

NPN 16201352



STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE INSURANCE DIVISION,)
Petitioner,)
vs.)
JASON ALAN NIDAY,)
Respondent.)

Docket No. 12.04-1474103
TID No. 17-073

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SECRETARY OF STATE

AGREED FINAL ORDER

The Insurance Division ("Division") of the State of Tennessee Department of Commerce and Insurance ("Department"), by and through undersigned counsel, and Jason Alan Niday ("Respondent") hereby stipulate and agree, subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"), as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Agreed Final 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. This Agreed Final Order is executed by Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Agreed Final Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Agreed Final Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondent fully understands that this Agreed Final Order will in no way preclude additional proceedings by the Commissioner for acts and/or omissions not specifically addressed in this Agreed Final Order, or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Other than this proceeding brought by the Commissioner for violations of Title 56 of Tennessee Code Annotated addressed specifically in this Agreed Final Order, Respondent fully understands that this Agreed Final Order will in no way preclude proceedings by state or local officers, agencies, or civil or criminal law enforcement authorities against Respondent for violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which arise as a result of the execution of this Agreed Final Order by Respondent.

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

6. Respondent fully understands and agrees that the Division is not required to file this Agreed Final Order with the Administrative Procedures Division of the Tennessee Secretary of State's Office if Respondent does not deliver to the Division his first scheduled payment of the below civil penalty assessment in a timely manner. Should Respondent not make this first payment in a timely manner, this Agreed Final Order will not become effective and the Division will reschedule the hearing in this case on a contested docket before an Administrative Judge assigned to the Secretary of State. This Agreed Final Order will become effective on the date it is filed with the Administrative Procedures Division of the Tennessee Secretary of State.

AUTHORITY AND JURISDICTION

7. The Commissioner has jurisdiction over this matter pursuant to the Tennessee Insurance Law ("Law"), Title 56 of the Tennessee Code Annotated, specifically Tenn. Code Ann. §§ 56-1-101, 56-1-202, 56-2-305, and 56-6-112. The Law places on the Commissioner the responsibility of the administration of its provisions.

PARTIES

8. The 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.

9. Respondent is a Tennessee resident, whose listed address of record with the Division is 177 Thomas Road, Speedwell, TN 37870. However, Respondent admits that he actually resides at 148 Colwyn Ave., Cumberland Gap, TN 37724-4718. Respondent obtained his Tennessee Resident Insurance Producer License, number 2030531, on or about April 20, 2011. Respondent's license expired on November 30, 2015, and has now lapsed by operation of law.

FINDINGS OF FACT

10. From on or about May 16, 2013, to on or about August 1, 2014, Respondent was employed as a Unit Field Trainer ("UFT") with Bankers Life and Casualty Company ("BLC").

11. Sharon D. Blair first met Respondent in 2002, when he served as her supervisor at an Americash Check Advance Company ("Americash") location in Chattanooga, Tennessee. Ms. Blair was later transferred to a Knoxville, Tennessee branch of Americash, and continued to work under Respondent's supervision until 2005.

12. Respondent has taken actions to remain close to Ms. Blair and her family over the years, including visiting her home, attending family outings, being there for her during times of family illness, and referring to her as "Mama."

13. Beginning in August 2013 and continuing through May 2014, Respondent wrote three (3) BLC life insurance policy applications for Ms. Blair. BLC issued these policies between September 2013 and May 2014.

14. Each of the above BLC life insurance policies issued to Ms. Blair lapsed due to non-payment within one (1) to four (4) months after issuance, and Respondent paid all monthly premiums due on the above policies for the short period of time they were in effect, using his own bank account for drafts of these monthly premiums.

15. After suffering a stroke in 2013, Wayne A. Bolton was introduced to Respondent by his cousin, Tennessee insurance producer Earl Douglas ("Doug") Bolton. Doug Bolton served as a mentor to Respondent in the insurance business and asked Respondent to do his best to "keep Wayne insured."

16. Beginning in July 2013 and continuing through May 2014, Respondent wrote three (3) BLC life insurance policy applications for Wayne Bolton. BLC issued these policies between August 2013 and June 2014.

17. Each of the above BLC life insurance policies issued to Wayne Bolton lapsed due to non-payment within one (1) to five (5) months after issuance.

18. During March 2014, either Respondent, or an agent working under his supervision, signed Wayne Bolton's name on four (4) policy related documents without Mr. Bolton's knowledge, as follows: two (2) Premium Payment Service Plan ("PPSP") authorization forms (ACH withdrawal forms as to Mr. Bolton's bank account) for BLC policy number 330265634; a Western Union Money Order dated March 18, 2014, made payable to BLC in the amount of one hundred twenty-eight dollars and forty-two cents (\$128.42); and, a Policy Delivery Receipt ("PDR") for BLC policy number 330265634, dated March 22, 2014.

19. Although Respondent considered Ms. Blair a family friend, he did not have any insurable interest in the life insurance policies on Ms. Blair's life, and he was not one of her immediate family members - which would enable him to pay a customer's premium according to BLC's guidelines. Further, although Respondent believed he was doing a favor for Doug Bolton's cousin, he did not obtain Wayne Bolton's consent to place this customer's signatures on the four (4) referenced documents.

20. In mitigation, Respondent contends he was attempting to help customers who were continually in financial distress during the relevant period, he had no fraudulent intent regarding Wayne Bolton, did not gain financially by signing this customer's name to documents, and was only trying to keep Wayne Bolton insured. Moreover, Respondent said the cash used to purchase the Western Union Money Order made payable to BLC was given to Respondent by Wayne Bolton. Finally, Respondent did not consider at the time that his payment of premiums for Ms. Blair could be considered the giving of an improper special advantage to this customer which was not specified in her policies, or rebating - an unfair insurance trade practice in Tennessee.

CONCLUSIONS OF LAW

21. Respondent's actions as set forth above in the foregoing Findings of Fact, constitute violations of Tenn. Code Ann. §§ 56-6-112(a)(2), (a)(8), and (a)(10) (2011), which read 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;

....

- (10) Forging another's name to an application for insurance or to any document related to an insurance transaction[.]

22. Respondent's payments of premiums for Ms. Blair constitutes rebating, an unfair insurance trade practice in Tennessee defined by Tenn. Code Ann. § 56-8-104(8)(A) (2011). This provision reads, in pertinent part, as follows:

The following practices are defined as unfair trade practices in the business of insurance by any person:

...

(8) Rebates. (A) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any policy of insurance, including, but not limited to, any life insurance policy or annuity, or accident and health insurance or other insurance, or agreement as to the contract other than as plainly expressed in the policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to the policy, any rebate of premiums payable on the policy, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to the policy or annuity or in connection with the policy or annuity, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the policy.

23. Respondent's payments of premiums for Ms. Blair constitute violations of Tenn. Code Ann. § 56-8-103 (2011), which provides, in pertinent part, as follows:

No person shall engage in an unfair trade practice from, in, or into this state that is defined in § 56-8-104 or § 56-8-106 or determined by rule pursuant to § 56-8-108 to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance...

24. Respondent's violations of Tenn. Code Ann. §§ 56-6-112(a)(2), (a)(8), & (a)(10), and 56-8-103 (2011), constitute grounds for the imposition of lawful discipline, including the

assessment of civil penalties, as prescribed at Tenn. Code Ann. §§ 56-6-112(g)(1), (2) and (3), which read as follows:

- (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.

25. Based upon the above Findings of Fact and Conclusions of Law, the Commissioner considers that the Respondent's actions warrant the imposition of lawful discipline, to include assessment of a civil penalty in accordance with Tenn. Code Ann. § 56-6-112(g)(1), (2), and (3).

26. In order to avoid further expenses or costs associated with additional administrative litigation of this matter or judicial review, Respondent hereby acknowledges the Commissioner's authority to administer the statutes cited herein, concedes that the Commissioner's interpretation of the statutes cited in the Conclusions of Law are reasonable and enforceable, and agrees to the entry of this Agreed Final Order including each of the following sanctions ordered by the Commissioner.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and Respondent's waiver of the right to a hearing and appeal under the Law and the Uniform Administrative Procedures Act,

Tenn. Code Ann. §§ 4-5-101 to 4-5-404 (2011), and Respondent's admission of jurisdiction of the Commissioner, the Commissioner finds that Respondent, for the purpose of settling this matter, admits the Findings of Fact and Conclusions of Law, agrees to the entry of this Agreed Final Order pursuant to Tenn. Code Ann. § 4-5-314(a) and agrees that this Agreed Final Order is in the public interest and is consistent with the purposes fairly intended by the Law.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 56-6-112(g) that:

1. Respondent is **ASSESSED a CIVIL PENALTY** in the amount of one thousand dollars (\$1,000).
2. All payments to the Department of the one thousand dollars (\$1,000) civil penalty assessment shall be mailed to:

**State of Tennessee
Department of Commerce and Insurance
Office of Legal Counsel
Attn: Jesse D. Joseph, Assistant General Counsel
500 James Robertson Parkway, 8th Floor
Nashville, TN 37243**

3. Respondent's payment of the civil penalty to the Department shall be in three (3) installments over six (6) months as follows:
 - (a) Respondent shall deliver his first payment in the amount of two hundred fifty dollars (**\$250**) to the Department toward the civil penalty assessment, **by December 15, 2017;**
 - (b) Respondent shall deliver his second payment in the amount of five hundred dollars (**\$500**) to the Department toward the civil penalty assessment **by March 15, 2018;** and
 - (c) Respondent shall deliver his final payment in the amount of two hundred fifty dollars (**\$250**) to the Department toward the civil penalty assessment **by June 15, 2018.**
4. Respondent is permitted to pay the civil penalty assessment sooner than required by the above schedule, and in larger installment payment amounts if he chooses.

5. A payment shall be considered timely made if it is **received** by the Department within seven (7) calendar days of the date such payment is due. All payments of this civil penalty assessment shall include a copy of the first page of this Agreed Final Order and shall be made payable to the "State of Tennessee."

6. The failure to make timely payments under the terms of this Agreed Final Order may result in additional disciplinary proceedings being brought against Respondent, which may result in the assessment of additional civil monetary penalties.

7. Failure to timely make any payment shall render any remaining balance under this Agreed Final Order immediately due and collectible. If Respondent fails to pay the civil penalty according to the above schedule, the Department may file and enforce any remaining balance of this civil penalty as a judgment against Respondent in the Circuit or Chancery Court without further notice to Respondent or additional proceedings.

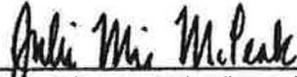
8. All persons in any way assisting, aiding, or helping Respondent in any of the aforementioned violations of Tenn. Code Ann. §§ 56-6-112 and 56-8-103 shall **CEASE AND DESIST** from all such activities in violation of the Law.

IT IS ORDERED that this Agreed Final Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions, and causes of action by the Commissioner against Respondent for violations of Tenn. Code Ann. §§ 56-6-112(a)(2), (a)(8), & (a)(10), and 56-8-103 alleged by the Division to have occurred with respect to the transactions involving the facts contained herein.

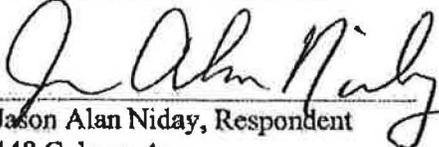
This Agreed Final Order is in the public interest and in the best interests of the parties, represents a compromise and settlement of the controversy between the parties, and is for settlement purposes only. By the signatures affixed below, Respondent affirmatively states he has freely agreed to the entry of this Agreed Final Order, that he waives the right to a hearing on

the matters underlying this Agreed Final Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made to him by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Agreed Final Order, affirmatively state their agreement to be bound by the terms of this Agreed Final Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of the settlement as set forth in this Agreed Final Order, are binding upon them.

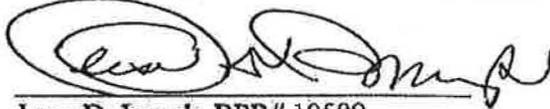
ENTERED this 13 day of December, 2017.


Julie Mix McPeak, Commissioner
TN Department of Commerce and Insurance

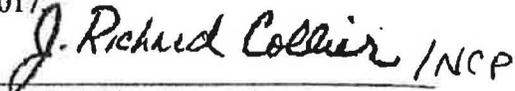
APPROVED FOR ENTRY:


Jason Alan Niday, Respondent
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Cumberland Gap, TN 37724-4718


Michael Humphreys
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TN Department of Commerce and Insurance


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Filed in the Office of the Secretary of State, Administrative Procedures Division, this
13 day of December, 2017.


J. Richard Collier, Esq., Director,
Administrative Procedures Division