



State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

July 14, 2022

Vishan Ramcharan, Esq.
Tennessee Department of
Commerce and Insurance
General Civil - Legal Division
500 James Robertson Parkway
5th Floor
Nashville, TN 37243

Alan Robert Harris
6500 Papermill Rd
209
Knoxville, TN 37919

**RE: TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE V. ALAN
ROBERT HARRIS, APD Case No. 12.01-210911J**

Enclosed is an *Initial Order*, including a *Notice of Appeal Procedures*, rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
COMMERCE AND INSURANCE,
*Petitioner,***

v.

**ALAN ROBERT HARRIS,
*Respondent.***

APD Case No. 12.01-210911J

INITIAL ORDER

This matter was heard *de novo* on February 11, 2022, before Administrative Judge Rachel L. Waterhouse, assigned by the Secretary of State, Administrative Procedures Division, sitting on behalf of the Commissioner of the Tennessee Department of Commerce and Insurance (Department). By prior agreement of the parties, the hearing was held via WebEx videoconferencing. Associate General Counsel for the Department, Vishan Ramcharan, represented the Tennessee Insurance Division (Petitioner/Division). The Respondent, Alan Robert Harris, did not appear, nor did anyone appear on his behalf.

NOTICE AND ORDER OF DEFAULT

Pursuant to Tenn. Code Ann. § 4-5-309, the Division moved for default based on the failure of the Respondent, or an attorney on his behalf, to appear for the scheduled hearing after receiving proper notice thereof.

The Respondent had participated in telephone pre-hearing conferences on June 14, July 22, and September 23, 2021. During these telephone pre-hearing conferences, the pre-hearing and hearing procedures were explained to the Respondent, the parties agreed to hold the contested case hearing via WebEx videoconferencing, prior continuances were granted, and new

hearing dates were agreed to by the parties. During the pre-hearing conferences, the Respondent stated that he chose to proceed without the assistance of legal counsel.

Prior to the hearing date, several Orders¹ were sent to the Respondent by both email and U.S. Mail stating that the hearing would proceed on February 11, 2022, and including specific instructions on how to connect and participate in the hearing. On February 7, 2022, the Respondent requested a continuance of the February 11, 2022, hearing date. On February 8, 2022, the Division filed a Response in opposition to a continuance of the hearing date. On February 9, 2022, an Order denying the request for a continuance of the hearing date was entered. That Order specifically stated that the hearing would proceed on February 11, 2022, and it was sent to the Respondent by U.S. Mail and email. In addition, the undersigned Judge sent an email to the parties attaching the February 9, 2022, Order and stating that the hearing would proceed as scheduled on February 11, 2022.

Moreover, several Orders sent to the Respondent stated that: “The parties are cautioned that any failure by either party to ‘participate in a pre-hearing conference, hearing or other stage’ of these proceedings, including compliance with the pre-hearing filing deadlines, may result in that party being held in default pursuant to Tenn. Code Ann. § 4-5-309.”

Therefore, based on proof that the Respondent had been properly notified of the hearing date, time, and format and his failure to appear for the hearing, the Division’s Motion for Default was GRANTED and the Respondent was held in DEFAULT, pursuant to Tenn. Code Ann. § 4-5-309 and Tenn. Comp. R. & Regs. (Rule) 1360-04-01-.15. Pursuant to Rule 1360-04-01-.15(2)(b), the hearing was held on an uncontested basis.

¹ Since the opening of this matter in May of 2021, none of the Orders sent to the Respondent by U.S. Mail were returned as undeliverable. Therefore, under the law, it is presumed that all of the Orders were properly delivered.

INITIAL ORDER

The hearing transcript was ordered at the conclusion of the hearing, and the transcript was filed on April 19, 2022. The Division's Proposed Initial Order was filed on May 19, 2022. Therefore, the Record closed on May 19, 2022.

The subject of the hearing was the Division's allegations that the Respondent had violated several provisions of the Tennessee Insurance Producer Licensing Act of 2002, Tenn. Code Ann. § 56-6-101 *et seq.* For the alleged violations, the Division seeks to have the Respondent's Tennessee insurance producer license (No. 0784274) revoked and civil penalties imposed against him.

After consideration of all the evidence, arguments of the Division, and the entire Record, this Initial Order is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF EVIDENCE

Amber Patterson, a Financial Services Investigator within the Division, testified on behalf of the Division. Seven (7) exhibits were entered into evidence.

Exhibit 1: March 21, 2016, check from Bank of America to Alan R. Harris Insurance in the amount of \$3,247.65;

Exhibit 2: May 2, 2016, premium finance agreement;

Exhibit 3: July 5, 2016, Invoice from IPFS Corp. to insured Robert Capps for \$546.82;

Exhibit 4: August 13, 2018, letter from the Respondent's attorney about the Capps' premium payment to IPFS Corp. and a check for \$651.38 payable to Rebecca Capps from Alan R Harris Insurance;

Exhibit 5: April 13, 2015, premium finance agreement;

Exhibit 6: July 3, 2015, check from Becky M. Capps to Allen R Harris Insurance in the amount of \$907.20; and

Exhibit 7: Licensee summary of the Respondent.

FINDINGS OF FACT

1. The Commissioner of the Tennessee Department of Commerce and Insurance has jurisdiction over this matter pursuant to the Tennessee Insurance Producer Licensing Act of 2002, as amended, Tenn. Code Ann. § 56-1-101, *et seq.* (the Law). The Division is the lawful agent through which the Commissioner discharges the responsibility of enforcing the provisions of the Law to protect the public from violations of the Law.

2. At all relevant times, the Respondent held a valid Tennessee insurance producer license (No. 0784274) which became active on or about August 22, 1997.

3. The Respondent is a Tennessee licensed insurance producer with lines of authority in casualty, property, variable contracts, life, and accident & health.

4. The Respondent was responsible for managing and remitting payment for the homeowners insurance policy premiums of Robert and Rebecca Capps (the Capps).

5. Neither of the Capps had entered into premium finance agreements to finance their homeowners insurance premiums in 2015 or 2016 because they paid in full each year.

6. In 2015, the Respondent received a check from Rebecca Capps dated July 3, 2015, to pay the Capps' annual homeowners insurance policy premium. Thus, for 2015, the Capps paid their annual homeowners insurance policy premium in full directly to the Respondent.

7. Despite receiving the funds to do so, the Respondent did not make the 2015 homeowners insurance policy premium payment in full. The Respondent used the Capps' funds in a way not authorized by the Capps.

8. In 2015, the Respondent forged Rebecca Capps' signature on a premium finance agreement with IPFS. The only other signature on the agreement is the Respondent's. The

Respondent timely paid the 2015 premium finance agreement payments in full without the Capps' awareness or authorization.

9. Beginning in 2016, the Capps' homeowners insurance premiums were escrowed in an account with Bank of America.

10. On March 21, 2016, Bank of America sent the Respondent a check for three thousand, two hundred forty-seven dollars and sixty-five cents (\$3,247.65) to pay for the Capps' annual homeowners insurance policy premium payment in full. This amount was supposed to be placed into an escrow account by the Respondent to be paid in full later.

11. The Respondent did not make the 2016 payment in full. The Respondent used the Capps' funds in a way not authorized by either the Capps or Bank of America.

12. On May 2, 2016, the Respondent forged Robert Capps' signature on a premium finance agreement with IPFS. The only other signature on the agreement is the Respondent's. The 2016 agreement shows a total premium of three thousand, two hundred forty-seven dollars and sixty-five cents (\$3,247.65). The 2016 agreement also shows a cash down payment of one thousand, ten dollars and forty cents (\$1,010.40), leaving a financed amount of two thousand, two hundred thirty-seven dollars and twenty-five cents (\$2,237.25). The Respondent did not timely pay all of the agreement's payments.

13. In July 2016, the Capps received an invoice from IPFS to pay five hundred forty-six dollars and eighty-two cents (\$546.82) to maintain their homeowners insurance policy. The Capps were unaware of the agreement with IPFS until they received the invoice. The invoice stated that their policy would be canceled if they didn't make the payment. The Capps made this payment to IPFS.

14. Thereafter, the Capps received a letter dated August 13, 2018, from an attorney on the Respondent's behalf. The letter stated that the Respondent did not know the Capps had made

a payment in 2016 directly to IPFS for their homeowners insurance policy until the Respondent received a copy of a complaint the Capps had filed with the Division.

15. The August 13, 2018, letter from the Respondent's attorney further states: "As a result of your complaint wherein a copy of your check was provided to him, Mr. Harris reviewed his records and determined that he did in fact not pay out the entire premium amount that had been provided to him for your benefit."

16. Along with the August 13, 2018, letter was a check for the amount the Capps had paid directly to IPFS, plus 10% interest since it had been years since the Capps had paid IPFS. Further, the letter states: "This check serves as full and final payment for the premium amount remitted by you to [IPFS]."

17. There is no benefit to a policyholder who is able to and intends to pay his/her entire annual homeowners insurance policy premium in a lump sum to enter into a premium finance agreement.

18. The only person who benefits from a premium finance agreement in that situation is the insurance agent who entered into the agreement because the agent would only make a down payment and finance the balance of the premium amount. Thus, in that situation, the insurance agent has use of the balance of the premium amount that had been paid to the agent by the policyholder or on the policyholder's behalf.

APPLICABLE LAW

1. Tenn. Code Ann. § 56-6-112 provides, in pertinent part, as follows:
 - (a) The commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license issued under this part or may levy a civil penalty in accordance with this section or take any combination of those actions, for any one (1) or more of the following causes:

...

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

....

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

...

(g) If . . . the commissioner finds that any person required to be licensed, permitted, or authorized by the division of insurance pursuant to this chapter has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:

(1) The person to cease and desist from engaging in the act or practice giving rise to the violation.

(2) Payment of a monetary penalty of not more than one thousand dollars (\$1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars (\$100,000). This subdivision (g)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (g)(2), each day of continued violation shall constitute a separate violation; and

(3) The suspension or revocation of the person's license.

(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 and CONCLUSIONS OF LAW

1. In accordance with Rules 1360-04-01-.02(7) and 1360-04-01-.15(3), the Division proved by a preponderance of evidence the facts set forth in the above Findings of Facts.

2. The Division has shown by a preponderance of the evidence that, while licensed with the Division, the Respondent received two (2) checks for the purpose of paying for the Capps' annual homeowners insurance policy premiums for the years 2015 and 2016.

3. The funds from 2015 and 2016 were misappropriated for a time period and not used for their immediate intended purpose.

4. The premium finance agreements gave the Respondent a chance to pay the premiums throughout the year, rather than in full, thus using the Capps' funds in a way not intended or authorized by the Capps.

5. Using any premium payment collected from a bank or individual in a way not intended or authorized by the bank or individual constitutes a misappropriation of moneys received in the course of doing insurance business, which is in violation of Tenn. Code Ann. § 56-6-112(a)(4).

6. The Division has shown by a preponderance of the evidence that, while licensed with the Division, the Respondent forged the Capps' signatures on premium finance agreements in 2015 and 2016 in order to conceal the misappropriation of his customers' funds.

7. Forging a consumer's signature on a premium finance agreement is fraud, which is in violation of Tenn. Code Ann. § 56-6-112(a)(8).

8. Each of the factors enumerated in Tenn. Code Ann. § 56-6-112(h) have been considered, and each are determined to apply in this matter, based on the proven facts.

9. From the foregoing, it is concluded that the proof adduced at hearing provides adequate grounds for the imposition of REVOCATION of the Respondent's Tennessee

insurance producer license and for the imposition of the maximum CIVIL PENALTIES against the Respondent of \$1,000 for each of the two (2) violations found above during each of the two (2) years (2015 and 2016), resulting in a total amount of four thousand dollars (\$4,000.00) in civil penalties.

JUDGMENT

WHEREFORE, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. The Respondent's Tennessee insurance producer license (No. 0784274) is hereby **REVOKED** due to his actions in violation of the Law, as described above.
2. The Respondent is **ASSESSED CIVIL PENALTIES** in the total amount of four thousand dollars (**\$4,000.00**) due to his actions in violation of the Law, as described above, computed as follows: \$1,000.00 for EACH of the two (2) violations [one in 2015 and one in 2016] of Tenn. Code Ann. § 56-6-112(a)(4) and \$1,000.00 for EACH of the two (2) violations [one in 2015 and one in 2016] of Tenn. Code Ann. § 56-6-112(a)(8).
3. The Respondent, and any and all persons who may assist or aid him in any of the aforementioned violations of the Law, shall **CEASE and DESIST** from any such activities.
4. The costs of this action shall be assessed against the Respondent, pursuant to Tenn. Code Ann. § 56-1-110(b)(1).

This Initial Order imposing sanctions against the Respondent is entered to protect the public and consumers of insurance products in Tennessee, consistent with the purposes fairly intended by policy and provisions of the Law.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **14th day of July, 2022**.

Rachel L. Waterhouse

**RACHEL L. WATERHOUSE
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE**

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the
14th day of July, 2022.

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case **BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE (COMMISSIONER)**, called an Initial Order, was entered on **July 14, 2022**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **July 29, 2022**. A new 15 day period for the filing of an appeal to the **COMMISSIONER** (as set forth in paragraph (2), below) starts to run from the entry date of an order ruling on a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued. Filing instructions are included at the end of this document.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an Appeal, which must be **received** by APD no later than 15 days after the date of denial of the Petition. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the **COMMISSIONER** by filing an Appeal of the Initial Order with APD. An Appeal of the Initial Order should include your name and the above APD case number and state that you want to appeal the decision to the **COMMISSIONER**, along with the specific reasons for your appeal. APD must **receive** your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **July 29, 2022**. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.
3. **The COMMISSIONER decides to Review the Initial Order:** In addition, the **COMMISSIONER** may give written notice of the intent to review the Initial Order, within 15 days after the entry of the Initial Order.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the **COMMISSIONER** renders a Final Order.

If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for Stay must be **received** by APD within 7 days of the date of entry of the Initial Order, which is no later than **July 21, 2022**. *See* TENN. CODE ANN. § 4-5-316. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

NOTICE OF APPEAL PROCEDURES

REVIEW OF A FINAL ORDER

When an Initial Order becomes a Final Order, a person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review “in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person’s discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County,” within 60 days of the date the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.Filings@tn.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, TN 37243-1102