

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

TENNESSEE INSURANCE DIVISION,

Petitioner,

vs.

RICK D. MCCREARY,

Respondent.

)  
)  
)  
)  
)  
)  
)  
)

No: 10-061

---

CONSENT ORDER

---

The Insurance Division of the Tennessee Department of Commerce and Insurance ("Insurance Division"), by and through counsel, and Rick D. McCreary ("Respondent") hereby stipulate and agree, subject to the approval of the Commissioner 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. The Commissioner has determined that the resolution set forth in this Consent Order is fair and reasonable and in the best public interest.
3. This Consent Order is executed by Respondent 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.

4. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against Respondent for acts and/or omissions not specifically addressed in this Consent Order or for acts and/or omissions that do not arise from the facts or transactions herein addressed. Respondent also understands that this Consent Order may be used by the Commissioner or any Commissioner, Department or Board to revoke or refuse to issue any license Respondent currently holds or for which Respondent applies in the future.

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

#### **JURISDICTION**

6. The Commissioner has jurisdiction pursuant to the Tennessee Insurance Law (the "Law"), TENN. CODE ANN. § 56-6-101 *et seq.*, and the Law places the responsibility for the administration of the Law on the Commissioner.

#### **PARTIES**

7. The Insurance 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. Respondent is a citizen and resident of Tennessee, residing at 110 Evans Road, Jacksboro, Tennessee 37757. Respondent's insurance producer license, numbered 962057, was issued in 2006. Although Respondent's insurance producer license expired on December 31, 2009, he currently holds a property interest right in said license until December 31, 2010.

## FINDINGS OF FACT

9. From approximately November 30, 2006 until February 5, 2009, Respondent was an appointed agent for American Family Life Assurance Company of Columbus ("Aflac").

10. On approximately January 20, 2009, Respondent admitted to an Aflac special investigator that from approximately June 9, 2008 through November 10, 2008, he had submitted approximately one hundred thirty (130) insurance applications to Aflac utilizing fictitious names and social security numbers for the sole purpose to receive sales commissions.

11. Based on Respondent's actions, Aflac suffered a financial loss of forty-nine thousand eight hundred sixty-one dollars (\$49,861), representing sales commissions paid to Respondent.

## CONCLUSIONS OF LAW

12. TENN. CODE ANN. § 56-6-112(a)(4) (2008) 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 anyone who improperly withholds, misappropriates or converts any moneys or properties received in the course of doing insurance business.

13. TENN. CODE ANN. § 56-6-112(a)(8) (2008) provides that the Commissioner may place on probation, suspend, revoke or refuse to issue or renew a license and/or levy a civil penalty for anyone who uses fraudulent, coercive or dishonest practice or demonstrates incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

14. Based on the Findings of Facts cited above, the Commissioner finds that Respondent improperly withheld, misappropriated or converted moneys received in the course of doing insurance business and used fraudulent or dishonest practices or demonstrated untrustworthiness in the conduct of business in this state.

15. Such facts constitute grounds for an Order revoking Respondent's property interest right in his insurance producer license based on violations of TENN. CODE ANN. §§ 56-6-112(a)(4)

and (8) (2008) and assessing a civil penalty in an amount up to one thousand dollars (\$1,000) for each violation in accordance with TENN. CODE ANN. § 56-2-305(a)(2) (2008). Respondent admits to the Findings of Fact and concedes that the Conclusions of Law contained herein are fair and reasonable as outlined above. Respondent enters into this Consent Order for the sole purpose of avoiding further administrative action with respect to this cause.

### **ORDER**

**NOW, THEREFORE**, based on the foregoing and the waiver of Respondent of his rights to a hearing and appeal under the Law and Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 *et seq.*, and the admission by Respondent of the jurisdiction of the Commissioner, the Commissioner finds that Respondent has agreed to the entry of this Consent Order and that this Consent Order is appropriate and in the public interest.

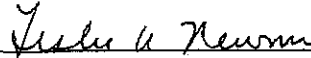
**IT IS ORDERED**, pursuant to TENN. CODE ANN. § 56-6-112(a) (2008) that:

Respondent's property interest right in his insurance producer license, numbered 962057, is hereby **REVOKED**.


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 signature affixed below, Rick D. McCreary, affirmatively states that he has freely agreed to the entry of this Consent Order, that he has been advised that he may consult with legal counsel in this matter, that he waives his right to a hearing on the matters underlying this Consent Order and that no threats or promises of any kind have been made by the Commissioner, the Insurance Division or any agent 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 settlement set forth in this Consent Order, are binding upon them.


**SO ORDERED.**

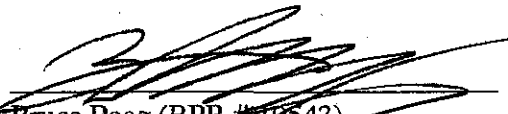
**ENTERED** this the 8<sup>th</sup> day of November, 2010.

  
\_\_\_\_\_  
Leslie A. Newman, Commissioner  
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**

  
\_\_\_\_\_  
Larry C. Knight, Jr.  
Assistant Commissioner for Insurance  
Department of Commerce and Insurance

  
\_\_\_\_\_  
Rick D. McCreary  
110 Evans Road  
Jacksboro, Tennessee 37757

  
\_\_\_\_\_  
Bruce Poag (BPR # 19543)  
Assistant General Counsel  
Department of Commerce and Insurance  
500 James Robertson Parkway  
2<sup>ND</sup> Floor  
Nashville, Tennessee 37243