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June 29, 2018

Commissioner Julie Mix McPeak
Tennessee Department of Commerce &
Insurance
Office of Legal Counsel
12th Floor, Davy Crockett Tower
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Avis Betancourt
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Nashville, TN 37243-0569

RE: In the Matter of: Avis Betancourt

Docket No. 12.04-151480J

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

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

RECEIVED
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DEPT. OF COMMERCE AND INSURANCE
LEGAL OFFICE

BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

AVIS BETANCOURT

DOCKET NO. 12.04-151480J

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 **July 16, 2018**.

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.

**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE**

**TENNESSEE INSURANCE
DIVISION,
Petitioner,**

vs.

**AVIS BETANCOURT,
Respondent.**

**Docket No. 12.04-151480J
TID No. 18-025**

INITIAL ORDER

This contested case came forward on May 15, 2018, in Nashville, Tennessee, before Mattielyn B. Williams, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Commerce and Insurance. Mr. Jesse D. Joseph, Assistant General Counsel - Litigation, represented the Petitioner, the Tennessee Insurance Division ("Division"). The Respondent, Ms. Avis Betancourt, was not present nor was an attorney present on her behalf.

The May 15, 2018, hearing addressed the allegations contained in the NOTICE OF HEARING AND CHARGES filed on March 26, 2018.

After consideration of the entirety of the record, it is **DETERMINED** that the Tennessee nonresident insurance producer license (No. 0109113) of Respondent Avis Betancourt should be **REVOKED** and that Respondent Avis Betancourt should be assessed **CIVIL PENALTIES** in the total amount of **one thousand, five hundred dollars (\$1,500.00)** for violations of TENN. CODE ANN. §§ 56-6-112(a)(1), (a)(3), & (a)(6), and 56-6-119(a).

NOTICE OF DEFAULT

Pursuant to Tenn. Code Ann. § 4-5-307, the Petitioner filed and served a NOTICE OF HEARING AND CHARGES against Respondent on March 26, 2018, by First Class Mail, and Certified Mail Return Receipt Requested No. 7017 0660 0000 3644 0318, addressed to Respondent at 862 Preserve Park Dr., Loganville, GA 30052-8312. The NOTICE OF HEARING AND CHARGES notified Respondent that the hearing in this matter was set for May 15, 2018, at 9:00 a.m. Central time, in Conference Room 6-A on the 6th Floor of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, TN 37243.

On April 6, 2016, the Petitioner filed and served upon Respondent a CHANGE OF HEARING ROOM LOCATION, notifying Respondent that the location for the hearing was changed from Conference Room 6-A to Conference Room 1-B on the 1st Floor of the Davy Crockett Tower, on May 15, 2018, at 9:00 a.m. Central time.

Because Respondent failed to appear for the hearing, the Petitioner moved that the Respondent be held in default. In support of its motion for default, as to the NOTICE OF HEARING AND CHARGES (“Notice”), the Petitioner presented evidence demonstrating that it received from the US Postal Service a certified mail return receipt card for certified mail no. 7017 0660 0000 3644 0318, signed by the Respondent and marked “addressee.” The Notice was received by the Respondent on March 28, 2018.

It was determined that Petitioner properly served the Notice on the Respondent in compliance with TENN. COMP. R. & REGS. 1360-04-01-.06 of the Secretary of State’s rules. The Respondent did not appear for the hearing on May 15, 2018. No attorney appeared on Respondent’s behalf on May 15, 2018. Accordingly, pursuant to TENN. CODE ANN. § 4-5-309 and TENN. COMP. R. & REGS. 1360-04-01-.15(2)(b), the

Respondent was held in Default for failure to appear at the hearing. The matter was tried as an uncontested proceeding.

FINDINGS OF FACT

1. The Tennessee Insurance Law contained within Title 56 of TENN. CODE ANN., specifically TENN. CODE ANN. §§ 56-1-202 and 56-6-112 (the “Law”), places the responsibility for administering the Law on the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”). The Petitioner is the lawful agent through which the Commissioner discharges this responsibility.
2. Respondent holds a valid Tennessee nonresident insurance producer license, number 1019113, which became active on or about April 21, 2009, and which is currently scheduled to expire on January 31, 2019. Respondent also holds a valid Georgia resident insurance producer license, number 566842. Upon information and belief, and based on the records on file with the Division, Respondent’s residential address of record is 862 Preserve Park Dr., Loganville, GA 30052-8312.
3. On or about November 7, 1989, while known as Avis Landon, the Respondent was indicted by a federal grand jury in the Northern District of Illinois (Case No. 89-CR-938) for multiple violations of 18 U.S.C. §§ 641 and 1001 – knowingly making false and fraudulent statements on U.S. Housing and Urban Development (HUD) forms regarding her income received between 1983 and 1987, and thereby converting to her own use HUD Section 8 rental assistance funds.
4. On December 6, 1989, Respondent entered a guilty plea in this federal matter to knowingly, willfully, and unlawfully receiving stolen government property in violation of 18 U.S.C. § 641 as set forth in Counts 12 and 13 of the Indictment, and on February 8,

1990, the U.S. District Court for the Northern District of Illinois convicted Respondent of these felony counts, sentenced her to three (3) years of probation and ordered her to pay forty-three thousand and two dollars (\$43,002.00) in restitution, as a condition of probation.

5. Within Respondent's initial Tennessee nonresident insurance producer license application submitted to the Division electronically on or about April 9, 2009, and within her renewal applications submitted on or about February 1, 2011, February 1, 2013, and December 18, 2014, the Respondent answered no ("N") four (4) times to questions asking whether she had been convicted of a felony.

6. On or about March 6, 2015, July 10, 2015, and January 2, 2016, administrative actions were taken against Respondent's Georgia resident, Mississippi nonresident, and California nonresident insurance producer licenses, respectively. The Georgia Department of Insurance (DOI) assessed a four hundred fifty dollar (\$450.00) civil penalty and gave the Respondent permission to engage in the business of insurance, pursuant to 18 U.S.C. § 1033(e). In Mississippi, the Respondent voluntarily surrendered her nonresident insurance producer license in lieu of other possible administrative action by the Mississippi DOI. In California, an Order of Summary Revocation was entered against Respondent's nonresident insurance producer license.

7. Respondent did not report to the Tennessee Commissioner the July 10, 2015 Mississippi administrative action taken against her within thirty (30) days after the final disposition of that matter, as is required.

8. The Division first learned about the Respondent's federal felony conviction when she finally disclosed such conviction to the Division in her renewal application, submitted on or about January 31, 2017.

CONCLUSIONS OF LAW

1. In accordance with TENN. COMP. R. & REGS. 1360-04-01-.02(7) and 1360-04-01-.15(3), it is **CONCLUDED** that the Petitioner has proven, by a preponderance of evidence, that the facts alleged in the Notice pertaining to the Respondent are true and that the issues raised therein should be resolved in its favor.

2. TENN. CODE ANN. §§ 56-6-112(a)(1), (a)(3), & (a)(6) provide:

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 this section or take any combination of those actions, for any one (1) or more of the following causes:

(1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

....

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud;

....

(6) Having been convicted of a felony[.]

3. It is **CONCLUDED** that the Petitioner has shown, by a preponderance of the evidence, that the Respondent provided materially untrue information to the Petitioner in four (4) separate online initial and renewal applications, as set forth above, submitted over a six (6) year period between April 2009 and December 2014, by answering no ("N") to all questions on such applications asking whether she had been convicted of a felony, thereby obtaining her initial license and subsequent renewals of her Tennessee insurance producer license through misrepresentation. Respondent knew that she had been convicted in 1990 of two counts of knowingly, willfully, and unlawfully receiving stolen government property – federal felony offenses – and knew that she had never

reported this conviction to the Petitioner before January 31, 2017. These actions by Respondent violate TENN. CODE ANN. §§ 56-6-112(a)(1) and (a)(3).

4. It is **CONCLUDED** that the Petitioner has shown, by a preponderance of the evidence, that Respondent was convicted of two (2) counts of violating 18 U.S.C. § 641, by knowingly, willfully, and unlawfully receiving stolen government property. These are federal felony offenses. Such a conviction constitutes violation of TENN. CODE ANN. § 56-6-112(a)(6).

5. It is **CONCLUDED** that the Petitioner has shown, by a preponderance of the evidence, that Respondent failed to report to the Commissioner the July 10, 2015 Mississippi disciplinary action wherein she voluntarily surrendered her nonresident insurance producer license in lieu of other possible administrative action by the Mississippi DOI, within thirty (30) days after the entry of said order, which was the final disposition of that matter. This failure on Respondent's part violates TENN. CODE ANN. § 56-6-119(a).

6. TENN. CODE ANN. § 56-6-112(g) provides, in pertinent part:

(g) If . . . the commissioner finds that any person required to be licensed, permitted, or authorized by the division of insurance pursuant to this chapter has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:

- (1) The person to cease and desist from engaging in the act or practice giving rise to the violation.
- (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). This subdivision (g)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (g)(2), each day of continued violation shall constitute a separate violation; and
- (3) The suspension or revocation of the person's license.

7. It is **CONCLUDED**, based upon the proof adduced at the hearing, that the proper discipline for Respondent's conduct is revocation of Respondent's Tennessee nonresident insurance producer license and the imposition of a civil penalty against Respondent in the amount of one thousand five hundred dollars (\$1,500.00) for her multiple violations of TENN. CODE ANN. §§ 56-6-112(a)(1), (a)(3), & (a)(6), and 56-6-119(a), as detailed above.

8. More specifically, a civil penalty of two hundred fifty dollars (\$250.00) is assessed for each of Respondent's four (4) violations of TENN. CODE ANN. §§ 56-6-112(a)(1) and (a)(3) as set forth within Count One of the Notice; a civil penalty of two hundred fifty dollars (\$250.00) for Respondent's violation of TENN. CODE ANN. § 56-6-112(a)(6) as set forth within Count Two of the Notice; and finally, a civil penalty of two hundred fifty dollars (\$250.00) for Respondent's violation of TENN. CODE ANN. § 56-6-119(a) as set forth within Count Three of the Notice.

9. Imposition of maximum civil penalties is not necessary to further the public interest in this case because the Respondent is not a Tennessee resident and appears to be disinterested in continuing to engage in the insurance business in this state. Furthermore, Respondent's felony conviction occurred twenty-eight (28) years ago.

IT IS, THEREFORE, ORDERED that:

1. The Respondent's Tennessee nonresident insurance producer license (No. 1019113) **be and hereby is, REVOKED**, due to her actions in violation of TENN. CODE ANN. §§ 56-6-112(a)(1), (a)(3), & (a)(6), and 56-6-119(a), as described above.
2. Due to the above violations, the Respondent **is ASSESSED CIVIL PENALTIES** in the amount of **one thousand, five hundred dollars (\$1,500.00)**, pursuant to Tenn. Code Ann. § 56-6-112(g)(2), as set forth above.

3. The Respondent and any and all persons who may assist her in any of the aforementioned violations of TENN. CODE ANN. § 56-6-112 **shall CEASE and DESIST** from any such activities.

This INITIAL ORDER, imposing sanctions against the Respondent, is entered to protect the public and consumers of insurance products in Tennessee, consistent with the purposes fairly intended by policy and provisions of the Law.

This INITIAL ORDER entered and effective this the 29th day of June/~~July~~, 2018.


MATTIELYN B. WILLIAMS
ADMINISTRATIVE JUDGE

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this the 29th of June/~~July~~ 2018.


J. RICHARD COLLIER, DIRECTOR
CHIEF ADMINISTRATIVE LAW JUDGE
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.