



State of Tennessee
Department of State
Administrative Procedures Division
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March 15, 2018

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

Charles Holeman Phelps
P.O. Box 62471
Oviedo, FL 32762

Charles Holeman Phelps
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Charles Holeman Phelps
2697 Rainbow Lane
Orlando, FL 32828

RE: In the Matter of: Charles Holeman Phelps

Docket No. 12.04-144897J

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

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

RECEIVED

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

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

IN THE MATTER OF:

CHARLES HOLEMAN PHELPS

DOCKET NO. 12.04-144897J

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 **April 2, 2018**.

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.

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
COMMERCE & INSURANCE,
INSURANCE DIVISION,
*Petitioner,***

v.

**CHARLES HOLMAN PHELPS,
*Respondent.***

DOCKET NO: 12.04-144897J

**INSURANCE DIVISION
No. 17-020**

INITIAL ORDER

This matter was heard on August 15, 2017, in Nashville, Tennessee, before Administrative Judge Mary M. Collier, assigned by the Secretary of State, Administrative Procedures Division (“APD”), to sit for the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”). The August 15, 2017, hearing addressed the allegations contained in the NOTICE OF HEARING AND CHARGES filed on June 23, 2017, pertaining to Respondent Charles Holman Phelps. Jesse D. Joseph, Assistant General Counsel, represented the Petitioner, the Tennessee Department of Commerce and Insurance, Insurance Division (“Division”). The Respondent, Charles Holman Phelps, was not present nor was an attorney present on his behalf.

After the hearing, the Petitioner filed the TRANSCRIPT of the proceedings and a proposed INITIAL ORDER. To date, the Respondent has not filed a response the proposed INITIAL ORDER.

After consideration of the RECORD in this matter, it is **ORDERED** that the Tennessee insurance producer license (No. 2144310) of the Respondent Charles Holman Phelps is **REVOKED** and that the Respondent Charles Holman Phelps is assessed **CIVIL PENALTIES**

in the total amount of three thousand dollars (\$3,000) for violations of TENN. CODE ANN. §§ 56-6-112(a)(2), (a)(7), (a)(8), & (a)(10). It is **FURTHER ORDERED** that the Respondent may not apply for a new insurance producer license from the Commissioner until this civil penalty assessment is paid in full. This decision is based upon the following.

NOTICE OF DEFAULT

Pursuant to TENN. CODE ANN. § 4-5-307, the Petitioner filed and served a NOTICE OF HEARING AND CHARGES against Respondent on June 23, 2017, setting this matter for hearing on August 15, 2017. The Respondent did not appear for the hearing on August 15, 2017. Similarly, counsel did not appear on behalf of the Respondent.

On July 31, 2017, the Petitioner filed a MOTION TO DEEM SERVICE OF PROCESS COMPLETE AND SUFFICIENT, and at the hearing, the Petitioner moved for a default against the Respondent pursuant to TENN. CODE ANN. § 4-5-309, based on the following exhibits admitted into evidence:

1. a copy of the July 14, 2017, affidavit of Renee Powell, which reflects that the Respondent's current residential and mailing address listed with the Division since August 22, 2014, is 5656 Daley Way, Oviedo, FL 32765, and that according to the records of the Florida Department of Financial Services - which Tennessee has access to through the National Association of Insurance Commissioners' ("NAIC") website - the Respondent's Florida mailing and residential addresses last updated as of April 22, 2014, are P.O. Box 62471, Oviedo, FL 32762-0471, and 2697 Rainbow Springs Lane, Orlando, FL 32828, respectively. Moreover, Ms. Powell's affidavit indicated that, to date, the Respondent has not reported to the Division's Agent Licensing Section any change of address from the above 5656 Daley Way residential address in Oviedo, Florida (HRG. EX. 4);
2. a copy of the certified mail envelope for the June 23, 2017, service attempt of the NOTICE OF HEARING AND CHARGES to the Respondent at his 2697 Rainbow Spring Lane address in Orlando, which was returned to the Petitioner's Office of Legal Counsel with a United States Postal Service notation that the item was "UNCLAIMED - UNABLE TO FORWARD" (HRG. EX. 1);
3. a copy of the certified mailing envelope for the July 13, 2017, second service attempt of the NOTICE OF HEARING AND CHARGES to the Respondent at his P.O. Box 62471,

Oviedo, FL 32762 address, which was returned to the Petitioner's Office of Legal Counsel with a United States Postal Service notation that there was "NO SUCH NUMBER – UNABLE TO FORWARD" (HRG. EX. 2); and

4. a copy of the July 14, 2017, transmittal letter from counsel for the Petitioner sending a third copy of the NOTICE OF HEARING AND CHARGES to the Respondent at his 5656 Daley Way address in Oviedo, Florida, 32765 by FedEx Overnight Saturday Delivery and of the FedEx envelope for this item, which was returned to the Petitioner's Office of Legal Counsel with three (3) unsuccessful delivery attempts dated July 15, July 17, and July 18, 2017, marked by FedEx staff on said envelope (COLLECTIVE HRG. EX. 3).

Based upon the Affidavit of Ms. Powell (HRG. EX. 4), the Respondent's address information on Record with the Division, the Petitioner's properly addressed certified return receipt mail and FedEx service attempts dated June 23, 2017, July 13, 2017, and July 14, 2017, each enclosing a copy of the NOTICE OF HEARING AND CHARGES (HRG. EXS. 1, 2 & COLLECTIVE HRG. EX. 3), and the provisions of TENN. CODE ANN. §§ 56-6-107(g), and 56-6-112(f), it is concluded that 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 as set forth above at his listed address of record in the files of the Division 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 NOHC in the mail on June 23, 2017, 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 service of the NOTICE OF HEARING AND CHARGES by certified mail return receipt requested and by FedEx Overnight Delivery was legally sufficient in accordance with TENN. CODE ANN. §§ 4-5-307 and 56-6-112(f), and TENN. COMP. R. & REGS. 1360-04-01-.06. Based on the failure of the Respondent to appear for the August 15, 2017, 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. The Tennessee Insurance Law contained within Title 56 of the Tennessee Code, specifically TENN. CODE ANN. §§ 56-1-202 and 56-6-112 (the “Law”), places the responsibility of administering the Law on the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”). The Division is the lawful agent through which the Commissioner discharges this responsibility.

2. Charles Holman Phelps (“Respondent”) is a licensee of the Division who is responsible for being compliant with the insurance laws and regulations of the State of Tennessee. The Respondent held a valid Tennessee nonresident insurance producer license, number 2144310, which became active on or about July 31, 2012, and which expired on November 30, 2014.

3. The Respondent holds a suspended license in the State of Florida as a resident life including variable annuity and health agent, and a resident customer representative agent, license number A206161.

4. According to the Division's official agent licensing records as of the time of the hearing, the Respondent's residential and mailing address of record was 5656 Daley Way, Oviedo, FL 32765. However, according to the records of the Florida Department of Financial Services, the Respondent's mailing and residential addresses (last updated as of April 22, 2014) were P.O. Box 62471, Oviedo, FL 32762-0471, and 2697 Rainbow Springs Lane, Orlando, FL 32828, respectively.

5. By correspondence dated December 9, 2014, Allstate Insurance Company ("Allstate") notified the Division's Agent Licensing Section that the Respondent had been terminated for cause from the Allstate Life Insurance Company, and from Lincoln Benefit Life Company, two (2) of Allstate's subsidiaries, due to his forgery of customers' signatures on two life insurance applications.

6. From January through early December 2014, the Respondent was employed as an Exclusive Financial Specialist within Allstate's Florida Region.

7. In January 2014, Allstate Agent Dale McMIndes arranged for the Respondent to meet with Florida customer R.W. about obtaining life insurance policies for his daughters, A.W. and M.W. On or about January 22, 2014, R.W. met with Respondent to sign his life insurance application and to provide Respondent with A.W.'s and M.W.'s personal information to assist in the completion of their policies.

8. The first applications for A.W. and for M.W. were both completed on or about March 12, 2014, and were submitted by Respondent to Lincoln Benefit Life at that time.

9. Shortly thereafter, Respondent told R.W. that he had been informed by underwriting staff that there was a problem approving the applications for A.W. and M.W. because of a lack of insurable interest -- given that R.W. would be the owner of both daughters' policies. Respondent contacted the underwriting department again and indicated that there was insurable interest because the daughters were still in school.

10. R.W.'s life insurance application was approved, and he soon became frustrated with the process due to the delay in obtaining approved policies for his daughters.

11. Respondent then created and completed a second application for both A.W. and M.W. electronically given that the process is faster. Respondent copied the information from the first paper applications, traced the signatures on the digital signature pad for both A.W. and M.W., and placed these signatures on the electronic applications (second applications) which he submitted for both of them on or about April 1, 2014.

12. At some later point in 2014, R.W. received a "Change to Application for Insurance" notice dated April 1, 2014, and revised life insurance policies which had been approved for A.W. and M.W. The life insurance policies were issued in July 2014 for A.W. and M.W.

13. R.W. did not sign the "Change to Application for Insurance" dated April 1, 2014, which contained his purported signature, and he did not recognize the signatures purporting to be those of his daughters on the second life insurance applications which Respondent submitted electronically. A.W. did not sign either the first or the second life insurance applications submitted by Respondent on her behalf.

14. On or about October 3, 2014, Respondent was interviewed by Allstate representatives concerning the allegation that he had submitted forged signatures of A.W. and

M.W. on life insurance applications. During this interview, Respondent admitted “copying and pasting” A.W.’s and M.W.’s signatures from the paper (first) applications onto the electronic applications. On or about October 13, 2014, Respondent was contacted again by Allstate representatives wherein he clarified that he took the paper versions of the applications and traced the signatures on the digital signature pad for A.W. and M.W., when completing their online life insurance applications.

15. On April 3, 2017, the Florida Department of Financial Services filed an Administrative Complaint seeking licensing sanctions against Respondent in his capacity as a resident insurance producer in that state, based on the above allegations.

16. The certified mail service attempt of the Florida Administrative Complaint filed against Respondent April 3, 2017, and sent to his P.O. Box 62471, Oviedo, FL 32762 address, was unsuccessful.

17. On June 6, 2017, the Florida Department of Financial Services entered an ORDER OF SUSPENSION imposing a twelve (12) month suspension of the Respondent’s Florida resident insurance producer license.

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

2. TENN. CODE ANN. § 56-6-112(a) provides:

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;
- (10) Forging another's name to an application for insurance or to any document related to an insurance transaction[.]

3. The Division has shown by a preponderance of the evidence that the Respondent violated laws of the Commissioner of the State Tennessee as well as the State of Florida in violation of TENN. CODE ANN. § 56-6-112(a)(2); that the Respondent admitted to Allstate representatives his commission of fraud by forging the signatures of others as set forth above to insurance applications, thereby engaging in dishonest and untrustworthy practices in violation of TENN. CODE ANN. §§ 56-6-112(a)(7) and (a)(8); and that the Respondent forged the signatures of others to applications for insurance, in violation of TENN. CODE ANN. §§ 56-6-112(a)(10).

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

- (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.

5. 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), calculated as follows: seven hundred and fifty dollars (\$750) for each of the four (4) multiple violations of TENN. CODE ANN. §§ 56-6-112(a)(2), (a)(7), (a)(8), & (a)(10), as cited above.

6. It is further **ORDERED** that the Respondent may not apply for a new insurance producer license from the Commissioner until this three thousand dollars (\$3,000) civil penalty assessment is paid in full.

JUDGEMENT

IT IS, THEREFORE, ORDERED that:

1. The Respondent's Tennessee insurance producer license (No. 2144310) is **REVOKED** based upon his actions in violation of TENN. CODE ANN. §§ 56-6-112(a)(2), (a)(7), (a)(8), & (a)(10), as found above.

2. The Respondent is **ASSESSED** a total civil penalty of three thousand dollars (\$3,000), based upon his violations of the four (4) statutes cited above. This total civil penalty is calculated as follows: seven hundred and fifty dollars (\$750) for each of the four (4) multiple violations of TENN. CODE ANN. §§ 56-6-112(a)(2), (a)(7), (a)(8), & (a)(10), found above.

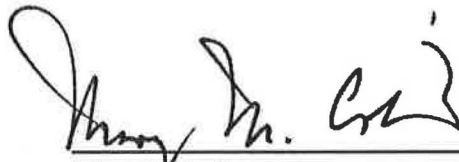
3. The Respondent, and any and all persons who may assist him in any of the aforementioned violations of TENN. CODE ANN. § 56-6-112, **shall CEASE and DESIST** from any such activities.

4. The Respondent may not apply for a new insurance producer license from the Commissioner until this three thousand dollars (\$3,000) civil penalty assessment is paid in full.

5. This INITIAL ORDER, imposing sanctions against the Respondent, is entered to protect the public and consumers of insurance products sold by Tennessee licensed insurance producers, consistent with the purposes fairly intended by policy and provisions of the Law.

It is so ORDERED.

This INITIAL ORDER entered and effective this the 15TH day of MARCH 2018.



**MARY M. COLLIER
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 MARCH 2018.



**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.