NPR - 5935680

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

0673692

November 25, 2009

Commissioner Leslie Schecter Newman
Tennessee Department of Commerce & Insurance
5th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243-5065

Bruce Poag, Esq.
Assistant General Counsel
Tennessee Department of Commerce & Insurance
Office of Legal Counsel
2nd Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243-1162

Joyce Allen
3625 Vista Road
Louisville, TN 37777

RE: In the Matter of: Joyce Allen Docket No. 12.01-104871J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

The Department of State is an equal opportunity, equal access, affirmative action employer.

BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

JOYCE ALLEN **DOCKET NO. 12.01-104871J**

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 **December 10, 2009.**

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:	
Joyce Allen	DOCKET NO: 12.01-104871J

INITIAL ORDER OF DEFAULT AND DISMISSAL

This contested case hearing was set to be heard in person on November 24, 2009, in Nashville, Tennessee, before Joyce Carter-Ball, Administrative Judge, Administrative Procedures Division, assigned by the Secretary of State and sitting for the Commissioner of the Tennessee Department of Commerce and Insurance. Bruce Poag, Staff Attorney for the Tennessee Department of Commerce and Insurance, represented the State. Respondent, Joyce Allen, was not present, nor was anyone present to represent her.

DEFAULT

The State moved that a default be entered against Respondent for failure to participate in the hearing after due notice. The State introduced proof that reasonable attempts were made to notify the Respondent of the hearing set for November 24, 2009. Proof of service was made part of the record. It appearing that proper notice was sent to Respondent, and that Respondent failed to appear at the hearing, the State's Motion for Default is well taken and is hereby **GRANTED** pursuant to TENN. CODE ANN. § 4-5-

309(a). *See also* RULE 1360–4–1–.15(1) of the UNIFORM RULES OF PROCEDURE FOR HEARING CONTESTED CASES BEFORE STATE ADMINISTRATIVE AGENCIES.

DISMISSAL

The Motion for Default having been granted, the Petitioner was permitted to proceed uncontested, pursuant to TENN. CODE ANN. § 4-5-309(a), *see also* RULE 1360–4–1–.15(2). The issue presented for consideration at this hearing was the State's petition to suspend or revoke Respondent's license, and/or the imposition of other lawful discipline. After consideration of the record and arguments of Petitioner, it is **ORDERED** that Respondent's license as an Insurance Producer be **REVOKED.**

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

FINDINGS OF FACT

1. At all times relative hereto, Respondent was licensed as an Insurance Producer, having obtained said license, numbered 673692, in 1986.

2. On July 31, 2008, insurance fraud investigator Robert Heisse ("Investigator Heisse") notified Respondent that her presence at the offices of the Department of Commerce and Insurance ("Department") on August 19, 2008 at 2:00 p.m. CST was required to provide information and documents related to certain parties Investigator Heisse was investigating. The correspondence was mailed via U.S. Postal Service, certified mail, return receipt requested, receipt number 7002086000017625, to Respondent's home address. On August 4, 2008, the correspondence was received, and

the signature card bears the signature J. Ellis. Respondent failed to appear at the offices of the Department on the established date and time. Respondent subsequently informed Investigator Heisse that automobile problems prevented her from appearing.

3. On August 19, 2008, Investigator Heisse again notified Respondent that her presence at the offices of the Department on August 26, 2008 at 10:00 a.m. CST was required to provide the previously requested information and documents related to certain parties Investigator Heisse was investigating. The correspondence was mailed via U.S. Postal Service to Respondent at Post Office Box 371, Alcoa, Tennessee 37701. Again, Respondent failed to appear at the offices of the Department on the established date and time.

4. On October 20, 2008, Investigator Heisse notified Respondent that her presence at the offices of the Department on October 29, 2008 at 10:00 a.m. CST was required to provide the previously requested information and documents related to certain parties Investigator Heisse was investigating. The correspondence was mailed via U.S. Postal Service, certified mail, return receipt requested, receipt number 7000167000058480, to Respondent at Post Office Box 371, Alcoa, Tennessee 37701. On October 28, 2008, the correspondence was received, and the signature card bears the signature Jenny Roof. Respondent failed to appear at the offices of the Department on the established date and time. Investigator Heisse attempted to contact Respondent to no avail.

5. On February 20, 2009, the Commissioner issued a *subpoena ad testificandum* and *subpoena duces tecum* compelling Respondent's appearance at 500

James Robertson Parkway, Fourth Floor Conference Room, Nashville, Tennessee 37243 at 10:00 a.m. CST on March 10, 2009 to give sworn testimony in a matter being investigated by Investigator Heisse.

6. On February 24, 2009, the subpoenas were mailed to Respondent at Post Office Box 371, Alcoa, Tennessee 37701 via United States Postal Service, certified mail, return receipt requested, receipt number 70041350000261480386. On February 28, 2009, the subpoenas were received, and the signature card bears the signature Jenny Root.

7. On March 3, 2009, Investigator Heisse received a telephone call from South Carolina attorney Randall Hiller. Attorney Hiller disputed the Insurance Division's authority to subpoena Respondent and advised Respondent to not comply with the subpoenas.

8. On April 22, 2009, Investigator Heisse notified Respondent through attorney Hiller that her presence at the offices of the Department on May 6, 2009 at 1:00 p.m. CST was required to provide the previously requested information and documents related to certain parties Investigator Heisse was investigating. A copy of the correspondence was mailed via U.S. Postal Service, certified mail, return receipt requested, receipt number 70001670000599998473, to Respondent at Post Office Box 371, Alcoa, Tennessee 37701. The correspondence was received (date unknown), and the signature card bears the signature J. Ellis. Again, Respondent failed to appear at the offices of the Department on the established date and time.

9. In a letter from attorney Hiller to Investigator Heisse dated April 27, 2009, attorney Hiller indicated that he did not represent Respondent and had advised her to

obtain counsel.

10. Investigator Heisse has not received any correspondence or contact from Respondent.

CONCLUSIONS OF LAW

1. TENN. CODE ANN. § 56-6-112(a)(2) (2008) provides that the Commissioner may place on probation, suspend, revoke or refuse to issue or renew a license for anyone who violates any law, rule, regulation, subpoena or order of the Commissioner or of another state's Commissioner.

2. The facts demonstrate that Respondent violated TENN. CODE ANN. § 56-6-112(a)(2) (2008) by failing to appear as directed by the subpoenas. Such facts constitute grounds for an Order revoking Respondent's Insurance Producer license in accordance with TENN. CODE ANN. § 56-6-112(a)(2) (2008) and assessing a civil penalty in an amount not more than one thousand dollars ($1,000) and up to twenty-five thousand dollars ($25,000) if Respondent knowingly violated a statute, rule or order in accordance with TENN. CODE ANN. § 56-2-305(a)(2) (2008).

1. It is **CONCLUDED** that the State has carried its burden of proof by a preponderance of the evidence that the Respondent violated provisions of the rules promulgated by the Commissioner.

2. It is therefore **ORDERED** that Respondent's Insurance Production license (#673692) be **REVOKED** and that Respondent be assessed a civil penalty in the amount of one thousand dollars ($1,000.00).

This Initial Order entered and effective this 25TH day of NOV, 2009.

Joyce Carter-Ball
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 25TH day of NOVEMBER 2009.

Thomas G. Stovall, Director
Administrative Procedures Division

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.