

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

TENNESSEE INSURANCE DIVISION
Petitioner

V.

DEBORAH E. HURD
Respondent

DOCKET NO: 12.01-132443J

NOTICE OF DEFAULT AND INITIAL ORDER

This matter came to be heard on December 3, 2015, before Leonard Pogue, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”). Stephanie Crenshaw, Assistant General Counsel, Department of Commerce and Insurance, Office of Legal Counsel, represented the State. The Respondent, Deborah E. Hurd, was not present at the hearing, nor did an attorney appear on her behalf.

The subject of this hearing was a Notice of Hearing and Charges filed by the Tennessee Insurance Division against the Respondent to determine whether the Commissioner should take disciplinary action against the Respondent for alleged violations of TENN. CODE ANN. § 56-6-101, *et seq.* and/or any rule or regulation promulgated by the Commissioner.

After consideration of the argument of counsel and the record in this matter, it is the determination of this Administrative Judge that Respondent’s license should be revoked and Respondent should pay to the Commissioner of the Tennessee Department of Commerce and

Insurance a civil penalty in the amount of two thousand dollars (\$2,000.00). This decision is based upon the following Findings of Fact and Conclusions of Law.

ORDER OF DEFAULT

The State moved that a default be entered against Respondent for failure to participate in the hearing after due notice. The State introduced proof that service, by certified mail, at Respondent's address of record of the Notice of Hearing and Charges was made on August 12, 2015. It appearing that proper notice was sent to Respondent and that Respondent knew of the hearing date, and that Respondent failed to appear at the hearing, the State's Motion for Default is well taken and is hereby **GRANTED** pursuant to TENN. CODE ANN. § 4-5-309(a). *See also* RULE 1360-4-1-.15(1) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, TENN. COMP. R. & REGS. Ch. 1360-4-1 (June 2004 (Revised)).

FINDINGS OF FACT

1. The Division is the lawful agent through which the Commissioner administers the Tennessee Insurance Law and is authorized to bring this action.
2. Respondent is a licensee of the Division, having been granted Insurance Producer license number 0807815, which became active on or about April 6, 1999 and expired on February 28, 2015.
3. In November, 2013 the Department was notified by American General Life Insurance Company ("AGLA") that Respondent had misappropriated premiums she had collected. On November 1, 2013, Respondent was terminated by AGLA for misconduct.
4. Earlier in 2013, a number of policyholders had received notices from AGLA stating that their premium payments were late but the policyholders had paid their premiums to Respondent. Respondent refused to explain the discrepancies to her supervisor.

5. Kerry Rickard, an insurance fraud investigator with the Department, began an investigation. Mr. Rickard attempted to interview Respondent but she refused to talk to him. Mr. Rickard contacted several policyholders who confirmed payments to Respondent for the time periods shown by AGLA as the policyholders' premiums being deficient.
6. The proof did not establish an exact amount of funds misappropriated by Respondent.

CONCLUSIONS OF LAW

1. TENN. CODE ANN. § 56-6-112(a) provides that the Commissioner may place on probation, suspend, revoke or refuse to issue or renew a license and/or may levy a civil penalty for any one or more of the following violations:

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business.

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

2. TENN. CODE ANN. § 56-6-112 further provides, in part, as follows:

(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.

. . . .

(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.

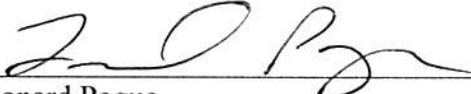
3. The State has proven by a preponderance of the evidence that Respondent used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in violation of TENN. CODE ANN. § 56-6-112(a)(8), as well as, improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business in violation of TENN. CODE ANN. § 56-6-112(a)(4).

JUDGMENT

WHEREFORE, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

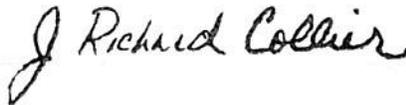
1. Respondent's insurance producer license number 0807815 is hereby **REVOKED**.
2. Respondent is hereby **ASSESSED** and shall pay a civil penalty in the amount of **\$2,000.00** for the violations found herein.

This Initial Order entered this 9th day of December, 2015.



Leonard Pogue
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State
this 9th day of December, 2015.



J. Richard Collier, Director
Administrative Procedures Division

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.