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RE: In the Matter of: Johnny Jackson

Docket No. 12.01-130904J

Enclosed is an order rendered in the above-styled cause of action.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

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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:

**TENNESSEE INSURANCE DIVISION,
Petitioner,**

v.

**JOHNNY R. JACKSON,
Respondent.**

**DOCKET NO: 12.01-130904J
TID NO: 14-199**

ORDER ON REMAND

An Initial Order was issued in this matter on October 26, 2016. By order issued June 1, 2018, the Davidson County Chancery Court remanded this case to the undersigned “to reconsider the calculation of the civil penalty amount against [Respondent] Jackson and promulgate an amended decision on the civil penalty amount that considers and applies the seven (7) factors identified in Tennessee Code Annotated § 56-6-112(h).” The Chancery Court affirmed all other findings, conclusions, and rulings contained in the Initial Order “including, without limitation, the Cease and Desist Order issued against Jackson and the conclusions that (1) Jackson violated Tenn. Code Ann. §§ 56-6-112(a)(2) and 56-6-103 by selling, soliciting and/or negotiating insurance in the State of Tennessee without a license, (2) Jackson violated Tenn. Code Ann. § 56-6-112(a)(8) by engaging in fraudulent and dishonest acts while conducting insurance business in Tennessee reflecting incompetence, untrustworthiness, and financial irresponsibility, and (3) the assessment of civil penalties against Jackson is justified pursuant to TENN. CODE ANN. § 56-6-112 as a result of Jackson’s misconduct.” The Chancery Court provided that “the record, as it now exists, is the

record upon which that amended decision should be made.” The June 1, 2018, Chancery Court order was filed with the Administrative Procedures Division on February 12, 2019.

Pursuant to the direction of the Chancery Court, after review of the record of the proceedings before the Administrative Procedures Division, it is determined that the factors in TENN. CODE ANN. § 56-6-112(h) overwhelmingly support an award of civil penalties in the amount of \$44,400.00 against Jackson.

TENN. CODE ANN. § 56-6-112(h) provides:

(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.

Under the first factor – whether Jackson could reasonably have interpreted his actions to be in compliance with the obligations required by statute, rule, or order – it is undisputed that Jackson knew his insurance producer license was revoked as of October 26, 1999, the day he signed a consent order agreeing to its revocation. Yet, he knowingly advised Mr. and Ms. Price regarding purchasing insurance when he met with them on November 25, 2013. At this meeting Jackson gave his opinion regarding the Prices’ current insurance, at a time he was not licensed and had the Prices sign blank insurance contracts. Further, when the Prices discovered that their previous policy had not been cancelled, Jackson did not immediately rectify the situation, causing the Prices to pay premiums on two redundant insurance policies for a total of 74 days – from the

date the policies were sold to them on November 25, 2013, to the date the premiums were refunded to them on February 7, 2014. Given these circumstances, it is inconceivable that Jackson could reasonably have interpreted his actions to be in compliance with the obligations of the statutes, rules, and orders. Thus, the first factor weighs overwhelmingly in favor of imposing a substantial civil penalty.

Pursuant to the second factor, it is quite possible that a civil penalty of \$44,400.00 is not high enough to act as “substantial economic deterrent” to Jackson, given that he continued in the insurance business after his license was revoked in 1999, until the hearing on May 9, 2016. However, the Department did not prove violations of the Tennessee Insurance Act except as to his conduct in relation to Mr. and Ms. Price. The Department did prove that Jackson knowingly violated TENN. CODE ANN. § 56-6-112(a)(2) and (8) by selling, soliciting, or negotiating insurance at a time when his license was revoked and that due to his fraudulent and dishonest conduct, the Prices paid for two duplicative insurance policies for 74 days. A civil penalty of \$300 per day for each of two violations for the 74 days the Prices paid for duplicative policies as a result of these two violations, is determined to be at least a sufficient economic deterrent.

The circumstances leading to the violation (the third factor) weigh overwhelmingly in favor of this civil penalty. Jackson knowingly continued to sell insurance at a time when his insurance license had been revoked by a consent order. His testimony at the hearing that he did not engage in activities that are restricted to licensed insurance agents is not credible. Thus, this factor strongly supports a civil penalty.

Fourth, the severity of the violation and the risk of harm to the public are significant. The Price were indisputably harmed by having to pay for two duplicative policies for 74 days. Allowing Jackson to continue to operate with impunity would put other members of the public at

risk of harm by his unlawful, unscrupulous, fraudulent and dishonest practices. Accordingly, the civil penalty imposed by this order is fully justified under the fourth factor.

As to the fifth factor, the record is unclear as to the economic benefit gained by Jackson as a result of his violation of the Tennessee Insurance Act. While there presumably was some economic benefit to him, no amount was proven by the Department. Therefore, this factor does not weigh for or against a civil penalty.

Similar to factor four, the sixth factor – the interest of the public – is overwhelmingly supported by the imposition of this civil penalty. The Prices were directly harmed by Jackson's violations of the Tennessee Insurance Act. A civil penalty significant enough to deter him from future violations is without doubt in the public interest.

Finally, under the seventh factor, Jackson's efforts to cure the violation were dilatory and unsuccessful. Ms. Price made multiple telephone calls to Jackson's office in an attempt to have him rectify the fact that premiums for two duplicative policies were being deducted from the Prices' bank account. She was told multiple times that he was out of the office or in a meeting. When she finally spoke to him, he said he would get it straightened out. However, he did not and it took Ms. Price calling the insurance company directly for her to be refunded the premiums she was due. Thus, this factor again overwhelmingly supports the imposition of this civil penalty. Accordingly, a civil penalty of \$44,400.00 is fully justified under the factors of TENN. CODE ANN. § 56-6-112(h).

JUDGMENT

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

1. The Respondent Johnny R. Jackson is **ASSESSED a civil penalty in the amount of \$44,400.00**, for which execution shall issue if necessary, computed as follows:

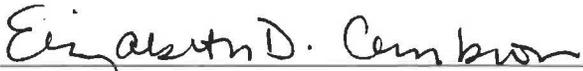
- a. **\$300.00 dollars per day** for each of the 74 days from November 25, 2013, to February 7, 2014, for violation of TENN. CODE ANN. § 56-6-112(a)(2);
- b. **\$300.00 dollars per day** for each of the 74 days from November 25, 2013, to February 7, 2014, for violation of TENN. CODE ANN. § 56-6-112(a)(8).

2. The Respondent is **ASSESSED half of the court reporter costs** incurred in this matter, for which execution may issue if necessary.

3. The Respondent shall pay said civil penalty and costs to the Department of Commerce and Insurance with one (1) year of the effective date of this Initial Order.

It is so ORDERED.

Entered and effective this the 2ND day of MAY 2019.


ELIZABETH D. CAMBRON
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 2ND day of MAY 2019.


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