TN ID# 0851961

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

NPN- 231965

TENNESSEE INSURANCE DIVISION,	)	
Petitioner,	)	
	)	
vs.	)	**No: 11-050**
	)	
TIMOTHY PATRICK KIRK,	)	
Respondent.	)	

CONSENT ORDER

The Insurance Division of the Tennessee Department of Commerce and Insurance ("Insurance Division"), through counsel, and Timothy Patrick Kirk ("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 or any Commissioner, Department or Board to revoke or refuse to issue any license Respondent currently holds or for which Respondent applies in the future.

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 Texas, residing at 15814 Lower Lake Drive, Cypress, Texas 77433. Respondent's Texas insurance producer license, numbered 648562, was issued in 1992. Respondent was issued a non-resident Tennessee insurance producer license, numbered 851961, in 2001. Respondent conducts insurance business through his agency, American Surety.

FINDINGS OF FACT

9. In 2006, Templebloc, Inc. ("Templebloc"), through a referral from Gregory Candebat, solicited Respondent to procure a construction surety bond for a construction project Templebloc undertook for its client, Old St. Paul Missionary Baptist Church ("St. Paul").

10. On approximately March 16, 2006, First Nation Insurance Group ("First Nation") ostensibly issued a construction surety bond not to exceed claims over two million six hundred ninety thousand six hundred fifty-nine dollars ($2,690,659) for the St. Paul construction project. St. Paul paid one hundred twenty-one thousand seventy-nine dollars and sixty-five cents ($121,079.65) in premiums for the construction surety bond.

11. Respondent received a sales commission totaling approximately twenty-six thousand nine hundred dollars ($26,900), representing one percent (1%) of the value of the construction surety bond. Gregory Candebat received a referral fee totaling approximately thirteen thousand four hundred fifty dollars ($13,450), representing one-half percent (1/2 %) of the value of the construction surety bond.

12. On approximately December 12, 2006, Templebloc allegedly abandoned the construction project before its completion and failed to pay some of its subcontractors and materialmen.

13. First Nation did not have a certificate of authority to transact insurance business in Arkansas, the state in which the St. Paul construction project was located, or any other known jurisdiction.

14. Respondent failed to perform due diligence with regards to verifying whether First Nation was authorized to transact insurance business in Arkansas. Rather, Respondent only relied on representations made by Gwen Moyo, who claimed to be First Nation's lawful representative, and the due diligence that had been conducted by the lender that was requiring the bond.

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 851961, issued to Timothy Patrick Kirk, is hereby **REVOKED.**

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

Timothy Patrick Kirk is also assessed a civil penalty in the amount of ten thousand dollars ($10,000), which is 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, Timothy Patrick Kirk, 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 15th day of December, 2011.

Julie Mix McPeak

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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