

STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

SECRETARY OF STATE

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TENNESSEE INSURANCE DIVISION,)
Petitioner,)
vs.)
JAMES EARL THOMPSON,)
Respondent.)

Docket No. 12.04-13772J
TID No. 15-139

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OCT 27 2016

AGREED FINAL ORDER

DEPT. OF COMMERCE AND INSURANCE
LEGAL OFFICE

The Insurance Division ("Division") of the State of Tennessee Department of Commerce and Insurance ("Department"), by and through undersigned counsel, and James Earl Thompson ("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 the parties for the purpose of avoiding further administrative action with respect to this cause. The parties stipulate to entry of the Findings of Fact stated herein for the sole purpose of settling this matter. If the Commissioner does not accept this Order, then both parties expressly reserve the right to a hearing, with the opportunity for the Division to present all available evidence of alleged violations as contained in the Notice of Hearing and Charges, and the opportunity for the Respondent to present any and all alleged factual and legal defenses to all matters raised in the Notice of Hearing and Charges. 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 the 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 installment payment toward the 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.

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 citizen of the State of Tennessee, with an address of record on file with the Division of 133 Hannah Drive, Jackson, TN 38305. Respondent held a Tennessee resident insurance producer license, number 0843703, which became active on or about March 30, 2001. Respondent’s Tennessee resident insurance producer license was suspended for failure to pay child support on December 2, 2014, and ultimately expired on March 31, 2015.

FINDINGS OF FACT

10. Respondent was an insurance producer with United Insurance Company of America (“United”) responsible for collecting monthly premiums and submitting them to United through a standard deposit process.

11. During routine audits of Respondent’s accounts completed the weeks of October 9, 2013, and October 16, 2013, United determined that Respondent had recently collected at least \$183.39 in premiums from policyholders that were not deposited with the company. United

terminated Respondent's appointment as agent due to his misappropriation and withholding of premiums, on or about October 11, 2013.

12. Respondent paid back \$61.43 of this deficiency to United on or about November 4, 2013, leaving a net deficiency of \$121.96. United satisfied this \$121.96 deficiency by deducting this amount from the bond Respondent had on deposit with the company as of the date of his termination, which was over \$2,000.00.

CONCLUSIONS OF LAW

13. Respondent's actions as set forth above in the foregoing Findings of Fact, have violated Tenn. Code Ann. §§ 56-6-112(a)(4) & (a)(8) (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:

....

- (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

....

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

....

14. Respondent's violations of Tenn. Code Ann. §§ 56-6-112(a)(4) & (a)(8), 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) & (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.

15. 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) & (3).

16. 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 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's Tennessee resident insurance producer license (No. 0843703) is **hereby REVOKED**.

2. Respondent is **ASSESSED a CIVIL PENALTY** in the amount of \$1,000.00.

3. All payments to the Department of the \$1,000.00 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**

4. Respondent's payment of the civil penalty to the Department shall be in four (4) installments over one (1) year as follows:

(a) Respondent shall deliver his first **\$250.00 payment** to the Department toward the civil penalty assessment, by **October 24, 2016**;

(b) Respondent shall deliver his second **\$250.00 payment** to the Department toward the civil penalty assessment by **February 24, 2017**;

(c) Respondent shall deliver his third **\$250.00 payment** to the Department toward the civil penalty assessment by **June 24, 2017**; and

(d) Respondent shall deliver his fourth **\$250.00 payment** to the Department toward the civil penalty assessment by **October 24, 2017**.

5. 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.

6. 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 shall

include a copy of the first page of this Agreed Final Order and shall be made payable to "State of Tennessee."

7. 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 and investigatory and hearing costs.

8. Failure to timely make any payment shall render any remaining balance under this Agreed Final Order immediately due and collectible.

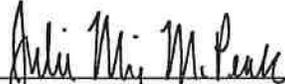
9. All persons in any way assisting, aiding, or helping Respondent in any of the aforementioned violations of Tenn. Code Ann. § 56-6-112 shall **CEASE AND DESIST** from all such activities in violation of the Law.

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)(4) & (a)(8) 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, and 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.

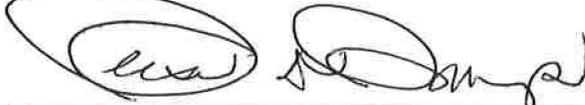
ENTERED this 27 day of October, 2016.


Julie Mix McPeak, Commissioner
TN Department of Commerce and Insurance

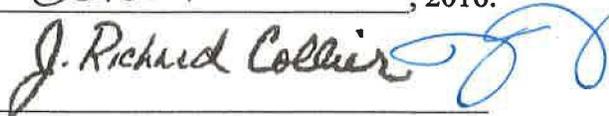
APPROVED FOR ENTRY:


James Earl Thompson, Respondent
133 Hannah Drive
Jackson, TN 38305
Phone: (731) 298-6054


Michael Humphreys
Assistant Commissioner for Insurance
TN Department of Commerce and Insurance


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27 Filed in the Office of the Secretary of State, Administrative Procedures Division, this day of October, 2016.


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