> . . .
>
> (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), unless the insurer, person, or entity knowingly violates a statute, rule or order,

in which case the penalty shall not be more than twenty-five thousand dollars ($25,000) for each violation, not to exceed an aggregate penalty of two hundred fifty thousand dollars ($250,000). This subdivision (a)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (a)(2), each day of continued violation shall constitute a separate violation. . . .

. . .

(d) This section does not apply to individual or business entity insurance producers licensed pursuant to chapter 6, part 1 of this title.[2]

6. In deciding an appropriate penalty for all violations occurring before July 1, 2011, Tenn. Code Ann. § 56-2-305(b) (2008) requires the Commissioner to consider the following:

(1) Whether the insurer, person or entity could reasonably have interpreted its 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 circumstance 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 insurer's, person's, or entity's efforts to cure the violation.

[2] This subsection appears to be inadvertently left in after the change to Tenn. Code Ann. § 56-6-112(a) and will be disregarded.

7. The Petitioner has met its burden of proof by a preponderance of the evidence that Respondent engaged in a total six (6) violations of Tennessee insurance laws. The record shows that Respondent engaged in two (2) violations of Tenn. Code Ann. § 56-6-112(a)(4) (2008); three (3) violations of Tenn. Code Ann. § 56-6-112(a)(8) (2008); and one (1) violation of Tenn. Code Ann. § 56-6-112(a)(8) (Supp. 2007). These violations are evidenced by the following actions:

a. Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) by improperly withholding Cannon's insurance premium payment.

b. Respondent violated Tenn. Code. Ann § 56-6-112(a)(8) (2008) by failing to bind or secure homeowner's and automobile insurance coverage for Cannon. Respondent's actions were incompetent and financially irresponsible in the conduct of business in this state or elsewhere.

c. Respondent violated Tenn. Code Ann. § 56-6-112(a)(8) (2008) by submitting to Cannon fraudulent documents showing insurance coverage for her home and automobile. Respondent's actions were fraudulent, dishonest, and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in this state or elsewhere.

d. Respondent violated Tenn. Code Ann. §§ 56-6-112(a)(4) (2008) and 56-6-112(a)(8) (2008) by improperly withholding, misappropriating, and converting Dean Hill's construction surety bond premium payment for his own personal use. Respondent's actions were fraudulent, dishonest, and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in this state or elsewhere.

e. Respondent violated Tenn. Code Ann. § 56-6-112(a)(8) (Supp. 2007) by securing or referring a construction surety bond on behalf of St. Paul from an insurance company that was not authorized to conduct insurance business in the state in which the construction project took place. Respondent's actions were incompetent and financially irresponsible in the conduct of business in this state or elsewhere. However, testimony at the hearing showed that the Respondent was not aware of the irresponsibility of his actions until the complaint against him was filed.

Based upon the foregoing, it is therefore **ORDERED** that the insurance producer license of Respondent Gregory Candebat, numbered 646300, be **REVOKED**, and that the Respondent pay a total civil monetary penalty of **six thousand dollars ($6,000.00)** plus the Division's reasonable and necessary court reporter costs pursuant to TRCP 54.04. This penalty is assessed as follows:

1. One thousand dollars ($1,000.00) for each violation of Tenn. Code Ann. §§ 56-6-112(a)(4) (2008) and 56-6-112(a)(8) (2008) as described in the Conclusions of Law and related facts in paragraphs 7-10 of this Order, for total of three thousand dollars ($3,000.00);

2. One thousand dollars ($1,000.00) for each violation of Tenn. Code Ann. §§ 56-6-112(a)(4) (2008) and 56-6-112(a)(8) (2008) as described in the Conclusions of Law and related facts in paragraphs 7 and 11 of this Order, for a total of two thousand ($2,000.00); and

3. One thousand dollars ($1,000.00) for violating § 56-6-112(a)(8) (Supp. 2007) as described in the Conclusions of Law and related facts in paragraphs 7 and 12 of this Order.

These penalties are assessed by taking into account the relevant factors stated in Tenn. Code Ann. § 56-2-305(b), including the impact of the economic detriment imposed on the Respondent, the knowledge and intent of the Respondent, and the economic benefits to the

Respondent as a result of his violations. There was no proof to show that the Respondent knowingly violated the statute, as required by Tenn. Code Ann. § 56-2-305(a)(2), even though his actions were irresponsible. Furthermore, he the economic impact of these penalties will be significant since the Respondent's insurance producer's license is revoked, and he no longer has his usual means of producing income.

Respondent shall have sixty (60) days from receipt of this Initial Order to pay the above mentioned civil monetary penalty plus the Division's reasonable and necessary court reporter costs.

This Initial Order entered and effective this 26th day of SEPT, 2014.

Ann Johnson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 26th day of SEPTEMBER 2014.

J. Richard Collier

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.