

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

TENNESSEE INSURANCE DIVISION,

Petitioner,

v.

ERIK A. MOORE,

Respondent.

APD No.: 12.01-150773J

TID No.: 17-091

NOTICE OF DEFAULT AND CORRECTED INITIAL ORDER¹

This cause came on to be heard on the 29th day of March, 2018, before the Honorable J. Shannon Barnhill, Administrative Law Judge, sitting on behalf of the Commissioner (“Commissioner”) of the Department of Commerce and Insurance. The Petitioner, the Tennessee Insurance Division (“Division”) was represented by Garron Amos, Assistant General Counsel. The Respondent did not appear.

NOTICE OF DEFAULT

At the hearing, the Court noted that the Respondent did not appear. (Tr. p. 4, l. 12). Subsequently, the Petitioner moved for a default judgment against the Respondent. (Tr. p. 4, l. 15-16). In support of the motion for default judgement, the Petitioner demonstrated that the Respondent was on notice of the proceedings against him based on the following documents admitted into evidence as Collective Exhibit 1:

1. A copy of the Notice of Proposed Action letter, issued pursuant to Tenn. Code Ann. § 4-5-320(c), and Proposed Notice of Hearing and Charges mailed to the Respondent on January 29, 2018, and a copy of the United States Postal Service certified mail return receipt card (receipt no. 70170660000036442138) signed on February 15, 2018;

¹ The Initial Order contained a scrivener’s error in paragraphs three (3) and (4) of the Judgment section. Tenn. Code Ann. §56-1-112 was cited in error. The correct citation is Tenn. Code Ann. §56-6-112. The entry of this corrected Initial Order does not affect the dates of the original appeal time period.

2. A copy of the Notice of Hearing and Charges and Notice of Hearing and Rights of Respondent mailed to the Respondent on February 13, 2018, and a copy of the United States Postal Service certified mail return receipt card (receipt no. 70170660000036442299) signed on February 26, 2018; and

3. A copy of Petitioner's Motion for Protective Order mailed to the Respondent on February 13, 2018, and a copy of the United States Postal Service certified mail return receipt card (receipt no. 70170660000036442282) signed on February 16, 2018.

The Petitioner further represented to the Court that the Petitioner called the Respondent's phone on March 5, 2018, and left a message for the Respondent to return the Petitioner's call; however the call was never returned. (Tr. p. 5-6, l. 24-2).

Notice of the proceedings and charges thus established to the satisfaction of the Court, the Petitioner was allowed to proceed on an uncontested basis. (Tr. p. 6, l. 3-5). The Court considered the oral Motion for Default Judgment by the Petitioner, found the Motion to be well taken, and granted the Motion pursuant to Tenn. Code Ann. § 4-5-309 and Tenn. Comp. R. & Regs. 1360-04-01-.15. (Tr. p. 6, l. 3-4).

Upon consideration of the pleadings, the testimony of witnesses both live and by affidavit, documentary evidence, and the entire record, the Court issues this Initial Order with Findings of Fact and Conclusions of Law as follows.

FINDINGS OF FACT

1. The Petitioner moved to conform the Notice of Hearing and Charges to the evidence before the court in the form of the Affidavit of investigator Thomas Smith. (Tr. p. 16, 2-5). Specifically, dollar values for four (4) of the nineteen (19) counts of misappropriation were incorrectly calculated in the Notice of Hearing and Charges, yet were accurately reflected in the Smith affidavit. (Tr. p. 15-16, l. 22-1). The court, on the oral motion of the petitioner, granted permission to adopt the dollar values found in the Smith affidavit as the actual dollar values of the alleged misappropriated funds, pursuant to rule 1360-04-01-.05(8) of the Uniform Rules of

Procedure for the Hearing of Contested cases Before State Administrative Agencies. (Tr. p. 18, l. 14-24).

2 The Petitioner moved to enter Exhibit 3 and Exhibit 4 under seal in keeping with the Protective Order entered by this Court on March 9, 2018. (Tr. p. 9, l. 22-24; Tr. p. 13, l. 2-5). The Court granted the oral motion of the Petitioner. (Tr. p. 9, l. 24; Tr. p. 13, l. 5).

3. The Respondent is a Tennessee resident with an address of record of 5724 Logan Cove, Arlington, Tennessee 38002. (Exhibit 2; Exhibit 5; Tr. p. 15, l. 7-10).

4. The Respondent was first licensed with the Tennessee Insurance Division (“TID”) on August 23, 2002. The Respondent held Tennessee Insurance Producer License number 0874159. The Respondent’s license expired on June 30, 2017. (Exhibit 2).

5. The Respondent was employed as an insurance agent for the United Insurance Company of America (“UICA”) from January 1, 2015, until he was terminated for cause on August 7, 2015. (Exhibit 3).

6. On November 11, 2015, UICA completed an audit of the Respondent’s account and concluded that the Respondent collected at least one thousand, two hundred ninety-three dollars and twenty-eight cents (\$1,293.28) in premiums from nineteen (19) separate policyholders, which the Respondent failed to remit to UICA. (Exhibit 3; Exhibit 4).

7. Subsequently, UICA applied the Respondent’s four hundred twenty-two dollar and two cents (\$422.02) cash bond toward the unremitted premiums, leaving the Respondent with a balance of eight hundred seventy-one dollars and twenty-six cents (\$871.26) owed to UICA. (Exhibit 3; Exhibit 4).

8. On or about November 11, 2015, UICA notified the TID of the findings of their audit of the Respondent. (Exhibit 2; Exhibit 3; Exhibit 4).

9. Investigator Thomas Smith ("Smith") conducted the investigation on the Respondent on behalf of the TID. (Exhibit 4; Tr. p. 11, l. 16-24).

10. Smith's investigation revealed that the Respondent collected at least one thousand, two hundred ninety-three dollars and twenty-eight cents (\$1,293.28) in premiums from the following nineteen (19) separate policyholders, which he failed to remit to UICA:

1. Minnie Wells in the amount of \$42.97;
2. Larry Williams in the amount of \$76.60;
3. Jacquelyn Williams in the amount of \$248.18;
4. Deandre Williams in the amount of \$63.00;
5. Lula Flowers in the amount of \$26.55;
6. Ruthie Lowe in the amount of \$78.80;
7. Peggy Washington in the amount of \$59.01;
8. Joe Sherrod in the amount of \$33.24;
9. Cecilia Ward in the amount of \$115.22;
10. Chiquita Daniels in the amount of \$31.38;
11. Vernice Foster in the amount of \$35.70;
12. Bertha Cason in the amount of \$37.06;
13. Norma Clark in the amount of \$22.26;
14. Nobia Griffin in the amount of \$110.58;
15. Jacqueline Todd in the amount of \$74.73;
16. L. Joyner in the amount of \$32.40;
17. Dola Anthony in the amount of \$70.10;
18. Ella Buford in the amount of \$78.50; and
19. Delinor Jones in the amount of \$57.00.

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.

15. While employed as an insurance agent for UICA, the Respondent collected at least one thousand, two hundred ninety-three dollars and twenty-eight cents (\$1,293.28) in premiums from nineteen (19) separate policyholders, which he failed to remit to UICA.

16. The Respondent's misappropriation of at least one thousand, two hundred ninety-three dollars and twenty-eight cents (\$1,293.28) in premiums from nineteen (19) policyholders during the course of insurance business constitutes nineteen (19) separate violations of Tenn. Code Ann. § 56-6-112(a)(4).

17. The Respondent's fraudulent and dishonest practices of collecting at least one thousand, two hundred ninety-three dollars and twenty-eight cents (\$1,293.28) in premiums from nineteen (19) separate policyholders in the conduct of business in this state and failing to remit these premiums to UICA constitute nineteen (19) separate violations of Tenn. Code Ann. § 56-6-112(a)(8).

JUDGMENT

1. Respondent Erik A. Moore shall fully **COMPLY** with the Tennessee Insurance Law (the "Law"), and all rules promulgated thereunder.

2. The Respondent's Tennessee Insurance Producer License number 0874159 is **REVOKED**.


3. The Respondent has been shown to have committed thirty-eight (38) distinct violations of Tenn. Code Ann. § 56-6-112.

4. The Respondent is **ASSESSED** a Civil Penalty of nineteen thousand dollars (\$19,000) as a sanction for each of the thirty-eight (38) violations of Tenn. Code Ann. § 56-6-112(a)(4) and (8). This Civil Penalty is due and payable upon this Order becoming final.

5. All persons in any way assisting, aiding, or helping the aforementioned Respondent in any of the aforementioned violations of the Law shall **CEASE AND DESIST** all such activities.


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

This Initial Order entered and effective this 8th day of MAY, 2018.



J. SHANNON BARNHILL
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
8th day of MAY 2018.



J. Richard Collier, Director
Administrative Procedures Division