



STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE INSURANCE DIVISION,)

Petitioner,)

vs.)

MATTHEW BLAKE MALONE,)

Respondent.)

TID No. 17-019
Docket No. 12.01-144518J

INITIAL ORDER

This cause came on to be heard by the Honorable Joyce Carter-Ball, Administrative Law Judge on August 30, 2017. The Tennessee Department of Commerce and Insurance ("Petitioner"), was represented by Assistant General Counsel Charles S. Herrell. The Respondent, Matthew Blake Malone ("Malone"), did not appear and was not represented by counsel. Based upon the pleadings, the testimony of witnesses both live and by affidavit, exhibits introduced, and the record as a whole, the Court hereby grants relief as requested by the Petitioner and issues the following findings of fact and conclusions of law.

JURISDICTION

1. The Tennessee Insurance Law, as amended, TENN. CODE ANN. § 56-1-101, *et seq.* ("Law"), places the responsibility for the administration of the Law on the Commissioner of the Department ("Commissioner"). The TID is the lawful agent through which the Commissioner discharges this responsibility. TENN. CODE ANN. § 56-1-202 and TENN. CODE ANN. § 56-6-112.

FINDINGS OF FACT

2. The TID is the lawful agent through which the Commissioner administers the Law and it is authorized to administer this action for the protection of the public.
3. Respondent Matthew Blake Malone ("Malone") is at present a citizen and resident of Memphis, Tennessee with a current address of 821 Berclair Drive, Apartment 8, Memphis, TN 38122.
4. At all times relevant hereto, Respondent held insurance producer license No. 2123310, first issued on June 15, 2012, and voluntarily surrendered July 2, 2015.
5. On or about January 13, 2015, the Agent Licensing section of the TID received notice from Family Heritage Life Insurance Company of America ("Family Heritage") that the appointment of Malone had been terminated for cause.
6. The notice to the TID was in the form of a letter dated January 6, 2015, from Arthur Chu ("Chu"), compliance analyst for Family Heritage. (Exhibit One)
7. In his January 6, 2015 letter, Chu stated that Malone had written a total of twenty-six (26) policies in a time period lasting eight (8) days spanning two (2) calendar weeks, from November 18, 2015 through November 25, 2015.
8. None of the twenty-six (26) policies written by Malone during the November 18, 2015 through November 25, 2015 period were issued. Ten (10) of the policies were not issued because of clerical or other shortcomings. Sixteen (16) of the policies were not issued due to a variety of reasons including, but not limited to, the provision by Malone of invalid bank account information for premium payments by proposed insureds, falsified policy information, and other fraudulent application inadequacies.
9. Chu stated in his January 6, 2015 letter that Malone ceased writing policies for Family Heritage when his authorization to collect advanced commissions was suspended.

10. Chu further stated in his January 6, 2015 letter that the termination of Malone's appointment was based upon the finding by Family Heritage that Malone had engaged in a practice of "[u]sing fraudulent, coercive, or dishonest practices, or demonstrating incompetence untrustworthiness or financial irresponsibility in the conduct of business."

11. The testimony of the Petitioner's witness, Mr. Jake Barlow, Fraud Investigator, and the documentation of the scheme employed by Respondent has established by a preponderance of the evidence that the actions of the Respondent were an intentional effort to obtain commission income by dishonest and fraudulent means and to do so at the expense of Family Heritage Life Insurance Company.

CONCLUSIONS OF LAW

12. At all times relevant hereto, TENN. CODE ANN. § 56-6-112 has provided that:

(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:

...

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. TENN. CODE ANN. § 56-6-112 further states in pertinent part:

...

(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.

14. The conduct of the Respondent in submitting one (1) application for insurance on an existing customer without indicating that the coverage was intended to replace existing coverage under a Family Heritage policy indicates fraudulent conduct intended to generate commissions for himself at the expense of Family Heritage.

15. The conduct of the Respondent in generating twelve (12) insurance applications directing Family Heritage to draft bank accounts that did not exist establishes a pattern of fraudulent conduct intended to generate commissions for himself at the expense of Family Heritage.

16. The thirteen (13) instances described above all occurred prior to the suspension by Family Heritage of Malone's ability to collect advanced commissions.

17. There was no effort by Malone to contact Family Heritage at any time after the suspension by Family Heritage of Malone's ability to collect advanced commissions.

18. Because there has been no effort to mitigate the harm to Family Heritage that was caused by the conduct of Malone, these violations are continuing in nature.

ORDER

IT IS THEREFORE, ORDERED that:

1. Respondent Matthew Blake Malone shall fully **COMPLY** with the Law, and all rules promulgated thereunder.
2. Respondent's Tennessee Insurance Producer License number 2123310 is **REVOKED**.
3. The Respondent has been shown to have committed multiple continuing violations of TENN. CODE ANN. § 56-1-112 and has not demonstrated any effort to mitigate or reduce the harm that has resulted from those actions since the date of their occurrence.
4. The Respondent is assessed the maximum civil penalty of one hundred thousand dollars (\$100,000) as a sanction for the multiple continuing violations of TENN. CODE ANN. § 56-1-112.
5. All persons in any way assisting, aiding, or helping the aforementioned Respondent in any of the aforementioned violations of the Law shall **CEASE AND DESIST** all such activities.
6. Respondent shall be permanently barred from conducting insurance related business or engaging in the practice of insurance from, in, or into the State of Tennessee.
7. This Order shall not be interpreted in any manner that is in conflict with the provisions of 11 U.S.C. § 362 of the federal bankruptcy code.
8. A Protective Order was offered by the Petitioner and granted by the Court, and the terms of the Protective Order are incorporated by reference into this Initial Order.

9. This Initial Order imposing sanctions against the Respondent is entered to protect the public and consumers of insurance products in the State of Tennessee, consistent with the purposes fairly intended by the policy and provisions of the Law.

This Initial Order entered and effective this 18TH day of Oct, 2017.



JOYCE CARTER-BALL
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 18TH
day of OCT, 2017


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

APPROVED FOR ENTRY:



Charles S. Herrell BPR# 18035
Assistant General Counsel
Department of Commerce and Insurance
Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243
(615) 253-1378
charles.s.herrell@tn.gov

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.