



State of Tennessee
Department of State
Administrative Procedures Division
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December 15, 2016

Commissioner Julie Mix McPeak
Tennessee Department of Commerce &
Insurance
Office of Legal Counsel
12th Floor, Davy Crockett Tower
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Darius M. Jones
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Nashville, TN 37243-0569

RE: In the Matter of: Darius Marquette Jones

Docket No. 12.04-137723J

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

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

RECEIVED

DEC 19 2016

**DEPT. OF COMMERCE AND INSURANCE
LEGAL OFFICE**

BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

DARIUS MARQUETTE JONES

DOCKET NO. 12.04-137723J

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 **December 30, 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
DEPARTMENT OF COMMERCE AND INSURANCE**

**TENNESSEE INSURANCE
DIVISION,**

Petitioner,

vs.

DARIUS MARQUETTE JONES,

Respondent.

Docket No. 12.04-137723J

TID No. 16-005

INITIAL ORDER

This contested case was heard on August 15, 2016, before Administrative Judge Elizabeth D. Cambron, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Commerce and Insurance. The Petitioner was represented by Assistant General Counsel Jesse D. Joseph. The Respondent, Mr. Darius Marquette Jones, did not appear for the hearing and no attorney appeared on his behalf.

ORDER OF DEFAULT

This matter was heard upon the Petitioner's Motion for Default and Motion to Deem Service Sufficient, due to the failure of the Respondent to appear or to be represented at the hearing on August 15, 2016.

The record indicates that at all times relevant to this formal proceeding, Respondent's address of record in the Division's files has been 36 Clay Cove, Atoka, TN 38004, and to date, Respondent has not reported to the Division's Agent Licensing Section any change of address from this 36 Clay Cove address in Atoka. *See*, ¶¶ 7 and 10 of the August 2, 2016 affidavit of

Kimberly Biggs, Director, Agent Licensing Section, filed in the record of this proceeding on August 3, 2016, and entered into evidence as Exhibit 2. Moreover, the record reflects that on or about May 12, 2015, former Division Fraud Investigators Mike Aucoin and Tom Stoquert met with the Respondent as part of their investigation, and that Respondent admitted in this in-person interview with Mr. Aucoin on May 12, 2015, his residence to be 36 Clay Cove, Atoka, TN 38004. *See*, copy of the May 12, 2015 Memorandum of Interview prepared by Messrs. Aucoin and Stoquert in this investigation, entered into evidence as Exhibit 3.

As is set forth in the Petitioner's Motion to Deem Service Sufficient filed in this matter on August 3, 2016, the Division, through counsel for the State, used the 36 Clay Cove address in Atoka as the address for attempted service of the Notice of Hearing and Charges filed on June 13, 2016. According to the Certificate of Service for this document (p. 7), the Division served Respondent with the Notice of Hearing and Charges on June 13, 2016, via certified mail return receipt requested no. 7014 1200 0001 7187 7019, and via first class mail.

The certified mail envelope for this June 13, 2016, service attempt was returned to the Department's Office of Legal Counsel in late July 2016 with a United States Postal Service yellow sticker notation that the item was "unclaimed -unable to forward," and with a checked box marked "Unclaimed-Refused." *See*, copy of mailing envelope for this certified mail return receipt envelope sent to Respondent returned with these "unclaimed" and "refused" notations, entered into evidence as Exhibit 1. Notably, the first class mailing of this Notice of Hearing and Charges to Respondent on June 13, 2016, was not returned to sender according to Petitioner.

Moreover, it is clear from the copy of the unclaimed certified mail envelope (Exhibit 1), that the address was valid and the envelope was properly addressed with no typographical errors contained thereon.

Based on the affidavit of Ms. Biggs (Exhibit 2), the Respondent's in-person interview with the Division's investigators on May 12, 2015, set out in Exhibit 3, the Respondent's address information on record with the Division, the properly addressed certified return receipt mail sent June 13, 2016, enclosing the Notice of Hearing and Charges (Exhibit 1), and the provisions of TENN. CODE ANN. §§ 56-6-107(g), and 56-6-112(f) & (g), the Division has taken the necessary steps as are deemed reasonable and required under the law in its attempt to serve Respondent and to obtain his signature acknowledging service of the Notice of Hearing and Charges.

The Division has served the Respondent by certified mail on June 13, 2016, at his listed address of record in the files of the Department in accordance with TENN. CODE ANN. § 56-6-112(f), even though there has been no return receipt 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), the service of the Notice of Hearing and Charges was complete upon placing the Notice of Hearing and Charges in the mail on June 13, 2016, in 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.*, 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.

It is determined that Petitioner properly served the Notice of Hearing and Charges the Respondent in accordance with TENN. CODE ANN. § 56-6-112(f). Based on the failure of the Respondent to appear for the August 15, 2016 hearing, pursuant to 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. Title 56 of the Tennessee Code Annotated (“TENN. CODE ANN.”), specifically TENN. CODE ANN. §§ 56-1-202 and 56-6-112 (the “Law”), places the responsibility of the administration of the Law on the Commissioner of the Department of Commerce and Insurance (“Commissioner”). The Division is the lawful agent through which the Commissioner discharges this responsibility.
2. Darius Marquette Jones (“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 holds a Tennessee insurance producer license, number 1000572, which became active on June 26, 2008. (Exhibit 2).
3. Respondent’s insurance producer license expired on May 31, 2016, and according to the Division’s official agent licensing records as of the time of the hearing, Respondent’s mailing address listed with the Division at all relevant times is 36 Clay Cove, Atoka, TN 38004. (Exhibits 1, 2, & 3; testimony of Thomas Smith at Transcript (“Tr.”) pp. 18-19).
4. Respondent was a licensed insurance agent with an appointment with Farmers Insurance (“Farmers”), from January 2012 through October 16, 2014. (Exhibits 4 & 8).
5. As a licensed agent, Respondent was authorized to accept customer cash premium payments on behalf of Farmers. (Exhibits 3, 6, & 8).
6. Respondent had a fiduciary duty to apply the premiums he collected from consumers to the consumers’ policies and remit all payments to Farmers. (Exhibit 6).

7. In May 2014, Farmers conducted an internal audit of Respondent's agency which revealed that between December 2013 and April 2014, Respondent's agency had a cash shortage of \$4,070.86. (Exhibits 6 & 7).

8. During the relevant time period, Farmers maintained an account at Regions Bank, in which Respondent was to deposit all customer payments for Farmers' policyholders. Respondent also had during the relevant time period a separate account at Patriot Bank for depositing cash payments for customers of Bristol West Insurance Group ("Bristol West"), another member of the Farmers Insurance Group of companies. Respondent used this separate account at Patriot Bank as his sweep account for Bristol West cash payments. (Exhibits 6 & 11).

9. In or around November 2013, Respondent claims he caught his former Customer Service Representative, Samantha Newman, leaving his office with approximately \$580.00 in cash customer payments. After being confronted by Respondent, Ms. Newman allegedly returned the money and was terminated by Respondent shortly thereafter that month. (Exhibit 8).

10. As of June 18, 2014, Respondent could not explain to Farmers' Internal Audit and management staff why the \$4,070.86 shortage had not been deposited or credited to Farmers, other than to claim that it must have been Ms. Newman who stole the money. (Exhibit 8).

11. On or about July 29, 2014, Respondent followed up by indicating to Farmers' Internal Audit staff that he was at that time able to determine where the money was going. Respondent admitted that he was charged a total of \$3,624.00 in insufficient funds, returned payment fees, and related fees by Bristol West and/or Patriot Bank between November 2013 and May 2014. (Exhibit 11).

12. On or about May 12, 2015, Respondent admitted to the Division's fraud investigators that during the next 5-6 months after Ms. Newman was terminated, he struggled

catching up on missing payments, that Bristol West fees and Patriot Bank fees totaled over \$4,000.00, and that on multiple occasions in an attempt to avoid fees, he took cash from the Regions Bank account for Farmers' customers cash premium payments, and deposited such funds into the Patriot Bank account for Bristol West customers.(Exhibit 3, ¶¶ 7,12; Exhibit 11).

13. Respondent claims that at some point in July 2014, he replaced all of the misappropriated money from Farmers with his own personal money. (Exhibit 3, ¶¶ 15 & 16).

14. On October 16, 2014, Respondent's agency appointment with Farmers was terminated for embezzlement. (Exhibit 6, ¶ 1). Respondent has admitted to the Division's investigators that he misappropriated funds due Farmers, even though he did not use them for his personal gain. (Exhibit 3, ¶ 16).

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 Respondent Darius Marquette Jones are true and that the issues raised therein should be resolved in its favor.

2. TENN. CODE ANN. §§ 56-6-112(a)(2), (a)(4), & (a)(8) 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;

...

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business; [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. The Division has shown by a preponderance of the evidence that the Respondent misappropriated moneys (cash premium payments) due Farmers in the course of doing insurance business in violation of TENN. CODE ANN. § 56-6-112(a)(4).

4. The Division has also shown by a preponderance of the evidence that the Respondent demonstrated untrustworthiness and financial irresponsibility in the conduct business in this state on account of his actions as detailed above, in violation of TENN. CODE ANN. § 56-6-112(a)(8).

5. It is determined that the Respondent's violations of TENN. CODE ANN. § 56-6-112(a)(4) and (a)(8) also result in violations of TENN. CODE ANN. § 56-6-112(a)(2), since Respondent's actions violate laws of the Commissioner.

6. TENN. CODE ANN. § 56-6-112(g) provides, in pertinent part:

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.

7. It is determined that the proof adduced at hearing provides adequate grounds for the revocation of Respondent's Tennessee insurance producer license, and for the imposition of a civil penalty against Respondent in the total amount of three thousand dollars (\$3,000.00), or one thousand dollars (\$1,000.00) for each of the three above violations of TENN. CODE ANN. § 56-6-112(a)(2), (a)(4), and (a)(8).

8. TENN. R. CIV. P. 54.04(1) and TENN. COMP. R. & REGS. 1360-04-01-.01(1) respectively, provide as follows:

54.04. Costs. -

(1) Costs included in the bill of costs prepared by the clerk shall be allowed to the prevailing party unless the court otherwise directs, but costs against the state, its officers, or its agencies shall be imposed only to the extent permitted by law.

1360-04-01-.01(3) SCOPE.

(3) In any situation that is not specifically addressed by these rules, reference may be made to the Tennessee Rules of Civil Procedure for guidance as to the proper procedure to follow, where appropriate and to whatever extent will best serve the interests of justice and the speedy and inexpensive determination of the matter at hand.

9. It is further determined pursuant to the above authorities that the hearing costs incurred by the Division to the Administrative Procedures Division of the Secretary of State, and to the court reporter in this matter, should be assessed against the Respondent.

JUDGMENT

IT IS, THEREFORE, ORDERED that:

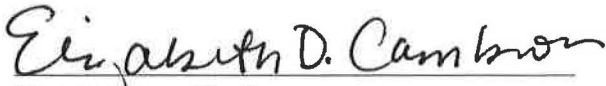
1. The Respondent's Tennessee insurance producer license (No. 1000572) **be and hereby is, REVOKED**, due to his actions in violations of TENN. CODE ANN. §§ 56-6-112(a)(2), (a)(4), and (a)(8), as described above.
2. The Respondent is **ASSESSED** a civil penalty of three thousand dollars (\$3,000), based on his violations of the three (3) statutes cited above. Respondent shall pay said civil

penalty to the Tennessee Department of Commerce and Insurance within ninety (90) days after the date this Initial Order becomes a Final Order.


3. The Respondent, and any and all persons who may assist him in any of the aforementioned violations of TENN. CODE ANN. § 56-6-112, **shall CEASE and DESIST** from any such activities.
4. The Division shall file its Itemized Assessed Bill of Costs including the Administrative Procedures Division costs, and those of the court reporter, within fifteen (15) days after the filing of the Initial Order in this matter, and said costs are hereby incorporated within the Initial Order.
5. The Respondent is **ASSESSED all such costs** incurred by the Division herein pursuant to TENN. R. CIV. P. 54.04(1) and RULE 1360-04-01-.01(3), and shall pay same within ninety (90) days after the date this Initial Order becomes a Final Order, for which execution may issue if necessary.
6. This Initial Order shall take effect upon filing with the Administrative Procedures Division of the Office of the Secretary of State.

It is so ORDERED.

Entered and effective this the 15th day of DECEMBER 2016.


ELIZABETH D. CAMBRON
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 15th day of DECEMBER 2016.


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

**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.