TN-ID-0714401
NPN-5939635

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

TENNESSEE INSURANCE DIVISION,	)	
Petitioner,	)	
	)	
vs.	)	**No: 11-015**
	)	
DANIEL LEE FOWINKLE,	)	
Respondent.	)	

CONSENT ORDER

The Insurance Division of the Tennessee Department of Commerce and Insurance ("Insurance Division"), through counsel, and Daniel Lee Fowinkle ("Respondent"), also through counsel, hereby stipulate and agree, subject to the approval of the Commissioner of Commerce and Insurance ("Commissioner"), as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

2. The Commissioner has determined that the resolution set forth in this Consent Order is fair and reasonable and in the best public interest.

3. This Consent Order is executed by Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

4. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against Respondent for acts and/or omissions not specifically addressed in this Consent Order or for acts and/or omissions that do not arise from the facts or transactions herein addressed. Respondent also understands that this Consent Order may be used by the Commissioner to revoke or refuse to issue any license Respondent currently holds or for which Respondent applies in the future with the Insurance Division of the Tennessee Department of Commerce and Insurance.

5. 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 Consent Order, the stipulation and imposition of discipline contained herein and the consideration and entry of said Consent Order by the Commissioner.

JURISDICTION

6. The Commissioner has jurisdiction pursuant to the Tennessee Insurance Law (the "Law"), TENN. CODE ANN. §§ 56-6-101 *et seq.*, and the Law places the responsibility for the administration of the Law on the Commissioner.

PARTIES

7. The Insurance 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. Respondent is a citizen and resident of the State of Tennessee, residing at 3024 Country Place Drive East, Collierville, Tennessee 38017. Respondent's insurance producer license, numbered 714401, was issued in 1990. Respondent conducts insurance business from his agency, Fowinkle Insurance, located at 5489 Murray Road, Memphis, Tennessee 38119.

FINDINGS OF FACT

9. On approximately September 17, 2010, Respondent submitted three (3) life insurance applications to Farmers New World Life Insurance Company ("Farmers") in the names of three (3) individuals without their authorization or knowledge in order to obtain commissions. In an effort to conceal the existence of the policies, Respondent listed the individuals' address as that of property owned by Respondent in Counce, Tennessee and paid the initial premiums for the policies from his personal funds.

10. A routine audit by Farmers identified the address discrepancy and notified the individuals. The individuals confronted Respondent who admitted that he had submitted the fraudulent applications in their names.

11. Farmers suffered no financial loss from the issuance of the policies.

CONCLUSIONS OF LAW

12. TENN. CODE ANN. § 56-6-112(a)(8) (2008) provides that the Commissioner may place on probation, suspend, revoke or refuse to issue or renew a license and/or may levy a civil penalty for anyone who uses fraudulent, coercive or dishonest practices or demonstrates incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

13. Based on the Findings of Facts cited above, the Commissioner finds that Respondent used fraudulent and dishonest practices in the conduct of business in the state.

14. Such facts constitute grounds for an Order revoking Respondent's insurance producer license and assessing a civil penalty based on violations of TENN. CODE ANN. § 56-6-112(a)(8) (2008). Respondent admits that the Findings of Facts are accurate and concedes that the Conclusions of Law contained herein are fair and reasonable as outlined above. Respondent enters into this Consent Order for the sole purpose of avoiding further administrative action with respect to this cause.

ORDER

NOW, THEREFORE, based on the foregoing and the waiver of Respondent of his rights to a hearing and appeal under the Law and Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 *et seq.*, and the admission by Respondent of the jurisdiction of the Commissioner, the Commissioner finds that the Respondent has agreed to the entry of this Consent Order and that this Consent Order is appropriate and in the public interest.

IT IS ORDERED, pursuant to TENN. CODE ANN. § 56-6-112(a) (2008) that:

The insurance producer license, numbered 714401, issued to Daniel Lee Fowinkle, is hereby **REVOKED.**

IT IS FURTHER ORDERED, pursuant to TENN. CODE ANN. § 56-2-305(a)(2) (2008) that:

Respondent be assessed a civil penalty in the amount of five hundred dollars ($500) to be deposited into the Department's Education Fund.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By signature affixed below, Daniel Lee Fowinkle, affirmatively states that he has freely agreed to the entry of this Consent Order, that he has been advised that he may consult with legal counsel in this matter, that he waives the right to a hearing on the matters underlying this Consent Order and that no threats or promises of any kind have been made by the Commissioner, the Insurance Division or any agent thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

SO ORDERED.

ENTERED this the 2nd day of June, 2011.

Julie Mix McPeak, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

Larry C. Knight, Jr.
Assistant Commissioner for Insurance
Department of Commerce and Insurance

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