



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

TENNESSEE INSURANCE DIVISION,)
)
Petitioner,)
)
vs.) **TID No.: 20-063**
)
FARMERS MUTUAL FIRE INSURANCE)
COMPANY OF UNION COUNTY,)
)
Respondent.)

AGREED FINAL ORDER

COME NOW, Petitioner, the Insurance Division of the Tennessee Department of Commerce and Insurance (“Division”), by and through counsel, and Farmers Mutual Fire Insurance Company of Union County (“Respondent” or “Farmers Mutual”), and 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 and execution of this Agreed Final Order by the Commissioner. Entry and execution of the Agreed Final Order by the Commissioner shall occur when the Commissioner signs and dates this Agreed Final Order.

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

4. The Respondent fully understands that this Agreed Final Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for violations of the statutes, rules, or regulations addressed specifically in the Findings of Fact and Conclusions of Law in this Agreed Final Order, or which may arise as a result of the execution of this Agreed Final Order by the Respondent.

5. The 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 Agreed Final Order and the consideration and entry and execution of said Agreed Final Order by the Commissioner.

AUTHORITY AND JURISDICTION

6. The Commissioner has jurisdiction over this matter pursuant to Tennessee insurance law, Title 56 of Tennessee Code Annotated (“Tenn. Code Ann.”), specifically Tenn. Code Ann. §§ 56-1-101 *et seq.*, 56-1-202, 56-1-401 *et seq.*, 56-2-101 *et seq.*, and 56-2-305 (the “Law”). The Law places on the Commissioner the responsibility of the administration of its provisions.

PARTIES

7. 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.

8. The Respondent is a county mutual insurance company located in Tennessee, and currently has a Certificate of Authority to sell insurance in the state of Tennessee.

FINDINGS OF FACT

9. The Respondent is a county mutual insurance company whose purpose is to insure loss or damage to property due to fire, lightening, and wind to residents of Union County and the counties contiguous to Union County in the first degree.

10. The Respondent's 2018 annual review showed a compensation expense ratio of sixty-eight percent (68%), which is in excess of the thirty percent (30%) allowed by rule.

11. A full scope examination of the Respondent began as of December 31, 2018, and has already shown expected additional violations of the compensation expense ratio for 2017 at sixty-three percent (63%), 2016 at sixty-three percent (63%), and 2015 at one hundred forty-one percent (141%).

12. The Respondent's primary reason for exceeding the compensation expense ratio appears to be a result of the compensation of one (1) officer, the treasurer and secretary, whose compensation alone accounts for approximately two-thirds of the total compensation for the entire company.

13. The officer's compensation in 2018 was seventy-seven percent (77%) of the company's total compensation, seventy-eight percent (78%) in 2017, seventy-six percent (76%) in 2016, and ninety-one percent (91%) in 2015.

14. In 2015, the officer received a sixty-four thousand, five hundred ninety dollar (\$64,590) bonus approved by the board.

15. On September 30, 2019, the Division contacted the Respondent to inquire about its plan to remedy these compensation expense ratio violations.

16. In a letter to the Division dated October 30, 2019, the Respondent indicated it had no plan to remedy the violations and it had “no other option but to be in violation of the compensation ratio again due to the small size of the company as well as the many years of valuable service that Ms. Sexton has given the company.”

17. The Respondent has, in the past, indicated a desire to leave its operation by merging with Farmers Mutual of Tennessee. A Form A was filed in September of 2016 but has not been deemed complete by the Division.

18. The Division does not have any other immediate concerns about the financial condition of the Respondent due to its surplus amounts.

CONCLUSIONS OF LAW

19. Tenn. Code Ann. § 56-1-416 provides that the Commissioner shall revoke or suspend all Certificates of Authority granted to an insurance company if the Commissioner is of the opinion, upon examination or other evidence, that an insurance company is in an unsound condition or has failed to comply with the law and, upon such a finding, no new business shall be done by the company or its agents under suspension or revocation while such default or disability continues and not until its authority to do business is restored by the Commissioner.

20. Tenn. Code Ann. § 56-22-107(b)(1) provides that no officer, director or other person whose duty it is to determine the character of risk and upon whose decision the application for insurance shall be accepted or rejected shall receive as any part of the person’s compensation

a commission upon the premium, but the compensation shall be a fixed salary, and/or a share of the net profits of the county mutual insurance company that the board of directors may determine appropriate.

21. Tenn. Code Ann. § 56-22-107(b)(3) provides that the Commissioner may promulgate rules to set appropriate expense ratios to address those expenses incurred in subdivisions (b)(1) and (2).

22. Tenn. Code Ann. § 56-22-117(a)(3) provides that the Commissioner may, after notice and a hearing, levy a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) against a county mutual insurance company or an entity required to be licensed as a county mutual insurance company, upon a finding that the county mutual insurance company, the entity required to be licensed as a county mutual insurance company, an officer or director of the county mutual insurance company, or the entity required to be licensed as a county mutual insurance company is in a hazardous operating condition.

23. Tenn. Code Ann. § 56-22-117(c) provides that each day of continued violation shall constitute a separate violation for purposes of determining the possible amount of penalty under this section.

24. Tenn. Comp. R. & Regs. 0780-01-78.02(2) provides that “compensation expense ratio” means the ratio of the total compensation (including, but not limited to, salaries, commissions, insurance benefits and retirement account contributions, as well as all local, state and federal taxes associated with such compensation) paid to all officers, directors, employees and other individuals who exercise authority over the underwriting decisions of a county mutual insurance company to the gross premium of the county mutual insurance company.

25. Tenn. Comp. R. & Regs. 0780-01-78.03(1) provides that no county mutual insurance company's compensation expense ratio may exceed thirty percent (30%) for any given year.

26. Tenn. Comp. R. & Regs. 0780-01-78.03(2) provides that any county mutual insurance company whose compensation expense ratio exceeds thirty percent (30%) for any given year shall be considered to be operating in a hazardous financial condition.

27. Considering the hazardous financial condition factor in Tenn. Comp. R. & Regs. 0780-01-78.03(2), the Respondent is in an unsound financial condition and fails to meet all requirements for accreditation under Tennessee law and thus is subject to sanctions under Tenn. Code Ann. § 56-1-416.

ORDER

NOW, THEREFORE, on the basis of the foregoing and the Respondent's waiver of the right to a hearing and appeal under Tennessee insurance law and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et seq*, and the Respondent's admission of jurisdiction of the Commissioner, the Commissioner finds that the Respondent, for the purpose of settling this matter, admits the Findings of Fact and Conclusions of Law, agrees to the entry and execution of this Agreed Final Order, and agrees that this Agreed Final Order is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Law.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 56-1-416 of the Tennessee insurance law, that:

1. Farmers Mutual shall pay a penalty of ten thousand dollars (\$10,000) for its violation of the compensation expense ratio.

2. Farmers Mutual will provide the Division a corrective action plan explaining the steps it intends to take to prevent future violations of the compensation expense ratio within forty-five (45) days of the signing of this Agreed Final Order.

3. This Agreed Final Order is in the public interest and in the best interests of the parties. This Agreed Final Order represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signature affixed below, in two (2) or more counterparts, the Respondent affirmatively states it has freely agreed to the entry and execution of this Agreed Final Order; it has been advised that it may consult legal counsel in this matter and has had the opportunity to consult with legal counsel; it waives its right to a hearing on the matters underlying this Agreed Final Order, to a review of the Findings of Fact and Conclusions of Law contained herein, and to objections to enforcement of this Agreed Final Order; and no threats or promises of any kind have been made 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 settlement set forth in this Agreed Final Order, are binding upon them.

4. Nothing in this Agreed Final Order should be construed to limit the authority of the Division or the Commissioner to take further action against the Respondent should such action, in the opinion of the Division or the Commissioner, be necessary.

5. This Agreed Final Order may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The facsimile, email, or other electronically delivered signatures of the parties shall be deemed to constitute original signatures, and facsimile or electronic copies shall be deemed to constitute duplicate originals.

IT IS SO ORDERED.

ENTERED AND EXECUTED this 17 day of July, 2020.


Hodgen Mainda (Jul 17, 2020 21:15 EDT)

Hodgen Mainda, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY AND EXECUTION:

Name James L. Sexton
Title President
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Rachel Jade-Rice (Jul 16, 2020 13:07 CDT)
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