

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

<b>TENNESSEE INSURANCE DIVISION,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>TID No.: 20-128</b>
	)	
<b>AMERICAN FIDELITY ASSURANCE</b>	)	
<b>COMPANY,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	

**CONSENT ORDER**

The Insurance Division of the Tennessee Department of Commerce and Insurance (“Division”) and American Fidelity Assurance Company (“Respondent”) hereby stipulate and agree to the entry and execution of this Consent Order, 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 Consent 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 an order by the Commissioner.
  
2. This Consent Order is executed by the parties 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.
  
3. The Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not

specifically addressed in this Consent Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. The Respondent fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for alleged violations of the law addressed specifically in this Consent Order, violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the entry and execution of this Consent 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 Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry and execution of said Consent Order by the Commissioner.

#### **AUTHORITY AND JURISDICTION**

6. The Commissioner has jurisdiction of this action pursuant to the Tennessee insurance law, Title 56 of the Tennessee Code Annotated (“Tenn. Code Ann.”), specifically Tenn. Code Ann. §§ 56-1-103 and 56-6-112 (the “Law”). The Division is the lawful agent through which the Commissioner discharges this responsibility.

#### **PARTIES**

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

8. The Respondent is an accredited insurance company licensed by the Commissioner to conduct insurance business in the State of Tennessee.

9. The Respondent employs representatives that are properly licensed by the Division to sell, solicit and/or negotiate the business of insurance in the State of Tennessee.

### **FINDINGS OF FACT**

10. On or about February 28, 2019, the Division was made aware of allegations that a representative of the Respondent had violated Tennessee insurance law.

11. As a result, the Division entered Inquisitorial Order 19-030 on April 9, 2019, initiating an investigation into the conduct of that representative.

12. On March 12, 2020, the Division entered Amended Inquisitorial Order 19-030, expanding the investigation to include the conduct of the Respondent and an additional representative of the Respondent.

13. On December 7, 2018, the Division issued Interpretive Opinion 05-18.

14. On December 19, 2018, the Division rescinded Interpretive Opinion 05-18.

15. On or about February 15, 2019, a representative of the Respondent provided a copy of rescinded Interpretive Opinion 05-18 to a client in response to the client's concerns about whether another insurance company and its appointed producer were operating in violation of Tennessee insurance law.

16. Prior to providing the copy of rescinded Interpretive Opinion 05-18 to this client, the representative requested, and was granted, permission to do so from the Respondent's management structure and internal legal counsel.

17. At that time, the Respondent's management structure and internal legal counsel knew, or should have known, that Interpretive Opinion 05-18 was rescinded.

18. The Respondent has since averred to the Division that it has addressed this internal issue and has taken steps to ensure that such an oversight does not take place in the future.

19. The Respondent did not request issuance of and had no knowledge of Interpretive Opinion 05-18 prior to its issuance by the Division.

### CONCLUSIONS OF LAW

20. At all times relevant hereto, Tenn. Code Ann. § 56-6-112 has provided that:

(a) The [C]ommissioner may place on probation, suspend, revoke, or refuse to issue or renew a license issued under [T]itle 56, [P]art 6, [C]hapter 1, or issue a civil penalty for any one (1) or more of the following causes:

...

(2) Violating any law, rule, regulation, subpoena or order of the [C]ommissioner or of another state's commissioner;

...

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

...

(e) The [C]ommissioner 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.

...

(g) If . . . the [C]ommissioner 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 [C]ommissioner may, at the [C]ommissioner'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 [C]ommissioner 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.

**ORDER**

NOW, THEREFORE, on the basis of the foregoing, and the Respondent's waiver of the right to a hearing and appeal under the Law and the 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, acknowledges the Findings of Fact and consents to the entry and execution of this Consent Order.

**IT IS ORDERED**, pursuant to Tenn. Code Ann. § 56-6-112 of the Law, that:

1. The Respondent shall pay a total civil monetary penalty of **ONE THOUSAND DOLLARS (\$1,000)**. Payment shall be made within thirty (30) days of the date this agreement is entered and executed by the Commissioner. Payment shall be mailed to:

**State of Tennessee  
Department of Commerce and Insurance  
Attn: Vishan Ramcharan, Legal Division  
Davy Crockett Tower  
500 James Robertson Parkway  
Nashville, Tennessee 37243**

2. This Consent Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Commissioner against the Respondent for violations of the Law alleged by or currently known by the Division to have occurred with respect to the transactions involving the above referenced facts contained herein.

3. 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. Third parties are hereby given specific notice by the Division of the prohibitions against unfair trade practices, false information and defamation pursuant to Tenn. Code Ann. § 56-8-104(2) and (3) in connection with any use or publication of this Consent Order.

4. By the signatures affixed below, the Respondent affirmatively states that it has freely agreed to the entry and execution of this Consent Order, that the Respondent waives the right to a hearing on the matters underlying this Consent Order or the enforcement of this Consent Order, and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made to it by the Commissioner, the Division, or any agent or representative thereof.

5. 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 as set forth in this Consent Order, are binding upon them.

6. This Consent 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

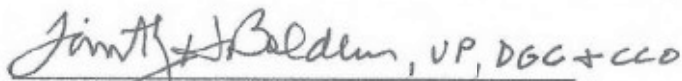
constitute original signatures, and facsimile or electronic copies shall be deemed to constitute duplicate originals.

ENTERED AND EXECUTED October 12, 2020.


  
Hodgen Mainda (Oct 12, 2020 09:45 CDT)

Hodgen Mainda, Commissioner  
Department of Commerce and Insurance

**APPROVED FOR ENTRY AND EXECUTION:**

  
Respondent

American Fidelity Assurance Company  
Authorized Representative:

  
Attorney for Respondent  
T. Stephen C. Taylor, BPR#018921  
Bass Berry & Sims PLC  
150 Third Avenue South, Suite 2800  
Nashville, TN 37201  
(615) 742-7758  
[staylor@bassberry.com](mailto:staylor@bassberry.com)

Vishan J. Ramcharan  
Vishan J. Ramcharan (Oct 6, 2020 13:02 CDT)

Vishan J. Ramcharan, BPR#34403  
Associate General Counsel  
Department of Commerce and Insurance  
500 James Robertson Parkway  
Davy Crockett Tower  
Nashville, TN 37243  
(615) 770-0082  
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