



STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE INSURANCE DIVISION,)	
)	
Petitioner,)	
)	
vs.)	APD No.: 12.04-156246J
)	TID No.: 18-013
LASHAWN SMITH,)	
)	
Respondent.)	

INITIAL ORDER

ENTRY OF DEFAULT

On December 13, 2018, pursuant to Tenn. Code Ann. § 4-5-307, Petitioner filed a Notice of Hearing and Charges. Subsequently this matter was set for a hearing on February 22, 2019. The named Respondent in the Notice of Hearing and Charges is LaShawn Smith ("Respondent"). At the hearing, Petitioner moved for a default against Respondent pursuant to Tenn. Code Ann. § 4-5-309.

In support of the motion for default, Petitioner presented evidence demonstrating that Respondent was on notice of the proceedings against him and was served with copies of all pleadings submitted in this case, based on collective exhibit 1, which is comprised of the following documents:

1. United States Postal Service ("USPS") certified mail receipts signed by Respondent in April of 2015, and on May 3, 2016, at 609 Hedgeapple Lane, Apt. 9, Knoxville, TN 37920.

2. USPS tracking document for tracking number 7018068000018475558, confirming mailing of the draft Notice of Hearing and Charges and the 320(c) letter to 609 Hedgeapple Lane, Apt. 9, Knoxville, TN 37920, but returned as undeliverable on December 24, 2018.
3. USPS tracking document for tracking number 70180680000181475572, which showed that the Notice of Hearing and Charges in this matter was mailed to 609 Hedgeapple Lane, Apt. 9, Knoxville, TN 37920, but was returned as undeliverable on January 12, 2019.
4. USPS tracking document for tracking number 70170660000036442060, which showed that the Notice of Intent to Introduce Affidavits in this matter was mailed to 1124 Whitesburg Dr. Knoxville, TN 37918, but was returned as undeliverable on February 16, 2019.
5. USPS tracking document for tracking number 70170660000036441971, which showed that a courtesy letter regarding this matter was mailed to 1124 Whitesburg Dr. Knoxville, TN 37918, but was returned as undeliverable on February 19, 2019.
6. USPS tracking document for tracking number 70180680000181475138, which showed that the Witness and Exhibit Disclosures in this matter was mailed to 1124 Whitesburg Dr. Knoxville, TN 37918, but was returned as undeliverable on February 20, 2019.

Service upon the Respondent was legally sufficient in accordance with Tenn. Code Ann. § 4-5-307 and Tenn. Comp. R. & Regs. ("Rule") 1360-04-01-.06.

Petitioner properly served the Notice of Hearing and Charges on Respondent in accordance with Rule 1360-04-01-.06. Based Respondent's failure to appear at the hearing on February 22, 2019, pursuant to Tenn. Code Ann. § 4-5-309 and Rule 1360-04-01-.15, Respondent was held in default. Pursuant to Rule 1360-04-01-.15(2)(b), the hearing was held on an uncontested basis.

PROPOSED FINDINGS OF FACT

1. Respondent is a resident of Tennessee with a mailing address of record of 1124 Whitesburg Dr. Knoxville, TN 37918. Respondent also provided the alternate mailing address of 609 Hedgeapple Lane, Apt. 9, Knoxville, TN 37920.

2. Respondent was first licensed with the Tennessee Insurance Division ("TID") on November 11, 2011. His license ID number was 2045950. His license expired on February 29, 2016.
3. Respondent was appointed as an insurance agent for Mutual of Omaha Insurance Company ("MOIC").
4. Respondent called the application verification line of MOIC pretending to be an individual by the name of Jerry Meyers. He was able to open a new insurance policy under the name Jerry Meyers.
5. Respondent received an advanced commission for the policy on Jerry Meyers, which he has not repaid to MOIC.
6. The identifying information provided for Jerry Meyers does not match any existing individual named Jerry Meyers.
7. The insurance policy for Jerry Meyers was cancelled before MOIC received any premium payments.
8. Respondent also called the application verification line of MOIC pretending to be an individual named John Tolliver. He unsuccessfully attempted to open an insurance policy for John Tolliver.
9. MOIC obtained self-identifying recordings of the respondent. The voice in the self-identifying recording of the respondent matches the voices of Jerry Meyers and John Tolliver.
10. Respondent also opened an insurance policy for an individual named Susan Tolliver. The identifying information provided for Susan Tolliver does not match any existing individual named Susan Tolliver.
11. Respondent opened an insurance policy for an individual named Ronnie Mitchell. The identifying information provided for Ronnie Mitchell does not match any existing individual

named Ronnie Mitchell. The insurance policy for Ronnie Mitchell was cancelled before MOIC received any premium payments.

12. Respondent opened an insurance policy for an individual named John Wells. The identifying information provided for John Wells does not match any existing individual named John Wells. The insurance policy for John Wells was cancelled before MOIC received any premium payments.

13. Respondent opened an insurance policy for an individual named Paul Lewis. The identifying information provided for Paul Lewis does not match any existing individual named Paul Lewis. The insurance policy for Paul Lewis was cancelled before MOIC received any premium payments.

14. The Respondent owes MOIC a total of twelve thousand, six-hundred and twenty-nine dollars, and one cent (\$12,629.01) in chargebacks.

15. As of the date of the hearing, Respondent had not repaid any of the \$12, 629.01 to MOIC.

CONCLUSIONS OF LAW

1. In accordance with Rules 1360-04-01-.02(7) and 1360-04-01-.15(3), Petitioner has shown by a preponderance of evidence that the facts alleged in the Notice of Hearing and Charges are true and that the issues raised therein should be resolved in its favor.

2. Although Respondent's license had expired prior to the commencement of this litigation, Tenn. Code Ann. § 56-6-112(e) specifically authorizes the present action and any penalty or remedy available under the Law.

3. Respondent called his employer, MOIC, and pretended to be Jerry Meyers and John Tolliver in order to open insurance policies for these individuals, who the Respondent knew to be fictitious. Respondent also opened insurance policies with MOIC for Susan Tolliver, Ronnie

Mitchell, John Wells and Paul Lewis, each of whom Respondent knew to be fictitious. These actions constitute violations of Tenn. Code Ann. §§ 56-6-112(a)(5) and 56-6-112(a)(8).

4. MOIC paid Respondent advanced commissions totaling \$12,629.01, on policies that were cancelled before MOIC received any premium payment. Respondent is required to repay this money, but he has not done so as of the date of the hearing. This constitutes a further violation of Tenn. Code Ann. § 56-6-112(a)(8).

5. Tenn. Code Ann. § 56-6-112(h) states that 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.

6. The evidence presented at the hearing demonstrates that Respondent held himself out to be multiple fictitious policyholders and submitted falsified identifying information to his employer for multiple fictitious policyholders. It is not unreasonable for an insurance producer to believe that these actions complied with any insurance statute, rule or order. For this reason, Tenn. Code Ann. § 56-6-112(h)(1) weighs in favor of assessing the maximum civil penalty.

7. Respondent no longer participates in the insurance industry. For this reason, Tenn. Code Ann. § 56-6-112(h)(2) weighs in favor of assessing a lower civil penalty.

8. There was no justification for Respondent's actions. Respondent purposefully committed fraud in order to obtain advanced commissions. For this reason, Tenn. Code Ann. § 56-6-112(h)(3) weighs in favor of assessing the maximum civil penalty.

9. Respondent committed a severe violation by defrauding his employer of thousands of dollars and by submitting false identifying information, some of which actually belonged to individuals unrelated to this matter. For these reasons, Tenn. Code Ann. § 56-6-112(h)(4) weighs in favor of assessing the maximum civil penalty.

10. Respondent improperly gained \$12,629.01 from MOIC. For this reason, Tenn. Code Ann. § 56-6-112(h)(5) weighs in favor of assessing the maximum civil penalty.

11. It is in the public interest that Petitioner license trustworthy individuals as insurance producers. The creation of fraudulent policies, along with holding himself out to be fictitious policyholders, demonstrates that Respondent is not a trustworthy individual. For this reason, Tenn. Code Ann. § 56-6-112(h)(6) weighs in favor of assessing the maximum civil penalty.

12. Respondent did not attempt to cure his violations. For this reason, Tenn. Code Ann. § 56-6-112(h)(7) weighs in favor of assessing the maximum civil penalty.

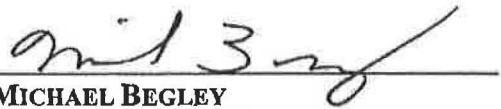
13. For the aforementioned reasons, it is determined that there are adequate grounds for the imposition of the maximum monetary civil penalty of one thousand dollars (\$1,000) under Tenn. Code Ann. § 56-6-112(g) for each violation, in the total amount of thirteen thousand dollars (\$13,000.00).

IT IS THEREFORE ORDERED that:


1. Respondent's Tennessee nonresident insurance producer license (No. 2045950) **hereby is, REVOKED.**
2. Respondent **is ASSESSED CIVIL PENALTIES** totaling thirteen thousand dollars (\$13,000), pursuant to TENN. CODE ANN. § 56-6-112(g)(2).
3. The costs of this action are assessed against Respondent.

4. 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.
5. Any order arising from this action shall not be interpreted in any manner that is in conflict with the automatic stay provisions of 11 U.S.C. § 362 of the federal bankruptcy code.
6. This **INITIAL ORDER** imposing sanctions against Respondent is entered to protect the public and consumers of insurance products in Tennessee, consistent with the purposes fairly intended by policy and provisions of the Law.

This INITIAL ORDER entered and effective this the 6TH day of SEPT, 2019.


MICHAEL BEGLEY
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

6TH Filed in the Administrative Procedures Division, Office of the Secretary of State, this the
day of SEPTEMBER 2019.


STEPHANIE SHACKELFORD, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

IN THE MATTER OF:

APD CASE No. 12.04-156246J

Tennessee Insurance Division, Petitioner v.
LaShawn Smith, Respondent.

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

Attached is the Administrative Judge's decision in your case before the **Commissioner of the Tennessee Department of Commerce & Insurance (the Commissioner)**, called an Initial Order, with an entry date of **September 6, 2019**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and sets forth the specific reasons why you think the decision is incorrect. The APD must receive your written Petition no later than 15 days after entry of the Initial Order, which is no later than **September 23, 2019**. A new 15 day period for the filing of an appeal to the Commissioner (as set forth in paragraph (2), below) 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.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal. Such an Appeal must be received by the APD no later than 15 days after the date of denial of the Petition. See TENN. CODE ANN. § 4-5-317 and § 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the Commissioner. Mail to the APD a document that includes your name and the above APD case number, and states that you want to appeal the decision to the Commissioner, along with the basis for your appeal. The APD must receive your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **September 23, 2019**. The filing of a Petition for Reconsideration is not required before appealing. See TENN. CODE ANN. § 4-5-317.
3. **The Commissioner of the Tennessee Department of Commerce & Insurance decides to Review the Initial Order:** In addition, the Commissioner may give written notice of his or her intent to review the Initial Order, within 15 days after the entry of the Initial Order.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the Commissioner renders a Final Order.

If none of these actions set forth in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for a stay must be received by the APD within 7 days of the date of entry of the Initial Order, which is no later than **September 13, 2019**. See TENN. CODE ANN. § 4-5-316.

IN THE MATTER OF:

APD CASE No. 12.04-156246J

Tennessee Insurance Division, Petitioner v.

LaShawn Smith, Respondent.

REVIEW OF A FINAL ORDER

1. **A Party may file a Petition for Reconsideration of the Final Order:** When an Initial Order becomes a Final Order, a party may file a Petition asking for reconsideration of the Final Order. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and sets forth the specific reasons why you think the Final Order is incorrect. If the Initial Order became a Final Order without an Appeal being filed, and without the Commissioner deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Commissioner rendered a Final Order, the Commissioner will consider the Petition. The APD must receive your written Petition for Reconsideration no later than 15 days after: (a) the issuance of a Final Order by the Commissioner; or (b) the date the Initial Order becomes a Final Order. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing the Final Order will be adjusted. If no action is taken within 20 days of filing of the Petition, it is deemed denied. *See* TENN. CODE ANN. § 4-5-317.
2. **A Party Files an Appeal of the Final Order:** A person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review "in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person's discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County," within 60 days of the date of entry of the Final Order. *See* TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.
3. **A Party may request a stay of the Final Order:** A party may file a Petition asking for a stay that will delay the effectiveness of the Final Order. If the Initial Order became a Final Order without an Appeal being filed, and without the Commissioner deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Commissioner rendered a Final Order, the Commissioner will consider the Petition. A Petition for a stay of a Final Order must be received by the APD within 7 days after the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-316.

FILING

To file documents with the Administrative Procedures Division, use this address:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, TN 37243-1102
Fax: (615) 741-4472