

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

IN THE MATTER OF:

**TENNESSEE INSURANCE DIVISION,
Petitioner,**

v.

**FORREST J. McDOLE,
Respondent.**

DOCKET NO: 12.01-130903J

TID NO: 14-200

INITIAL ORDER

This contested case was heard before Administrative Judge Elizabeth D. Cambron, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Commerce and Insurance on May 9, 2016. James R. Witham, Assistant General Counsel, represented the Tennessee Insurance Division (the Division). Respondents, Johnny R. Jackson and Forrest J. McDole, (collectively "the Respondents"), appeared and were represented by attorney David Grimmitt.

SUMMARY OF THE EVIDENCE

Three witnesses testified on behalf of the Division: Kimberly Biggs, Alan Price, and Nancy Price. The Respondents also testified. Nine exhibits were entered into evidence: (1) the Affidavit of Kimberly Biggs; (2) documents from the Kentucky Secretary of State's Office; (3) the insurance applications of Alan and Nancy Price;¹ (4) Tennessee Insurance Division v. Johnny R. Jackson, Docket No. 12.01-005694J, TID No. 99-22; (5) Tennessee Insurance Division v.

¹ Exhibit 3 was filed under seal as it contains Mr. and Ms. Price's dates of birth, social security numbers, and banking information.

Michael E. Beckman, Docket No. 12.01-055533J, TID No. 08-070; (6) Tennessee Insurance Division v. Robert McGill Lea, TID No. 09-016; (7) Tennessee Insurance Division v. Ruben D. Foster, TID No. 08-145; (8) Affidavit of Nancy Price; and (9) Affidavit of Alan Price.

SUMMARY OF DETERMINATION

The subject of this hearing was the proposed revocation of McDole's Tennessee Resident Insurance Producer License and a request for civil monetary penalties in response to McDole's alleged violations of TENN. CODE ANN. § 56-6-112(a)(2), (8), and (13). After considering the arguments of counsel and record in this matter, it is determined that McDole's license is revoked and he is ordered to pay civil penalties in the amount of \$22,200.00, plus half of the Division's court reporter costs. McDole shall have one year from the date this Initial Order is issued to pay the above-mentioned civil penalty and costs.

The Respondents and all other persons in any way assisting, aiding, or helping the Respondents in any of the aforementioned violations of TENN. CODE ANN. § 56-6-112 shall cease and desist from all activities that are in violation of Tennessee insurance laws. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACTS

1. The Respondents are Tennessee residents who either hold or have held Tennessee insurance producer licenses. Jackson's insurance producer license number is 716183 and it was issued on October 16, 1990. Jackson's insurance producer license was revoked on October 26, 1999. McDole's insurance producer license number 959611; it was issued on September 22, 2006, and is currently active.

2. From 2013 to the present, the Respondents owned and operated an insurance agency by the name of Senior Security, LLC, a limited liability company filed and organized in Kentucky.

3. On April 27, 2015, the Division filed Notices of Hearing and Charges against each of the Respondents pursuant to Title 56 of TENN. CODE ANN. §§ 56-1-202 and 56-6-112 (“the Law”), which places responsibility for the administration of the Law on the Commissioner of the Tennessee Department of Commerce and Insurance. The Division is the lawful agent through which the Commissioner discharges this responsibility for the protection of the public.

4. On or about November 25, 2013, the Respondents visited the residence of Alan and Nancy Price in Sparta, Tennessee. The Respondents visited the Price residence because Ms. Nancy Price called Senior Security and asked about acquiring supplemental Medicare for her husband, Mr. Alan Price. Jackson went into detail with the Prices about several different plans for Medicare supplements. In addition, Jackson asked the Prices whether they had life insurance and gave an opinion as to the Prices’ current life insurance. He stated that the term life insurance that the Prices had at the time was not as good as whole life insurance. Furthermore, Jackson stated that the Prices had too much insurance coverage. Lastly, Jackson stated that he could offer the Prices cheaper insurance coverage than what they had and gave details about insurance coverage offered by Columbian Life Insurance Company (“Columbian”). The Respondents knew that Jackson was an unlicensed agent at the time they participated in selling insurance to the Prices.

5. The Prices then signed “blank pieces of paper.” The “blank pieces of paper” were actually uncompleted insurance applications pertaining to the Prices’ life insurance products from Columbian. The Prices never received a copy of their insurance policies with Columbian

nor were they apprised of the actual cost of their insurance policies by the Respondents. McDole signed the Prices' Columbian insurance applications as the insurance agent of record.

6. Furthermore, the Prices were subjected to untrustworthy, deceptive, dishonest, and dilatory behavior from Mr. Jackson in responding to queries about their Columbian insurance products. The Prices were led to believe that their previous insurance policy with Primerica Term Life Insurance would be cancelled but were instead billed for both policies for a period of time. Jackson later told the Prices that they were getting twenty-five thousand dollars (\$25,000.00) in insurance coverage with Columbian instead of twenty thousand dollars (\$20,000.00) in insurance coverage, as was conveyed to them in November of 2013. In actuality, the Prices only received fifteen thousand dollars (\$15,000.00) in insurance coverage with Columbian. The Prices were unable to get their premium refunded to them until on or about February 7, 2014.

7. On November 25, 2013, Jackson did most of the talking to the Prices and tried to convince them to purchase an insurance policy through his agency, Senior Security. The Respondents gave the Prices the false and mistaken belief that McDole was just an insurance agent along for the ride. As a result, the Prices did not think to contact McDole to correct the problems they were having with their insurance coverage. The conduct of the Respondents led the Prices to believe that Jackson was their insurance agent, not McDole.

8. The Prices have no motivation to do anything other than testify truthfully. Thus, the testimony of Mr. and Ms. Price is found to be credible.

9. The testimony of the Respondents is not credible. Jackson made self-serving statements and consistently deflected his actions toward McDole.

10. On May 9, 2016, the Respondents testified at the hearing. Jackson made several incredulous statements. When asked whether he ever advised the Prices about purchasing whole life insurance, Jackson responded “No, sir. I advised Mr. McDole what I think would be relevant.” (Tr. p. 146). When Jackson was asked whether he made any representations to the Prices as to any term or condition of an insurance policy, he responded “I made some statements to Mr. McDole, yes. I thought we could get them coverage.” (Tr. p. 144). When Jackson was asked about representations he made to the Prices about whether they needed the amount of term life insurance they currently had, he responded “I may have told Mr. McDole what needed to be done there, . . .” (Tr. p. 171). There is no reason why McDole, a seven-and-a-half-year insurance agent veteran would need remedial insurance education from Jackson. Further, at no point in time did the Respondents testify that they discussed policy information between themselves outside the presence of the Prices.

11. A more plausible explanation for Jackson’s statements is McDole’s increasing need to have Jackson with him due to McDole’s aging infirmities. McDole is elderly and Jackson rode with him due to McDole being “old, tired, [and] wore out.” (Tr. p. 178). At his age, McDole is “lucky to remember last week.” (Tr. p. 210).

12. In an attempt to cover for Jackson at the hearing, McDole stated that Jackson would never ride with him to assist and advise McDole on the presentation of insurance policies. Later, when confronted with his discovery responses, McDole admitted that it was a “possibility” that Jackson assisted him with the presentation of at least one insurance product involving Alan and Nancy Price. (TR. pp. 199-201).

13. Accordingly, each of the Respondents willingly and wrongfully enabled Jackson to sell insurance to the Prices.

14. Jackson knowingly engaged in the unauthorized sale of insurance in the State of Tennessee without a license.

15. McDole knowingly allowed and accepted Jackson's sale of insurance to the Prices.

CONCLUSIONS OF LAW

1. In accordance with TENN. COMP. R. & REG. 1360-04-01-.02(7), the Division bears the burden of proving by a preponderance of the evidence that the facts alleged in the Notice of Hearing and Charges are true and that the issues raised therein should be resolved in its favor.

2. TENN. CODE ANN. § 56-6-112(a) authorizes the Commissioner to place on probation, suspend, revoke, or refuse to issue or renew a license and/or levy a monetary civil penalty as follows:

(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:

(2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;

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

(13) Knowingly accepting insurance business from an individual who is not licensed[.]

TENN. CODE ANN. § 56-6-112(a)(2), (8), (13).

3. TENN. CODE ANN. § 56-6-103 states that a person shall not sell, solicit, or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this part.

4. TENN. CODE ANN. § 56-6-102 defines the following:

(14) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract; provided, that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers;

(16) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company;

(17) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company[.]

TENN. CODE ANN. § 56-6-102 (14), (16)-(17).

5. For violations occurring on or after July 1, 2011, TENN. CODE ANN. § 56-6-112 (2011) states:

(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, after providing notice consistent with the process established by § 4-5-320(c), and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, 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.

TENN. CODE ANN. § 56-6-112(e), (g)-(h).

6. The Division met its burden of proof by a preponderance of the evidence that Jackson knowingly violated TENN. CODE ANN. § 56-6-112(a)(2) by selling, soliciting, or negotiating insurance in the State of Tennessee without an active license in spite of his revoked licensure status.

7. The Division met its burden of proof by a preponderance of the evidence that Jackson knowingly violated TENN. CODE ANN. § 56-6-112(a)(2) by selling, soliciting, or negotiating insurance in the State of Tennessee in violation of TENN. CODE ANN. § 56-6-103.

8. The Division met its burden of proof by a preponderance of the evidence that McDole knowingly accepted insurance business from Jackson, an unlicensed person, in violation of TENN. CODE ANN. § 56-6-112(a)(13).

9. The Division met its burden of proof by a preponderance of the evidence that both Respondents knowingly enabled Jackson, an unlicensed person, to sell, solicit, and negotiate insurance in the State of Tennessee in violation of TENN. CODE ANN. § 56-6-112(a)(2) and (8).

10. The Respondents conduct and practice was both fraudulent and dishonest, thus demonstrating incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in Tennessee, in violation of TENN. CODE ANN. § 56-6-112(a)(8).

11. In sum, McDole violated TENN. CODE ANN. § 56-6-112(a)(2), (8), and (13).

JUDGMENT

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

1. The Respondent Forrest J. McDole's Tennessee insurance producer license (No. 959611) is hereby **REVOKED**, due to his actions in violation of TENN. CODE ANN. §§ 56-6-112(a)(2), (8), and (13).

2. The Respondent Forrest J. McDole is **ASSESSED a civil penalty in the amount of \$22,200.00**, for which execution shall issue if necessary, computed as follows:

- a. **\$100.00 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. **\$100.00 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);
- c. **\$100.00 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)(13).

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

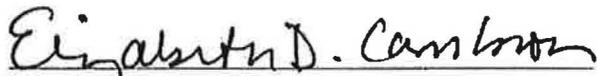
4. The Respondent shall pay said civil penalty and costs to the Department of Commerce and Insurance with one (1) year of the effective date of this Initial Order.

5. The Respondents and any and all persons who may assist them in any of the aforementioned violations of TENN. CODE ANN. § 56-6-112, shall **CEASE and DESIST** from any such activities.

6. This Initial Order shall take effect upon filing with the Administrative Procedures Division of the Office of the Secretary of State.

It is so ORDERED.

Entered and effective this the 26TH day of OCTOBER 2016.



**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

26TH day of OCTOBER 2016.



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