



STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE INSURANCE DIVISION,)
)
Petitioner,)
)
v.)
)
MERVIN E. GRABER)
In his individual capacity)
)
And)
)
MERVIN E. GRABER d/b/a TENNESSEE)
CHRISTIAN MUTAL MOTORIST AID)
)
Respondent.)

Matter No.: 20-00409

CONSENT ORDER

The Insurance Division of the Tennessee Department of Commerce and Insurance (“Division”) and Mervin E. Graber in his individual capacity (“Respondent Graber”) and Mervin E. Graber d/b/a Tennessee Christian Mutual Motorist Aid (“Respondent TCMMA) and hereby stipulate and agree to the entry and execution of this Consent Order, subject to the approval of the Commissioner of the Tennessee Department 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 and execution of an order by the Commissioner.

2. This Consent Order is executed by the parties 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.

3. The Respondents fully understand that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondents for acts or omissions not specifically addressed in this Consent Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. The Respondents fully understand that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for alleged violations of the law addressed specifically in this Consent Order, violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the entry and execution of this Consent Order by the Respondent.

5. The Respondents expressly waive 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 stipulations and imposition of discipline contained herein, and the consideration and entry and execution of said Consent Order by the Commissioner.

AUTHORITY AND JURISDICTION

6. The Commissioner has jurisdiction of this action pursuant to the Tennessee insurance law, Title 56 of the Tennessee Code Annotated (“Tenn. Code Ann.”), specifically

Tenn. Code Ann. §§ 56-1-103 and 56-6-112 (the “Law”). The Division is the lawful agent through which the Commissioner discharges this responsibility.

PARTIES

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

8. Mervin E. Graber (the “Respondent”) is a resident of Tennessee and has never been licensed with the Division.

9. The Respondent is doing business as Tennessee Christian Mutual Motorist Aid (“Tennessee Christian Mutual”), an unincorporated insurance company located in Tennessee that has never been licensed with the Division.

FINDINGS OF FACT

10. Respondent Graber has never been licensed to provide insurance in the State of Tennessee and has never applied for such licensure with the Division.

11. Tennessee Christian Mutual has never been incorporated in Tennessee.

12. On or about January 15, 2013, the State of Michigan entered an Order to Cease and Desist with Statement of Findings and Opportunity for Hearing (“Michigan Order”) against Respondent Graber and Tennessee Christian Mutual.

13. The Michigan Order stated that Respondent Graber and Tennessee Christian Mutual violated Michigan insurance laws; specifically, they were not licensed, yet offered, sold, and negotiated automobile insurance to consumers in Michigan.

14. On or about July 20, 2017, Respondent Graber submitted a Religious Organization Application for Self-Insurance on behalf of Tennessee Christian Mutual with the Tennessee Department of Safety and Homeland Security (“Department of Safety”).

15. On or about August 28, 2017, the Department of Safety issued Tennessee Christian Mutual a Certificate of Self-Insurance for the period from August 28, 2017, until August 28, 2018.

16. On or about January 22, 2019, Respondent Graber submitted a Religious Organization Application for Self-Insurance, on behalf of a church named Finger Christian Fellowship with the Department of Safety.

17. On or about January 22, 2019, the Department of Safety issued Finger Christian Fellowship a Certificate of Self-Insurance for the period from January 22, 2019, until January 22, 2020.

18. On or about February 26, 2019, the Montana Department of Insurance notified the Division that it suspected Respondent Graber and Tennessee Christian Mutual were unlicensed and had sold insurance policies in Tennessee, Montana, and Ohio.

19. On or about March 11, 2019, the Division issued Inquisitorial Order number 19-024, authorizing an investigation into Respondent Graber by the Financial Services Investigation Unit (“FSIU”).

20. FSIU’s investigation revealed that Respondent Graber unlawfully sold, solicited, or negotiated insurance, without a license to do so, and committed fraud.

21. Specifically, Respondent Graber unlawfully sold, solicited, or negotiated insurance through Tennessee Christian Mutual, and later Finger Christian Fellowship, since at least 2013.

22. Respondent Graber attempted to conceal his illegal activity by obtaining a Certificate of Self-Insurance from the Department of Safety for Tennessee Christian Mutual.

23. When the Department of Safety later found that Tennessee Christian Mutual did not qualify for the religious exemption, Respondent Graber obtained a Certificate of Self-Insurance from the Department of Safety for Finger Christian Fellowship.

24. The Certificates of Self-Insurance obtained by Respondent Graber from the Department of Safety on behalf of Tennessee Christian Mutual and Finger Christian Fellowship did not authorize the Respondent to sell, solicit, or negotiate automotive insurance in this state or elsewhere.

25. On or about April 11, 2019, the Commissioner of Securities and Insurance for the Office of the Montana State Auditor entered a Temporary Order to Cease and Desist and Notice against Respondent Graber ordering the Respondent to cease accepting premium payments from Montana residents or selling insurance in that state.

26. On or about July 28, 2021, the Commissioner of Securities and Insurance for the Office of the Montana State Auditor ratified a Consent Agreement and Final Order signed by Respondent Graber and stipulating that Respondent Graber, while a resident of Tennessee, sold or renewed at least thirteen (13) unauthorized automobile insurance policies.

CONCLUSIONS OF LAW

27. Tenn. Code Ann. § 56-6-102 provides:

...

(6) “Insurance” means any of the lines of authority in § 56-2-201;

...

(9) “License” means a document issued by this state’s commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance carrier;

...

(15) “Negotiate” means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract; provided, that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers;

...

(17) “Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company; [and]

(18) “Solicit” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company[.]

...

28. Tenn. Code Ann. § 56-6-103 states that “[a] person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this part.”

29. Tenn. Code Ann. § 56-6-112 provides:

(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:

...

(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; [and]

...

(14) Selling, soliciting or negotiating insurance for a company that is not authorized to transact the business of insurance in this state[.]

...

(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, after providing notice consistent with the process established by § 4-5-320(c), and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, 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; [and]

(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[.]

...

(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.

30. Tenn. Code Ann. § 56-2-102(a) states that “No domestic insurance company or foreign insurance company shall commence business in this state until it has complied with § 56-2-101, this section, §§ 56-2-103, 56-2-104, 56-2-113 — 56-2-115, 56-2-201, and 56-2-301, and has received from the commissioner a certificate of authority to do business.”

31. Tenn. Code Ann. § 56-2-103 provides:

(a) No domestic or foreign insurance company shall be qualified and authorized to do business in this state until:

- (1) It files or deposits with the commissioner a properly certified copy of its charter or deed of settlement and, if a foreign insurance company, a statement of its financial condition and business on December 31 preceding the date on which it applies for permission to transact business, in the form and detail the commissioner requires, signed and sworn to by its president and secretary, or other proper officers, and pays for the filing of the copy and statement the sum of one hundred dollars (\$100). If it is a foreign insurance corporation, it shall also file and deposit with the commissioner a certified statement of the secretary of state to the effect that its name complies with the requirements of title 48, chapter 14 or title 48, chapter 54, as applicable;
- (2) It satisfies the commissioner that it is fully and legally organized under the laws of the state or foreign nation of its incorporation, and that it possesses and maintains the amount of capital, if a stock company, or surplus funds, if a mutual, reciprocal or Lloyd's plan insurer, required by § 56-2-114 and the amount of additional surplus required by § 56-2-115, to do the kind or kinds of business it proposes to transact;
- (3) It, by duly executed instrument filed in the commissioner's office, constitutes and appoints the commissioner, the commissioner's chief deputy, or their successors, its true and lawful attorneys upon either of whom all lawful process in any action or legal proceeding against it may be served, and in the instrument agrees that any lawful process against it, which may be served upon its attorney, shall be of the same force and validity as if served on the company, and that the authority of the instrument shall continue in force, irrevocably, as long as any liability of the company remains outstanding in this state. Any process issued by any court of record in this state and served upon the commissioner or the commissioner's chief

deputy by the proper officer of the county in which the commissioner or the chief deputy may have an office shall be deemed a sufficient process on the company, and it is the duty of the commissioner or the chief deputy, promptly, after service of process by any claimant, to forward, by registered mail, an exact copy of the notice to the company. Service of process from any county in this state upon the commissioner or the chief deputy by the proper officer of the county in which the commissioner or the chief deputy may have an office shall establish proper venue in the county from which the process was issued, if the plaintiff resides in that county, whether the insurance company has an office or agency located in one (1) or more other counties of this state or not;

32. Tenn. Code Ann. § 56-2-105 states that “It is unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this state without a certificate of authority from the commissioner;...”

33. Tenn. Code Ann. § 56-2-108 provides:

(a) Any company that violates § 56-2-105 is subject to a fine or a civil penalty, or both, of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each violation.

(b) Each day in which a violation occurs constitutes a separate violation.

34. Based on the Findings of Fact above, Respondent Graber sold, solicited, or negotiated insurance in the state of Tennessee while being not being licensed to do so, in violation of Tenn. Code Ann. § 56-6-103.

35. Based on the Findings of Fact above, Respondent Graber sold or negotiated insurance without a license for a company that was not properly licensed, registered, or authorized to operate in the state of Tennessee. This constitutes violating an insurance law, rule, or regulation of the state’s Commissioner, in violation of Tenn. Code Ann. § 56-6-112(a)(2). This violation authorizes the assessment of civil penalties.

36. Based on the Findings of Fact above, Respondent Graber sold or negotiated insurance without a license for a company that was not properly licensed, registered, or authorized to operate in the state of Tennessee. This constitutes committing an unfair insurance trade practice

or fraud, in violation of Tenn. Code Ann. § 56-6-112(a)(7). This violation authorizes the assessment of civil penalties.

37. Based on the Findings of Fact above, Respondent Graber sold or negotiated insurance without a license for a company that was not properly licensed, registered, or authorized to operate in the state of Tennessee. This constitutes using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere, in violation of Tenn. Code Ann. § 56-6-112(a)(8). This violation authorizes the assessment of civil penalties.

38. Based on the Findings of Fact above, Respondent Graber sold or negotiated insurance without a license for a company that was not authorized to transact the business of insurance in this state in violation of Tenn. Code Ann. § 56-6-112(a)(14). This violation authorizes the assessment of civil penalties.

39. Based on the Findings of Fact above, Respondents commenced insurance business in the state of Tennessee without first complying with Tenn. Code Ann. §§ 56-2-101, § 56-2-103, 56-2-104, 56-2-113 — 56-2-115, 56-2-201, and 56-2-301, or receiving from the Commissioner a certificate of authority to do business, in violation of Tenn. Code Ann. § 56-2-102(a). This violation authorizes the assessment of civil penalties.

40. Based on the Findings of Fact above, Respondent TCMMA entered into a contract of insurance as an insurer and transacted insurance business in this state without a certificate of authority from the Commissioner, in violation of Tenn. Code Ann. § 56-2-105. This violation authorizes the assessment of civil penalties.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and the Respondents' waiver of the right to a hearing and appeal under the Law and the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et seq.*, and the Respondent's admission of jurisdiction of the Commissioner, the Commissioner finds that the Respondents, for the purpose of settling this matter, admits the Findings of Fact and agree to the entry and execution of this Order.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 56-6-112 of the Law, that:

41. Respondent Graber shall **CEASE AND DESIST** from all activities requiring a license under Tenn. Code Ann. § 56-6-103.
42. Respondent TCMMA shall **CEASE AND DESIST** from all activities requiring a certificate of authority under Tenn. Code Ann. § 56-2-105.
43. Respondent Graber shall be **BARRED** from applying for an insurance producer license in Tennessee and be barred from engaging in the business of insurance in Tennessee.
44. Respondent Graber shall **PAY A CIVIL PENALTY** to the State of Tennessee of two thousand dollars (\$2,000). The payment of such civil penalty shall be made by check payable to the "**Tennessee Department of Commerce and Insurance.**" Page one (1) of this Consent Order must accompany the payment for reference. Payment shall be remitted within thirty (30) days after the entry and execution of this Consent Order, as evidenced by the Commissioner's signature, and mailed to the attention of:

**Tennessee Department of Commerce and Insurance
Legal Division
Attn: Samuel L. Moore
500 James Robertson Parkway
Davy Crockett Tower
Nashville, TN 37243**

45. This Consent Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the

Commissioner against the Respondent for violations of the Law alleged by or currently known by the Division to have occurred with respect to the transactions involving the above referenced facts contained herein.

46. 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.

47. By the signatures affixed below, the Respondent affirmatively states he has freely agreed to the entry and execution of this Consent Order, that the Respondent waives the right to a hearing on the matters underlying this Consent Order or the enforcement of this Consent Order, and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made to him by the Commissioner, the Division, or any agent or representative thereof.

48. 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 as set forth in this Consent Order, are binding upon them.

49. This Consent Order may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The facsimile, email, or other electronically delivered signatures of the parties shall be deemed to constitute original signatures, and facsimile or electronic copies shall be deemed to constitute duplicate originals.

ENTERED AND EXECUTED March _____, 2023.


Carter Lawrence (Apr 5, 2023 14:58 CDT)
Carter Lawrence, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:



Bill Huddleston (Apr 5, 2023 11:49 CDT)

Bill Huddleston
Assistant Commissioner for Insurance
Department of Commerce and Insurance

Apr 5, 2023

Date



Mervin E. Graber
Respondent

3.22.23

Date



Samuel L. Moore, BRP#031342
Associate General Counsel
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Davy Crockett Tower
Nashville, TN 37243
(615) 770-0082
Samuel.L.Moore@tn.gov

Apr 5, 2023

Date