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

TENNESSEE INSURANCE DIVISION,	)	
Petitioner,	)	
	)	
vs.	)	**APD No.: 12.01-126479J**
	)	**TID No.: No. 14-058**
RICHARD E. RUSHING Jr.,	)	
Respondent	)	

PROPOSED NOTICE OF DEFAULT AND INITIAL ORDER

This matter was heard on February 19, 2015, in Nashville, Tennessee before the Honorable Ann Johnson, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, 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. Richard E. Rushing Jr., ("Respondent"), was not present nor was an attorney present on his behalf.

NOTICE OF DEFAULT

Petitioner moved for default based on failure of the Respondent, or his representative, to appear at the scheduled hearing after receiving proper notice thereof. In support of the motion, Petitioner submitted a mail receipt showing notice of the hearing and notice of Respondent's rights was mailed to Respondent's address and signed by Respondent on November 17, 2014.

The record indicates that service was legally sufficient in accordance with Tennessee Code Annotated ("Tenn. Code Ann.") § 4-5-307 and § 56-6-112(f); and Tennessee Compilation Rules and Regulations ("Tenn. Comp. R. & Regs.") 1360-04-01-.06 and 1360-04-01-.15(c). The 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)(4), (8), and (9) (2011). After consideration of the evidence and entire record in this matter, it is determined that the Respondent's Insurance Producer License is **REVOKED**.

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 an Alabama resident and has a residential address at 937 Lake Forest Circle, Hoover, Alabama 35244. Respondent is licensed by the Division to sell insurance in Tennessee, having license number 2006752. Respondent's license expired on April 30, 2014.

3. At all relevant times, Respondent was a licensee of the Alabama Department of Insurance ("ALDOI") and held Alabama insurance producer license number 446884; first issued and effective on February 18, 2010.

4. Respondent was responsible for compliance with the insurance laws, rules and

regulations of the State of Alabama until his license was surrendered pursuant to an Alabama Consent Order on February 4, 2013.

5. On or about December 1, 2010, Respondent acquired all of the stock of AUA Inc., and owned and operated this business to acquire insurance policyholders for third party insurance companies.

6. As an insurance producer, Respondent had a duty to remit all premiums due and owing to policyholders, insurance companies, finance companies, and proper third party entities.

7. On or about May 16, 2012, Mr. John L. Parish ("Parish"), a Tennessee resident, issued a check to AUA Inc. in the amount of one thousand one hundred eighteen dollars ($1,118.00) for the renewal of an insurance policy with North America Specialty Insurance Company ("North American").

8. On or about May 21, 2012, Parish's check was deposited into a bank account owned and operated by AUA Inc.

9. On or about June 19, 2012, Parish's insurance policy with North American was cancelled.

10. Respondent was responsible for remitting the above-mentioned payment to North American; however, he failed to remit Parish's payment to North American.

11. Parish never received repayment for his negotiated check in the amount of one thousand one hundred eighteen dollars ($1,118.00).

12. On or about July 7, 2012, Mike 54 Aviation Inc., a business principally located in Tennessee, issued a check to AUA Inc. in the amount of seven hundred eleven dollars ($711.00) for the renewal of an insurance policy with Granite State Insurance Company ("Granite").

13. This check was subsequently deposited into a bank account owned and operated

by AUA Inc.

14. On or about August 29, 2012, Mike 54 Aviation Inc. received notice that its insurance policy with Granite was being canceled due to nonpayment of premium.

15. Respondent was responsible for remitting the above-mentioned payment to Granite; however, he failed to remit Mike 54 Aviation Inc.'s payment to Granite.

16. Mike 54 Aviation Inc. never received repayment for its negotiated check in the amount of seven hundred eleven dollars ($711.00).

CONCLUSIONS OF LAW

1. In accordance with Tenn. Comp. R. and Regs. 1360-4-1-.02(7), the Division bears the burden of proof in proving by a preponderance of the evidence that the facts alleged in the Notice of Hearing and Charges are true and that the issues raised therein should be resolved in its favor.

2. Tenn. Code Ann. § 56-6-112(a) (2011) provides 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 this section 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; [and]
>
> (9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory[.]

3. Tenn Code Ann. § 56-6-112(g)(2) (2011) permits a maximum penalty of one thousand dollars ($1,000) per violation of Tenn. Code Ann. § 56-6-112(a), up to a total maximum aggregate penalty of one hundred thousand dollars ($100,000). Each day of continued violation shall constitute a separate violation.

4. In deciding the appropriate penalty, Tenn. Code Ann. § 56-6-112(h) (2011) requires the Commissioner to consider the following:

(1) Whether the person could reasonably have 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 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 person's efforts to cure the violation.

5. Respondent:

(1) Improperly withheld, misappropriated or converted moneys received in the course of doing insurance business;

(2) Used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business in this state or elsewhere; and

(3) Had an insurance producer license, or its equivalent, denied, by surrendering it through an Alabama Consent Order in the State of Alabama.

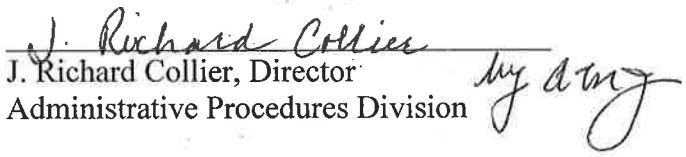
6. These conclusions of fact and law support grounds for an order revoking Respondent's Insurance Producer License and levying civil penalties pursuant to Tenn. Code Ann. § 56-6-112(g)(2).

It is therefore **ORDERED** that the Insurance Producer License of Richard E. Rushing, Jr., numbered 2006752, be **REVOKED**, beginning immediately upon final execution of this Default and Initial Order. Respondent is assessed reasonable court reporter costs incurred by the Division for litigating this matter.

This Initial Order entered and effective this 28TH day of APRIL, 2015.

Ann Johnson, Administrative Law Judge

Filed in the Administrative Procedures Division, this 28TH day of APRIL, 2015.



J. Richard Collier, Director
Administrative Procedures Division