



State of Tennessee
Department of State
Administrative Procedures Division
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Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

April 25, 2016

Commissioner Julie Mix McPeak
Tennessee Department of Commerce &
Insurance
Office of Legal Counsel
12th Floor, Davy Crockett Tower
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Nashville, Tennessee 37243-5065

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Nashville, TN 37243-0569

RE: In the Matter of: Raymond Aquilino

Docket No. 12.04-135070J

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

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

RECEIVED
APR 27 2016
DEPT OF COMMERCE AND INSURANCE
LEGAL OFFICE

**BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE**

IN THE MATTER OF:

RAYMOND AQUILINO

DOCKET NO. 12.04-135070J

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 **May 10, 2016**.

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 TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

**TENNESSEE INSURANCE DIVISION,
Petitioner,**

vs.

**RAYMOND A. AQUILINO,
Respondent.**

Docket No: 12.04-135070J

NOTICE OF DEFAULT and INITIAL ORDER

This contested case was heard in person in Nashville on March 3, 2016, by Administrative Judge Kim Summers, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Commerce and Insurance (the Department). Jesse Joseph, Assistant General Counsel, represented the Department in this matter. The Respondent was not present or represented by counsel at the hearing.

Because Respondent failed to appear for the hearing, the Petitioner, through Counsel, moved for a default. The default was granted based on acceptable proof of service of the Notice of Charges and Hearing, and the Department was granted leave to proceed with the hearing unopposed.

The issue in this matter is Respondent's alleged violation of Tenn. Code Ann. §§ 56-6-112(a) and 119(a) and the appropriate penalty to be imposed for any such violation pursuant to Tenn. Code Ann. § 56-6-112(g). After consideration of the entire record, it is determined that Respondent's actions have been in violation of Tenn. Code Ann. § 56-6-112(a) and (119)(a) and that penalties shall issue as further specified below.

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

SUMMARY OF EVIDENCE

One witness testified at the hearing on behalf of the Petitioner: Thomas Stoquert, Fraud Investigator with the Department of Commerce and Insurance. Twelve exhibits were entered into

evidence: EXHIBIT 1, Proof of Service of the Notice of Hearing and Charges on the Respondent; EXHIBIT 2, Affidavit of Kimberly Biggs; EXHIBIT 3, Amended Affidavit of Kimberly Biggs; EXHIBIT 4, Voluntary License Surrender Form from Missouri dated April 10, 2013; EXHIBIT 5, Voluntary License Surrender Order from Missouri dated April 25, 2015; EXHIBIT 6, Voluntary Surrender of License from North Carolina dated May 19, 2014; EXHIBIT 7, Stipulation Surrendering License from New York dated January 5, 2015; EXHIBIT 8, Affidavit of Katharine Guilfoile of Assurant Health dated February 19, 2016; EXHIBIT 9, Letter to the Respondent from Assurant Health dated December 20, 2013, regarding termination for cause; EXHIBIT 10, Internal Memo of Assurant Health dated December 24, 2013, regarding termination for cause; EXHIBIT 11, Termination Notice of Agency Contract or Agreement dated December 24, 2013; EXHIBIT 12, Letter from Assurant Health to Thomas Stoquert dated May 20, 2014.

FINDINGS OF FACT

1. Insurance producer license number 2097410 was issued to Respondent on April 17, 2012, and expired on January 31, 2015.
2. The Respondent entered into a Producer Sales Agreement with Assurant Health out of Milwaukee, Wisconsin, which was terminated without cause on May 22, 2013. This termination was changed to “for cause” by a letter sent to the Respondent on December 20, 2013.
3. The reason for the termination involved the misappropriation of commissions by the Respondent that should have been paid to other agents.
4. The Respondent’s Kentucky insurance license was revoked on July 21, 2014.
5. The Respondent surrendered his Missouri insurance license on April 25, 2014; his North Carolina insurance license on May 19, 2014; and his New York insurance license on January 5, 2015.

6. The license surrender was considered a regulatory action in both North Carolina and New York.

7. The Respondent never reported any of this activity to the Tennessee Department of Commerce and Insurance.

8. The Respondent never responded to requests from Tennessee to assist with the Department's investigation.

APPLICABLE LAW

1. RULE 1360-4-1-.02(3) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies states, in pertinent part:

The "petitioner" in a contested case proceeding is the "moving" party, i.e., the party who has initiated the proceedings. The petitioner usually bears the ultimate burden of proof.

2. RULE 1360-4-1-.15(1)(a) states:

The failure of a party to attend or participate in a prehearing conference, hearing or other stage of contested case proceedings after due notice thereof is cause for holding such party in default pursuant to T.C.A. §4-5-309.

3. Tenn. Code Ann. § 4-5-309(a) states:

If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge...may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings. (Emphasis added.)

4. TENN. CODE ANN. § 56-6-112(a) authorizes the Commissioner to place on probation, suspend, revoke or refuse to issue or renew a license or level a civil penalty for any of the following conduct:

- (1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;
- (2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;

- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (6) Having been convicted of a felony;
- (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 or financial irresponsibility in the conduct of business in this state or elsewhere;
- (9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;
- (10) Forging another's name to an application for insurance or to any document related to an insurance transaction;
- (11) Improperly using notes or any other reference material to complete an examination for an insurance license;
- (12) Knowingly directing any person to submit an application for health care benefits through the TennCare program at a time when the person is covered by a group policy or when the policy is being renewed, and then quoting a rate for a group health insurance policy if the insurance producer knows the person would otherwise have been eligible to participate or continue participation in the group policy;
- (13) Knowingly accepting insurance business from an individual who is not licensed;
- (14) Selling, soliciting or negotiating insurance for a company that is not authorized to transact the business of insurance in this state; and
- (15) Violating the unfair trade practices as enumerated in § 56-6-125.

5. Tenn. Code Ann. § 56-6-119 requires the following –

- (a) A producer shall report to the commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of any order entered or other relevant legal documents.

6. TENN. CODE ANN. § 56-6-112(g)(2) permits a penalty of \$1000 per violation of TENN. CODE ANN. § 56-6-112(a), up to a total penalty of \$100,000.

7. In deciding the appropriate penalty, TENN. CODE ANN. § 56-6-112(h) 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 circumstances 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.

ANALYSIS and CONCLUSIONS OF LAW

1. Even though Respondent did not participate in the hearing after the requisite notice was provided, the burden was still on the Petitioner to prove by a preponderance of the evidence that Respondent's has violated the provisions of TENN. CODE ANN. § 56-6-112(a) and 119(a) and is, therefore, subject to civil penalties.

2. The Department **HAS** shown by a preponderance of the evidence that the Respondent failed to report regulatory actions taken against him in Kentucky, Missouri, North Carolina, and New York in violation of Tenn. Code Ann. § 56-6-119(a).

3. The Department **HAS** shown by a preponderance of the evidence that the Respondent had his insurance license revoked in Kentucky in violation of Tenn. Code Ann. § 56-6-112(a)(9).

4. The Department **HAS** shown by a preponderance of the evidence that the Respondent's Producer Sales Agreement with Assurant Health was terminated for unfair trade practices and/or fraud in violation of Tenn. Code Ann. § 56-6-112(a)(7).

5. Based on Respondent's willful and intentional conduct, his, apparent, failure to accept responsibility for his actions, the best interest of the public, and the need to deter future violations, a civil penalty of \$1000 per violation is deemed appropriate, for a total penalty of \$3,000.

6. For all these reasons, the Respondent's Tennessee insurance producer's license shall also be revoked.

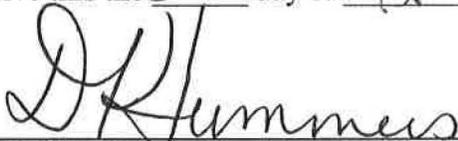
7. Based upon the foregoing, the Department's Petition to impose on the Respondent civil penalties and to revoke his insurance producer's license is hereby **GRANTED**.

8. All costs associated with the investigation and hearing of this matter shall be assessed against the Respondent.

9. Should good cause exist for Respondent's failure to appear / participate in the hearing, Respondent may move to have this order set aside no later than fifteen (15) days after entry.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 25TH day of APR 12 2016.


KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 25TH day of APR 12 2016.


J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

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.