

NPN-5933444

TN# 0640097

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

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SECRETARY OF STATE

TENNESSEE INSURANCE DIVISION	)	
Petitioner,	)	
	)	TID No. 13-066
vs.	)	
	)	No. 12.01-121760J
CHARLES E. CUNNINGHAM	)	
Respondent.	)	

FINAL ORDER

On December 30, 2014, Respondent, Charles E. Cunningham, commenced this appeal of the Initial Order entered by Mary M. Collier, Administrative Law Judge within the Department of State, Administrative Procedures Division. The December 18, 2014 Initial Order held that Petitioner, the Tennessee Insurance Division, had proven by a preponderance of the evidence that Respondent misappropriated premium payments, intentionally misrepresented the terms of an actual or proposed insurance contract, engaged in an insurance unfair trade practice, and engaged in dishonest and fraudulent practices, grounds for discipline based on TENN. CODE ANN. §§ 56-6-112(a)(4), (5), (7), (8), 56-6-116, and 56-8-104(1)(A). The Order also held that Respondent's insurance producer license should be revoked and a civil penalty in the amount of \$18,000.00 assessed.

A Scheduling Order entered on March 13, 2015 instructed Respondent to file his brief setting forth the basis of his appeal and the supporting law and argument by April 22, 2015. The Scheduling Order instructed Petitioner to file its brief in response by May 22, 2015. The Scheduling Order specified that Respondent's failure to submit his brief by

that date would result in the dismissal of his appeal and the entry of a Final Order adopting the Initial Order. Respondent filed his brief on April 22, 2015 with the Secretary of State and on April 30, 2015 with the Commissioner of Commerce and Insurance. Petitioner's brief was filed with the Commissioner of Commerce and Insurance on May 20, 2015. As part of its response, Petitioner moved for the dismissal of Respondent's appeal based on the untimeliness of his brief.

Upon careful review of the record in this matter and due consideration of the briefs filed by the parties, the following findings are made:

#### **FINDINGS OF FACT**

1. Respondent's brief was not timely filed with the Commissioner of Commerce and Insurance. Filing the brief with the Secretary of State did not fulfill Respondent's filing obligation as established by the Scheduling Order issued by the Commissioner of Commerce and Insurance.
2. The Findings of Fact, paragraphs 1-13 of the Initial Order, are adopted and an additional Finding of Fact is made:
3. Respondent failed to cite any proper factual or legal basis for his appeal of the Initial Order.

#### **CONCLUSIONS OF LAW**

1. The Conclusions of Law, paragraphs 5-9 of the Initial Order.

**ORDER**

The citizens of Tennessee are entitled to expect and trust in the honesty and law abiding conduct of the individuals authorized to engage in the business of insurance in this state. The acts of Respondent as set forth above require action on the part of the Department of Commerce and Insurance in order to protect the public interest.

It is, therefore, **ORDERED** that Mr. Cunningham's appeal of the Initial Order is **DISMISSED**. The Initial Order entered in this matter on December 18, 2014 is hereby **ADOPTED**.

**IT IS SO ORDERED.**

This 9<sup>th</sup> day of JULY, 2015.

  
\_\_\_\_\_  
Julie Mix McPeak, Commissioner

## **NOTICE OF RECONSIDERATION AND APPEAL PROCEDURES**

Within fifteen (15) days after the Final Order is entered, a party may file a Petition for Reconsideration of the Final Order with the Commissioner of Commerce and Insurance, in which the Petition shall state the specific reasons why the Final Order was in error. If no action is taken by the Commissioner of Commerce and Insurance within twenty (20) days of filing of the Petition for Reconsideration, the Petition is deemed denied. TENN. CODE ANN. § 4-5-317.

A party 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 Davidson County Chancery Court within sixty (60) days after the entry of the 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 for Reconsideration. The filing of a Petition for Reconsideration does not itself act to extend the sixty (60) day period, if the petition is not granted. A reviewing court also may order a stay of the Final Order upon appropriate terms. TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

**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, Department of State, and sent via hand delivery to counsel for the Department of Commerce & Insurance, Stephanie Crenshaw, Esq., and via Certified, Return Receipt Requested and by United States Mail, First Class, Postage Prepaid, to counsel for the Respondent, William E. Griffith, Esq., 1308 Rosa L. Parks Blvd., Nashville, Tennessee 37208 on this 9<sup>th</sup> day of July, 2015.

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

**IN THE MATTER OF:**

**TENNESSEE INSURANCE DIVISION,**  
*Petitioner,*

**v.**

**CHARLES E. CUNNINGHAM,**  
*Respondent.*

**DOCKET NO: 12.01-121760J**

**INITIAL ORDER**

This matter was heard on June 12, 2014,<sup>1</sup> by Administrative Judge Mary M. Collier, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Commerce and Insurance in Nashville, Tennessee. Ms. Lauren V. Dantche, Assistant General Counsel, Department of Commerce and Insurance, represented the Petitioner.<sup>2</sup> The Respondent, Mr. Charles E. Cunningham (“Mr. Cunningham”), participated via telephone, while his counsel, Mr. William E. Griffith, represented Mr. Cunningham in person.

The subject of this hearing was the proposed revocation of Mr. Cunningham’s insurance producer license in Tennessee and a request for civil penalties as appropriate in response to Mr. Cunningham’s alleged violations of TENN. CODE ANN. §§ 56-6-112(a)(4), (5), (7), (8), 56-6-116, and 56-8-104(1)(A). The Tennessee Insurance Law, as amended, TENN. CODE ANN. §§ 56-1-101, *et seq.* (the “Law”), places the responsibility for the administration of the Act on the

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<sup>1</sup> The Transcript from the hearing was filed on July 1, 2014. On July 9, 2014, the Petitioner filed PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW. The Respondent filed PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW on August 1, 2014.

<sup>2</sup> Since the hearing, Stephanie M. Crenshaw was added as counsel via the INSURANCE DIVISION’S NOTICE OF APPEARANCE. filed December 16, 2014.

Commissioner of the Department of Commerce and Insurance (“Commissioner”). The Petitioner, the Tennessee Insurance Division (“TID”), is the lawful agent through which the Commissioner discharges this responsibility. TENN. CODE ANN. §§ 56-1-202 & 56-6-112.

After consideration of the entire RECORD in this matter and the arguments presented by counsel, it is determined that Mr. Cunningham’s insurance producer license is **REVOKED**, and Mr. Cunningham is **ORDERED** to pay **EIGHTEEN THOUSAND (\$18,000) IN CIVIL PENALTIES**. This decision is based upon the following.

### SUMMARY OF THE EVIDENCE

One witness testified at the hearing on behalf of TID: Kerry Eugene Rickard, Fraud Investigator with TID. Fifteen exhibits were entered into evidence: EXHIBIT 1, Affidavit of Kimberly Briggs; EXHIBIT 2, Affidavit of Charles Michael Outland; EXHIBIT 3, Affidavit of Marguerite Fredette; COLLECTIVE EXHIBIT 4, Regions Bank Records for an account held by Mr. Cunningham d/b/a/ Cunningham Insurance LLC; EXHIBIT 5, Travelers Insurance Company’s Internal Investigation of Mr. Cunningham; EXHIBIT 6, Order Closing an Investigation for Mr. Cunningham and Cunningham Insurance Agency by TID in June 2006; EXHIBIT 7, Complaint, Default Judgment, and Judgment from the Circuit Court of Davidson County Re: *Letan Colin d/b/a Colin Construction v. Charles Cunningham d/b/a Cunningham Insurance* (Case No. 11C-97); COLLECTIVE EXHIBIT 8, documents relating to a complaint filed by Everett C. Barnes with the Consumer Insurance Services Section of the Tennessee Department of Commerce and Insurance (“Consumer Services”); COLLECTIVE EXHIBIT 9, documents relating to a complaint filed by William A. Bruster with Consumer Services; EXHIBIT 10, Inquisitorial Order issued on May 30, 2014 by the Tennessee Department of Commerce and Insurance; EXHIBIT 11, Affidavit of Kelvin Arauz; EXHIBIT 12, Affidavit of Martha Arauz; EXHIBIT 13, Affidavit of Heidi Drury; EXHIBIT 14, letter from Selective Insurance Company of America, dated June 2, 2014; EXHIBIT

15, letter from Plaza Insurance Company, dated June 6, 2014.

### FINDINGS OF FACT

1. The Respondent is a citizen and resident of the State of Tennessee, whose address of record is 3708 Nolensville Road, Suite A, Nashville, Tennessee 37211.

2. At all times relevant to the events herein, Respondent was licensed by the TID to sell insurance in this state as an insurance producer, having obtained resident insurance producer license number 0640097, on December 30, 1982. The Respondent's license is currently in active status, and scheduled to expire on June 30, 2016.

3. On July 30, 2010, TID received a complaint from alleged victims that Mr. Cunningham had misappropriated insurance premiums and failed to either purchase or remit payments from the insurance policies for which Cunningham had been contracted. Pursuant to this complaint, TID initiated a formal investigation, numbered 10-049, on November 8, 2010.

4. The victims were Charles Michael Outland and Rodney Moore, former co-owners of ABC Services ("ABC"), a janitorial service that had conducted insurance business with Mr. Cunningham for several years prior to the incident at issue in this proceeding.

5. On December 22, 2009, Mr. Moore issued a check to Mr. Cunningham made payable to Travelers Insurance ("Travelers") in the amount of \$4,617 for a worker's compensation and general liability insurance policy ("Transaction 1"). The check was directly deposited into Cunningham Insurance LLC's operating account. Mr. Cunningham never remitted the money to Travelers. Mr. Cunningham never submitted an application for a policy with Travelers in relation to the check issued for \$4,617 by Moore. A policy was never requested from, nor issued by, Travelers.

6. On December 29, 2009, Mr. Moore issued a check to Mr. Cunningham made payable to Travelers in the amount of \$10,744 for general liability and workmen's compensation

policies for ABC ("Transaction 2"). These policies were issued by Travelers, but were subsequently canceled on February 10, 2010, for nonpayment of premiums. The check Mr. Moore had written for the policies was deposited directly into Mr. Cunningham's operating account. Travelers never received the payment, which led to the policies being canceled and the unpaid balance being referred to collections.

7. Mr. Outland was unaware of the policies being canceled until RMS Collections Services ("RMS") contacted him in July, 2010. RMS notified Mr. Outland that the policies he had purchased from Travelers through Mr. Cunningham were canceled on February 10, 2010, for nonpayment of premiums. It was later discovered that Mr. Cunningham provided Travelers with his office address; therefore, Mr. Outland never received any correspondence from Travelers.

8. Mr. Outland immediately contacted Travelers about the status of the Transaction 2 policies he purchased. Travelers informed Mr. Outland that it had received the paperwork requesting purchase of the policies from Mr. Cunningham's Insurance Agency, but never received a premium payment. Travelers confirmed that the nonpayment was the reason the policies had been turned over to RMS. Travelers also explained to Mr. Outland that the policies' premiums totaled \$6,619. Travelers could not explain why Mr. Cunningham had collected \$10,744 for the policies.

9. After speaking with Travelers, Mr. Outland went to speak with Mr. Cunningham at his office to question him about the policies related to Transaction 2. Mr. Cunningham presented Mr. Outland with a declarations page, allegedly proving the legitimacy of the policies; however, the declarations page listed effective dates that were in the future (March 5, 2011—March 5, 2012). Mr. Cunningham told Mr. Outland that the dates were a clerical error. Mr. Outland expressed his wish to cancel the policies, and Mr. Cunningham told him that he would refund Mr. Outland the money within two weeks. ABC or Mr. Outland never received the

refund.

10. In September 2010, Travelers initiated an internal investigation regarding Transaction 2. It concluded that Mr. Cunningham collected premiums from ABC in excess of what was due, and never remitted the payments to Travelers. ABC provided Travelers with proof of payment, and in response, Travelers reinstated the canceled policies for the amount of \$6,619. Travelers also reimbursed ABC \$4,125 which was the amount ABC had been charged by Mr. Cunningham in excess of the premiums due.

11. Travelers demanded that Mr. Cunningham refund the company for the premiums it reimbursed to ABC related to Transaction 2. On August 9, 2010, Mr. Cunningham issued a check to Travelers for \$9,581 to cover the price of the policies and the refund for excess charges. On August 18, 2010, the check was returned to Travelers stamped nonsufficient funds. Travelers consequently terminated Mr. Cunningham's appointment with Travelers on September 29, 2010, for failure to cooperate with the company's internal investigation audit, and for failure to reimburse Travelers.

13. At the end of the case-in-chief, TID offered proof of additional wrongdoings committed by Mr. Cunningham to be considered only when calculating penalties, if any. The following factual findings relate to that proof:

A. Mr. Kelvin Arauz is the owner of Drywall Nashville Company. Mr. Arauz purchased an insurance policy through Mr. Cunningham in November, 2013, for his company. He paid Mr. Cunningham the initial premium and continued to make payments on the policy to Mr. Cunningham until May, 2014.

B. Mr. Cunningham gave Mr. Arauz an Acord Certificate of Liability of Insurance, which stated that Drywall Nashville Company had a commercial general liability insurance policy, policy number JAWAW4532, with Mesa Underwriters

Specialty Insurance Company, and employers' liability insurance policy through Plaza Insurance Company, policy number NC-TN-000736 BIN.

C. Martha Arauz, Mr. Arauz's wife, witnessed Mr. Arauz pay Mr. Cunningham. In addition, she had paid Mr. Cunningham for the insurance, on numerous occasions.

D. Ms. Heidi Drury is a subcontractor who was employed by Drywall Nashville Company. The Certificate of Insurance Mr. Arauz gave her did not list Drywall Systems Corporation as the certificate holder or additional insured.

E. Ms. Drury attempted to contact Mr. Cunningham several times, but he never answered. Ms. Drury left her information for him in voicemails, but the calls were not returned.

F. Drywall Nashville Company applied for a payment on May 30, 2014, and after that payment, Ms. Drury again attempted to contact Mr. Cunningham, but the attempts again failed.

G. Ms. Drury went to the State's worker's compensation verification website, and the site did not list Drywall Nashville Company as having a worker's compensation policy. Ms. Drury examined the Certificate of Insurance that Mr. Cunningham had provided to Mr. Arauz, and she noticed that that policy numbers were not typical. She contacted both insurers, and they both informed her that the policy numbers were not consistent with their policy numbers, the numbers were not consistent with their quote numbers, and that Mr. Cunningham's insurance agency was not listed as one of their agents.

H. On June 2, 2014, Mr. Cunningham called Ms. Drury around 10:00 a.m. to tell her that he had straightened out the problem with Drywall Nashville Company's

insurance, and that he would send her an updated Certificate of Insurance that day. As of the time of the affidavit taken that same day at 3:00 p.m., Mr. Drury had not heard back from Mr. Cunningham.

### CONCLUSIONS OF LAW

1. Pursuant to TENN. COMP. R. & REGS. 1700-03-02-.02(9), in a contested proceeding, TID as the moving party has the burden of establishing its allegations by a preponderance of the evidence presented.

2. TENN. CODE ANN. § 56-6-112(a)(4) 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 § 56-2-305 or take any combination of those actions, for any one (1) or more of the following causes: . . . (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business[.]”

3. Mr. Cunningham argued that TID failed to meet its burden because it did not offer any evidence that the premiums Mr. Cunningham collected from ABC were kept for personal use by Mr. Cunningham. However, TENN. CODE ANN. § 56-6-112(a)(4) does not require the State to prove that the funds were misappropriated for personal use, but rather, just that the funds were misappropriated. TID met its burden when it showed that Mr. Cunningham took money from ABC, deposited into his business’s account, and failed to use it appropriately to purchase insurance policies, even after being informed of the error.

4. Further, Mr. Cunningham argued that it is possible that Travelers simply failed to “sweep” the payments out of Mr. Cunningham’s account, and thus Mr. Cunningham did not misappropriate the funds. Again, TID submitted compelling evidence that Travelers had thoroughly investigated the matter, and Travelers gave Mr. Cunningham ample time to remedy any mistake that may have occurred. Mr. Cunningham failed to remit the payment even after the

extra time given, and the check he did send Travelers could not be cashed due to insufficient funds in the account.

5. It is **CONCLUDED** that Mr. Cunningham improperly withheld, misappropriated, and converted moneys received in the course of doing insurance business. TID has shown by a preponderance of the evidence that Mr. Cunningham misappropriated checks issued to Travelers on two occasions for the purchase of general liability and worker's compensation policies in the amount of \$4,617 and \$10,774. The misappropriation of these checks provides sufficient grounds under TENN. CODE ANN. § 56-6-112(a)(4) for the revocation of Mr. Cunningham's insurance producer license (License # 0640097) and the imposition of monetary civil penalties.

6. TENN. CODE ANN. § 56-6-112(a)(5) 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 § 56-2-305 or take any combination of those actions, for any one (1) or more of the following causes: . . . (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance[.]"

7. Mr. Cunningham argued that TID failed to meet its burden in showing that his actions resulted in the intentional misrepresentation of terms of an actual or proposed insurance contract. This argument is without merit. The evidence submitted by TID shows that Mr. Cunningham issued certificates of insurance related to the Transaction 2 premium payments that had incorrect dates. Mr. Cunningham argued that this was a clerical error and not intentional, but the certificates were issued by Mr. Cunningham two months after the policies had been cancelled for nonpayment of premiums. The notifications from Travelers about the overdue payment and subsequent cancellation were being sent directly to Mr. Cunningham. Further, Mr. Cunningham had the Transaction 2 funds in his account for almost four months, and even a cursory level of due diligence in monitoring his business accounts would have made him aware

the premiums had not been paid. Finally, even when Mr. Cunningham was told directly by ABC that the policies were invalid and demanded a refund, Mr. Cunningham again failed to remit the payment after promising to do so. Taken as a whole, TID has proven it is more likely than not that Mr. Cunningham intentionally misrepresented the validity of the policies ABC sought to purchase.

8. It is **CONCLUDED** that Mr. Cunningham intentionally misrepresented that policies were purchased for ABC, and premiums paid in full, which were either never purchased or canceled shortly after requested due to nonpayment. After the cancelled or non-existent policies were discovered by ABC, Mr. Cunningham continued to intentionally misrepresent that the Transaction 2 policies were in effect, when they had actually been canceled, by showing Mr. Outland a fraudulent declarations page with incorrect coverage dates of March 5, 2011, to March 5, 2012. These misrepresentations are in violation of TENN. CODE ANN. § 56-6-112(a)(5), providing grounds for the revocation of Mr. Cunningham's insurance producer license (License # 0640097) and the imposition of monetary civil penalties.

9. TENN. CODE ANN. § 56-6-112(a)(7) 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 § 56-2-305 or take any combination of those actions, for any one (1) or more of the following causes: . . . (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud[.]"

10. TENN. CODE ANN. § 56-8-104(1)(A) provides that:

The following practices are defined as unfair trade practices in the business of insurance by any person:

...  
(1) Misrepresentations and False Advertising of Insurance Policies. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement, sales presentation, omission or comparison that:

(A) Misrepresents the benefits, advantages, conditions or terms of any policy;

11. It is **CONCLUDED** that Mr. Cunningham engaged in an insurance unfair trade practice. TID has shown by a preponderance of the evidence that Mr. Cunningham, in relation to Transaction 2, intentionally issued a statement that misrepresented the terms of a policy, when he led ABC to believe it had valid and paid-for general liability and worker's compensation policies when it did not because of Mr. Cunningham's misappropriation of the premiums paid in violation of TENN. CODE ANN. §§ 56-8-104(1)(A) and 56-6-112(a)(7). This violation provides sufficient grounds under TENN. CODE ANN. § 56-6-112(a)(7) for the revocation of Mr. Cunningham's insurance producer license (License # 0640097) and the imposition of monetary civil penalties.

12. TENN. CODE ANN. § 56-6-112(a)(8), provides that:

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 § 56-2-305 or take any combination of those actions, for any one (1) or more of the following causes: . . . (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[].

13. It is **CONCLUDED** that Mr. Cunningham engaged in dishonest and fraudulent practices when he misappropriated premiums on two occasions for the amounts of \$4,617 and \$10,744 paid by ABC to secure insurance policies with Travelers. In addition, Mr. Cunningham demonstrated dishonest practices when he put ABC at risk by preventing the company from knowing about the canceled policies by intercepting all account notifications from Travelers to ABC. Mr. Cunningham also demonstrated fraudulent and dishonest behavior when he was confronted by Mr. Outland about the canceled policies and misappropriated premiums from

Transaction 2, to which Mr. Cunningham responded by presenting a fraudulent declarations page claiming the incorrect dates were clerical errors. All of these actions are in violation of TENN. CODE ANN. § 56-6-112(a)(8), providing grounds for the revocation of Mr. Cunningham's insurance producer license (License # 0640097) and the imposition of monetary civil penalties.

14. TENN. CODE ANN. § 56-6-116 states:

Any money that an insurance producer receives for soliciting, negotiating or selling insurance shall be held in a fiduciary capacity, and shall not be misappropriated, converted or improperly withheld. Any violation of this section shall be considered grounds for the denial, suspension, or revocation of the insurance producer's license and shall subject the insurance producer to the sanctions and penalties set forth under § 56-6-112.

15. It is **CONCLUDED** that Mr. Cunningham misappropriated funds on two occasions, in the amounts of \$4,617 and \$10,744, from his client, ABC, acting in the capacity of an insurance producer. These actions are violations of in Mr. Cunningham's fiduciary duties to ABC. These violations provide grounds for the revocation of Mr. Cunningham's insurance producer license (License # 0640097) and the imposition of monetary civil penalties.

16. It is **CONCLUDED** that the Commissioner may revoke Mr. Cunningham's insurance producer license (License # 0640097) for his unlawful misrepresentation of the validity of ABC's policies when the policies were, in fact, canceled, which constitutes conduct in violation of TENN. CODE ANN. § 56-8-104(1)(A). As a result, Mr. Cunningham's insurance producer license is hereby **REVOKED**.

17. It is **CONCLUDED** that the Commissioner may revoke Mr. Cunningham's insurance producer license (License # 0640097) for his unlawful conduct in violations of TENN. CODE ANN. §§ 56-6-112(a)(4), 56-6-112(a)(5), 56-6-112(a)(7), and 56-6-112(8). TID has shown by a preponderance of the evidence that Mr. Cunningham misappropriated checks from ABC on two occasions. As a result, the client's policies were canceled, but Mr. Cunningham continued

to represent that the policies were valid. After being confronted with the discrepancy, Mr. Cunningham failed to reimburse Travelers for the funds it reimbursed to ABC. As a result, Mr. Cunningham's insurance producer license is also **REVOKED** for that reason.

18. TENN. CODE ANN. § 56-2-305(a)(2) provides that:

If . . . the commissioner finds that any insurer, person, or entity required to be licensed, permitted, or authorized by the division of insurance has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order: . . . (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), unless the insurer, person, or entity knowingly violates a statute, rule or order, in which case the penalty shall not be more than twenty-five thousand dollars (\$25,000) for each violation, not to exceed an aggregate penalty of two hundred fifty thousand dollars (\$250,000). . . . For purposes of this subdivision (a)(2), each day of continued violation shall constitute a separate violation[].

19. It is **CONCLUDED** that the Commissioner may order payment of civil penalties for six violations of the Insurance Law. Mr. Cunningham's unlawful misappropriations of the premiums paid by ABC on two occasions constitute two violations. Moreover, Mr. Cunningham's intentional misrepresentation that the policies ABC attempted to purchase in Transaction 2 were valid constitutes one violation. In addition, Mr. Cunningham's intentional misrepresentation of the validity of the Transaction 2 policies through a fraudulent declaration page constitutes one violation. Finally, Mr. Cunningham's dishonest and fraudulent actions regarding ABC's policies and premium payments from Transaction 1 and Transaction 2 constitute two violations. This constitutes a total of six violations. TID established that Mr. Cunningham engaged in misconduct requisite for the imposition of civil penalties for these six violations. TENN. CODE ANN. § 56-2-305 provides that civil penalties shall not exceed \$1,000 for each violation, limited to an aggregate penalty of \$100,000; however, if the individual knowingly violates a statute, penalties can be assessed between \$1,000 and \$25,000, for each violation, not

to exceed \$250,000. Because of Mr. Cunningham's pattern of intentional behavior, it is determined that \$3,000 in civil penalties per violation is appropriate under TENN. CODE ANN. § 56-2-305(a)(2). Accordingly, for the six violations herein, the imposition of \$3,000 in civil penalties per violation for a total of **EIGHTEEN THOUSAND DOLLARS (\$18,000) IN CIVIL PENALTIES IS ORDERED** pursuant to TENN. CODE ANN. § 56-2-305(a)(2).

The policy reasons for this decision are to protect the welfare of the citizens of the State of Tennessee, and to uphold the laws of the State of Tennessee.

It is **ORDERED** that Mr. Cunningham's insurance producer license (License # 0640097) is hereby **REVOKED**, and six civil penalties for a total of **\$18,000** are **ASSESSED**.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this 18<sup>TH</sup> day of DEC. 2014.



MARY M. COLLIER  
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 18<sup>TH</sup> day of DECEMBER 2014.



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, 8<sup>th</sup> 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.