BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

TENNESSEE INSURANCE DIVISION,
Petitioner,

v.

TIFFANY LYNN LEWIS,
Respondent.

DOCKET NO: 12.01-119738J

NOTICE OF DEFAULT and INITIAL ORDER

This contested case was heard in person in Nashville on April 2, 2013, by Administrative Judge Kim Summers, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Commerce and Insurance (the Commissioner). Lauren Dantche, Assistant General Counsel, represented the Department in this matter. The Respondent was not present or represented by counsel at the hearing.

Because Respondent failed to appear for the hearing, the Petitioner, through Counsel, moved for a default. The default was granted based on acceptable proof of service of the Notice of Charges and Hearing, and the Department was granted leave to proceed with the hearing unopposed.

The issue in this matter is Respondent's alleged violation of Tenn. Code Ann. § 56-6-112(a) and the appropriate penalty to be imposed for any such violation pursuant to Tenn. Code Ann. § 56-6-112(g) / Tenn. Code Ann. § 56-2-305. After consideration of the entire record, it is determined that Respondent's actions have been in violation of Tenn. Code Ann. § 56-6-112(a) and that penalties shall issue as further specified below.

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

SUMMARY OF EVIDENCE

One witness testified at the hearing on behalf of the Petitioner: Richard Riddle, Fraud Investigator with the Department of Commerce and Insurance. Twelve exhibits were entered into evidence: EXHIBIT 1, Proof of Service of the Petition on Respondent; EXHIBIT 2, Affidavit of Kimberly Biggs, entered into evidence, effectively as live witness testimony; EXHIBIT 3, documents involving the criminal proceedings against the Respondent in Texas; EXHIBIT 4, Order Affirming Judgment of Disbarment against Respondent in Texas; EXHIBIT 5, Affidavit of Respondent voluntarily surrendering her insurance license in Texas in lieu of a contested case; EXHIBIT 6, order revoking the Respondent's insurance license in South Carolina; EXHIBIT 7, order revoking the Respondent's insurance license in Illinois; EXHIBIT 8, order revoking the Respondent's insurance license in Idaho; EXHIBIT 9, order revoking the Respondent's insurance license in Washington; EXHIBIT 10, order revoking the Respondent's insurance license in Connecticut; EXHIBIT 11, order revoking the Respondent's insurance license in Arkansas; EXHIBIT 12, order revoking the Respondent's insurance license in Oregon.

FINDINGS OF FACT

1. Non-resident insurance producer license number 2017428 was issued to Respondent in Tennessee in 2010 and is set to expire on July 31, 2013.

2. Respondent's address of record is 615 E Abram, #127, Dallas, TX 76010.

3. The Respondent's Tennessee insurance license was placed on hold following revocation of her resident insurance license in Texas.

4. On her October 4, 2010 application submitted to the Tennessee Department of Commerce and Insurance, the Respondent answered "no" to the following question – Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?

5. On her October 4, 2010 application submitted to the Tennessee Department of Commerce and Insurance, the Respondent answered "no" to the following question – Have you ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration?

6. A Judgment of Conviction was entered against the Respondent in Texas on September 15, 2009, following several indictments that were issued in July 2003. Respondent was ordered to pay restitution in the amount of $58,256.92.

7. An Order Affirming Judgment of Disbarment against the Respondent's license to practice law was issued in Texas on June 15, 2006.

8. The Respondent surrendered her Texas insurance license on October 3, 2011.

9. The Respondent applied for a non-resident insurance producer license in South Carolina in October 2010. The license was revoked by an order dated July 13, 2011, for failure to disclose the Texas conviction. No monetary penalty was assessed.

10. The Respondent applied for a non-resident insurance producer license in Illinois in October 2010. The license was revoked by an order dated October 18, 2011, for failure to disclose either the Texas conviction or disbarment. A civil penalty of $20,000 was assessed.

11. The Respondent applied for a non-resident insurance producer license in Idaho in October 2010. The license was revoked by an order dated July 19, 2011. An administrative penalty of $3,000 was assessed.

12. The Respondent applied for a non-resident insurance producer license in Washington in October 2010. The license was revoked by an order dated August 11, 2011, for failure to disclose either the Texas conviction or disbarment. No monetary penalty was assessed.

13. The Respondent applied for a non-resident insurance producer license in Connecticut in October 2010. The license was revoked by an order dated October 7, 2011, for failure to disclose either the Texas conviction or disbarment. No monetary penalty was assessed.

14. The Respondent applied for a non-resident insurance producer license in Arkansas in October 2010. The license was revoked by an order dated September 14, 2011, for failure to disclose the Texas conviction or disbarment. No monetary penalty was assessed.

15. The Respondent applied for a non-resident insurance producer license in Oregon in October 2010. The license was revoked by an order dated August 10, 2011, for failure to disclose the Texas conviction or disbarment. No monetary penalty was assessed.

APPLICABLE LAW

1. RULE 1360–4–1–.02(3) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies states, in pertinent part:

> The "petitioner" in a contested case proceeding is the "moving" party, i.e., the party who has initiated the proceedings. The petitioner usually bears the ultimate burden of proof.

2. RULE 1360–4–1–.15(1)(a) states:

> The failure of a party to attend or participate in a prehearing conference, hearing or other stage of contested case proceedings after due notice thereof is cause for holding such party in default pursuant to T.C.A. §4-5-309.

3. Tenn. Code Ann. § 4-5-309(a) states:

> ***If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge…may hold the party in default*** and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings. (Emphasis added.)

4. TENN. CODE ANN. § 56-6-112(a) authorizes the Commissioner to place on probation, suspend, revoke or refuse to issue or renew a license or level a civil penalty for any of the following conduct:

(1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

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

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(6) Having been convicted of a felony;

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory.

5. For violations of TENN. CODE ANN. § 56-6-112(a) occurring on or after July 1, 2011, TENN. CODE ANN. § 56-6-112(g)(2) permits a penalty of $1000 per violation of TENN. CODE ANN. § 56-6-112(a), up to a total penalty of $100,000.

6. For violations of TENN. CODE ANN. § 56-6-112(a), occurring prior to July 1, 2011, TENN. CODE ANN. § 56-2-305(a)(2) permits a penalty of $1000 per violation of TENN. CODE ANN. § 56-6-112(a), up to a total penalty of $100,000, or up to $25,000 for each knowing violation for a total penalty of $250,000.

7. In deciding the appropriate penalty, TENN. CODE ANN. § 56-6-112(h) requires the Commissioner to consider the following:

(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. Even though Respondent did not participate in the hearing after the requisite notice was provided, the burden was still on the Petitioner to prove by a preponderance of the evidence

that Respondent has violated the provisions of TENN. CODE ANN. § 56-6-112(a) and is subject to civil penalties and / or the revocation of her insurance producer license.

2. The Respondent had been convicted of a crime in the State of Texas at the time that she applied with the State of Tennessee for a non-resident insurance producer license on October 4, 2010. She failed to disclose this conviction on her application.

3. The Respondent had been the subject of administrative proceedings regarding her license to practice law in the State of Texas at the time that she applied with the State of Tennessee for a non-resident insurance producer license on October 4, 2010. She failed to disclose the proceedings and the resulting disbarment on her application.

4. The Respondent applied for an insurance producer license in all eight States referenced in this Order, including Tennessee, in October 2010. The license revocation in the seven other States occurred after the Respondent had applied for a license with the State of Tennessee.

5. The Department **HAS** shown by a preponderance of the evidence two (2) violations of TENN. CODE ANN. § 56-6-112(a)(1) for providing incorrect, misleading, incomplete, and materially untrue information in her insurance application.

6. Based upon these two violations, Respondent's insurance producer license is properly revoked.

7. Although the Respondent failed to disclose the criminal and administrative proceedings in a total of eight states when applying for a non-resident insurance producer license, the underlying conduct occurred in Texas. The Respondent has been penalized in Texas for this conduct. The Respondent still resides in Texas and no longer has a license in Texas to either practice law or sell insurance. The Respondent has been penalized for the failure to disclose in both Illinois and Idaho.

8. The Respondent shall be assessed a $1000 civil penalty for each failure to disclose in her Tennessee application, for a total civil penalty of $2,000, plus the cost of these proceedings.

9. The Respondent shall not be eligible to reapply for an insurance producer license in the State of Tennessee without proof that all restitution and civil penalties referenced in this Order have been paid in full.

Based upon the foregoing, the Department's Petition to revoke the Respondent's insurance producer license and assess civil penalties against the Respondent is hereby **GRANTED**.

It is hereby **ORDERED** that the Respondent's Tennessee insurance producer license is revoked and that Respondent shall pay to the State of Tennessee a civil penalty of $2,000. Respondent shall be prohibited from reapplying for an insurance producer license in the State of Tennessee until full payment has been made of all restitution and civil penalties, in the total amount of 83,256.92, plus the cost of these proceedings, not to exceed $3,000.

Should good cause exist for Respondent's failure to appear / participate in the hearing, Respondent may move to have this order set aside no later than fifteen (15) days after entry.

This INITIAL ORDER entered and effective this the 15TH day of MAY 2013.

KIM SUMMERS
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 15TH day of MAY 2013.

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