

TN ID 1006289
NPN 11742736

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DEPT OF COMMERCE AND INSURANCE
LEGAL OFFICE

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

IN THE MATTER OF:

APRIL DAVIS

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TID Order No. 14-059

CONSENT ORDER

The Insurance Division, of the Tennessee Department of Commerce and Insurance ("Division"), by and through counsel, and April Davis ("Davis") hereby stipulate and agree, subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"), as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

2. This Consent Order is executed by Davis for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Davis fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner for acts and/or omissions not specifically addressed in this Consent Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Davis fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for violations of Title 56 of the Tennessee Code Annotated addressed specifically in this Consent Order, against Davis for violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which arise as a result of the execution of this Consent Order by Davis.

5. Davis expressly waives all further procedural steps, and expressly waives rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

AUTHORITY AND JURISDICTION

6. The Commissioner has jurisdiction over this matter pursuant to the Tennessee Insurance Law ("Law"), Title 56 of the Tennessee Code Annotated, specifically Tenn. Code Ann. §§ 56-1-101, 56-1-202, 56-2-305 and 56-6-112. The Law places on the Commissioner the responsibility of the administration of its provisions.

PARTIES

7. The Division is the lawful agent through which the Commissioner administers the Law and is authorized to bring this action for the protection of the public.

8. Davis is a citizen and resident of the State of Tennessee. Davis' address of record on file with the Division is 247 Springfield Road, Brownsville, Tennessee 38012. Davis obtained her resident insurance producer license number 1006289, on or about September 25, 2008. Davis allowed her insurance producer license to expire on February 28, 2014, and it is currently on inactive status.

FINDINGS OF FACT

9. American General Life and Accident Insurance Company ("AGLA") supplied the Division with documentation evidencing that Davis failed to remit to AGLA One Thousand Twelve Dollars and Eighty-Nine Cents (\$1,012.89) in cash premiums she had collected from AGLA clients on four (4) separate work days in October 2011.

10. On or about October 11, 2011, Davis submitted a resignation letter with Robert Gilliland ("Gilliland"), service manager for AGLA, stating that due to personal issues she was resigning from AGLA effective October 20, 2011.

11. Following Davis' resignation from AGLA, Gilliland received calls from three (3) different policyholders that had conducted business with AGLA through Davis. Each policyholder alleged that they had received policy cancellation notices in October 2011, for nonpayment of premiums. Each policyholder alleged that they had made September payments

for their policies to Davis in cash, collectively totaling Two Hundred Eleven Dollars and Twenty Cents (\$211.20) that were not remitted to AGLA.

12. In addition, these three (3) policyholders allege that Davis had come out to their homes without her AGLA computer and collected cash premiums from them following her October 20, 2011, resignation date.

13. On or about December 20, 2012, Davis made a payment of Nine Hundred Twenty-Five Dollars (\$925.00) to AGLA as reimbursement for the premiums that had not been deposited back in October 2011. On or about January 14, 2013, Davis made a final payment of Two Hundred Ninety-Nine Dollars and Nine Cents (\$299.09) completing full reimbursement to AGLA for the premiums she failed to remit.

14. On or about April 16, 2013, the Division received a second complaint against Davis, this time from Combined Insurance Company of America ("Combined"), informing the Division that Davis' employment had been terminated for cause due to fraud, and to provide the Division with the company's investigative file in support of their allegations.

15. The investigation submitted by Combined alleged that Davis submitted applications for fraudulent policies for various individuals, including relatives, who had not applied for such policies in order to collect commissions with no intention of maintaining the policies.

16. Combined's investigative report found that Davis submitted a total of thirty-eight (38) fraudulent policies with the company that she had no intention of maintaining from August 20, 2012 through February 11, 2013. The policies were initially paid for in various forms, such as debit cards from Davis' or her relatives' accounts and checks from Davis' personal account,

most of which did not clear the bank. In addition, all recurring monthly payments set up with various accounts connected to either Davis, a relative, or an acquaintance, came back as either "non-sufficient funds" or "account closed."

17. Despite the fraudulent nature of these policies, Davis collected commissions from Combined for their sale. In total, Davis accrued Eight Thousand Three Hundred Seventy-Three Dollars and Nine Cents (\$8,373.09) in commissions related to the fraudulent policies. Combined was able to recover Three Thousand Nine Hundred Eight Dollars and Forty-Five Cents (\$3,908.45) of the commissions, leaving a total of Four Thousand Four Hundred Sixty-One Dollars and Sixty-Four Cents (\$4,461.64) paid to Davis that was unearned and currently owing to Combined.

CONCLUSIONS OF LAW

18. Tenn. Code Ann. § 56-6-112(a) provides that "[t]he commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license issued under this part and/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:

- (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;
.....
- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere [.]

19. Based upon the Findings of Fact stated above and the Conclusions of Law contained herein, the Commissioner considers the actions of Davis to be in violation of Tenn. Code Ann. §§ 56-6-112(a)(4), (5) and (8) for mismanaging funds while employed with AGLA, submitting fraudulent applications, and collecting unearned commissions as a Combined employee. Such facts provide grounds for the revocation of Davis' insurance producer license, number 1006289, and the imposition of a Two Thousand Five Hundred Dollar (\$2,500) civil penalty for violation in accordance with Tenn. Code Ann. §§ 56-6-112(a) and (g).

20. In order to avoid any further expenses or costs associated with litigating this matter in any administrative or judicial proceedings, Davis hereby acknowledges the Commissioner's authority to administer the statutes cited herein, concedes that the Commissioner's interpretation of the statutes cited in the Conclusions of Law are reasonable and enforceable, and agrees to the entry of this Consent Order including each of the sanctions ordered by the Commissioner.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and Davis' waiver of the right to a hearing and appeal under the Law and the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 to 4-5-404 (2011), and Davis' admission of jurisdiction of the Commissioner, the Commissioner finds that Davis, for the purpose of settling this matter admits to the Conclusions of Law, agrees to the entry of this Order and agrees that this Order is in the public interest, necessary for the protection of consumers and consistent with the purposes fairly intended by the policy and provisions of the Law.

IT IS ORDERED, pursuant to Tenn. Code Ann. §§ 56-6-112(a) and (g), that:

1. Insurance Producer License, number 1006289, issued to Davis, is hereby **REVOKED**, beginning immediately upon final execution of this agreement.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 56-6-112(g), that Davis:

1. Pay **CIVIL PENALTIES** in the amount of Two Thousand Five Hundred Dollars (\$2,500) within twelve (12) months of the final execution of this Order. Payment shall be mailed to:

State of Tennessee
Department of Commerce and Insurance
Legal Office, Attn: Stephanie Crenshaw
Davy Crockett Tower, 8th Floor
500 James Robertson Parkway
Nashville, Tennessee 37243

2. In addition, it is further **ORDERED** that all persons in any way assisting, aiding, or helping Davis in any of the aforementioned violations of Tenn. Code Ann. § 56-6-112 shall **CEASE AND DESIST** from all such activities in violation of the Law.

IT IS ORDERED, pursuant to Davis' agreement, that:

1. Davis pay full restitution in the amount of Four Thousand Four Hundred Sixty-One Dollars and Sixty-Four Cents (\$4,461.64) to Combined Insurance Company of America within twelve (12) months of the final execution of this Order.

IT IS ORDERED that this Consent Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Commissioner against Davis for violations of Tenn. Code Ann. § 56-6-112 alleged by the Division to have occurred with respect to the transactions involving the facts contained herein.

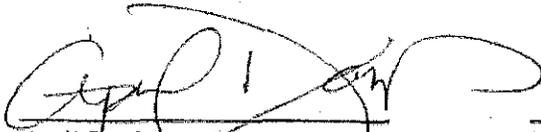
This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties, and is for settlement purposes only. By the signatures affixed below, Davis affirmatively states she has freely agreed to the entry of this Consent Order, that she waives the right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made to her by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of the settlement as set forth in this Consent Order, are binding upon them.

ENTERED this 16th day of December, 2014.

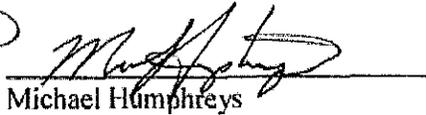


Julie Mix McPeak, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:



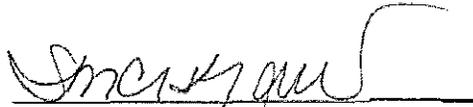
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