



State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

July 19, 2016

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

James Randall Witham, Esq.
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TN Department of Commerce & Insurance
8th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, TN 37243

Jerry Gardner
P.O. Box 18748
Memphis, TN 38181

RE: In the Matter of: Jerry Gardner

Docket No. 12.04-136858J

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

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

RECEIVED
JUL 21 2016
DEPT OF COMMERCE AND INSURANCE
LEGAL OFFICE

BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

JERRY GARDNER

DOCKET NO. 12.04-136858J

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 August 3, 2016.

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.



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

TENNESSEE INSURANCE DIVISION,)	
Petitioner,)	
)	APD No. 12.04-136858J
vs.)	TID No. 15-133
)	
JERRY GARDNER,)	
Respondent.)	

INITIAL ORDER

This matter was heard on June 17, 2016, in Nashville, Tennessee before the Honorable Jerome Cochran, Administrative Law Judge (“ALJ”), assigned by the Secretary of State, Administrative Procedures Division (“APD”), to sit for the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”). James R. Witham, Assistant General Counsel, represented the Petitioner, the Tennessee Insurance Division (“Division”), in this matter. The Respondent, Jerry Gardner, did not have counsel present and represented himself.

SUMMARY OF DETERMINATION

The subject of this hearing was the proposed revocation of Respondent’s Tennessee insurance producer license and entry of an order assessing civil penalties against Respondent for violations of Tennessee Code Annotated (“Tenn. Code Ann.”) §§ 56-6-112(a)(2), (a)(6), (a)(7), (a)(8), and 56-6-119(b). After consideration of the evidence, testimony, and entire record in this matter, it is determined that:

- a. Respondent’s insurance producer license is **REVOKED**; and

b. Respondent be assessed a total civil monetary penalty of **one thousand, five hundred dollars (\$1,500)** for five (5) violations of Tenn. Code Ann. §§ 56-6-112(a)(2), (a)(6), (a)(7), (a)(8), and 56-6-119(b).

Respondent shall have **six (6) months** from receipt of this Initial Order to pay the above mentioned civil monetary penalty plus the Division's court reporter costs pursuant to Tennessee Rules of Civil Procedure ("Tenn. R. Civ. P.") 54.04. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Title 56 of Tenn. Code Ann. §§ 56-1-202 and 56-6-112 (the "Law"), places the responsibility of the administration of the Law on the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

2. The Commissioner administers the Law through the Division and authorized the Division to bring this action for the protection of the public.

3. Respondent is a licensee of the Division who is responsible for being compliant with the insurance laws and regulations of the State of Tennessee.

4. Respondent, at all relevant times, held a Tennessee insurance producer license, number 0848152.

5. Respondent's address of record is 2899 S. Mendenhall Road, Suite 2, Memphis, Tennessee 38115.

6. Respondent's alternate addresses are as follows: 9330 Barrow Drive Cordova, TN 38016; and P.O. Box 18748 Memphis, TN 38181.

7. On or about June 12, 2015, Respondent pled guilty to and was convicted of a Class D, Felony Theft of Property, \$1,000 - \$10,000, in the Criminal Circuit Court for Shelby County, Tennessee.

8. On August 25, 2015, Respondent was sentenced to two (2) years in a workhouse.

9. Respondent's conviction stems from complaints that Respondent took premiums from a consumer, but never bound the insurance coverage with Monumental, Occidental or Settlers insurance companies.

10. Respondent failed to notify the Commissioner of the pending charges against him within thirty (30) days of the initial pretrial hearing date or of the order resulting from the final hearing.

CONCLUSIONS OF LAW

1. In accordance with Tennessee Compilation Rules and Regulations 1360-4-1-.02(7), Petitioner bears the burden of proof in proving by a preponderance of the evidence that the facts alleged in the Notice of Hearing and Charges are true and that the issues raised therein should be resolved in its favor.

2. At all times relevant hereto, Tenn. Code Ann. § 56-6-112(a) has provided that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license issued under Title 56, Part 6, Chapter 1, or issue a civil penalty for the following reasons:

....

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

....

(6) Having been convicted of a felony;

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

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

....

3. Tenn. Code Ann. § 56-6-119(b) states that within thirty (30) days of the initial pretrial hearing date, a producer shall report to the Commissioner any criminal prosecution of the producer taken in any jurisdiction, including a copy of the initial complaint, the order resulting from the hearing, and any other relevant legal documents.

4. Tenn. Code Ann. § 56-53-106(b)(1) and 18 United States Code (“U.S.C.”) § 1033(e)(2) provide, in pertinent part, that a person convicted of a felony involving dishonesty or breach of trust shall not participate in the business of insurance unless a waiver is granted by the Commissioner.

5. Tenn. Code Ann. § 56-6-112 (2011), states:

....

- (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.

....

- (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.

6. The Petitioner has met its burden of proof by a preponderance of the evidence that on or about June 12, 2015, Respondent pled guilty to and was convicted of a Class D, Felony Theft of Property, \$1,000 - \$10,000, in the Criminal Circuit Court for Shelby County, Tennessee.

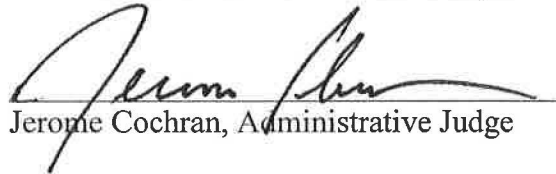
7. Respondent failed to notify the Commissioner of the pending charges against him within thirty (30) days of the initial pretrial hearing date or of the order resulting from the final hearing.

8. Respondent's actions were fraudulent, dishonest, incompetent, untrustworthy, and financially irresponsible in the conduct of business in Tennessee.

It is therefore **ORDERED** that the insurance producer license of Respondent Jerry Gardner, numbered 0848152, be **REVOKED**, and that the Respondent pay a total civil monetary penalty of **one thousand, five hundred dollars (\$1,500)** plus court reporter costs pursuant to Tenn R. Civ. P. 54.04. This penalty is assessed as follows:

Respondent shall have six (6) months from receipt of this Initial Order to pay the above mentioned civil monetary penalty plus court reporter costs.

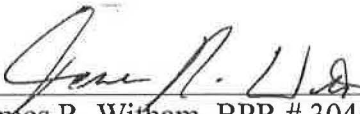
This Initial Order entered and effective this 19TH day of JULY, 2016.


Jerome Cochran, Administrative Judge

Filed in the Administrative Procedures Division, this 19TH day of JULY, 2016.


J. Richard Collier, Director
Administrative Procedures Division

Respectfully submitted,



James R. Witham, BPR # 30468
Assistant General Counsel
Department of Commerce and Insurance
Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243
615-253-7848
james.witham@tn.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document will be served upon Respondent via: U.S. Mail, postage prepaid, to the address enclosed below, on the 13th day of July, 2016, and that the original has been filed with the Administrative Procedures Division on the 12th day of July, 2016.

Jerry Gardner
9330 Barrow Drive
Cordova, TN 38016

Jerry Gardner
P.O. Box 18748
Memphis, TN 38181


James R. Witham

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.