



State of Tennessee
Department of State
Administrative Procedures Division
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May 11, 2018

Commissioner Julie Mix McPeak
Tennessee Department of Commerce &
Insurance
Office of Legal Counsel
12th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243-5065

Leah Rose Fox-Greenberg
561 McElroy Road
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Tennessee Department of Commerce and
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8th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, TN 37243-0569

RE: In the Matter of: Leah Rose Fox-Greenberg

Docket No. 12.04-150832J

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

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

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LEGAL OFFICE

**BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE**

IN THE MATTER OF:

LEAH ROSE FOX GREENBERG

DOCKET NO. 12.04-150832J

NOTICE

ATTACHED 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 **May 29, 2018**.

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 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

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 COMMERCE AND INSURANCE
OF THE STATE OF TENNESSEE

IN THE MATTER OF:

TENNESSEE INSURANCE
DIVISION,

Petitioner,

vs.

LEAH ROSE FOX-GREENBERG,

Respondent.

DOCKET NO. 12.04-150832J
TID NO. 18-008

INITIAL ORDER

This matter was heard on April 9, 2018, in Nashville, Tennessee, before Administrative Judge Steve Darnell, assigned by the Secretary of State, Administrative Procedures Division (“APD”), to sit for the Commissioner of the Tennessee Department of Commerce and Insurance. The April 9, 2018, hearing addressed the allegations contained in the NOTICE OF HEARING AND CHARGES filed on February 16, 2018, pertaining to Respondent Leah Rose Fox-Greenberg. Jesse D. Joseph, Assistant General Counsel, represented the Petitioner, the Tennessee Insurance Division (“Division”). The Respondent, Leah Rose Fox-Greenberg, was not present nor was an attorney present on her behalf.

After consideration of the RECORD in this matter, it is **ORDERED** that the Tennessee resident insurance producer license (No. 2306252) of the Respondent Leah Rose Fox-Greenberg is **REVOKED** and that the Respondent Leah Rose Fox-Greenberg is assessed **CIVIL PENALTIES** in the total amount of two thousand dollars (\$2,000.00) for violations of TENN. CODE ANN. §§ 56-6-112(a)(2), (a)(7), (a)(8), & (a)(10).

NOTICE OF DEFAULT

Pursuant to TENN. CODE ANN. § 4-5-307, the Petitioner filed and served a NOTICE OF HEARING AND CHARGES against Respondent on February 16, 2018, setting this matter for hearing on April 9, 2018. On March 22, 2018, the Petitioner filed a MOTION TO DEEM SERVICE OF PROCESS COMPLETE AND SUFFICIENT (HRG. EX. 1), and at the hearing, the Petitioner moved for a default against the Respondent pursuant to TENN. CODE ANN. § 4-5-309, based on the following exhibits admitted into evidence:

1. a copy of the mandatory notice letter sent to Respondent pursuant to Tenn. Code Ann. § 4-5-320(c), dated February 5, 2018, prior to the filing of the NOTICE OF HEARING AND CHARGES and of the www.usps.com tracking printout dated March 21, 2018 for this certified mailpiece, reflecting that a first notice was left for Respondent on February 9, 2018, and that this mailpiece still was located in the Memphis, TN 38120 post office designated "Action Needed," awaiting return to sender as of March 21, 2018. (HRG. EX. 2);
2. a copy of the www.usps.com tracking printout dated March 21, 2018 for the first class and certified mail return receipt mailing on February 16, 2018 of item no. 7017 0660 0000 3644 0356, reflecting that a first notice was left for Respondent on February 20, 2018, and that this mailpiece still was located in the Memphis, TN 38120 post office designated "Action Needed," awaiting return to sender as of March 21, 2018. (HRG. EX. 3);
3. a copy of correspondence from Petitioner's counsel dated March 8, 2018 enclosing a third copy of the February 16, 2018 NOTICE OF HEARING AND CHARGES to Respondent at her Tennessee listed residential, business, and mailing address of 561 McElroy Road, Memphis, TN 38120, sent via FedEx Standard Overnight Delivery (signature required) No. 8095 2010 8307, along with copies of the FedEx tracking printout, and of the returned FedEx envelope for this item, setting out with three (3) unsuccessful delivery attempts marked on the envelope by FedEx staff on March 9, March 12, and March 13, 2018. (HRG. EX. 4);
4. a copy of a March 9, 2018 email from Petitioner's counsel to Respondent's email address of lerofog@gmail.com , attaching a fourth copy of the NOTICE OF HEARING AND CHARGES, and of Respondent's reply email to Petitioner's counsel dated March 26, 2018. (HRG. EX. 5); and

5. a copy of the March 19, 2018, affidavit of Kimberly Biggs, which reflects that the Respondent's current residential, business and mailing address listed with the Petitioner is 561 McElroy Road, Memphis, TN 38120, that her listed email address according to the Petitioner's records is lerofog@gmail.com, and that, to date, the Respondent has not reported to the Petitioner's Agent Licensing Section any change of address from the above address in Memphis, Tennessee. (HRG. EX. 6);

Based on the affidavit of Ms. Biggs (HRG. EX. 6); the Respondent's address information on record with the Division, the Petitioner's properly addressed certified return receipt mail to Respondent's listed residential, business, and mailing address, enclosing a copy of the mandatory notice letter sent to Respondent pursuant to Tenn. Code Ann. § 4-5-320(c) on February 6, 2018, and a copy of the NOTICE OF HEARING AND CHARGES on February 16, 2018 (HRG. EXs. 2 & 3); the Petitioner's properly addressed FedEx Standard Overnight Delivery (signature required) letter dated March 8, 2018 enclosing a third copy of the NOTICE OF HEARING AND CHARGES (HRG. EX. 4); counsel for the Petitioner's March 9, 2018 email to Respondent attaching a fourth copy of the NOTICE OF HEARING AND CHARGES, Respondent's March 26, 2018 reply email to counsel for the Petitioner (HRG. EX. 5), and the provisions of TENN. CODE ANN. §§ 56-6-107(g), and 56-6-112(f), the Court concludes that the Petitioner has taken the necessary steps as are deemed reasonable and required under the law in its attempt to serve Respondent and to obtain her signature acknowledging service of the NOTICE OF HEARING AND CHARGES filed on February 16, 2018.

The Petitioner has served the Respondent by certified mail as set forth above at her listed addresses of record in the files of the Division in accordance with TENN. CODE ANN. § 56-6-112(f), even though there has been no return receipt personally signed by the Respondent as to this service. Since the Department has a statute that allows service by

certified mail without specifying the necessity for a return receipt (TENN. CODE ANN. § 56-6-112(f)), and a statute that requires the licensee to keep his or her address information current (TENN. CODE ANN. § 56-6-107(g)), pursuant to TENN. COMP. R. & REGS. 1360-04-01-.06(3), service of the NOTICE OF HEARING AND CHARGES was complete upon placing said NOTICE OF HEARING AND CHARGES in the mail as a certified mailpiece on January 19, 2018, given that this is the manner specified in the statute. The Tennessee Court of Appeals reached this same result in *William Wyttenbach v. Board of Tennessee Medical Examiners, et al.*, 2016 WL 1045668, No. M2014-02024-COA-R3-CV (Tenn. Ct. App. March 15, 2016), where service was considered sufficient by certified mail even without a signed return receipt by the Respondent.

As set out above, it is determined that service of the NOTICE OF HEARING AND CHARGES by certified mail return receipt requested in this matter was legally sufficient in accordance with TENN. CODE ANN. §§ 4-5-307 and 56-6-112(f), and TENN. COMP. R. & REGS. 1360-04-01-.06. Based on the failure of the Respondent to appear for the April 9, 2018 hearing, pursuant to TENN. CODE ANN. § 4-5-309 and Tenn. Code Ann. § 4-5-309 and TENN. COMP. R. & REGS. 1360-04-01-.15, the Respondent was held in default. Pursuant to TENN. COMP. R. & REGS. 1360-04-01-.15(2)(b), the hearing was conducted as an uncontested proceeding.

FINDINGS OF FACT

1. The Tennessee Insurance Law contained within Title 56 of TENN. CODE ANN., specifically TENN. CODE ANN. §§ 56-1-202 and 56-6-112 (the “Law”), places the responsibility of administering the Law on the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”). The Division is the lawful agent through which the Commissioner discharges this responsibility.

2. Leah Rose Fox-Greenberg (“Respondent”) is a licensee of the Division who is responsible for being compliant with the insurance laws and regulations of the State of Tennessee. Respondent held a Tennessee nonresident insurance producer license, number 2306252, which became active on June 30, 2015, and expired on August 31, 2017. Respondent’s current residential, business, and mailing address according to the Division’s records is 561 McElroy Road, Memphis, TN 38120. Further, the Respondent’s listed email address according to the Petitioner’s records is lerofog@gmail.com. To date, there is no record of Respondent’s reporting to the Petitioner’s Agent Licensing Section any address changes from the above address in Memphis, Tennessee. (HRG. EX. 6, ¶¶ 7-9; Transcript of Proceedings (“Tr.”) p. 8-9).

3. Beginning on or about February 15, 2016, and continuing until August 2, 2016, Respondent was an appointed agent of Northwestern Mutual Life Insurance Company (“Northwestern Mutual”), working as an independent contractor with the office of Northwestern Mutual Managing Partner James Meeks, Jr., in Memphis, Tennessee. (HRG. EXS. 7,8, & 9).

4. On or about August 1, 2016, Respondent prepared ten (10) separate reinstatement documents for Northwestern Mutual policies owned, or believed to be owned by Katherine King, all of which contained the “cut and taped” signatures of Ms. King affixed by Respondent. These documents dated August 1, 2016, were as follows:

- Three (3) Applications for Reinstatement of Life Insurance policy forms;
- Three (3) Authorization for Release of Health-Related Information forms;
- Two (2) Personal History Questionnaire forms;
- One (1) Insured’s Authorization to Obtain and Disclose Information form; and
- One (1) Personal Health and Status Declaration form.

(HRG. EXS. 8 & 9, ¶ 8, and Collective Attachment A to HRG. EX. 9).

5. On August 2, 2016, Northwestern Mutual Director of Office Supervision David G. Gilbert was presented with the above ten (10) documents by his staff, and immediately thereafter, met with Respondent. Within this meeting with Mr. Gilbert on August 2, 2016, Respondent admitted that she had affixed Ms. King's signatures in question to said documents, and explained her forgeries by stating that she was running out of time to meet the reinstatement deadline for Ms. King, and that Ms. King wanted to reinstate the policies. (HRG. EX. 9, ¶¶ 6-7).

6. Later on August 2, 2016, Respondent signed a Northwestern Mutual agreement of agent contract termination with Mr. Gilbert (who signed this agreement on behalf of, and with the permission of Managing Partner Jim Meeks, Jr.) agreeing that she was resigning from Northwestern Mutual effective at the close of business that day. (HRG. EX. 9, ¶ 10, and Attachment B to this Exhibit).

7. After Respondent's Northwestern Mutual agent contract was terminated, Mr. Gilbert's staff made several attempts during August 2016 to contact Ms. King by phone to have this policyholder complete new reinstatement forms. After receiving no response from Ms. King, Mr. Gilbert sent correspondence to her dated August 24, 2016, requesting that she contact members of Mr. Gilbert's staff if she still desired to reinstate her policies. As of October 4, 2016, Ms. King had not responded and her Northwestern Mutual policies had not been reinstated. (HRG. EX. 9, ¶ 13, and Attachment C to this Exhibit).

CONCLUSIONS OF LAW

1. In accordance with TENN. COMP. R. & REGS. 1360-04-01-.02(7) and 1360-04-01-.15(3), the Petitioner has proven by a preponderance of evidence that the facts alleged in

the NOTICE OF HEARING AND CHARGES pertaining to the Respondent are true and that the issues raised therein should be resolved in its favor.

2. TENN. CODE ANN. § 56-6-107(g) provides:

(g) A licensed insurance producer shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty (30) days of the change. Failure to timely inform the commissioner of a change in legal name or address may result in a disciplinary action pursuant to § 56-6-112.

4. TENN. CODE ANN. §§ 56-6-112(a)(2), (a)(7), (a)(8), (a)(10), (e), (f), (g) & (h) provide:

The commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license issued under this part or may levy a civil penalty in accordance with this section or take any combination of those actions, for any one (1) or more of the following causes:

...

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

....

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

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

....

(10) Forging another's name to an application for insurance or to any document related to an insurance transaction[.]

....

(e) The commissioner 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.

(f) The commissioner may serve a notice or order in any action arising under this part by registered or certified mail to the insurance producer or applicant at the address of record in the files of the department. Notwithstanding any law to the contrary,

service in the manner set forth in this subsection (f) shall be deemed to constitute actual service on the insurance producer or applicant.

(g) If . . . the commissioner 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 commissioner may, at the commissioner'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 commissioner 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.

5. With respect to Count One of the NOTICE OF HEARING AND CHARGES, the Petitioner has shown by a preponderance of the evidence that the Respondent violated

laws of the Commissioner in violation of TENN. CODE ANN. § 56-6-112(a)(2); with respect to Count Two of the NOTICE OF HEARING AND CHARGES, the Petitioner has shown by a preponderance of the evidence that the Respondent violated TENN. CODE ANN. § 56-6-112(a)(8) by using fraudulent and deceptive practices and demonstrating untrustworthiness in the conduct of insurance business by forging the signature of Katherine King to ten (10) Northwestern Mutual insurance related documents on or about August 1, 2016; with respect to Count Three of the NOTICE OF HEARING AND CHARGES, the Petitioner has shown by a preponderance of the evidence that the Respondent violated TENN. CODE ANN. § 56-6-112(a)(7) by admitting to her Northwestern Mutual supervisors that she engaged in fraudulent actions; and, with respect to Count Four of the NOTICE OF HEARING AND CHARGES, the Petitioner has shown by a preponderance of the evidence that the Respondent violated TENN. CODE ANN. § 56-6-112(a)(10), given Respondent's forging the signature of Katherine King by cutting and taping it to ten (10) Northwestern Mutual insurance related documents on or about August 1, 2016.

6. It is determined that the proof adduced at hearing provides adequate grounds for the revocation of Respondent's Tennessee nonresident insurance producer license, and for the imposition of a civil penalty against Respondent in the total amount of two thousand dollars (\$2,000.00), or two hundred dollars (\$200.00) for each of the Respondent's ten (10) fraudulent acts of forgery committed herein. The Court is cognizant that a larger monetary penalty could be imposed here, but given that the Respondent's misconduct appears to have arisen out of a single incident occurring on or about August 1, 2016, a two thousand dollar (\$2,000.00) civil penalty and revocation of her insurance producer license is considered a sufficient sanction to protect the public.

JUDGMENT

IT IS, THEREFORE, ORDERED that:

1. The Respondent's Tennessee nonresident insurance producer license (No. 2306252) is hereby **REVOKED**, due to her actions in violation of TENN. CODE ANN. §§ 56-6-112(a)(2), (a)(7), (a)(8), (a)(10), as described above.
2. The Respondent is **ASSESSED** a civil penalty of two thousand dollars (\$2,000.00), based on her violations of the four (4) statutes cited above, as described and calculated within numbered paragraph 6 of the above CONCLUSIONS OF LAW.
3. The Respondent, and any and all persons who may assist her in any of the aforementioned violations of Tenn. CODE Ann. § 56-6-112, **shall CEASE and DESIST** from any such activities.
4. This INITIAL ORDER, imposing sanctions against the Respondent, is entered to protect the public and consumers of insurance products sold by Tennessee licensed insurance producers, consistent with the purposes fairly intended by policy and provisions of the Law.

This INITIAL ORDER entered and effective this the 11th day of

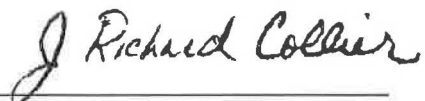
MAY, 2018.



STEVE DARNELL
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE


Filed in the Administrative Procedures Division, Office of the Secretary of State, this

the 11th of MAY 2018.



J. RICHARD COLLIER, DIRECTOR
CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

APPROVED FOR ENTRY:



Jesse D. Joseph, BPR# 10509
Assistant General Counsel-Litigation
TN Department Of Commerce and Insurance
500 James Robertson Parkway, 8th Floor
Nashville, Tennessee 37243
Telephone: (615) 253-4701
Jesse.Joseph@tn.gov

Certificate of Service

I hereby certify that I have served a copy of the Petitioner's Proposed Initial Order upon the Respondent, by forwarding, via first class mail, a copy of same to Respondent Leah Rose Fox-Greenberg, 561 McElroy Road, Memphis, TN 38120, and that I have filed the original of this Proposed Initial Order with the Office of the Secretary of State, Administrative Procedures Division, 8th Floor, Wm. R. Snodgrass Tennessee Tower, Nashville, Tennessee, on this 7 day of May, 2018.



Jesse D. Joseph

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 Rosa L. Parks Avenue, Nashville, Tennessee, 37243-1102. (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.