

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

**TENNESSEE INSURANCE DIVISION,**

**Petitioner,**

**vs.**

**BERNIE HOWARD,**

**Respondent.**

**No: 11-057**

**CONSENT ORDER**

The Insurance Division of the Tennessee Department of Commerce and Insurance ("Insurance Division"), through counsel, and Bernie Howard ("Respondent"), also through counsel, hereby stipulate and agree, subject to the approval of the Commissioner 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 of the Commissioner.
2. The Commissioner has determined that the resolution set forth in this Consent Order is fair and reasonable and in the best public interest.
3. This Consent Order is executed by Respondent for the purpose of avoiding further administrative action with respect to this cause and is not an admission of wrongdoing or liability. 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.

4. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against Respondent for acts and/or omissions not specifically addressed in this Consent Order or for acts and/or omissions that do not arise from the facts or transactions herein addressed. Respondent also understands that this Consent Order may be used by the Commissioner or any Commissioner, Department or Board to revoke or refuse to issue any license Respondent currently holds or for which Respondent applies in the future.

5. Respondent expressly waives 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 stipulation and imposition of discipline contained herein and the consideration and entry of said Consent Order by the Commissioner.

#### **JURISDICTION**

6. The Commissioner has jurisdiction pursuant to the Tennessee Insurance Law (the "Law"), TENN. CODE ANN. § 56-6-101 *et seq.*, and the Law places the responsibility for the administration of the Law on the Commissioner.

#### **PARTIES**

7. The Insurance Division is the lawful agent through which the Commissioner administers the Law and is authorized to bring this action for the protection of the public.

8. Respondent is a resident of Tennessee, residing at 1008 Austin Court, Nolensville, Tennessee 37135. Respondent's insurance producer license, numbered 834872, was issued in 2000.

#### **FINDINGS OF FACT**

9. From approximately June 2009 until July 2010, Respondent received commission payments from American Family Life Assurance Company of Columbus ("Aflac") in the amount of two hundred forty thousand three hundred forty-three dollars and twenty-two cents (\$240,343.22).

10. Respondent received the commission payments after submitting to Aflac approximately one thousand nineteen (1,019) insurance applications in the names of four hundred six (406) individuals as employees of Loxahatchee Feed and Hay, a business owned and operated by Respondent's brother in Loxahatchee, Florida.

11. The Loxahatchee Feed and Hay payroll account paid four (4) monthly premiums totaling approximately seventy-three thousand two hundred thirty-two dollars (\$73,232) for the policies. The policies were subsequently canceled by Aflac after premiums for the policies were no longer being paid.

12. Aflac was unable to verify the authenticity of one thousand twelve (1,012) applications submitted in names of four hundred four (404) individuals because the applications were submitted by Respondent without the applicants' social security numbers and telephone numbers. No claims were ever filed against any of the policies.

13. Aflac claims a monetary loss of approximately one hundred sixty-seven thousand one hundred ten dollars (\$167,110) in commissions payments made to Respondent for the policies.

#### **CONCLUSIONS OF LAW**

14. TENN. CODE ANN. § 56-6-112(a)(4) (2008) provides that the Commissioner may place on probation, suspend, revoke or refuse to issue or renew a license and/or may levy a civil penalty for anyone who improperly withholds, misappropriates or converts any moneys or properties received in the course of doing insurance business.

15. TENN. CODE ANN. § 56-6-112(a)(8) (2008) provides that the Commissioner may place on probation, suspend, revoke or refuse to issue or renew a license and/or may levy a civil penalty for anyone who uses fraudulent, coercive or dishonest practices or demonstrates incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

16. Based on the Findings of Facts cited above, the Commissioner finds that Respondent improperly misappropriated moneys received in the course of doing insurance business and used fraudulent, coercive or dishonest practices or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the state.

17. Such facts, if true, constitute grounds for an Order revoking Respondent's insurance producer license and assessing a civil penalty based on violations of TENN. CODE ANN. § 56-6-112(a)(4) and (8) (2008). Respondent neither admits nor denies the Findings of Fact but concedes that the Conclusions of Law contained herein are fair and reasonable as outlined above. Respondent enters this Consent Order for the sole purpose to avoid further administrative action with respect to this cause.

#### **ORDER**

**NOW, THEREFORE**, based on the foregoing and the waiver of Respondent of his rights to a hearing and appeal under the Law and Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 *et seq.* and the admission by Respondent of the jurisdiction of the Commissioner, the parties agree to a revocation of Respondent's insurance producer license and the assessment of a civil penalty in the amount of ten thousand dollars (\$10,000). Furthermore, the parties agree that this Consent Order is appropriate and in the public interest.

**IT IS ORDERED**, pursuant to TENN. CODE ANN. § 56-6-112(a) (2008), that the insurance producer license, numbered 834872, issued to Bernie Howard, is hereby **REVOKED**.

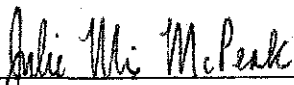
**IT IS ALSO ORDERED**, pursuant to TENN. CODE ANN. § 56-2-305(a)(2) (2008), that Respondent be assessed a civil penalty in the amount of ten thousand dollars (\$10,000), which is to be paid into the Department's Education Fund.

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. By signature affixed below, Bernie Howard, affirmatively states that he has freely agreed to the entry of this Consent Order, that he has been advised that he may consult with legal counsel in this matter, that he waives the right to a hearing on the matters underlying this Consent Order and that no threats or promises of any kind have been made by the Commissioner, the Insurance Division or any agent thereof. 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 set forth in this Consent Order, are binding upon them.

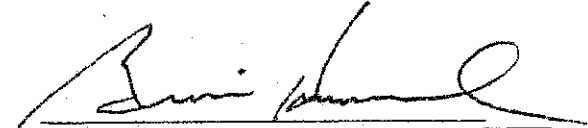
**SO ORDERED.**

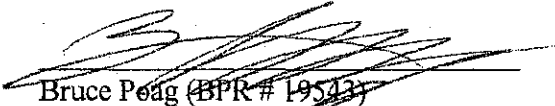
ENTERED this the 18<sup>th</sup> day of April, 2012.

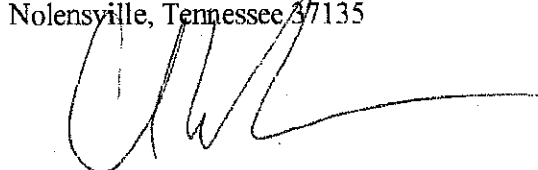
  
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Julie Mix McPeak, Commissioner  
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**

  
Larry C. Knight, Jr.  
Assistant Commissioner for Insurance  
Department of Commerce and Insurance

  
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