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

TENNESSEE INSURANCE DIVISION, **Petitioner**	)	
vs.	)	**No. 12.01-063395J**
JAMES PAUL CARROLL, JR., **Respondent**	)	

FINAL ORDER

The Petitioner Tennessee Insurance Division ("Insurance Division") initiated this appeal of the Initial Order entered on May 15, 2006 by Marion P. Wall, Administrative Judge for the Secretary of State, Administrative Procedures Division. The record of this matter demonstrates that Respondent James Paul Carroll, Jr. ("Mr. Carroll") filed a Petition for Reconsideration of the Initial Order on May 30, 2006. The Insurance Division filed a Petition for Appeal of the Initial Order on that same date. As the record indicates no action taken by the administrative judge regarding the Petition for Reconsideration, the Petition was deemed denied on June 20, 2006 pursuant to Tenn. Code Ann. § 4-5-317(c). The Insurance Division then filed an Amended Petition for appeal of the Initial Order on June 30, 2006. In accordance with a Scheduling Order entered on August 18, 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. Neither the Insurance Division, nor Mr. Carroll, disputed the Findings of Fact contained in the Initial Order.

2. In November, 2001 Mr. Carroll submitted an application for, and was issued a policy for, automobile insurance coverage. When this coverage was obtained, Mr. Carroll represented that he was eligible for a discount in premium due to home ownership. Mr. Carroll received an 8% discount in his premium due to this representation. (Tr. 68-69, Exhibit 7)

3. Mr. Carroll did not, in fact, own a home when he obtained an automobile insurance policy for himself in 2001, so he was not eligible for such a premium discount. (Tr. 61, 69, 131)

4. Mr. Carroll's father, James P. Carroll, Sr., is not licensed to sell property and casualty insurance in Tennessee, but is licensed to sell life and health insurance in Tennessee (Tr. 219).

CONCLUSIONS OF LAW

1. The primary actions of Mr. Carroll which are the subject of this action occurred in 2001 and 2002. In governing the professional conduct of licensed insurance agents in Tennessee, Tennessee Code Annotated § 56-6-112(a) currently provides as follows:

> (a) The 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:
>
> . . .

(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 of financial irresponsibility in the conduct of business in this state or elsewhere;

. . .

(e) 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 or insurance in this state. Each day of continued violation constitutes a separate violation.

The Insurance Division and the Initial Order entered in this matter relied upon this statute, which was effective January 1, 2003.

2. The conduct of Mr. Carroll which is the subject of this action are governed under the law as it existed in 2001 and 2002. At that time, the statute provided as follows:

(a) The commissioner may suspend, revoke, or refuse to issue or renew any license under this part for any one (1) or more of the following causes:

. . .

(7) Committing any unfair trade practice or fraud proscribed in this code;
(8) Using, in the conduct of affairs under such license, fraudulent, coercive, or dishonest practices;

. . .

(10) Being demonstrably incompetent, untrustworthy, or financially irresponsible;

. . .

> (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.

Tenn. Code Ann. § 56-6-155 (2002). This statute, though repealed by Chapter 798 of the Public Acts of 2002 effective January 1, 2003, sets for substantially similar provisions governing the conduct of insurance agents as the statute cited in the Initial Order, Tenn. Code Ann. § 56-6-112(a). The Tennessee Court of Appeals has recognized the basic similarities of the provisions governing agent conduct in the previous, operative and current statutes. See Mosley v. Tennessee Department of Commerce and Insurance, 167 S.W.3d 308, 322 n1 (Tenn. Ct. App. 2004). Therefore, the findings of the Initial Order are equally applicable under the earlier statute which is applicable in this matter.[1]

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)(8) and (10) that Mr. Carroll, in the conduct of affairs under his insurance license, used fraudulent and dishonest practices and further demonstrated untrustworthiness by falsely and fraudulently back-dating and signing his own application for motor vehicle insurance on March 29, 2002 in an effort to obtain coverage for his theft loss that had already occurred.

4. 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)(8) and (10) that Mr. Carroll, in the conduct of affairs under his insurance license, used fraudulent and

[1] The Initial Order references, in Paragraph 4, page 9, that the proof established violations of Tenn. Code Ann. §§ 55-53-102(a) and 55-53-103(a). These statutes have no relation to either the conduct in question or the statutes governing the licensure of insurance agents. It is assumed that these references were typographical errors. Because the Initial Order references the applicable statutes and makes specific findings regarding Mr. Carroll's conduct in the context of those applicable standards, this typographical error in the Initial Order is harmless.

dishonest practices and further demonstrated untrustworthiness by claiming a homeowner's policy discount on or about November 16, 2001 to which he knew he was not entitled.

5. The possible penalties applicable to Mr. Carroll's conduct are prescribed by Tenn. Code Ann. § 56-6-155 which is the law in effect at the time that Mr. Carroll's conduct occurred, and not Tenn. Code Ann. § 56-6-112(a)(2), which only became effective January 1, 2003. Though the later statute, relied upon in the Initial Order, permits the combination of the available disciplinary penalties of that later law, the provisions of Tenn. Code Ann. § 56-6-155 do not provide for the combination of available disciplinary penalties of probation, suspension, revocation, or refusal to issue or renew a license issued. Therefore, no combination of suspension and probation as prescribed in the Initial Order is permitted.

6. Even if the combination of suspension and probation were permitted under the applicable statute, the month-to-month "supervised" probation with monthly compliance certification by Mr. Carroll's father, who is not licensed to sell property and casualty insurance, is beyond the statute's contemplation of how "probation" of a license would be imposed and is impractical given that month-to-month monitoring would be required by the Insurance Division. Further this "supervised" month-to-month lifting of supervision would place a legal duty on another insurance agent to be responsible for Mr. Carroll's compliance with applicable laws and regulations. This is an unreasonable request of any other licensed agent and ostensibly could expose such a supervising agent to potential disciplinary action against that supervising agent's license if any future violation occurred.

7. After considering all the circumstances, the nature of the violations committed by Mr. Carroll, and the entire record of this matter, **IT IS CONCLUDED THAT THE APPROPRIATE RESOLUTION OF THIS MATTER IS A SUSPENSION OF MR. CARROLL'S INSURANCE PRODUCER LICENSE FOR FIVE YEARS. IN ADDITION, A CIVIL PENALTY OF ONE THOUSAND ($1,000.00) IS ASSESSED AGAINST MR. CARROLL, AS WELL AS THE COSTS OF THIS ACTION.**

IT IS SO ORDERED.

This 18th day of December, 2006.

Paula A. Flowers

Paula A. Flowers, 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: Counsel G. Brian Jackson, 1200 One Nashville Place, 150 Fourth Avenue North, Nashville, Tennessee 37219-2433, and the Tennessee Insurance Division, Tennessee Department of Commerce and Insurance, 500 James Robertson Pkwy, Nashville, Tennessee 37243 on this 18th day of December 2006.