C677294

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

TENNESSEE INSURANCE DIVISION, Petitioner, vs. FRANK TODD DAVIS, Respondent,	)))))))))	Docket No.: 12.01-061787J

ORDER

This matter came to be heard on July 11, 2006 before Phillip Barber, Administrative Judge assigned to the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Commerce and Insurance in Nashville, Tennessee.

Shawn Kiser Hawk, Attorney, Department of Commerce and Insurance, represented the Tennessee Insurance Division.

The Respondent, Frank Todd Davis, (hereinafter referred to as "Respondent"), appeared without counsel and was advised by this Administrative Judge of Respondent's right to have legal counsel. Respondent subsequently acknowledged and formally waived such right to counsel and proceeded in his own defense *pro se*.

The subject of this hearing was the proposed revocation of the Respondent's insurance producer license in Tennessee and the imposition of civil penalties.

After consideration of the testimony of witnesses, argument of the parties or their counsel, and the record in this matter, it is the determination of this Administrative Judge that the Respondent's insurance producer license should be

REVOKED and that the Respondent should be ordered to pay civil penalties to the Department in the amount of Five Thousand Dollars ($5,000) plus the cost of this action.

This decision is based on the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Tennessee Insurance Law, as amended, Tennessee Code Annotated (hereinafter referred to as "T. C. A."), Title 56, places the responsibility for the administration of the Law on the Commissioner of Commerce and Insurance (hereinafter referred to as the "Commissioner").

The Insurance Division of the Tennessee Department of Commerce and Insurance (hereinafter referred to as the "Division") is the lawful agent through which the Commissioner discharges this responsibility.

The Respondent has, at all times relevant, been a citizen and resident of Tennessee and licensed by the Division to sell insurance in this state as an insurance producer, having obtained said license, numbered 677294, in 1988. Respondent's license is currently revoked for non-payment of licensing fees.

On or about February 14, 2003 Leslie Elmore gave Respondent One Hundred Fifty-One Dollars ($151.00) in payment for a personal umbrella policy and Respondent failed to forward the payment to an insurer.

On or about July 1, 2003 Respondent intentionally misrepresented to Leslie Elmore that One Thousand Four Hundred Seventy-Two Dollars ($1472.00), payment Respondent received from Leslie Elmore for a commercial property and liability policy on her law office to be effective June 21, 2003, constituted the entire premium for the full term of the policy. Later, however, Respondent secured the commercial property and liability policy from The Burlington Insurance Company but the premium increased to Three Thousand Four Hundred Sixty Dollars and

Forty-Eight Cents ($3,460.48) with an effective date of July 8, 2003.

On or about August 19, 2003 Respondent failed to submit to The Burlington Insurance Company an application for commercial property and liability insurance signed by Leslie Elmore and a copy of her professional liability policy. Respondent's failure resulted in a cancellation of the policy effective September 21, 2003.

On or about December 31, 2003 Title Enterprises, LLC sent a check payable to Foremost Insurance Company in the amount of Six Hundred Five Dollars ($605.00) to the Respondent's office in payment for hazard insurance on the property of Betty Sue Vance at 321 Deaderick Avenue, Knoxville, Tennessee. Respondent deposited the check and failed to forward the payment to the insurer.

In November of 2003 Karen Privett, co-owner of L&K Builders, LLC, gave Respondent Nine Thousand Three Hundred Forty Dollars ($9,340.00) in payment for workers compensation insurance coverage. Respondent failed to forward the payment to the insurer.

On or about November 12, 2003 Karen Privitt, co-owner of L&K Builders, LLC, gave Respondent approximately One Thousand Four Hundred Thirty-Two Dollars ($1,432.19) in payment for commercial general liability coverage. Respondent failed to forward the payment to the insurer.

On or about December 9, 2003 Respondent intentionally misrepresented to Karen Privitt, co-owner of L&K Builders, LLC, by copy of a false certificate of insurance signed by Respondent, that a commercial general and excess liability policy existed under which L&K Builders was an insured effective December 1, 2003.

On or about January 15, 2004, Respondent intentionally misrepresented to Karen Privitt, co-owner of L&K Builders, LLC, through another false copy of a certificate of insurance signed by Respondent, that a commercial general liability

policy existed under which L&K Builders was an insured effective December 10, 2003.

On or about January 15, 2004, Respondent intentionally misrepresented to Karen Privitt, co-owner of L&K Builders, LLC, through another false copy of a certificate of insurance signed by Respondent, that a worker's compensation insurance policy existed under which L&K Builders was an insured effective December 10, 2003.

On or about January 28, 2004, Karen Privett met with Sevierville Police Detective Lt. Ted Agee about Respondent, and the next day, Karen Privett finally received from Respondent evidence she was able to confirm of the existence of workers compensation insurance on L & K Builders, LLC effective January 28, 2004. However, on two occasions Respondent sent to the insurer as payment of premium checks on Respondent's bank accounts in which insufficient funds were available, so no funds were ever received by the insurer from Respondent.

On or about March 15, 2004, Lonnie Privett was given a check on the account of Respondent in partial reimbursement for payment of premium, but such check was subsequently returned to the Privetts due to the closure of Respondent's bank account.

By July 2004, Lonnie and Karen Privett received full reimbursement from Respondent and Respondent's father.

On or about January 5, 2004, Karen Chamberlain, on behalf of Chamberlain's Home Improvement, gave Respondent Seven Hundred Seventeen Dollars and Fifty Cents ($717.50) in payment for commercial general liability insurance. Respondent failed to forward the payment to an insurance company.

CONCLUSIONS OF LAW -

In this and all other civil enforcement actions brought by the Tennessee Department of Commerce of Insurance, the Department has the burden of

proving that the Respondent engaged in activity that is in violation of Tennessee law and/or the Department rules. *See Moseley v. Tennessee Dept. of Commerce and Ins.*, 167 S.W. 3d 308 (Tenn. Ct. App. 2004).

T. C. A. § 56-6-112(a)(4) states, in pertinent part, that the commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license or levy a civil penalty or take any combination of such actions if she finds that one holding an insurance producer license has improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business.

The Division has proven by a preponderance of the evidence that Respondent improperly withheld, misappropriated and converted moneys received in the course of doing insurance business on five (5) occasions, providing grounds for an order revoking his insurance producer license and assessing civil penalties in accordance with Tenn. Code Ann. § 56-6-112(a)(4).

Tenn. Code Ann. § 56-6-112(a)(8) states, in pertinent part, that the commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license or levy a civil penalty or take any combination of such actions if she finds that one holding an insurance producer license has demonstrated incompetence or untrustworthiness in the conduct of business.

The Division has proven by a preponderance of the evidence that Respondent demonstrated incompetence and untrustworthiness when he failed to forward to the insurer on one (1) occasion certain information required by the insurer which resulted in the cancellation of the insurance policy. Such failure provides grounds for an order revoking Respondent's insurance producer license and assessing civil penalties in accordance with T. C. A. § 56-6-112(a)(8).

T. C. A. § 56-6-112(a)(8) states, in pertinent part, that the commissioner

may place on probation, suspend, revoke, or refuse to issue or renew any license or levy a civil penalty or take any combination of such actions if she finds that one holding an insurance producer license has used fraudulent or dishonest practices or demonstrated financial irresponsibility in the conduct of business in this state or elsewhere.

The Division has proven by a preponderance of the evidence that Respondent used fraudulent and dishonest practices and demonstrated financial irresponsibility when he issued checks on three (3) occasions on bank accounts not open or containing insufficient funds to cover such checks. Such facts provide grounds for an order revoking Respondent's insurance producer license and assessing civil penalties in accordance with T. C. A. § 56-6-112(a)(8).

T. C. A. § 56-6-112(a)(5) provides, in pertinent part, that the commissioner may revoke a license issued under this part or may levy a civil penalty in accordance with subsection (e) or take any combination of such actions is she finds that one holding a license has intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance.

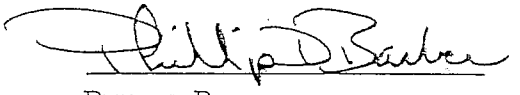
The Division has proven by a preponderance of the evidence that Respondent intentionally misrepresented the existence of an insurance contract on three (3) occasions and intentionally misrepresented the premium on one (1) occasion. Such facts constitute grounds for an order revoking Respondent's insurance producer license and assessing civil penalties in accordance with T. C. A. § 56-6-112(a)(5).

Therefore, it is determined that the insurance producer license number 677294 issued to Frank Todd Davis should be and is hereby revoked.

Further it is determined that Respondent civil penalties in the amount of Five Thousand Dollars $5,000.00 plus the cost of this action should be assessed against the Respondent under the provisions of T.C.A. § 56-6-112 (a) (5) for the offenses of intentionally misrepresenting the terms of actual or proposed contracts or applications for insurance coverage and intentionally misrepresenting the premium for insurance coverage.

It is so ORDERED.

Entered this 5th day of August, 2006.



PHILLIP BARBER
ADMINISTRATIVE JUDGE