

BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

TENNESSEE SECURITIES DIVISON
and
TENNESSEE INSURANCE DIVISION
Petitioners

DOCKET NO.: 12.06-103253J

v.

KT INVESTMENTS, LLC, *and*
DERRICK TRENT FORTNER,
Respondents.

ORDER

THIS ORDER IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN March 1, 2010.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 EIGHTH AVENUE NORTH, 8th FLOOR
NASHVILLE, TENNESSEE 37243-0307

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472**. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE**

IN THE MATTER OF:

**TENNESSEE SECURITIES DIVISION
and
TENNESSEE INSURANCE DIVISION,
*Petitioners,***

v.

**KT INVESTMENTS, LLC, *and*
DERRICK TRENT FORTNER,
*Respondents.***

DOCKET NO: 12.06-103253J

INITIAL ORDER

This matter was heard on October 13, 2009, by Administrative Judge Mary M. Collier, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Commerce and Insurance in Nashville, Tennessee. Ms. Barbara A. Doak, Chief Counsel, Department of Commerce and Insurance, and Mr. Matthew McCarthy, Assistant General Counsel, Department of Commerce and Insurance, represented the Petitioners. The natural person Respondent, Mr. Derrick Trent Fortner (“Fortner”), appeared and elected to represent himself in this matter, waiving the right to hire legal counsel. The business Respondent, KT Investments, LLC (“KTI”) was not represented by counsel at the hearing.

The Transcript from the hearing was filed on November 2, 2009. The parties were given 15 days in which to file proposed findings of fact and conclusions of law. On November 13, 2009, the Petitioners filed a proposed initial order, which contained proposed findings of fact and conclusions of law. The Respondents were given through and including November 17, 2009, to

file proposed findings of fact and conclusions of law. To date, the Respondents have made no such filings. Accordingly, the RECORD was closed on November 17, 2009.

The subject of this hearing was the proposed revocation of Fortner's insurance producer license in Tennessee and the entry of an Order Permanently Barring Fortner from seeking licensure as an insurance producer in Tennessee and/or securities registration as an agent of a broker-dealer, or as an investment adviser representative.

After consideration of the RECORD in this matter and the arguments presented by Fortner and counsel for the Petitioners, it is determined that Fortner's insurance producer license is **REVOKED**; Fortner is **PERMANENTLY BARRED** from seeking a securities registration as an agent of a broker-dealer, or as an investment adviser representative in Tennessee or seeking a license as an insurance producer in Tennessee; and Fortner **IS ORDERED** to pay **FIVE HUNDRED AND FIVE THOUSAND DOLLARS (\$505,000.00) IN CIVIL PENALTIES**.

This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Tennessee Securities Act of 1980, as amended, TENN. CODE ANN. §§ 48-2-101, *et seq.* (the "Act"), places the responsibility for the administration of the Act on the Commissioner of the Department of Commerce and Insurance ("Commissioner"). The Petitioner the Tennessee Securities Division ("TSD") is the lawful agent through which the Commissioner discharges this responsibility. TENN. CODE ANN. §§ 48-2-112 & 48-2-115.

2. The Tennessee Insurance Law, TENN. CODE ANN. §§ 56-1-101 *et seq.* (the "Law"), places the responsibility of the administration of the Law on the Commissioner. The Petitioner the Tennessee Insurance Division ("TID") is the lawful agent through which the Commissioner discharges this responsibility. TENN. CODE ANN. §§ 56-1-202 & 56-6-112.

SECURITIES REGISTRATION

3. Fortner is a citizen and resident of Davidson County, Tennessee, residing at 1304 Hale Place, Old Hickory, TN 37138. Fortner is not currently registered, as a broker-dealer, broker-dealer agent, investment advisor, or investment advisor representative with the TSD. Fortner has not been a registered agent pursuant to the Act since August 4, 2004. Fortner was formally registered as a broker-dealer agent through the Financial Industry Regulatory Authority (“FINRA”)'s Central Registration Depository (“CRD”), as CRD # 2092759. On August 4, 2004, Fortner voluntarily terminated his registration through New York Life Securities, LLC (CRD # 5167), where he had been registered as a broker-dealer agent since June 7, 2002. Fortner was previously registered as a broker-dealer agent with 1727 Capital Management Co., (CRD # 4082) from July 31, 1996 through January 22, 2002 and Guardian Investor Services, LLC (CRD # 6635) from October 22, 1993 through July 17, 1996.

4. Fortner is not and has not ever been registered as a broker-dealer agent with KTI in Tennessee. Beginning in or around 2000 and ending in 2005, Fortner conducted business through KTI. KTI was intended to be a limited liability company in which to hold the Fortner family's investments in real estate, promissory notes, and other forms of investment. KTI was located at 1304 Hale Place, Old Hickory, TN 37138 and for a brief period at 1707 Division Street, Nashville, TN 37203.

INSURANCE LICENSE

5. Fortner is a licensed insurance producer (License # 701501; National Association of Insurance Commissioners (“NAIC”) # 1639800) in the State of Tennessee.

SECURITIES REGISTRATION VIOLATIONS

6. Beginning in or around 1997, Fortner began selling unregistered securities, in the

form of promissory notes. Fortner sold promissory notes to approximately forty-four (44) different individuals during the relevant period. The first promissory notes were issued in 1997 to Mr. Mark Baird. During the relevant period, Fortner issued at least thirty-eight (38) separate promissory notes to multiple individuals in the State of Tennessee and in other states, including insurance clients, friends and other individuals previously unknown to Fortner.¹ The promissory notes were issued in varying amounts from thirty thousand dollars (\$30,000) to five hundred and fifty-five thousand, nine hundred thirteen dollars and five cents (\$555,913.05), and with maturity dates ranging from a matter of days to one year.

7. Fortner did hold a securities registration in Tennessee from 1993 through 2004; however, the securities registration held by Fortner did not permit him to sell any of the promissory notes sold. None of the promissory notes sold from 1997 through 2004, when Fortner's securities registration ended, were recorded with any of Fortner's associated broker-dealers. The failure to record sales of securities on the books and records of his associated broker-dealer means that all such sales were conducted by an unregistered person, Fortner.

8. Ten (10) of the thirty-eight (38) promissory notes sold by Fortner were issued by KTI. An additional one (1) promissory note was promised by Fortner to be issued by KTI for fifty thousand dollars (\$50,000) given to KTI by Doris Dockum, but the note was never delivered to Ms. Dockum. None of these eleven (11) promissory notes sold by Fortner and issued or promised to be issued by KTI were registered with the TSD for sale in Tennessee. Fortner was not registered with KTI to sell these promissory notes.

9. One (1) of the thirty-eight (38) promissory notes was issued through another one of his companies, Drarock Leasing, LLC, to James and Glenda Simpson for five hundred and

¹ These individuals included Mark Baird, Jada (Floyd) Hicks, Jim and Glenda Simpson, Stanley and Lisa Hicks, Don and Mary Ann Shackelford, John Peters, Terry and Sandy Skrabut, Doris Dockum, and Henry Baron.

fifty-five thousand, nine hundred thirteen dollars and five cents (\$555,913.05). This one (1) promissory note issued by Drarock Leasing, LLC, and sold by Fortner was not registered with the TSD for sale in Tennessee. Fortner was not registered with Drarock Leasing, LLC, to sell this promissory note in Tennessee.

10. Twenty-six (26) of the thirty-eight (38) promissory notes sold during the relevant period were issued by Fortner, individually. None of the twenty-six (26) promissory notes issued by Fortner were registered with the TSD for sale in Tennessee.

SECURITIES FRAUD VIOLATIONS

11. Fortner failed to fully inform his investors of information material to their decisions to invest. Specifically, Fortner failed to inform his investors that he had personally declared Chapter 7 bankruptcy in 1992. Knowing that Fortner had previously declared bankruptcy would have been material to the investors' respective investment decisions. In addition, Fortner did not fully inform his investors where their money was actually being invested. Knowledge of the intended investment objectives would have been material to the investors' investment decisions. Fortner untruthfully informed his investors that he was investing their money in real estate deals or insurance premium financing deals, but instead invested the money in his own failing businesses.

INSURANCE VIOLATIONS

12. In an attempt to repay these outstanding promissory notes, Fortner unlawfully rebated commissions he earned for the sale of insurance policies to his investors. Fortner devised this unlawful scheme to pay down his outstanding obligations on the promissory notes issued during the relevant period.

13. In a further attempt to meet his outstanding financial obligations, Fortner unlawfully sold an unwanted insurance policy to Washington State resident Mr. Terry Skrabut. In order to complete this unlicensed sale, Fortner convinced Mr. Skrabut to use his mother's address in Clarksville, Tennessee, as Mr. Skrabut's residential address. At the time of the sale, Fortner was not licensed to sell insurance in Washington State.

CONCLUSIONS OF LAW

SECURITIES REGISTRATION VIOLATIONS

1. TENN. CODE ANN. § 48-2-112 provides that:

The commissioner may by order deny, suspend, or revoke any registration under this part if the commissioner finds that:

- (1) The order is in the public interest and necessary for the protection of investors, and;
 - (2) The applicant or registrant or, in the case of a broker-dealer or investment advisor, any affiliate, partner, officer, director, or any person occupying a similar status or performing similar functions;
- . . .
- (B) Has willfully violated or willfully failed to comply with any provision of this part or a predecessor chapter . . .

TENN. CODE ANN. § 48-2-112(a)(1) & (2)(B).

2. It is **CONCLUDED** that Fortner willfully engaged in the act of the unregistered sale of unregistered securities in Tennessee and is subject to a PERMANENT BAR from the securities industry under TENN. CODE ANN. §§ 48-2-112(a)(1) & (2)(B). Further, by failing to disclose all material information to his investors, Fortner deprived his clients of the right to make an informed decision about their investments. The actions of Fortner, taken together as a whole, establishes unlawful conduct that subjects a securities registration to revocation, and gives the commissioner sufficient grounds to deny any new application for such a securities registration in the future. As such, Fortner is **PERMANENTLY BARRED** from the securities industry.

3. TENN. CODE ANN. § 48-2-102 defines security as “any **note**, stock, treasury stock, bond, debenture, **evidence of indebtedness . . .**” TENN. CODE ANN. § 48-2-102(16) (emphasis added).

4. TENN. CODE ANN. § 48-2-104(a) provides that: “[i]t is unlawful for any person to sell any security in this state unless: (1) It is registered under this part; (2) The security or transaction is exempted under § 48-2-103; or (3) The security is a covered security.”

5. It is **CONCLUDED** that Fortner’s conduct violated TENN. CODE ANN. § 48-2-104, as Fortner sold unregistered promissory notes from and into Tennessee. TENN. CODE ANN. § 48-2-102(16) provides that security is defined to include promissory notes. The TSD and TID have shown by a preponderance of the evidence that Fortner’s sales constituted thirty-eight (38) violations of TENN. CODE ANN. § 48-2-104(a).

6. TENN. CODE ANN. § 48-2-104(b) provides that “[t]he commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation.”

7. It is CONCLUDED that the Commissioner may order payment of civil penalties for thirty-eight (38) violations of TENN. CODE ANN. § 48-2-104(a). The TSD and TID have shown by a preponderance of the evidence that Fortner made thirty-eight (38) unregistered sales in violation of the Act. As such, the imposition of (\$10,000.00) per violation for a total of **THREE HUNDRED AND EIGHTY THOUSAND (\$380,000.00) IN CIVIL PENALTIES IS ORDERED** pursuant to TENN. CODE ANN. § 48-2-104(b).

8. TENN. CODE ANN. § 48-2-102(3) defines an “agent” as “any individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities from, in or into this state.”

9. TENN. CODE ANN. § 48-2-102(4) defines a “broker-dealer” as “any person engaged in the business of effecting transactions in securities for the account of others . . . ”

10. TENN. CODE ANN. § 48-2-109(a) provides that “[i]t is unlawful for any person to transact business from or in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part . . . ”

11. It is **CONCLUDED** that Fortner’s conduct violated TENN. CODE ANN. § 48-2-109(a), as Fortner was not registered to sell promissory notes from and into Tennessee. The TSD and TID have shown by a preponderance of the evidence that Fortner was not registered to sell promissory notes in the name of KTI or Drarock Leasing, LLC, and that these unregistered sales constitute twelve (12) violations of TENN. CODE ANN. § 48-2-109.

12. TENN. CODE ANN. § 48-2-109(e) provides that “[t]he commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation.”

13. It is **CONCLUDED** that the Commissioner may order payment of civil penalties for twelve (12) violations of TENN. CODE ANN. § 48-2-109(a). The TSD and TID have shown by a preponderance of the evidence that Fortner made twelve (12) unregistered sales in violation of the Act. As such, the imposition of ten thousand dollars (\$10,000.00) per violation for a total

of ONE HUNDRED AND TWENTY THOUSAND (\$120,000.00) IN CIVIL PENALTIES
IS ORDERED pursuant to TENN. CODE ANN. § 48-2-109(e).

14. TENN. CODE ANN. § 48-2-112(a)(2)(G) provides that “[t]he commissioner may by order deny, suspend, or revoke any registration under this part if the commissioner finds that: (2) the applicant or registrant ... (G) has engaged in dishonest or unethical practices in the securities business.”

15. The Rules of the Tennessee Department of Commerce and Insurance Division of Securities provide that it shall be deemed a “dishonest or unethical business practice” by an agent under TENN. CODE ANN. § 48-2-112(a)(2)(G) to engage in the activity of “[e]ffecting securities transactions with a customer not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are disclosed to, and authorized in writing by, the broker-dealer prior to execution of the transactions[].” TENN. COMP. R. & REGS. 0780-4-3-.02(6)(b)3.

16. It is **CONCLUDED** that the promissory notes that were not properly recorded on the books of Fortner’s respective broker-dealers while he was registered as a broker-dealer agent from 1993 through 2004 were not registered sales. Selling away from his broker-dealer is an unethical and dishonest business practice and such unlawful conduct is grounds for the revocation of a securities registration under TENN. CODE ANN. § 48-2-112(a)(2)(G). Fortner’s securities registration is invalid for any sales he did not properly record with his respective broker-dealers and those sales were made by an unregistered person in violation of TENN. CODE ANN. § 48-2-109(a).

SECURITIES FRAUD VIOLATIONS

17. TENN. CODE ANN. § 48-2-121(a)(2) provides that: “[i]t is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or

indirectly, to . . . [m]ake any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading."

18. It is **CONCLUDED** that Fortner violated TENN. CODE ANN. § 48-2-121(a)(2) by omitting facts material to the investment decisions of his insurance and securities clients. The TSD and TID have shown by a preponderance of the evidence that Fortner failed to disclose that he was not registered to sell securities in Tennessee, that the promissory notes he was selling were not registered for sale in Tennessee and that selling these notes constituted a violation of the Law. In addition, Fortner failed to make the material disclosure that he went through a personal bankruptcy in 1992. Each of Fortner's clients testified that knowing that Fortner went through a personal bankruptcy would have affected his decision to invest. The failure to make these material disclosures constitutes a fraud on Fortner's clients, violates the Act and the Law and subjects both his securities registration and his insurance producer license to **PERMANENT REVOCATION.**

19. TENN. CODE ANN. § 48-2-121(a)(3) provides that: "[i]t is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to . . . [e]ngage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person."

20. It is **CONCLUDED** that in violation of TENN. CODE ANN. § 48-2-121(a)(3), Fortner defrauded his clients by misleading them about where their investments were being used. Fortner did not fully inform his clients that he was using funds intended for real estate transactions or insurance premium financing deals to invest in his own personal failed

businesses. Fortner's failure to make adequate disclosures of the funds' use constitutes a violation of TENN. CODE ANN. § 48-2-121(a)(3).

INSURANCE VIOLATIONS

21. TENN. CODE ANN. § 56-6-112(a)(7), provides that “[t]he 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 § 56-2-305 or take any combination of those actions, for any one (1) or more of the following causes: . . . (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud[.]”

22. It is **CONCLUDED** that Fortner engaged in an insurance unfair trade practice. The TSD and TID have shown by a preponderance of the evidence that Fortner rebated the commissions he earned on the sale of insurance products to his insurance customers. The rebating of these commissions provides sufficient grounds under TENN. CODE ANN. § 56-6-112(a)(7) for the revocation of Fortner's insurance producer license (License # 701501; NAIC # 1639800). Under TENN. CODE ANN. § 56-6-112(a)(7), the Commissioner may refuse to issue a license when an individual has been found to have committed any insurance unfair trade practice or fraud. As such, Fortner's insurance producer license is **REVOKE**D and Fortner is **PERMANENTLY BARRED** from the insurance industry.

23. TENN. CODE ANN. § 56-8-104(8)(A) provides that:

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[].

24. It is **CONCLUDED** that the Commissioner may revoke Fortner's insurance producer license (License # 701501; NAIC # 1639800) for the unlawful offer or payment of rebates to his insurance customers. Specifically, the TSD and TID have shown that Fortner used his earned insurance commissions to pay premiums on customer insurance policies and used his commissions to pay cash payments to customers, which constitutes conduct in violation of TENN. CODE ANN. § 56-8-104(8)(A). As a result, Fortner's insurance producer license is **REVOKED**.

25. TENN. CODE ANN. § 56-6-112(a)(8) provides that:

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 § 56-2-305 or take any combination of those actions, for any one (1) or more of the following causes: . . . (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[].

26. It is **CONCLUDED** that the Commissioner may revoke Fortner's insurance producer license (License # 701501; NAIC # 1639800) for his unlawful conduct. The TID has shown by a preponderance of the evidence that Fortner induced Stanley and Lisa Hicks, Mark Baird, Terry and Sandy Skrabut, and Doris Dockum to purchase insurance policies by agreeing to split the earned commissions on the sale. In addition, Fortner requested that Mr. Terry Skrabut provide his mother's address in Clarksville, Tennessee, as Mr. Skrabut's address to complete the unlicensed sale of this insurance product. As a result, Fortner's insurance producer license is **REVOKED**.

27. TENN. CODE ANN. § 56-2-305(a)(2) provides that:

If . . . 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: . . . (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). . . . For purposes of this subdivision (a)(2), each day of continued violation shall constitute a separate violation[.]

28. It is CONCLUDED that the Commissioner may order payment of civil penalties for five (5) violations of the Insurance Law. Fortner's unlawful conduct, including offering to rebate commissions earned on the sale of insurance policies to Stanley and Lisa Hicks, Mark Baird, Terry and Sandy Skrabut, and Doris Dockum constitute four (4) violations of the Law. In addition, requesting that Mr. Terry Skrabut provide his mother's address in Clarksville, Tennessee, as Mr. Skrabut's address to complete the unauthorized, unlicensed sale of this insurance product is another violation of the Insurance Law. For these five (5) violations, the imposition of one thousand dollars (\$1000.00) per violation for a total of **FIVE THOUSAND DOLLARS (\$5000.00) IN CIVIL PENALTIES IS ORDERED** pursuant to TENN. CODE ANN. § 56-2-305(a)(2).

ORDER

29. TENN. CODE ANN. § 48-2-116 provides that the commissioner may make, promulgate, amend, and rescind such orders as are necessary to carry out the provisions of this Act as long as any such 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 Act.

30. It is **CONCLUDED** that it is in the public interest and necessary for the protection of investors that Fortner be **PERMANENTLY BARRED** from the securities industry. The TID and TSD have shown by a preponderance of the evidence that Fortner has repeatedly violated the Act and engaged in transactions that constitute fraud under the Law and the Act. Allowing Fortner to pursue registrations as an agent of a broker-dealer, as an investment adviser representative, and/or licensure as an insurance producer in Tennessee places the public at risk.

31. TENN. CODE ANN. § 48-2-116(e)(2) provides that no order may be entered without prior notice to affected parties (unless the commissioner determines that prior notice would not be in the public interest and would be detrimental to the protection of investors), an opportunity for a hearing before the commissioner, and written Findings of Fact and Conclusions of Law.

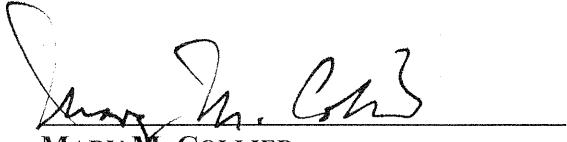
32. On October 13, 2009, the natural person Respondent, Derrick Trent Fortner appeared at a hearing before the Hon. Mary M. Collier, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Commerce and Insurance. After consideration of the RECORD in this matter, it is concluded that the Respondents violated provisions of the Law and the Act, and it is **THEREFORE ORDERED** that Fortner's insurance producer license is **REVOKE**D; Fortner is **PERMANENTLY BARRED** from seeking a securities registration as an agent of a broker-dealer and/or as an investment adviser representative in Tennessee; Fortner is **PERMANENTLY BARRED** from seeking a license as an insurance producer in Tennessee; and Fortner **IS ORDERED** to pay **FIVE HUNDRED AND FIVE THOUSAND DOLLARS (\$505,000.00)** IN CIVIL PENALTIES. Payment, in the form of a cashier's check or money

order, *made payable to the State of Tennessee*, shall be mailed or delivered, to:

State of Tennessee
Department of Commerce and Insurance
Securities Division
Attention: Barbara A. Doak, Attorney
Legal Section, Davy Crockett Tower, 2nd Floor
500 James Robertson Parkway
Nashville, Tennessee 37243.

It is so ORDERED.

This INITIAL ORDER entered and effective this 12th day of February 2010.


MARY M. 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

12th day of February 2010.


THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

APPENDIX A TO INITIAL ORDER **NOTICE OF APPEAL PROCEDURES**

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Eighth Avenue N., Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.