TN Agent # 0748481
NPN # 5943699

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

| ~~IN THE MATTER OF:~~ | |
|---|---|
| **RONALD RICE**<br>**Respondent** | **DOCKET NO: 12.01-114691J** |

## NOTICE OF DEFAULT AND INITIAL ORDER

This matter came to be heard on February 7, 2012, before Leonard Pogue, Administrative Judge assigned to the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Commerce and Insurance in Nashville, Tennessee. Bruce Poag, Assistant General Counsel, Department of Commerce and Insurance, represented the State. Respondent, Ronald Rice, was not present at the hearing nor did an attorney appear on his behalf. The subject of this hearing was the State's Petition to revoke Respondent's Insurance Producer License and/or to levy civil penalties against the Respondents for violations of T.C.A. §56-6-112 and T.C.A. §56-2-105.

## ORDER OF DEFAULT

The State moved that a default be entered against Respondent for failure to participate in the hearing after due notice. Prior to the filing of the Petition, an investigator for the State attempted to contact Respondent by telephone on many occasions but was unsuccessful (Respondent would not answer calls nor return calls). The State introduced proof that personal service, at Respondent's address of record, of the notice of hearing and T.C.A. § 4-5-320 notice were attempted, as well as delivery by mail of the notice of hearing and T.C.A. § 4-5-320 notice were made. Further, the State's

investigator made several attempts to determine if Respondent had moved from his address of record and it appeared Respondent had not changed his address. Respondent never reported a change of address and never listed an e-mail address. It appearing that proper notice was sent to Respondent, and that Respondent failed to appear at the hearing, the State's Motion for Default is well taken and is hereby **GRANTED** pursuant to TENN. CODE ANN. § 4-5-309(a). *See also* RULE 1360-4-1-.15(1) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, TENN. COMP. R. & REGS. Ch. 1360-4-1 (June 2004 (Revised)).

## INITIAL ORDER

After consideration of the argument of counsel and the record in this matter, it is the determination of this Administrative Judge that the Respondent's property interest in his license should be revoked (respondent's license expired on December 31, 2011) and Respondent should pay to the Commissioner of the Tennessee Department of Commerce and Insurance a civil penalty in the amount of thirty-six thousand dollars ($36,000.00). This decision is based upon the following Findings of Fact and Conclusions of Law.

## FINDINGS OF FACT

1. The Tennessee Insurance Law, as amended, places the responsibility for the administration of the Law on the Commissioner of Commerce and Insurance (the "Commissioner"). TENN. CODE ANN. §§ 56-1-202 and 56-6-101 *et seq.*

2. The Insurance Division is the lawful agent through which the Commissioner discharges her responsibility.

3. Respondent is a citizen and resident of Tennessee and resides at 441 Claircrest Drive, Antioch, Tennessee 37013. Respondent's original insurance producer license, numbered 748481, was issued in 1994.

4. In December 2008, the Consumer Insurance Services section of the Insurance Division received a complaint against Respondent from Beverly Duncan on behalf of her stepfather, James Hanlon, and her late mother, Lena Hanlon (collectively, the "Hanlons"). The complaint alleged questionable and financially irresponsible advice rendered to the Hanlons by Respondent. Robert Heisse, a fraud investigator with the Insurance Division of the Department of Commerce and Insurance, began an investigation based on the complaint allegations. Mr. Heisse initially learned that Respondent was the Hanlons insurance agent.

5. In approximately October 2004, Respondent convinced the Hanlons to enter a reverse mortgage agreement on their home. The reverse mortgage agreement netted the Hanlons seventy-five thousand dollars ($75,000). Afterwards, Respondent convinced Mrs. Hanlon to purchase an American Equity Investment Life Insurance Company ("American Equity") annuity for sixty-five thousand dollars ($65,000). In approximately December 2004, Mrs. Hanlon surrendered an annuity with ING USA Annuity and Life Insurance Company and received eighteen thousand eight hundred two dollars ($18,802). These funds were added to Mrs. Hanlon's American Equity annuity, increasing its balance to eighty-three thousand eight hundred two dollars ($83,802). Respondent received a commission based on Mrs. Hanlon's purchase of the American Equity annuity.

6. On approximately November 16, 2006, Respondent convinced the Hanlons to purchase a three thousand dollar ($3,000) annuity from R2 Financial. R2 Financial is an unincorporated entity, which is wholly owned and operated by Respondent, does not have a certificate of authority issued by the Commissioner and is

not authorized to transact insurance business in Tennessee. The Hanlons were to receive from Respondent and/or R2 Financial monthly annuity payments in the amount of seventy-one dollars ($71) for five (5) years. Respondent provided the Hanlons with a schedule of annuity payments they would receive from Respondent and/or R2 Financial.

7. In early February 2007, Respondent convinced Mrs. Hanlon to surrender her entire American Equity annuity, which caused her to incur a surrender penalty in the amount of fifteen thousand seven hundred seventy-five dollars and forty-six cents ($15,775.46). The surrender value was seventy-one thousand one hundred twenty one dollars and nine cents ($71,121.09). With these funds, on approximately February 16, 2007, Respondent convinced the Hanlons to purchase a fifteen thousand dollar ($15,000) annuity from R2 Financial. The Hanlons were to receive from Respondent /R2 Financial monthly annuity payments in the amount of two hundred eighteen dollars ($218) for seven (7) years. Respondent provided the Hanlons with a schedule of annuity payments they would receive from Respondent and/or R2 Financial. On approximately March 1, 2007, Respondent convinced Mr. Hanlon to purchase a forty thousand dollar ($40,000) annuity from AmerUs Life. Respondent received a commission based on Mr. Hanlon's purchase of the AmerUs Life annuity.

8. On approximately August 28, 2007, Respondent convinced Mr. Hanlon to withdraw five thousand nine dollars ($5,009) from the AmerUs Life annuity, which caused Mr. Hanlon to incur a surrender penalty in the amount of one thousand two hundred six dollars and nineteen cents ($1,206.19). On approximately September 5, 2007, Respondent convinced the Hanlons to purchase a five thousand dollar ($5,000) annuity from R2 Financial.

9. In September 2007, Respondent recommended Mr. Hanlon surrender his entire AmerUs Life annuity. The surrender value of the AmerUs Life annuity at the time was thirty thousand four hundred forty-eight dollars and thirty-seven cents ($30,448.37), and Mr. Hanlon incurred a surrender penalty in the amount of five thousand seven hundred thirty-six dollars and forty-four cents ($5,736.44). On approximately September 26, 2007, Respondent convinced the Hanlons to purchase a twenty-nine thousand dollar ($29,000) annuity from R2 Financial. The Hanlons were to receive from Respondent and/or R2 Financial monthly annuity payments in the amount of three hundred forty-seven dollars ($347) for ten (10) years. Respondent provided the Hanlons with a schedule of annuity payments they would receive from Respondent and/or R2 Financial.

10. At all times the Hanlons thought they were purchasing legitimate annuities from R2 Financial. They were never informed by Respondent that R2 Financial was Respondent's company and that it did not have a certificate of authority issued by the Commissioner. The Hanlons did receive some payments from Respondent/R2 Financial but the payments ceased in January, 2011. The amount of money invested by the Hanlons with Respondent minus payments made to them by Respondent is approximately $30,000.00.

11. Respondent's insurance producer license expired on December 31, 2011, and he has a property interest right in his license until December 31, 2012.

## CONCLUSIONS OF LAW

1. 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 Tennessee without a certificate of authority from the Commissioner.

2. TENN. CODE ANN. § 56-2-108 provides that: (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.

3 TENN. CODE ANN. § 56-6-112(a) 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 any one or more of the following violations:

> (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.
>
> (8) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

4. TENN. CODE ANN. § 56-6-112(e) (2007) provides that:

> With respect to any person licensed or required to be licensed under this part, and in addition to or in lieu of any applicable denial, suspension or revocation of a license, the commissioner may assess a civil penalty against such person in an amount no less than one hundred ($100) nor more than one thousand dollars ($1,000) for each separate violation of a statute, rule or order pertaining to the sale, solicitation or negotiation of insurance in this state. Each day of continued violation constitutes a separate violation.

5. The State has shown by a preponderance of the evidence that Respondent, through R2 Financial, violated TENN. CODE ANN. § 56-2-105 by selling four (4) annuities to the Hanlons at a time when R2 Financial did not have a certificate of authority issued by the Commissioner.

6. The State has shown by a preponderance of the evidence that Respondent, through R2 Financial, violated TENN. CODE ANN. § 56-6-112(a)(2) by selling four (4) annuities to the Hanlons at a time when R2 Financial did not have a certificate of authority issued by the Commissioner.

7. The State has shown by a preponderance of the evidence that Respondent, through R2 Financial, violated TENN. CODE ANN. § 56-6-112(a)(4) by improperly withholding, misappropriating and/or converting the Hanlons' four (4) annuity investments.

8. The State has shown by a preponderance of the evidence that Respondent, through R2 Financial, violated TENN. CODE ANN. § 56-6-112(a)(8) by failing to disclose to the Hanlons that R2 Financial did not have a certificate of authority issued by the Commissioner.

9. The State has shown by a preponderance of the evidence that Respondent, through R2 Financial, violated TENN. CODE ANN. § 56-6-112(a)(8) by advising the Hanlons to purchase four (4) annuities from R2 Financial, which did not have a certificate of authority issued by the Commissioner.

10. The State has shown by a preponderance of the evidence that Respondent, through R2 Financial, violated TENN. CODE ANN. § 56-6-112(a)(8) by demonstrating incompetence and untrustworthiness by advising the Hanlons in three (3) instances to

surrender—in whole or in part—their annuities with American Equity and AmerUs Life and thereby incurring significant surrender penalties totaling approximately twenty-two thousand seven hundred dollars ($22,700).

11. Pursuant to TENN. CODE ANN. § 56-6-112(a), it is determined that Respondent's property interest right in his insurance producer license be revoked (his license is expired) for violating § 56-6-112(a) and § 56-2-105.

12. Pursuant to TENN. CODE ANN. § 56-2-108, Respondent is assessed a civil penalty of $20,000.00 for violating § 56-2-105 on 4 occasions.

13. Pursuant to TENN. CODE ANN. § 56-6-112(e)(2007), Respondent is assessed a civil penalty of $ 16,000.00 for violating § 56-2-112(a), determined as follows: 4 violations of § 56-2-112(a)(2) - $4,000.00; 4 violations of § 56-2-112(a)(4) - $4,000.00; 8 violations of § 56-2-112(a)(8)-$8,000.00.

14. It is therefore **ORDERED** that Respondent's property interest right in his insurance producer license be **REVOKED** and that a civil penalty be assessed against Respondent in an amount of Thirty-Six Thousand Dollars ($36,000.00). The costs of this action are assessed against Respondent.

This Order entered this 10TH day of February, 2012.

Leonard Pogue
Administrative Judge

Filed in the Administrative Procedures Division, this 10TH day of February, 2011.

Thomas Stovall, Director
Administrative Procedures Division
Office of the Secretary of State