

BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

ARTURO VILLAVICENCIO

DOCKET NO. 12.01-142317J

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 August 18, 2017.

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 TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

TENNESSEE INSURANCE DIVISION,
Petitioner,

v.

ARTURO VILLAVICENCIO,
Respondent.

DOCKET NO: 12.01-142317J
TID No. 17-009

INITIAL ORDER

This contested case was heard in person in Nashville on May 8, 2017, by Administrative Judge Kim Summers, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Commerce and Insurance (the Department). Charles S. Herrell, Assistant General Counsel, represented the Department in this matter. The Respondent was present and represented by Daniel Hamilton, Esq.

The issue in this matter is Respondent's alleged violation of Tenn. Code Ann. § 56-6-112, *et seq.* and the appropriate penalty to be imposed for any such violation(s). After consideration of the entire record, it is determined that Respondent's actions have been in violation of Tenn. Code Ann. § 56-6-112, *et seq.* and that penalties shall issue as further specified below.

This determination is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF EVIDENCE

One witness testified at the hearing on behalf of the Petitioner: Jacqueline Cherry, Insurance Fraud Investigator with the Department of Commerce and Insurance. Six exhibits

were entered into evidence: **EXHIBIT 1**, Suspect's Statement; **EXHIBIT 2**, Chart of Terms; **COLLECTIVE EXHIBIT 3**, Individual Transactions; **EXHIBIT 4**, Glossary of Terms; **EXHIBIT 5**, Information Regarding Procedures; and **EXHIBIT 6**, Affidavit of Michael Vidal. Additional evidence was also provided through Stipulations agreed to by the Parties.

The Respondent testified on his own behalf as follows – he only made about \$25,000 / year with Farmers; he ran into financial difficulties when his mother was diagnosed with breast cancer; he knows what he did was wrong; this is a first-time offense, and he is asking for mercy.

FINDINGS OF FACT

1. The Respondent, Arturo Villavicencio, is a resident of the State of Tennessee.
2. The Respondent has been licensed as an insurance producer by the State of Tennessee since 2004. His Tennessee license number is 0914212.
3. The Respondent was an agent for Farmers Insurance from August of 2011 until October of 2014.
4. During a routine audit conducted by Farmers in May of 2014, it was discovered that eighteen times, from February through May of 2014, the Respondent had not remitted to Farmers, as required by procedure, the entire premium paid by various customers in cash. At the time of the audit, the entire shortfall was calculated to be \$4,303.35. After offsetting commissions owed by Farmers to the Respondent, the shortfall was reduced to \$505.35, which was satisfied from a claim made by Farmers against the Respondent's surety bond.
5. All insurance policies at issue were honored by Farmers.
6. Farmers terminated its relationship with the Respondent.

APPLICABLE LAW

1. RULE 1360-04-01-.02(3) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies states, in pertinent part:

The "petitioner" in a contested case proceeding is the "moving" party, i.e., the party who has initiated the proceedings. The petitioner usually bears the ultimate burden of proof.

5. Provisions of Tenn. Code Ann. § 56-6-112(a) applicable to this proceeding specify the following –

- (a) 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:
 - (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;

6. Tenn. Code Ann. § 56-6-112(g) and (h) provide the following –

- (g) If, after providing notice consistent with the process established by § 4-5-320(c), and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, 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.

ANALYSIS and CONCLUSIONS OF LAW

1. The Department has the burden to prove by a preponderance of the evidence that Respondent has violated the provisions of TENN. CODE ANN. § 56-6-112, *et seq.* and is subject to appropriate penalties.
2. The preponderance of the evidence shows eighteen separate occurrences of misappropriation of funds by the Respondent in violation of TENN. CODE ANN. § 56-6-112(a)(4) and (8).
3. The Respondent's conduct was knowing and intentional, and the Respondent should have known that his behavior was wrong notwithstanding the extenuating circumstances offered by the Respondent.
4. Although the Respondent has acknowledged the error of his behavior, it cannot be assumed that, again finding himself in a bind, he would not make similar choices.

5. Although Respondent's actions resulted in no permanent harm since Farmers Insurance was made whole and coverage was not disrupted for any of its policy holders, this outcome was not certain on the front end and could not be assumed should the conduct reoccur in the future.

6. It was the intervention of Farmers Insurance, not remedial actions by the Respondent, that prevented permanent injury to the company or its policy holders.

7. It is not appropriate to subject other insurance companies and unsuspecting insurance consumers to such a risk.

8. Accordingly, for each separate occurrence of misappropriation, the Respondent is assessed a civil penalty of \$1000 pursuant to TENN. CODE ANN. § 56-6-112(g)(2), for a total fine of \$18,000.

9. Based on the dishonesty shown by the Respondent in misappropriating funds from his employer, his Tennessee license is appropriately revoked.

10. Based upon the foregoing, the Department's Petition to impose on Respondent civil penalties is hereby **GRANTED**. Civil Penalties shall be imposed on the Respondent in the total amount of \$18,000.

11. Based upon the foregoing, the Department's request to revoke the Respondent's license is hereby **GRANTED**. The Respondent's Tennessee license No. 0914212 is hereby revoked.

12. The Respondent shall cease and desist from any future activity in violation of any laws of the State of Tennessee mentioned herein.

13. All costs associated with the investigation and hearing of this matter shall be assessed against the Respondent. The Division shall file its Itemized Assessed Bill of Costs

within fifteen (15) days of the filing of this INITIAL ORDER, and said costs will be incorporated within this INITIAL ORDER.

The purpose of this Order is to protect the citizens of the State of Tennessee, consistent with the purposes and provisions of the Act.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 3rd day of AUG. 2017.



KIM SUMMERS
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 3rd day of AUGUST 2017.



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.