0825223

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

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| TENNESSEE INSURANCE DIVISION,<br>Petitioner, | ) | |
| vs. | ) | No. 08-145 |
| RUBEN D. FOSTER, JR.<br>Respondent. | ) | |

## CONSENT ORDER

The Insurance Division of the Department of Commerce and Insurance of the State of Tennessee (the "Division") and Ruben D. Foster, Jr. ("Respondent") hereby stipulate and agree, subject to the approval of the Commissioner of Commerce and Insurance ("Commissioner"), as follows:

### GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and shall have no force and effect until such acceptance is evidenced by its entry by the Commissioner.

2. The Commissioner has determined that the resolution set forth in this Consent Order is fair and reasonable, and in the best public interest.

3. This Consent Order is executed by Respondent in order to avoid further administrative action regarding this cause. It is agreed that, in the event the Commissioner does not accept this Consent Order, submission to and consideration by the Commissioner shall in no way prejudice the Commissioner from further participation in or resolution of these proceedings or initiating additional proceedings against Respondent for acts or omissions not specifically addressed or arising from the acts or omissions specified herein.

4. Respondent further agrees that this Consent Order may be taken in consideration or used by the Commissioner, or other Commissioner, Department or Board to revoke or refuse issuance of any license currently held by Respondent or for which the Respondent may in the future apply.

5. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

## FINDINGS OF FACT

1. The Commissioner of the Department of Commerce and Insurance for the State of Tennessee (the "Commissioner") has jurisdiction pursuant to the Tennessee Insurance Law ("Insurance Law"), TITLE 56 of the Tennessee Code, and the Insurance Law places responsibility for administration of its provisions on the Commissioner.

2. The Division is the lawful agent through which the Commissioner administers the Insurance Law, and is authorized to bring this action for the protection of the public.

3. Respondent is a citizen and resident of Tennessee, residing at 137 Rebecca Drive, Hendersonville, Tennessee 37075 and has been licensed by the Division to sell insurance in Tennessee, having been issued license numbered 825223 April 29, 2002.

4. Respondent admits that, on multiple occasions, he visited homes of prospective policyholders accompanied by an unlicensed person, Johnny R. Jackson ("Mr. Jackson"), who impersonated a licensed insurance producer and sold insurance. Respondent further admits to participating in insurance transactions in which representations regarding material terms of insurance were made to prospective policyholders by such person for the purpose of selling

insurance policies.

5. Respondent entered into agreements ["Appointment Agreement(s)"] with insurers which authorized him to sell, solicit, and negotiate insurance policies. Under such Appointment Agreements, Respondent represented to insurers and prospective policyholders that insurance policies would be sold by duly licensed and appointed insurance producers in accordance with applicable law, regulations and policies.

7. Respondent admits that, on multiple occasions, he signed applications for insurance policies as the selling agent when such policies were in fact sold by another insurance producer and/or Mr. Jackson. Respondent further admits to selling insurance for insurers when he was not duly appointed by such insurers.

## CONCLUSIONS OF LAW

1. TENN. CODE ANN. § 56-6-112(a) provides 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:

> (2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;
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> . . . . .
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> (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
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> . . . . .
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> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
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> . . . . .
>
> (13) Knowingly accepting insurance business from an individual who is not licensed.
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> . . . . .

2. TENN. CODE ANN. § 56-6-115 provides in pertinent part as follows:

(a) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

. . . .

3. TENN. CODE ANN. § 56-53-103 provides in pertinent part as follows:

(a) Any person who commits, participates in, or aids, abets, or conspires to commit, or solicits another person to commit, or permits its employees or its agents to commit any of the following acts with an intent to induce reliance, has committed an unlawful insurance act:

. . . . .

(2) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, insurance professional or a premium finance company in connection with an insurance transaction or premium finance transaction, any information which the person knows to contain false representations, or representations the falsity of which the person has recklessly disregarded, as to any material fact, or which withholds or conceals a material fact, concerning any of the following:

(A) The solicitation for sale of any insurance policy or purported insurance policy;

. . . . .

b. It shall be unlawful for any person to commit, or to attempt to commit, or aid, assist, abet or solicit another to commit or to conspire to commit an unlawful insurance act.

4. Based upon the Findings of Fact cited above and the Conclusions of Law contained herein, the Commissioner considers the actions of Respondent to be in violation of TENN. CODE ANN. § 56-6-112(a)(2), (7), (8), and (13); § 56-6-115; and § 56-53-103. Respondent is therefore subject to sanctions set forth in TENN. CODE ANN. §56-6-112(a).

5. Respondent does not deny the Findings of Fact stated in paragraphs 1-5, above and understands that such Findings subject him to sanctions pursuant to TENN. CODE ANN. §56-6-112(a). Respondent hereby acknowledges the Commissioner's authority to administer the Insurance Law and concedes that the Commissioner's interpretation of the statutes cited in the Conclusions of Law is reasonable and enforceable. Therefore, Respondent, in order to avoid any

further expenses or costs associated with litigating this matter, hereby agrees to entry of this Consent Order.

## ORDER

**NOW, THEREFORE**, on the basis of the foregoing and the waiver by Respondent of his rights to a hearing and appeal under the Tennessee Insurance Law and Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*, and acknowledgment of the jurisdiction of the Commissioner, the Commissioner finds that Respondent has agreed to the entry of this Consent Order and that such Order is appropriate, in the public interest and necessary for the protection of the public.

**IT IS ORDERED** that, pursuant to TENN. CODE ANN. § 56-6-112(a), the insurance producer license held by Respondent, Ruben D. Foster, Jr., license numbered 825223, is hereby **REVOKED**. Respondent agrees to cease soliciting or negotiating insurance and conduct no further business for which a license is required under the Law.

Respondent shall cooperate fully with and assist the Division in completing its lawful investigation and/or testify in any proceeding with regard to any matter of which he has personal knowledge or information.

This Consent Order represents the complete and final resolution and discharge of administrative remedies available to the Commissioner under TENN. CODE ANN. § 56-6-112 against Respondent for violations of the Law arising out of the Findings of Fact set forth in paragraphs 1-7 above. This Order shall not, however, preclude a third party from pursuing civil remedies or criminal action against Respondent which may otherwise be available.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signatures affixed below, Respondent affirmatively states that he

has freely agreed to the entry of the Consent Order, that he has been advised of his right to legal counsel and had the opportunity to consult with legal counsel, has reviewed the Findings of Fact and Conclusions of Law contained herein, waives his right to a hearing on the matters specified in this Consent Order and the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. In signing this Consent Order, the parties affirm their agreement to be bound by the terms of such Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in the Consent Order, are binding upon them.

**SO ORDERED.**

**ENTERED** this the 15th day of December, 2008.

Leslie A. Newman, Commissioner
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**

Larry C. Knight, Jr.
Assistant Commissioner for Insurance
Department of Commerce and Insurance
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Ruben D. Foster, Jr.
Respondent