

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
COMMERCE AND INSURANCE,**

Petitioner,

v.

ANDREW GOODMAN,

Respondent.

APD Case No. 12.01-201341J

INITIAL ORDER

This matter came to be heard *de novo* on June 18, 2020, via WebEx¹ before the Honorable Rachel Waterhouse, assigned by the Secretary of State, Administrative Procedures Division, sitting on behalf of the Commissioner of the Tennessee Department of Commerce and Insurance. Assistant General Counsel for the Department, Robyn L. Ryan, represented the Tennessee Securities and Insurance Division (Division). The Respondent, Andrew Burke Goodman, did not appear nor did anyone appear on his behalf.

ORDER ON PENDING MOTION

Pending was the Division's Motion to Deem Service Sufficient and Complete (Motion), filed on June 3, 2020. Having reviewed the Motion, with the exhibits attached, it was determined that the Motion had merit and that all attempts to serve the Respondent with notice of the hearing date, time, and format (as set forth in the Motion and supporting exhibits) were sufficient. Accordingly, the Motion was GRANTED orally on the Record during the hearing.

¹ Due to precautions relating to the COVID-19 Pandemic, the hearing could not be held in-person as originally noticed because all state office buildings were not re-opened to the public and all in-person hearings had been suspended in favor of electronic hearings.

NOTICE AND ORDER OF DEFAULT

Pursuant to Tenn. Code Ann. § 4-5-309, the Division moved for default based on the failure of the Respondent, or an attorney on his behalf, to appear for the scheduled hearing after receiving proper notice thereof. Although the hearing was held via videoconferencing, specifically WebEx, due to precautions relating to the COVID-19 Pandemic, the Division had a person at the entrance to the original hearing location at Davy Crockett Tower, Nashville, Tennessee, to call Ms. Ryan if the Respondent appeared at the building. The Respondent did not appear at the Davy Crockett Tower building during the course of the hearing which was held from 9:00 – 10:00 a.m. on June 18, 2020.

Prior to the hearing date, several notices were sent to the Respondent by both email and U.S. Mail that the hearing would be held via WebEx, along with specific instructions on how to connect and participate in the hearing. These notices were provided by both the Division and the undersigned. On the hearing date, the Respondent did not call or connect to the WebEx meeting from before 9:00 until 10:00 a.m.

Moreover, several Orders sent to the Respondent stated that: “The parties are cautioned that any failure by either party to ‘participate in a pre-hearing conference, hearing or other stage’ of these proceedings, including compliance with the pre-hearing filing deadlines, may result in that party being held in default pursuant to Tenn. Code Ann. § 4-5-309.”

Based on the granting of the Motion to Deem Service Sufficient and Complete and on the failure of the Respondent to appear for the hearing, pursuant to Tenn. Code Ann. § 4-5-309 and Rule 1360-04-01-.15, the Division’s Motion For Default was GRANTED and the Respondent was held in DEFAULT. Pursuant to Rule 1360-04-01-.15(2)(b), the hearing was held on an uncontested basis.

INITIAL ORDER

The subject of the hearing was the Division's allegations that the Respondent had violated several provisions of the Tennessee Insurance Producer Licensing Act of 2002, Tenn. Code Ann. § 56-6-101 *et seq.* For the alleged violations, the Division seeks to revoke the Respondent's Tennessee resident insurance producer license (No. 2319280) and have civil penalties imposed against him.

After consideration of all of the evidence, arguments of the Division, and the entire Record, this Initial Order is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF EVIDENCE

Thomas Smith, a Financial Services Investigative Unit Investigator within the Division, testified on behalf of the Division. One exhibit was entered into evidence. Collective Exhibit 1 consists of Mr. Smith's investigative report.

FINDINGS OF FACT

1. The Commissioner of the Tennessee Department of Commerce and Insurance has jurisdiction over this matter pursuant to the Tennessee Insurance Producer Licensing Act of 2002, as amended, Tenn. Code Ann. § 56-1-101, *et seq.* (the Law). The Division is the lawful agent through which the Commissioner discharges the responsibility of enforcing the provisions of the Law to protect the public from violations of the Law.
2. The Respondent is a resident of Tennessee.
3. At all relevant times, the Respondent held a valid Tennessee resident insurance producer license (No. 2319280) which became active on or about October 29, 2015.
4. In March of 2018, the Respondent filed an online application to renew and add Accident & Health to his insurance license authority in Tennessee.

5. The Division denied his application because of the Respondent's failure to disclose an action by the Financial Industry Regulatory Authority (FINRA).

6. On the March 5, 2018, online application to renew and to add to the Respondent's lines of authority, the Respondent answered "N" to question number 2, "Have you been named or involved as a party in an administrative proceeding, regarding any professional or occupation license or registration?"

7. Wells Fargo Advisors, LLC, filed a claim for a repayment of a promissory note executed by the Respondent on December 30, 2013. The claim was filed with FINRA on or about January 28, 2016.

8. FINRA issued an Order against the Respondent on December 29, 2016. The Order provided that the Respondent pay to Wells Fargo Advisors, LLC, the sum of two hundred thirty- three thousand, eight hundred dollars and ninety-one cents (\$233,800.91) plus interest, court costs and attorney fees.

9. The Respondent did not pay as the Order provided, and his securities registration was suspended. The Respondent's registration remains suspended with FINRA.

10. In response to the Division's investigation, the Respondent wrote a letter dated March 30, 2018, stating that the incorrect answer in the application was an error on his part and it was not intentional. He stated that he was in a hurry when he completed the application and he should have been more careful. Further, he stated that he accepted responsibility for the incorrect submission. Thereafter, Mr. Smith spoke with the Respondent who stated the same as in his letter and that he didn't pay attention to the question that was answered incorrectly.

11. However, the Respondent never communicated with the Division after the Notice of Hearing and Charges was filed on April 15, 2020. The Respondent's March 30, 2018, letter was not notarized or sworn to in any way. It was not made under oath. It was neither a

Declaration nor an Affidavit. The Respondent's telephone conversation with Mr. Smith was not under oath. The Respondent did not appear at the contested case hearing to testify under oath and be subject to cross examination.

APPLICABLE LAW

1. Tenn. Code Ann. § 56-6-112 provides, in pertinent part, as follows:
 - (a) 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:
 - (1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;
 -
 - (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.

2. Tenn. Code Ann. § 56-6-119 (a) provides:

- (a) A producer shall report to the commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of any order entered or other relevant legal documents.

ANALYSIS AND CONCLUSIONS OF LAW

1. In accordance with Rules 1360-04-01-.02(7) and 1360-04-01-.15(3), the Division proved by a preponderance of evidence the facts set forth in the above Findings of Facts.

2. The Division has shown by a preponderance of the evidence that, while licensed with the Division, the Respondent violated Tenn. Code Ann. § 56-6-112(a)(1) by failing to report the FINRA action in his 2018 insurance application for renewal and addition of lines to his Tennessee resident insurance producer license, thereby providing incorrect, misleading, incomplete or materially untrue information in the license application.

3. The Division has shown by a preponderance of the evidence that, while licensed with the Division, the Respondent violated Tenn. Code Ann. § 56-6-119(a) by failing to report at any time the FINRA action of 2016 to the Division.

4. Each of the factors enumerated in Tenn. Code Ann. § 56-6-112(h) were considered, and each are determined to apply in this matter, based on the proven facts.

5. From the foregoing, it is CONCLUDED and DETERMINED that the proof adduced at hearing provides adequate grounds for the imposition of revocation of the

Respondent's resident insurance producer license and for the imposition of \$500 in civil penalties against the Respondent.

JUDGMENT

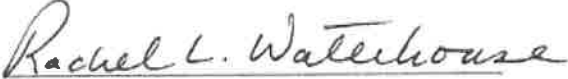
WHEREFORE, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. The Respondent's Tennessee resident insurance producer license (No. No. 2319280) be and hereby is **REVOKED** due to his actions which violated the Law, as described above.
2. Due to violations of the Law, as described above, the Respondent is **ASSESSED CIVIL PENALTIES in the total amount of five hundred dollars (\$500.00)**.
3. The Respondent, and any and all persons who may assist or aid him in any of the aforementioned violations of the Law shall **CEASE and DESIST** from any such activities.
4. The costs of this action shall be assessed against the Respondent.


This Initial Order imposing sanctions against the Respondent is entered to protect the public and consumers of insurance products in Tennessee, consistent with the purposes fairly intended by policy and provisions of the Law.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **24th day of June, 2020**.


RACHEL L. WATERHOUSE
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 **24th day of June, 2020**.


STEPHANIE SHACKELFORD, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE