

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART II**

MICHAEL DAVID VERBLE,)
)
 Petitioner)
)
 v.)
)
 TENNESSEE DEPARTMENT OF)
 COMMERCE AND INSURANCE,)
 INSURANCE DIVISION,)
)
 Respondent.)

F.D-7
No. 17-364-II
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MEMORANDUM AND ORDER

The Petitioner, Michael D. Verble (“the Petitioner” or “Mr. Verble”), seeks judicial review of a decision by the Insurance Division of the Tennessee Department of Commerce and Insurance (“the Department”), which revoked his insurance producer license and imposed monetary penalties and fees. The Petitioner brings this action pursuant to Tenn. Code Ann. §4-5-322. After careful consideration of the administrative record, the applicable law, the briefs and the arguments of counsel, the Court finds that the petition must be denied and the Department’s decision affirmed.

BACKGROUND

Relevant Facts

Mr. Verble has held a Tennessee insurance producer’s license since 1995. He has owned and operated Verble Estate Preservation and Advisors, LLC since 2007, through which he has sold annuities and other insurance products.

At all times relevant to this proceeding, Mr. Verble utilized two bank accounts at First Tennessee Bank for his business – an escrow account and an operating account. The escrow account was used to deposit and hold client funds and retainer payments, while the operating account was used to pay the operating expenses of the business and the Petitioner’s personal expenses. Mr. Verble signs the checks drawn on the escrow account and has access to all funds in the operating account by writing checks and using a Visa checkcard.

On December 12, 2006, Mr. Verble sold a life insurance policy to Tennessee resident Mary A. Todd Fults through her power of attorney, daughter Barbara Fults Spears. The policy was issued by Fidelity & Guaranty Life Insurance Company (“Fidelity”). Under this policy, the three children of Mary A. Todd Fults were named as beneficiaries, and the insurance company was obligated to make monthly payments to each of the children for a pre-determined time period following her death. Mary Fults’ husband, Mr. Robert Collins Fults, paid \$73,500 as a premium payment to Fidelity for the life insurance policy. No contract between Mr. Verble and Ms. Spears was ever produced.

In 2007, Ms. Fults’ life insurance policy was canceled during the “free look” period, which triggered a mandatory full refund of premium to Ms. Fults. No other insurance policy or annuity was purchased for Ms. Fults. OM Financial Life Insurance Company (“OM Financial”), a subsidiary of Fidelity, issued a refund check in the amount of \$73,500. The check was sent to Ms. Fults at her home address at 1979 Fountain Grove Road, Morrison, Tennessee 37357. This check was never cashed or negotiated.

Ms. Spears died in 2008 and no new power of attorney was appointed for Ms. Fults. Ms. Fults died on January 13, 2010.

On April 14, 2010, OM Financial again issued a check for \$73,500 to Ms. Fults, but this time it was sent to Mr. Verble's address of record at the time: 9005 Overlook Boulevard, Brentwood, Tennessee 37027. According to the testimony of Fidelity Operations Manager Mary Bickford, Mr. Verble directed that the check be sent to his place of business.

On April 21, 2010, this check was purportedly signed by "Mary A. Todd Fults", who had died three months earlier. This check was deposited into Mr. Verble's escrow account entitled "Verble Estate Preservation & Advisor". All parties were aware of Mrs. Fults' passing by this time, but all parties denied signing the check.

From April 2010 to November 2010, Mr. Verble withdrew money from the escrow account for his own use, and by November 30, 2010 the escrow account had a balance of less than \$30.

Money from the escrow account was deposited into Mr. Verble's business account; this money was used to pay Mr. Verble's personal expenses and the operating expenses of his business, including returned check charges, overdraft charges, water bills, grocery bills, cell phone and telephone bills, restaurant bills, gasoline purchases, etc. Examples of charges include, but are not limited to, establishments such as Starbucks, Outback Steakhouse, J. Alexanders, Yankee Candle Company, Olive Garden, and Helen Flowers. By November of 2010, the business account had a balance of \$5,852.42.

In November of 2012, Mr. Verble began to reimburse the heirs of Ms. Fults. He made payments until 2014, totaling \$25,584. At first, Mr. Verble made monthly payments, but then began making payments quarterly.

On February 7, 2014, the Department issued an Inquisitorial Order. Mr. Verble voluntarily met with representatives of the Department on multiple occasions and delivered documents in connection therewith.

None of the heirs left a Will or other directive regarding the administration of their affairs. Additionally, the heirs did not open probate proceedings for the administration of their respective parents' affairs. Evidence was presented showing complicated family dynamics by and between the Fults children and grandchildren, though the exact circumstances are unknown. According to Mr. Verble, these circumstances placed him in a compromised position.

Mr. Verble also testified that he consulted thereafter with the TennCare Bureau, in the Tennessee Department of Finance and Administration, to obtain guidance due to the death of Ms. Fults, presumably because Ms. Fults was obtaining her health insurance from TennCare at the time of her death. TennCare administers Tennessee's Medicaid waiver program. That process, according to Mr. Verble, further delayed the handling of the matter. As a result, Mr. Verble ultimately requested that the State provide him with a Compliance Meeting pursuant to the provisions of Tenn. Code Ann. § 4-5-320(c). That meeting was held on January 22, 2016. However, Mr. Verble has provided little to no documentation to prove he was instructed to hold back any money.

On February 16, 2016, the Department filed a Notice of Charges against Mr. Verble.

In September of 2016, Mr. Verble paid each heir an additional \$11,196 for a total of \$59,172 paid to the heirs of Ms. Fults. Mr. Verble had not fully refunded the funds to the heirs by the time the Notice of Charges had been filed, but he had begun issuing checks for portions of the amount.

Mr. Verble provided a statement charging \$9,500 for work done by attorney Karl Warden, but was unable to provide a record of any payment made to Karl Warden. Mr. Warden claims he never received payment, but he was also unable to provide any records to confirm either payment or non-payment.

Mr. Verble also claims to have charged a fee of \$5,000 for “work done” but was unable to provide a copy of any contract. At no time has Mr. Verble provided any accounting for the money that was deposited in April of 2010, nor any itemized statement of work done.

The total amount of disbursements to the family¹ is as follows:

1.	Robbie Benson	\$19,724
2.	Wm. R. Spears	\$8,528
3.	Steve “Bud” Fults	\$8,528
4.	LaDonna Kim Spears	\$11,196
5.	Rita Brown	\$11,196

Mr. Verble admits that he did not monitor the escrow account bank statements or the business account bank statements. He also admitted to taking money out of the escrow account, but claims his bookkeepers resolved the issue.

Procedural History

On October 25, 2013, LaDonna Kim Spears, the daughter of Barbara Fults Spears, filed a consumer complaint against Mr. Verble with the Department on behalf of her father, William Spears. In the complaint, Ms. Spears stated that despite multiple requests from the family, Mr. Verble had failed to provide the family with information about Mary Todd Fults’ insurance policy. She asked the Department to require Mr. Verble to “disclose information

¹ In December of 2006, when the Fidelity Life Insurance policy was purchased by Mary A. Todd Fults through her power of attorney, daughter Barbara Fults Spears, Ms. Fults had three adult children: Barbara Fults Spears, Ms. Robbie Benson and Steve “Bud” Fults. Other family members subsequently became involved in this matter, namely William R. Spears (the husband of Barbara Fults Spears), LaDonna Kim Spears (the daughter of Barbara Fults Spears), and Rita Brown (the daughter of Steve “Bud” Fults).

pertaining to [the] name of [the] insurance company and payments of the estate of Mary A. Fults.”

On February 7, 2014, an Inquisitional Order was issued by the Department authorizing an investigation into Mr. Verble’s dealings as a licensed insurance producer under Tennessee insurance laws.

In February of 2016, the Department filed a Notice of Hearing and Charges against Mr. Verble in relation to the Fults matter. In the Notice, the Department alleged that Mr. Verble had violated Tenn. Code Ann. §§ 56-6-116 and 56-6-112(a)(4), (8) and (10) during his business dealings with the Fults family in regard to the policy of Mary Todd Fults.

Administrative Law Judge (“ALJ”) Michael Begley conducted a hearing in the case on October 10-11, 2016. On February 10, 2017, the ALJ filed an Initial Order revoking Mr. Verble’s insurance producer license and assessing a civil penalty against him in the amount of \$100,000. This Order became a Final Order 15 days after its entry. Mr. Verble petitioned for a stay of the Final Order, which the ALJ granted in part by ruling that both the license revocation and civil penalties would be stayed pending appeal. However, the ALJ ruled that Mr. Verble’s license would be suspended during the appeal process. On April 17, 2017, Mr. Verble filed the present action with the Davidson County Chancery Court.

STANDARD OF REVIEW

The Court’s review of this matter is governed by the contested case provisions of the Uniform Administrative Procedures Act, found at Tenn. Code Ann. § 4-5-322. This Court is not allowed by law to consider this matter *de novo* but instead must limit the review to the record created by the agency below. *Metropolitan Government v. Shacklett*, 554 S.W.2d 601, 604 (Tenn. 1977). Pursuant to Tenn. Code Ann. § 4-5-322, this Court may affirm the decision

of the agency or remand the case for further proceedings. A trial court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (5) Unsupported by evidence which is both substantial and material in the light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

Tenn. Code Ann. § 4-5-322(h).

When the factual support for an administrative decision is challenged, determining whether substantial and material evidence supports the decision requires a reviewing court to conduct a searching and careful inquiry into the entire record. *Sanifill of Tennessee, Inc. v. Tennessee Solid Waste Disposal Control Bd.*, 907 S.W.2d 807, 810 (Tenn. 1995); *Willamette Indus., Inc. v. Tennessee Assessment Appeals Comm'n*, 11 S.W.3d 142, 147 (Tenn. Ct. App. 1999). The Court, however, may not reweigh the evidence or substitute its judgment for that of the administrative agency. *Martin v. Sizemore*, 78 S.W.3d 249, 276 (Tenn. Ct. App. 2001); *McClellan v. Board of Regents*, 921 S.W.2d 684, 693 (Tenn. 1996); *Humana of Tennessee v. Tennessee Health Facilities Comm'n*, 551 S.W.2d 664, 667 (Tenn. 1977). Substantial and material evidence is defined as “something less than a preponderance of the evidence, but more than a scintilla or glimmer.” *Wayne County v. Tennessee Solid Waste Control Bd.*, 756

S.W.2d 274, 280 (Tenn. Ct. App. 1988) (citations omitted). “[It] is not limited to direct evidence but may also include circumstantial evidence or the inferences reasonably drawn from direct evidence.” *Id.* (citations omitted). In short, “[s]ubstantial and material evidence is such relevant evidence as a reasonable mind might accept to support a rational conclusion and such as to furnish a reasonably sound basis for the action under consideration.” *Southern Ry. Co. v. State Bd. of Equalization*, 682 S.W.2d 196, 199 (Tenn. 1984) (citations omitted).

Additionally, the substantial and material evidence standard is related to the arbitrary or capricious standard, i.e., “[a]gency decisions not supported by substantial and material evidence are arbitrary and capricious.” *Jackson Mobilphone Co. v. Tennessee Pub. Serv. Comm’n*, 876 S.W.2d 106, 110 (Tenn. Ct. App. 1993). “However, agency decisions with adequate evidentiary support may still be arbitrary and capricious if caused by a clear error in judgment.” *Id.* Therefore, a reviewing court should not apply the arbitrary and capricious standard of review “mechanically”.

No agency decision in a contested case “shall be reversed, remanded, or modified ... unless for errors which affect the merits of such decision.” *Crawford v. Dep’t of Fin. & Admin.*, M2011-01467-COA-R3-CV, 2012 WL 219327, at *5 (Tenn. Ct. App. Jan. 24, 2012) (internal citations omitted); Tenn. Code Ann. § 4–5–322(i).

RELEVANT STATUTORY PROVISIONS

The following statutes are relevant to this Court’s review:

Tenn. Code Ann. § 56-6-116. Fiduciary duty

Any money that an insurance producer receives for soliciting, negotiating or selling insurance shall be held in a fiduciary capacity, and shall not be misappropriated, converted or improperly withheld. Any violation of this section shall be considered grounds for the denial, suspension, or revocation of the insurance producer's license

and shall subject the insurance producer to the sanctions and penalties set forth under § 56-6-112.

For each violation that occurred on or before June 30, 2011, Tenn. Code Ann. § 56-2-305

(2008) applies:

Tenn. Code Ann. § 56-2-305 (2008). Violations; penalties; exceptions

- (a) 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, part 3, the commissioner finds that any insurer, person, or entity required to be licensed, permitted, or authorized by the division of insurance has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:
- (1) The insurer, person, or entity 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), unless the insurer, person, or entity knowingly violates a statute, rule or order, in which case the penalty shall not be more than twenty-five thousand dollars (\$25,000) for each violation, not to exceed an aggregate penalty of two hundred fifty thousand dollars (\$250,000). This subdivision (a)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (a)(2), each day of continued violation shall constitute a separate violation; and
 - (3) The suspension or revocation of the insurer's, person's, or entity's license.
- (a) In determining the amount of penalty to assess under this section, or in determining whether the violation was a knowing violation for the purpose of subdivision (a)(2), the commissioner shall consider any evidence relative to the following criteria:

- (1) Whether the insurer, person or entity could reasonably have interpreted its 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) Whether the amount imposed would put the violator in a hazardous financial condition;
- (4) The circumstances leading to the violation;
- (5) The severity of the violation and the risk of harm to the public;
- (6) The economic benefits gained by the violator as a result of noncompliance;
- (7) The interest of the public; and
- (8) The insurer's, person's, or entity's efforts to cure the violation.

For all violations that occurred after July 1, 2011, Tenn. Code Ann. § 56-6-112 (2011) applies:

Tenn. Code Ann. § 56-6-112. License denial, nonrenewal, suspension or revocation

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

ANALYSIS

The Court's analysis begins with the recognition that Mr. Verble has a constitutionally protectable property interest in his Tennessee insurance producer's license, which can only be suspended or revoked upon a showing of cause, as he has a clear expectation that he will be

able to continue to hold the license absent proof of culpable conduct. *Martin v. Sizemore*, 78 S.W.3d 249, 262–63 (Tenn. Ct. App. 2001).

The ALJ found that Mr. Verble had violated Tenn. Code Ann. §§ 56-6-116 and 56-6-112(a)(4) and was subject to sanctions under Tenn. Code Ann. §§ 56-6-112 (2008 and 2011) and 56-2-305 (2008) for his handling of insurance premiums refunded from the policy of Mary Todd Fults. In his Initial Order, the ALJ stated that

[m]uch of the proof propounded by both parties was not supported by documentary evidence. [However, Mr. Verble] admitted that he never issued any accountings, billing, or kept any records regarding repayment to the heirs in this matter. He also admitted to using portions of the \$73,500 that had been placed in his escrow and/or business accounts for his own personal use. Documentary evidence of [Mr. Verble's] bank statements supports [the Department's] charge that [Mr. Verble] misappropriated the funds for his personal use and economic benefit on numerous occasions from approximately April 2010 until October 2013. Each day that [Mr. Verble] withheld funds from the heirs, he deprived them of their use and enjoyment of what was rightfully theirs to possess. [Mr. Verble] was unable to provide any specific direction from any governmental entity requiring him to withhold the funds.

[Mr. Verble] directed the second check to be mailed to his office. The check was purportedly signed by the [sic] Mary Fults, although she had passed away months prior. Neither [Mr. Verble] nor any of the heirs claim to have signed the check. Regardless, [Mr. Verble] could not have reasonably interpreted that his spending the money for his own personal use was in compliance [with] the statutes and rules governing his profession.

While the succession of deaths among the heirs, the failure of any filing of probate, and the purported conflict within the family itself would have made [Mr. Verble's] job more difficult in this case, there is no justification for the commingling, misappropriating, or converting of any of the \$73,500 for [Mr. Verble's] own personal use. [Mr. Verble] did eventually make efforts to cure his violations by reimbursing the heirs, less the disputed fees in the approximate amount of \$15,000.

Based on the above findings, the ALJ ruled that the Department had met its burden of proof for violation of Tenn. Code Ann. § 56-6-112(a)(4). He ordered that Mr. Verble's insurance producer license be revoked, and that Mr. Verble pay a total civil monetary penalty of \$100,000 plus the Department's court reporter costs pursuant to Tenn. R. Civ. P. 54.04.

Mr. Verble challenges the Department's decision in this Court, contending that it is unsupported by substantial and material evidence and is arbitrary and capricious, an abuse of discretion and an unwarranted exercise of discretion. *See* Tenn. Code Ann. § 4-5-322. The Court examines Mr. Verble's arguments in turn:

Misappropriation

Mr. Verble asserts that the Insurance Division's charge he "misappropriated One Hundred Percent (100%) of an insurance premium refund check for \$73,500 . . . for his own personal use and enjoyment" is not only unsupported by substantial and material evidence but is demonstrably false. According to Mr. Verble, 100% of the refunded money (except for the \$5,000 he claims as his fee and the \$9,500 he alleges was paid to a local attorney for services to the insured or the insured's estate) has been distributed to the heirs of Mary Todd Fults. Accordingly, Mr. Verble argues, no funds were "misappropriated"; there was simply "a delay" in Mrs. Fults' family receiving the refund money.

Mr. Verble relies on a narrow interpretation of the word "misappropriate" in his analysis, essentially arguing that the words connote a permanent loss, i.e., an item can only be "misappropriated" if the person who took it never returns it. Under this usage, the term "misappropriated" cannot be applied to the holding of another's property while there is a possibility that the property might someday be returned by the "borrower". Mr. Verble offers no real support for this argument, and the Court finds it disingenuous.

The term "misappropriate" is not defined in Title 56 of the Tennessee Code, nor could the Court find Tennessee caselaw that provides a definition of the term as used in Title 56. Accordingly, the Court looks to well-settled rules of statutory interpretation. *See generally*

Mills v. Fulmarque, Inc., 360 S.W.3d 362, 368 (Tenn. 2012) (citing *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010)). In interpreting a statute, the Court must determine the intent of the General Assembly by analyzing the text of the statute and giving the words therein “their natural and ordinary meaning in the context in which they appear and in light of the statute's general purpose.” *Mills*, 360 S.W.3d at 368. When the meaning is clear and unambiguous, the Court needs to look no further than the statutory text. *Id.* Where appropriate, dictionary definitions may be used to determine the ordinary meaning of words. *State v. Majors*, 318 S.W.3d 850, 859 (Tenn. 2010) (citing *State v. Williams*, 690 S.W.2d 517, 529 (Tenn. 1985)).

Black’s Law Dictionary defines “misappropriation” as “the unauthorized, improper, or unlawful use of funds or other property for purposes other than that for which intended.” BLACK’S LAW DICTIONARY 998 (6th ed. 1990). The definition looks to the fiduciary nature of the attorney-client relationship, stating that misappropriation includes any unauthorized use of a client’s funds, including “unauthorized temporary use.” *Id.* As insurance providers have a fiduciary duty to their clients² similar to that imposed upon attorneys, who are required to safeguard clients’ funds in escrow or trust accounts³, the Court finds this definition applicable in the present circumstance. As such, the cases from other jurisdictions cited by the Respondent involving attorneys’ misuse of clients’ funds are instructive. These cases offer a definition of “misappropriation” similar to the dictionary definition set out above, where misappropriation is defined as “including not only stealing, but also [any] unauthorized temporary use for the lawyer’s own purpose, whether or not he derives any personal gain or

² Tenn. Code Ann. § 56-6-116

³ S. Ct. Rule 8, RPC 1.15

benefit therefrom.” *State ex rel. Nebraska State Bar Ass’n v. Veith*, 470 N.W.2d 549, 554 (Neb. Sup. Ct. 1991); accord *In re Abbey*, 169 A.3d 865, 872 D.C.Ct. App. 2017); *State ex rel. Nebraska State Bar Ass’n v. Jones*, 704 N.W.2d 216, 224 (Neb. Sup. Ct. 2005); *In re McGinn*, 877 A.2d 688, 692 (Ver. Sup. Ct. 2005); *In re Reynolds*, 39 P.3d 136, 140 (N.M. Sup. Ct. 2002).

Mr. Verble received and cashed Mrs. Fults’ refund check in April of 2010. It wasn’t until two years later, in November of 2012, that he began doling out Mrs. Fults’ money to her family in installments. Mr. Verble has offered no credible justification for withholding the refunded money from Ms. Fults’ family for a period of years, while using the money on his own behalf. Neither has he offered a credible explanation for returning the money in a staggered series of installment payments. His assertion that he acted properly in retaining and making use of Mary Todd Fults’ money for an extended time because the money eventually made its way back to the Fults family is simply without merit given Mr. Verble possessed no legal authority to use these funds he held in a fiduciary capacity for his own personal use. Accordingly, the Court finds that the decision of the Department of Commerce and Insurance holding that Mr. Verble violated Tenn. Code Ann. § 56-6-112(a)(4) is supported by substantial and material evidence.

ALJ’s Failure to Consider the Circumstances

Mr. Verble next contends that the ALJ failed to consider difficulties that he encountered in trying to return Mrs. Fults’ insurance refund money to her family. He references family discord, the deaths of three family members with no estate directives or probate proceedings, and a lack of guidance on the part of the Respondent and the TennCare

Bureau. In his Initial Order, the ALJ cites these factors as part of his analysis, giving them the weight he deemed proper. The Court is not at liberty to reweigh the evidence. Tenn. Code Ann. 4-5-322(h)(5). Accordingly, this argument is without merit.

Severity of Sanctions

Mr. Verble contends that the Department failed to prove that he misappropriated or converted one hundred percent (100%) of Mrs. Fults' \$73,500 refund check, as set forth in the charges against him. He contends that since the entire sum, less the approximately \$14,500 in fees purportedly paid to Mr. Ward and to himself, was eventually distributed to the family, he could only be charged with misappropriating the amount of the fees – a much lesser transgression meriting a less severe punishment.

As discussed above, the Court is not persuaded by Mr. Verble's assertion that an extended "delay" is not equivalent to a misappropriation of funds. The record shows that Mrs. Fults' entire refund check was deposited into Mr. Verble's escrow account in April of 2010 and that Mr. Verble used those funds for his business operations and personal needs. The record also shows that he did not begin to reimburse the heirs of Mrs. Fults until November of 2012, over two years later, depriving the Fults' family of the use of these funds during that time. Thus, Mr. Verble's argument that only a small portion of the insurance refund could be subject to allegations of misappropriation is not well taken.

Mr. Verble next argues that, even if his actions could be deemed "misappropriation" under Tenn. Code Ann. § 56-6-112(a)(4), a punishment of license revocation and a \$100,000 fine is so severe as to be unsupported by the evidence, arbitrary and capricious, and an abuse

of discretion. In support, he cites his 25 years as a licensed insurance producer with only one prior licensing issue as proof that such punishment is not warranted in this instance.

The Court recognizes the severity of the sanctions imposed upon Mr. Verble. The Court, as well as the Administrative Law Judge and the Department, necessarily must rely upon the factors stated in the statutes enacted by the General Assembly to determine the what sanctions to impose.⁴ These factors include: whether the person should reasonably have known the acts were a violation, whether the person benefited financially from the violation, the person's efforts to cure the violation, the circumstances of the violation, its severity, and the public interest.

As a licensed insurance producer for 25 years, Mr. Verble was charged with knowledge of his fiduciary duty to his clients. It is undeniable that he benefited from his violation of that duty. While he made belated attempts to repay the funds, he failed to adequately explain how his misappropriation of Mrs. Fults' insurance refund was somehow the result of unavoidable circumstances. Mr. Verble's actions certainly did not serve the best interests of his client, nor will reducing the sanctions against him serve the broader public interest. Based on these factors and the record before it, the Court finds no reason to modify the Department's decision and thus rejects Mr. Verble's argument that lesser sanctions are appropriate.

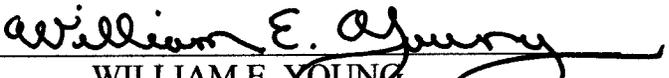
CONCLUSION

The Court finds that the Department's revocation of Mr. Verble's license and its imposition of a \$100,000 fine is neither arbitrary and capricious nor an abuse of discretion but is instead supported by substantial and material evidence in the record. Accordingly, the

⁴ Tenn. Code Ann. §56-2-305(b) and Tenn. Code Ann. § 56-6-112(h).

Court upholds Department' decision to impose these sanctions and the award of court reporter fees pursuant to Tenn. R. Civ. P 54.04. Costs of this matter are taxed to the Petitioner.

It is so ORDERED.


WILLIAM E. YOUNG
CHANCELLOR, PART II

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RULE 58 CERTIFICATION

A Copy of this order has been served by U. S. Mail
upon all parties or their counsel named above.



Deputy Clerk and Master
Chancery Court



Date