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July 13, 2018

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Rashann Bryant
3028 Montgomery Lane
Modesto, CA 95355

RE: In the Matter of: Rashann Bryant

Docket No. 12.04-151743J

Enclosed is an *Initial Order* and *Notice of Appeal Procedures* rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/arb
Enclosures

RECEIVED

JUL 17 2018

**DEPT. OF COMMERCE AND INSURANCE
LEGAL OFFICE**

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

IN THE MATTER OF:

**TENNESSEE INSURANCE
DIVISION,**
Petitioner,

vs.

RASHANN BRYANT,
Respondent.

**DOCKET NO. 12.04-151743J
TID NO. 18-027**

INITIAL ORDER

This matter was heard on May 30, 2018, in Nashville, Tennessee, before Administrative Judge Shannon Barnhill, assigned by the Secretary of State, Administrative Procedures Division (“APD”), to sit for the Commissioner of the Tennessee Department of Commerce and Insurance. The May 30, 2018 hearing addressed the allegations contained in the NOTICE OF HEARING AND CHARGES filed on April 10, 2018, pertaining to Respondent Rashann Bryant. Jesse D. Joseph, Assistant General Counsel, represented the Petitioner, the Tennessee Insurance Division (“Division”). The Respondent, Rashann Bryant, was not present nor was an attorney present on his behalf.

After consideration of the RECORD in this matter, it is **ORDERED** that the Respondent Rashann Bryant is assessed **CIVIL PENALTIES** in the total amount of seven hundred fifty dollars (\$750.00) for violations of TENN. CODE ANN. §§ 56-6-112(a)(1).

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 April 10, 2018, setting this matter for hearing on May 30, 2018. At the hearing, the Petitioner moved for a default against the

Respondent pursuant to TENN. CODE ANN. § 4-5-309, based on the following exhibits admitted into evidence:

1. a copy of the front and back of certified return receipt mailing envelope for the service copy of the April 10, 2018 NOTICE OF HEARING AND CHARGES (Cert. No. 7017 0660 0000 3644 0271), mailed to Respondent's residential address of 14220 Athens Avenue, Lakewood OH 44107, marked "return to sender, unable to forward," returned to the Office of Legal Counsel on April 30, 2018. (HRG. EX. 1);
2. a copy of the April 30, 2018 FedEx Standard Overnight letter sent to Respondent at his 3028 Montgomery Ln. residential address in Modesto, CA 95355, enclosing a second copy of the NOTICE OF HEARING AND CHARGES, and attached FedEx delivery receipt and signature (HRG. EX. 2 - COLLECTIVE);
3. a copy of an April 30, 2018 email from Petitioner's counsel to Respondent's email address of Rashann_bryant@msn.com , attaching yet another copy of the April 10, 2018 NOTICE OF HEARING AND CHARGES attached in PDF form, and Respondent's May 10, 2018 reply email to Petitioner's counsel. (HRG. EX. 3 - COLLECTIVE);

Based on the testimony of Ms. Biggs, the Petitioner's Director of Agent Licensing (Transcript of Proceedings ("TR.") pages 14-19); the Respondent's most-recent reported residential address information on record with the Petitioner (14220 Athens Avenue, Lakewood, OH 44107), the Petitioner's properly addressed certified return receipt mail to Respondent's listed residential address in Ohio enclosing a copy of the NOTICE OF HEARING AND CHARGES on April 10, 2018 (HRG. EX. 1); excerpts from the National Association of Insurance Commissioners' (NAIC) State Licensing Report summarizing the Respondent's insurance producer licensing status for the states of California, Pennsylvania, and Tennessee, reflecting a last reported residential and mailing address for him of 3028 Montgomery Ln., Modesto, CA 95355, according to both the California and Pennsylvania Departments of Insurance, as of 4/25/18 (HRG. EX. 4); the Petitioner's properly addressed FedEx Standard Overnight Delivery (signature required) letter dated

April 30, 2018 to Respondent at the 3028 Montgomery Ln., Modesto, CA 95355 address enclosing a second copy of the NOTICE OF HEARING AND CHARGES (HRG. EX. 2); counsel for the Petitioner's April 30, 2018 email to Respondent attaching a third copy of the NOTICE OF HEARING AND CHARGES and Respondent's May 10, 2018 reply email to counsel for the Petitioner (HRG. EX. 3); and the provisions of TENN. CODE ANN. §§ 56-6-107(g), and 56-6-112(f), the Court concludes that the Petitioner has taken the necessary steps as are deemed reasonable and required under the law in its attempt to serve Respondent and to obtain his signature acknowledging service of the NOTICE OF HEARING AND CHARGES filed on April 10, 2018.

The Petitioner has served the Respondent by certified mail as set forth above at his listed addresses of record in the files of the Division in accordance with TENN. CODE ANN. § 56-6-112(f), even though there has been no return receipt personally signed by the Respondent as to this service. Since the Department has a statute that allows service by certified mail without specifying the necessity for a return receipt (TENN. CODE ANN. § 56-6-112(f)), and a statute that requires the licensee to keep his or her address information current (TENN. CODE ANN. § 56-6-107(g)), pursuant to TENN. COMP. R. & REGS. 1360-04-01-.06(3), service of the NOTICE OF HEARING AND CHARGES was complete upon placing said NOTICE OF HEARING AND CHARGES in the mail as a certified mail piece on April 10, 2018, given that this is the manner specified in the statute. The Tennessee Court of Appeals reached this same result in *William Wyttenbach v. Board of Tennessee Medical Examiners, et al.*, 2016 WL 1045668, No. M2014-02024-COA-R3-CV (Tenn. Ct. App. March 15, 2016), where service was considered sufficient by certified mail even without a signed return receipt by the Respondent.

As set out above, it is determined that service of the NOTICE OF HEARING AND CHARGES by certified mail return receipt requested in this matter was legally sufficient in accordance with TENN. CODE ANN. §§ 4-5-307 and 56-6-112(f), and TENN. COMP. R. & REGS. 1360-04-01-.06. Based on the failure of the Respondent to appear for the May 30, 2018 hearing, pursuant to TENN. CODE ANN. § 4-5-309 and TENN. COMP. R. & REGS. 1360-04-01-.15, the Respondent was held in default. Pursuant to TENN. COMP. R. & REGS. 1360-04-01-.15(2)(b), the hearing was conducted 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 of administering the Law on the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”). The Division is the lawful agent through which the Commissioner discharges this responsibility.

2. Rashann Bryant (“Respondent”) is a licensee of the Division who is responsible for being compliant with the insurance laws and regulations of the State of Tennessee. Respondent held a Tennessee nonresident insurance producer license, number 2022004, which became active on November 29, 2010, and which expired on June 30, 2017. Respondent also previously held a Tennessee automobile club agent license, under the same license number, which has been inactive since July 21, 2016. (HRG. EX. 4, pp. 93-94; testimony of Ms. Biggs at TR. 15-16).

3. Respondent currently holds valid insurance producer licenses in the states of California and Pennsylvania. Respondent was registered to sell securities in Ohio (Individual Central Registration Depository (“CRD”) No. 2853062), but has not been registered in that state since November 2006. He has never been registered to sell

securities in Tennessee. His current residential address according to the Division's records is 14220 Athens Avenue, Lakewood, OH 44107. Further, the Respondent's listed email address according to the Petitioner's records is Rashann_bryant@msn.com. To date, there is no record of Respondent's reporting to the Petitioner's Agent Licensing Section any address changes from the above residential address in Lakewood, Ohio. (HRG. EX. 10; HRG. EX. 4, p. 93; testimony of Ms. Biggs at TR. 15-16).

4. According to both the California and Pennsylvania Departments of Insurance, Respondent's last reported residential and mailing address is 3028 Montgomery Ln., Modesto, CA 95355. (HRG. EX. 4, p. 1-3, 85-86; testimony of Ms. Biggs at TR. 18-19).

5. On or about May 4, 2009, the Financial Industry Regulatory Authority ("FINRA") entered a Default Decision against the Respondent, and for failing to provide requested information, Respondent was barred from associating with any FINRA member firm. In light of this bar, FINRA did not impose additional sanctions against Respondent for engaging in private securities transactions without providing prior notice to his firm, or for failing to provide prompt written notice to his firm of his involvement in outside business activities. (HRG. EX. 7 – COLLECTIVE).

6. Respondent was employed as an Investment Company and Variable Contracts Products Representative at AIG Financial Advisors in the Cleveland, Ohio area between 2005 and 2006, when he engaged in the conduct which resulted in the complaint to FINRA and his subsequent FINRA bar. (HRG. EX. 7 – COLLECTIVE).

7. Within Respondent's initial insurance producer license application submitted to the Division electronically on or about November 29, 2010, and within his insurance producer renewal application submitted to the Division on or about early July 2013, the Respondent answered no ("N") twice to questions on both of these applications asking

him whether he had ever been involved in an administrative proceeding regarding any professional license or registration. (HRG. EX. 5; testimony of Ms. Biggs at TR. 19-21).

8. According to the instructions present within the NAIC's Uniform Application for Individual Insurance Licenses or Registrations, the term "involved" also means "being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license..." These instructions were available to Respondent at the time he submitted his application for an insurance producer license and at the time he submitted his renewal application to the Division, in November 2010 and July 2013, respectively. (HRG. EX. 6, p. 3; testimony of Ms. Biggs at TR. 21-23).

9. A FINRA administrative proceeding, such as the matter involving the Respondent referred to within this matter, relates to an individual's (such as the Respondent's) professional or occupational securities registration. (HRG. EX. 7; testimony of Ms. Biggs at TR. 23).

10. The Division was first notified of the Respondent's FINRA administrative action barring him from associating with any FINRA member firm, on or about February 8, 2016 when Respondent submitted this sanction into the NAIC Attachments Warehouse of the National Insurance Producer Registry ("NIPR"). (HRG. EX. 7, p. 1; testimony of Ms. Biggs at TR. 23-24).

11. On or about May 17, 2016, and July 5, 2016, administrative actions were taken against Respondent's New York and North Carolina nonresident insurance producer licenses, respectively. The New York Department of Financial Services assessed a \$750 civil penalty against the Respondent, and the North Carolina Department of Insurance assessed a \$250 civil penalty against him. Both states' final administrative actions were due to Respondent's provision of materially incorrect and untrue information in his

insurance producer licensure applications submitted to those states – specifically, his failure to disclose the above referenced FINRA sanction. (HRG. EXS. 8 & 9; testimony of Ms. Biggs at TR. 24-27).

12. Although neither the May 17, 2016 New York final administrative action, nor the July 5, 2016 North Carolina final administrative action were transmitted to the Commissioner within thirty (30) days after the final disposition of those matters, as is required, the Respondent should not be held responsible for these failures, since he uploaded these sanctions to the NAIC Attachments Warehouse in June 2016 (in a timely fashion), and since the NIPR did not transmit said administrative orders to Tennessee, one of the states Respondent was licensed in at the time. (HRG. EXS. 8 & 9; testimony of Ms. Biggs at TR. 24-27).

CONCLUSIONS OF LAW

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

2. TENN. CODE ANN. § 56-6-107(g) provides:

(g) A licensed insurance producer shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty (30) days of the change. Failure to timely inform the commissioner of a change in legal name or address may result in a disciplinary action pursuant to § 56-6-112.

3. TENN. CODE ANN. §§ 56-6-112(a)(1), (e), (f), (g) & (h) provide:

(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 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[.]

....

(e) The commissioner shall retain the authority to enforce this part and impose any penalty or remedy authorized by this part and this title against any person who is under investigation for or charged with a violation of this part or this title, even if the person's license has been surrendered or has lapsed by operation of law.

(f) The commissioner may serve a notice or order in any action arising under this part by registered or certified mail to the insurance producer or applicant at the address of record in the files of the department. Notwithstanding any law to the contrary, service in the manner set forth in this subsection (f) shall be deemed to constitute actual service on the insurance producer or applicant.

(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.

(h) In determining the amount of penalty to assess under this section, the commissioner shall consider:

(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.

4. With respect to Count One of the NOTICE OF HEARING AND CHARGES, the Petitioner has shown by a preponderance of the evidence that the Respondent provided incorrect, incomplete, and materially untrue information to the Division in two (2) separate online initial and renewal applications as set forth above submitted over a two and one-half (2.5) year period between November 2010 and July 2013, by answering no ("N") to all questions on said applications asking whether he had ever been involved in an administrative proceeding regarding any professional license or registration. Respondent realized that he had been a party to a FINRA administrative proceeding relative to his professional securities registration, and that he had been barred by FINRA order, pursuant to the May 2009 FINRA Default Decision entered against him. These two (2) instances of providing incorrect, incomplete, and materially untrue information to the Division by Respondent have violated TENN. CODE ANN. § 56-6-112(a)(1). With respect to Count Two of the NOTICE OF HEARING AND CHARGES, the Petitioner announced at the hearing of this matter that it was not proceeding any longer with allegations that Respondent violated TENN. CODE ANN. § 56-6-119 due to the failure of the Commissioner to timely receive the New York and North Carolina disciplinary actions entered against Respondent.

5. It is determined that the proof adduced at hearing provides adequate grounds for the imposition of a civil penalty against Respondent in the total amount of seven hundred fifty dollars (\$750.00), or three hundred seventy-five dollars (\$375.00) for each of the

Respondent's (2) instances of providing incorrect, incomplete, and materially untrue information to the Division. The Court is cognizant of the fact that a monetary penalty of up to one thousand dollars (\$1,000.00) for each violation could be assessed, but nonetheless finds that a seven hundred fifty dollar (\$750.00) civil penalty amount is consistent with such penalties imposed against Respondent in other states for the same conduct, and is justified by a consideration of the factors enumerated within TENN. CODE ANN. § 56-6-112(h). Further, based on Respondent's current financial circumstances as described to counsel for the Petitioner, Respondent shall have a nine (9) month period in which to pay such civil penalty to the Department, said period to run from the date the INITIAL ORDER in this matter is entered.

JUDGMENT

IT IS, THEREFORE, ORDERED that:

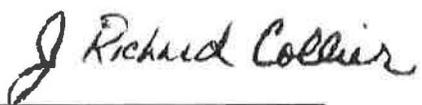
1. The Respondent is **ASSESSED** a civil penalty of seven hundred fifty dollars (\$750.00), or three hundred seventy-five dollars (\$375.00) for each of the Respondent's (2) instances of providing incorrect, incomplete, and materially untrue information to the Division in violation of TENN. CODE ANN. § 56-6-112(a)(1), as described and calculated within numbered paragraph 5 of the above CONCLUSIONS OF LAW.
2. Respondent shall have a nine (9) month period in which to pay such civil penalty to the Department, said period to run from the date this INITIAL ORDER is entered.
3. The Respondent, and any and all persons who may assist him in any of the aforementioned violations of Tenn. CODE Ann. § 56-6-112, **shall CEASE and DESIST** from any such activities.
4. This INITIAL ORDER, imposing sanctions against the Respondent, is entered to protect the public and consumers of insurance products sold by Tennessee licensed insurance producers, consistent with the purposes fairly intended by policy and provisions of the Law.
5. The Petitioner's NOTICE OF HEARING AND CHARGES is amended, pursuant to Tenn. R. Civ. P. 15.02, to conform to the issues tried by implied consent and the evidence introduced at hearing, so as to ensure that the NOTICE OF HEARING

AND CHARGES is consistent with the INITIAL ORDER entered herein and the evidence introduced at the May 30, 2018 hearing.

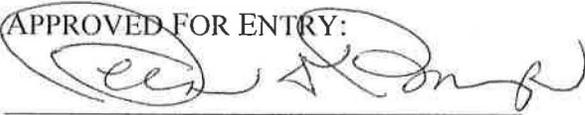
This INITIAL ORDER entered and effective this the 13th day of July, 2018.


SHANNON BARNHILL
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 13th of July 2018.


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

APPROVED FOR ENTRY:


Jesse D. Joseph, BPR# 10509
Assistant General Counsel-Litigation
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500 James Robertson Parkway, 8th Floor
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Certificate of Service

I hereby certify that I have served a copy of the Petitioner's Proposed Initial Order upon the Respondent, by forwarding, via first class mail, a copy of same to Respondent Rashann Bryant, 3028 Montgomery Ln., Modesto, CA 95355, and that I have filed the original of this Proposed Initial Order with the Office of the Secretary of State, Administrative Procedures Division, 8th Floor, Wm. R. Snodgrass Tennessee Tower, Nashville, Tennessee, on this 28 day of June, 2018.


Jesse D. Joseph

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

Attached is the Administrative Judge's decision in your case before the Commissioner of the Tennessee Department of Commerce and Insurance, called an Initial Order, with an entry date of July 13, 2018. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and sets forth the specific reasons why you think the decision is incorrect. The APD must receive your written Petition no later than 15 days after entry of the Initial Order, which is no later than July 30, 2018. A new 15 day period for the filing of an appeal to the Commissioner of the Tennessee Department of Commerce and Insurance (as set forth in paragraph (2) below) 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.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph 2 below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal. Such an Appeal must be received by the APD no later than 15 days after the date of denial of the Petition. *See* TENN. CODE ANN. § 4-5-317 and § 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the Commissioner of the Tennessee Department of Commerce and Insurance. Mail to the APD a document that includes your name and the above APD case number, and states that you want to appeal the decision to the Commissioner of the Tennessee Department of Commerce and Insurance, along with the basis for your appeal. The APD must receive your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than July 30, 2018. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.
3. **The Commissioner of the Tennessee Department of Commerce and Insurance decides to Review the Initial Order:** In addition to a party filing an appeal of the Initial Order, the Commissioner of the Tennessee Department of Commerce and Insurance may, on his or her own motion, review the Initial Order.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the Commissioner of the Tennessee Department of Commerce and Insurance renders a Final Order.

If none of these actions set forth in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order on July 31, 2018. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for a stay must be received by the APD within 7 days of the date of entry of the Initial Order, which is no later than July 20, 2018. *See* TENN. CODE ANN. § 4-5-316.

NOTICE OF APPEAL PROCEDURES

REVIEW OF A FINAL ORDER

1. **A Party may file a Petition for Reconsideration of the Final Order:** When an Initial Order becomes a Final Order, a party may file a Petition asking for reconsideration of the Final Order. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and sets forth the specific reasons why you think the Final Order is incorrect. If the Initial Order became a Final Order without an Appeal being filed, and without the Agency deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Commissioner of the Tennessee Department of Commerce and Insurance rendered a Final Order, the Commissioner of the Tennessee Department of Commerce and Insurance will consider the Petition. The APD must **receive** your written Petition for Reconsideration no later than 15 days after: (a) the issuance of a Final Order by the Commissioner of the Tennessee Department of Commerce and Insurance; or (b) the date the Initial Order becomes a Final Order. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing the Final Order will be adjusted. If no action is taken within 20 days of filing of the Petition, it is deemed denied. *See* TENN. CODE ANN. § 4-5-317.
2. **A Party Files an Appeal of the Final Order:** A person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review “in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person’s discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County,” within 60 days of the date of entry of the Final Order. *See* TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.
3. **A Party may request a stay of the Final Order:** A party may file a Petition asking for a stay that will delay the effectiveness of the Final Order. If the Initial Order became a Final Order without an Appeal being filed, and without the Agency deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Commissioner of the Tennessee Department of Commerce and Insurance rendered a Final Order, the Commissioner of the Tennessee Department of Commerce and Insurance will consider the Petition. A Petition for a stay of a Final Order must be **received** by the APD within 7 days after the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-316.

FILING

To file documents with the Administrative Procedures Division, use this address:

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