

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

IN THE MATTER OF:

**TENNESSEE INSURANCE DIVISION,
Petitioner,**

v.

**KATINA MARIE WHITE,
Respondent.**

**Docket No. 12.01-132999J
TID No. 15-082**

INITIAL ORDER

This matter came to be heard on November 5, 2015 in Room 8-C of the Davy Crockett Tower in Nashville, Tennessee, before Administrative Judge J. Richard Collier, assigned by the Secretary of State and sitting for the Commissioner of the Department of Commerce and Insurance. James Randall Witham, Assistant General Counsel, represented the Petitioner, Tennessee Insurance Division. The Respondent, Katina Marie White, was present and represented herself. The hearing was conducted pursuant to the Tennessee Uniform Administrative Procedures Act, TENN. CODE ANN. § 4-5-101, *et. seq.*¹

During the hearing on November 5, 2015, the Petitioner introduced testimony from four witnesses: Kevin Wicktora, Compliance Manager for Family Heritage Life Insurance Company of America (“Family Heritage”); Dana Vance, Customer Service Manager for Family Heritage; Michael Aucoin, Insurance Fraud Investigator for the Department of Commerce and Insurance; and William Garner, a purported client for whom Ms. White submitted an insurance application. The Respondent cross-examined the Petitioner’s witnesses and testified on her own behalf. In closing, the Petitioner proposed civil penalties in the event the Respondent fails to return the unearned commissions to Family Heritage.

¹ The transcript of the hearing was filed on July 22, 2016.

SUMMARY OF EVIDENCE

During the hearing, the following six (6) exhibits were admitted into evidence by the

Petitioner without objection:

COLLECTIVE EXHIBIT 1 – Family Heritage policy information

EXHIBIT 2 – Katina White Termination Letter

EXHIBIT 3 – Marketing Agreement between Katina White and Family Heritage

EXHIBIT 4 – Family Heritage Notification Letter to the Tennessee Insurance Commission

EXHIBIT 5 – William Garner policy documentation

EXHIBIT 6 – Affidavit of Kimberly Biggs

Following the presentation of opening statements, the witness testimony commenced with Kevin Wicktora. Mr. Wicktora testified regarding the internal fraud investigation undertaken by Family Heritage. He explained the terms of the marketing agreement between Ms. White and Family Heritage, the commission she would receive when submitting a new policy application, and the obligation of commission repayment to Family Heritage that was in place should the application be rejected or the policy rescinded. Mr. Wicktora identified the policies submitted by Ms. White between February 4, 2014 and May 13, 2014 for which a premium payment was never received either because of a nonexistent or closed bank account or because of a wrong address on the application. Mr. Wicktora read into the record the section of the policy application where the agent certifies that the information on the application is truthful and accurately recorded.

Dana Vance provided further clarification on Family Heritage's internal fraud investigations. She testified that the percentage of Ms. White's applications that were returned as bank returns was not common in routine business. Ms. Vance described the process of investigating an agent when fraud is suspected. In her opinion, a lack of training might result in one or two applications, but not a majority, being returned. Ms. Vance also opined that Ms. White submitted the insurance applications with the wrong information as part of a scheme to obtain advance commissions.

Michael Aucoin, a fraud investigator for the Tennessee Department of Commerce and Insurance, testified regarding the investigation of this matter conducted by the Petitioner. The Department received a letter from Arthur Chu, a Family Heritage employee in the compliance division, who notified the state about fourteen (14) potentially fraudulent applications submitted by Ms. White to Family Heritage. Mr. Aucoin then sent questionnaires to addresses listed on the applications submitted by Ms. White to Family Heritage. Only two completed questionnaires were returned to the Division. Mr. Aucoin testified that he traveled to the addresses himself in an attempt to talk with the alleged applicants. According to Mr. Aucoin, the addresses from the submitted applications were either nonexistent or were for homes that had been vacant for some time. Mr. Aucoin also interviewed Ms. White regarding the applications. It was his opinion that Ms. White was not merely doing a poor job but was intentionally providing false information.

William Garner, a person for whom Ms. White submitted an application, testified over the phone via FaceTime. Ms. White had no objection to this method of testimony. Mr. Garner was unable to identify Ms. White and did not recall ever purchasing insurance from Ms. White or from Family Heritage. He stated that he already had insurance through the Veterans Administration and would have no need for additional coverage.

Katina White testified that each person for whom she submitted an application had been her longtime client. Most of her clients were from poor neighborhoods and had bank accounts for Supplemental Security Income (SSI) with long numbers. She stated that she received no training with Family Heritage and that she became aware only after submitting several applications that Family Heritage could not accept SSI accounts. She testified that she did not intentionally commit fraud with the applications in question, that she is aware of her debt to Family Heritage for the commissions she kept, and that she was willing to reimburse the company.

FINDINGS OF FACT

1. At all times relevant, the Respondent Katina Marie White was a licensee of the Division and was responsible for being compliant with the insurance laws, rules, and regulations of the State of Tennessee.²
2. At all times relevant, Respondent had a fiduciary obligation to properly hold, dispense, and remit any money she received for soliciting, negotiating, or selling insurance.
3. Ms. White entered into a marketing agreement with Family Heritage whereby she would receive a commission upon submitting business to Family Heritage. Ms. White was on a forty percent (40%) first-year commission plan, meaning her commission was forty percent (40%) of the annual premium. Under the agreement, Ms. White would receive an advance payment of sixty percent (60%) of that commission immediately after submitting a new application.
4. At all times relevant, Respondent had an obligation to remit all unearned commissions received by her in the event that an application for insurance was rejected or the insurance policy was rescinded or terminated.
5. In order for an agent to retain an advanced commission, Family Heritage must receive a premium payment on the insurance policy. Under the marketing agreement, the agent is required to repay any commission received for a policy if the application is rejected or the policy is rescinded.
6. Between February of 2014 and May of 2014, Family Heritage received twenty (20) policy applications from Ms. White. Fourteen (14) of those applications were returned because of incorrect information on the application.

² Respondent held Insurance Producer license number 0932219, which expired on August 31, 2015.

7. Ms. White received a total of \$2,112.48 in advanced commissions from Family Heritage for submitting applications that were subsequently returned or the policy rescinded.
8. Ms. White admitted that she was fully aware of the requirement that an advanced commission payment had to be returned to Family Heritage where an application is returned or a policy is rescinded and where no premium is received.
9. During the hearing on November 5, 2016, Ms. White acknowledged her obligation and agreed to pay to Family Heritage the amount she owed in advanced commissions.
10. As of the date of this Order, Ms. White had not repaid Family Heritage for any of the advanced commissions she received.

CHARLES WILLIAMS

11. On or about February 1, 2014, Respondent completed a Family Heritage insurance application for Mr. Charles Williams, a Tennessee resident.
12. Mr. Williams's application was completed with incorrect contact information and incorrect bank account information.
13. Respondent received commissions in the amount of approximately one hundred ninety-five dollars and twelve cents (\$195.12) as a result of the application submitted on behalf of Mr. Williams.
14. On or about March 5, 2014, Mr. Williams's policy with Family Heritage was terminated due to unpaid premiums and incorrect application information.
15. Respondent failed to return to Family Heritage her unearned commissions in the approximate amount of one hundred ninety-five dollars and twelve cents (\$195.12).

ROBERT LEE DRAKE

16. On or about February 1, 2014, Respondent completed a Family Heritage insurance application for Mr. Robert Lee Drake, a Tennessee resident.
17. Mr. Drake's application was completed with incorrect contact information and incorrect bank account information.
18. Respondent received commissions in the amount of approximately one hundred eighty dollars and seventy-two cents (\$180.72) as a result of the application submitted on behalf of Mr. Drake.
19. On or about March 5, 2014, Mr. Drake's policy with Family Heritage was terminated due to unpaid premiums and incorrect application information.
20. Respondent failed to return to Family Heritage her unearned commissions in the approximate amount of one hundred eighty dollars and seventy-two cents (\$180.72).

JESSE PRICE

21. On or about February 2, 2014, Respondent completed a Family Heritage insurance application for Mr. Jesse Price, a Tennessee resident.
22. Mr. Price's February 2, 2014, application was completed with incorrect contact information and incorrect bank account information.
23. Respondent received commissions in the amount of approximately one hundred thirty-nine dollars and sixty-eight cents (\$139.68) as a result of the February 2, 2014 application submitted on behalf of Mr. Price.
24. On or about April 15, 2014, Respondent completed a second Family Heritage insurance application for Mr. Price.
25. Mr. Price's April 15, 2014, application was completed with incorrect contact information and incorrect bank account information.

26. Respondent received commissions in the amount of approximately three hundred six dollars (\$306.00) as a result of the April 15, 2014 application submitted on behalf of Mr. Price.
27. On or about June 10, 2014, both of Mr. Price's policies with Family Heritage were terminated due to unpaid premiums.
28. Respondent failed to return to Family Heritage her unearned commissions from the two policies submitted for Mr. Price in the approximate total amount of four hundred forty-five dollars and sixty-eight cents (\$445.68).

J.T. BOND

29. On or about March 12, 2014, Respondent completed an electronic Family Heritage insurance application for Mr. J.T. Bond, a Tennessee resident.
30. Mr. Bond's application was completed with incorrect contact information and incorrect bank account information.
31. Respondent received commissions in the amount of approximately two hundred thirty-three dollars and twenty-eight cents (\$233.28) as a result of the application submitted on behalf of Mr. Bond.
32. On or about June 10, 2014, Mr. Bond's policy with Family Heritage was terminated due to unpaid premiums and incorrect application information.
33. Respondent failed to return to Family Heritage her unearned commissions in the approximate amount of two hundred thirty-three dollars and twenty-eight cents (\$233.28).

TERESSA MCMULLEN

34. On or about April 10, 2014, Respondent completed an electronic Family Heritage insurance application for Ms. Teresa McMullen, a Tennessee resident.
35. Ms. McMullen's application was completed with incorrect contact information and incorrect bank account information.

36. Respondent received commissions in the amount of approximately two hundred seventy-nine dollars and thirty-six cents (\$279.36) as a result of the application submitted on behalf of Ms. McMullen.
37. On or about June 10, 2014, Ms. McMullen's policy with Family Heritage was terminated due to unpaid premiums and incorrect application information.
38. Respondent failed to return to Family Heritage her unearned commissions in the approximate amount of two hundred seventy-nine dollars and thirty-six cents (\$279.36).

ARGENTRY HARRIS

39. On or about April 23, 2014, Respondent completed an electronic Family Heritage insurance application for Mr. Argenry Harris, a Tennessee resident.
40. Mr. Harris's application was completed with incorrect contact information and incorrect bank account information.
41. Respondent received commissions in the amount of approximately two hundred forty-five dollars and fifty-two cents (\$245.52) as a result of the application submitted on behalf of Mr. Harris.
42. On or about June 5, 2014, Mr. Harris's policy with Family Heritage was terminated due to unpaid premiums and incorrect application information.
43. Respondent failed to return to Family Heritage her unearned commissions in the approximate amount of two hundred forty-five dollars and fifty-two cents (\$245.52).

EMMET CLARK

44. On or about April 23, 2014, Respondent completed an electronic Family Heritage insurance application for Mr. Emmet Clark, a Tennessee resident.
45. Mr. Clark's application was completed with incorrect contact information. The bank account listed on the application existed, but Family Heritage was unable to draft from it.

46. Respondent received commissions in the amount of approximately two hundred eighty-eight dollars (\$288.00) as a result of the application submitted on behalf of Mr. Clark.
47. On or about April 30, 2014, Mr. Clark's policy with Family Heritage was terminated due to unpaid premiums and incorrect application information.
48. Respondent failed to return to Family Heritage her unearned commissions in the approximate amount of two hundred eighty-eight dollars (\$288.00).

MARY ARMSTRONG

49. On or about April 23, 2014, Respondent filled out an electronic Family Heritage insurance application for Ms. Mary Armstrong, a Tennessee resident.
50. Ms. Armstrong's application was completed with incorrect bank account information.
51. Respondent received commissions in the amount of approximately two hundred forty-four dollars and eighty cents (\$244.80) as a result of the application submitted on behalf of Ms. Armstrong.
52. On or about June 10, 2014, Ms. Armstrong's policy with Family Heritage was terminated due to unpaid premiums and incorrect bank account information.
53. Respondent failed to return to Family Heritage her unearned commissions in the approximate amount of two hundred forty-four dollars and eighty cents (\$244.80).

WILLIAM GARNER

54. On or about May 13, 2014, Respondent completed an electronic Family Heritage insurance application for Mr. William Garner, a Tennessee resident, without his knowledge.
55. Mr. Garner's application was completed with incorrect contact information and incorrect bank account information.
55. Mr. Garner does not recall ever purchasing life insurance from Family Heritage.

56. On or about June 16, 2014, Mr. Garner's policy with Family Heritage was terminated due to unpaid premiums.

CONCLUSIONS OF LAW AND ANALYSIS

1. The Department of Commerce and Insurance bears the burden of proof in this case. The standard of proof is a preponderance of the evidence. Tenn. Comp. R. & Regs. 1360-4-1-.02(3)(7).

2. Title 56 of the Tennessee Code Annotated ("Tenn. Code Ann."), specifically Tenn. Code Ann. §§ 56-1-202 and 56-6-112 (the "Law"), places the responsibility of the administration of the Law on the Commissioner of the Department of Commerce and Insurance ("Commissioner"). The Division is the lawful agent through which the Commissioner discharges this responsibility.

3. The Commissioner administers the Law through the Division, and authorizes the Division to bring this action for the protection of the public.

4. Tenn. Code Ann. § 56-6-112(a) (2011) provides that the Commissioner may place on probation, suspend, revoke or refuse to issue or renew a license issued under Title 56, Chapter 6, Part 1, or issue a civil penalty for the following reasons:

(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; and

...

5. Tenn. Code Ann. § 56-6-112 (2011), in pertinent part, provides:

(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.* (Emphasis Supplied.)

(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 subsection (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.

6. Tenn. Code Ann. § 56-6-116 provides:

Any money 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. [Acts 2002, ch. 798, § 17.] (Emphasis supplied.)

The evidence in this case clearly shows that the Respondent submitted, on the behalf of Charles Williams, Robert Lee Drake, Jesse Price, J.T. Bond, Teresa McMullen, Argenry Harris, Emmet Clark, and Mary Armstrong, applications for insurance with Family Heritage Life Insurance Company of America and that those applications contained incorrect contact information and/or incorrect bank account information for the applicants. As a result of the incorrect information contained in the applications, Family Heritage Life Insurance Company of America terminated policies with the applicants due to unpaid premiums and/or incorrect application information. The Respondent had an obligation to remit to Family Heritage Life Insurance Company of America all unearned commissions received by her in the event that an application for insurance was rejected or the insurance policy was rescinded or terminated. The Respondent did not and, as of the date of this Order, has not repaid Family Heritage Life Insurance Company of America for any of the advanced commissions she received.

Based on the foregoing, the administrative judge determines that the Petitioner has shown by a preponderance of the evidence that the Respondent knowingly misappropriated a total of \$2,112.48 in unearned commission funds when, after the applications of Charles Williams, Robert Lee Drake, Jesse Price, J.T. Bond, Teresa McMullen, Argenry Harris, Emmet Clark, and Mary Armstrong were terminated or rescinded, the Respondent did not return the unearned commissions to Family Heritage Life Insurance Company of America. The administrative judge also determines that the Respondent used fraudulent or dishonest practices and demonstrated untrustworthiness as an insurance agent working with Family Heritage Life Insurance Company of America.

The Respondent's actions constitute nine violations of Tenn. Code Ann. § 56-6-112(a)(4) and (a)(8). Such violations are subject to the assessment of up to \$1,000 per separate violation, pursuant to TENN. CODE ANN. § 56-6-112 (2011). The Respondent's violations of § 56-6-112(a)(4) and (a)(8) render her insurance producer license subject to revocation pursuant to TENN. CODE ANN. § 56-6-116.

Accordingly, it is hereby **ORDERED** that Respondent's Tennessee Insurance Producer license number 0932219 be **REVOKED**. Further, the Respondent is assessed a civil penalty of \$1,000.00 per violation of Tenn. Code Ann. § 56-6-112(a)(4) and (a)(8), totaling \$9,000.00 for the nine violations determined herein.³ The civil penalty of \$9,000.00 shall be paid by the Respondent to the Tennessee Department of Commerce and Insurance not later than sixty (60) days from the date of this Initial Order.

It is so Ordered, entered and effective this the 6th day of October, 2016.



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

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 6th day of October 2016.



J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION

³ During the Hearing on November 5, 2016, counsel for the Department stated that the Department might seek a reduced civil penalty provided the Respondent repaid the amount of the unearned commissions to Family Heritage Life Insurance Company of America within 120 days. There has been no indication to the Department or to the administrative judge that the Respondent has made any payment to Family Heritage Life Insurance Company of America. Hence, the administrative judge has proceeded with the assessment of a civil penalty according to statute and based on the evidence presented at the hearing.