NPN - 916 4586

TN ID# 0972043

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

TENNESSEE INSURANCE DIVISION, **Petitioner,**	)	
vs.	)	**No: 11-099**
BENJAMIN FRANKLIN WEST, **Respondent.**	)	

CONSENT ORDER

The Insurance Division of the Tennessee Department of Commerce and Insurance ("Insurance Division"), by and through counsel, and Benjamin Franklin West ("Respondent") hereby stipulate and agree, subject to the approval of the Commissioner of Commerce and Insurance ("Commissioner"), as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

2. The Commissioner has determined that the resolution set forth in this Consent Order is fair and reasonable and in the best public interest.

3. This Consent Order is executed by Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

4. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against Respondent for acts and/or omissions not specifically addressed in this Consent Order or for acts and/or omissions that do not arise from the facts or transactions herein addressed. Respondent also understands that this Consent Order may be used by the Commissioner to revoke or refuse to issue any license Respondent currently holds or for which he applies in the future but not for imposition of any other penalty by the Commissioner. The foregoing limitation shall not apply to any other Commissioner, Department or Board of the State of Tennessee.

5. Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order, the stipulation and imposition of discipline contained herein and the consideration and entry of said Consent Order by the Commissioner.

JURISDICTION

6. The Commissioner has jurisdiction pursuant to the Tennessee Insurance Law (the "Law"), TENN. CODE ANN. § 56-6-101 *et seq.*, and the Law places the responsibility for the administration of the Law on the Commissioner.

PARTIES

7. The Insurance Division is the lawful agent through which the Commissioner administers the Law and is authorized to bring this action for the protection of the public.

8. Respondent is a resident of the state of Tennessee, residing at 10630 Gander Grove Way, Apartment 201, Knoxville, Tennessee 37932. Respondent's insurance producer license, numbered 972043, was issued in 2007.

9. From approximately April 23, 2007 to January 18, 2011, Respondent was an appointed agent for Farmers Insurance Group ("Farmers").

10. As part of his contract with Farmers, Respondent was expected to maintain a shared escrow account with Farmers in order to hold clients' funds which would then be collected by Farmers as premium payments.

FINDINGS OF FACT

Ritchie Burns

11. On approximately October 28, 2010, Ritchie Burns ("Burns") notified the Insurance Division that he paid Respondent five thousand four hundred sixty-six dollars ($5,466) for insurance coverage through Farmers on approximately July 23, 2010. Burns later discovered that a policy had not been issued and reported the matter to both Farmers and the Insurance Division.

12. Farmers subsequently determined that Respondent deposited Burns' premium payment into a depository account not affiliated with Farmers.

13. On approximately November 1, 2010, Respondent returned Burns' premium payment to Farmers.

Pamela Boyette

14. On approximately December 5, 2010, Pamela Boyette ("Boyette") notified Farmers that she paid Respondent eight hundred nine dollars ($809) for renewal insurance coverage through Farmers on approximately October 8, 2010.

15. Farmers subsequently determined that Respondent deposited Boyette's premium payment into a depository account not affiliated with Farmers.

16. On approximately December 6, 2010, Respondent returned Boyette's premium payment to Farmers.

Maureen Hibbard

17. At the Insurance Division's request, Farmers conducted a thorough audit of Respondent's book of business on approximately May 20, 2011. The results of the audit revealed

that on approximately June 6, 2010, Maureen Hibbard ("Hibbard") paid Respondent one thousand two hundred twenty-seven dollars ($1,227) for renewal insurance coverage through Farmers.

18. Respondent deposited Hibbard's premium payment into a depository account not affiliated with Farmers. Because it had not received Hibbard's premium payment, Farmers canceled her policy on approximately June 12, 2010.

19. Respondent eventually returned Hibbard's premium payment to Farmers on approximately June 10, 2011, a year later.

20. No policyholders have been denied claims or otherwise suffered any damages, and Farmers was paid all premiums payments it was owed by Respondent. Respondent claims that he acted without intent to defraud but ultimately failed to act competently in the conduct of the business of insurance.

CONCLUSIONS OF LAW

21. TENN. CODE ANN. § 56-6-112(a)(4) (2008) 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 anyone who improperly withholds, misappropriates or converts any moneys or properties received in the course of doing insurance business.

22. TENN. CODE ANN. § 56-6-112(a)(8) (2008) 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 anyone who uses fraudulent, coercive or dishonest practices or demonstrates incompetence, untrustworthiness or financial responsibility in the conduct of business in this state or elsewhere.

23. Based on the Findings of Facts cited above, the Commissioner finds that Respondent improperly misappropriated or withheld moneys received in the course of doing insurance business and used fraudulent, coercive or dishonest practices or demonstrated incompetence, untrustworthiness or financial responsibility in the conduct of business in this state.

24. Such facts would constitute grounds for an Order revoking Respondent's insurance producer license based on violations of TENN. CODE ANN. § 56-6-112(a)(4) and (8) (2008) and assessing a civil penalty against him in accordance with TENN. CODE ANN. § 56-2-305(a)(2) (2008).

25. Respondent admits to the Findings of Facts and concedes that the Conclusions of Law contained herein are fair and reasonable as outlined above. Respondent enters into this Consent Order for the sole purpose of avoiding further administrative action with respect to this cause.

ORDER

NOW, THEREFORE, based on the foregoing and the waiver of Respondent of his rights to a hearing and appeal under the Law and Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 *et seq.*, and the admission by Respondent of the jurisdiction of the Commissioner, the Commissioner finds that the Respondent has agreed to the entry of this Consent Order and that this Consent Order is appropriate and in the public interest.

IT IS ORDERED, pursuant to TENN. CODE ANN. § 56-6-112(a) (2008) that:

The insurance producer license, numbered 972043, issued to Benjamin Franklin West, is hereby **REVOKED**.

IT IS FURTHER ORDERED, pursuant to TENN. CODE ANN. § 56-2-305(a)(2) (2008) that:

Benjamin Franklin West shall pay a civil penalty in the amount of one thousand five hundred dollars ($1,500), which is to be deposited into the Department's Education Fund.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By signature affixed below, Benjamin Franklin West, affirmatively states that he has freely agreed to the entry of this Consent Order, that he has been advised that he may consult with legal counsel in this matter, that he waives the right to a hearing on the matters underlying this Consent Order and that no threats or promises of any kind have been made by the Commissioner, the

Insurance Division or any agent thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

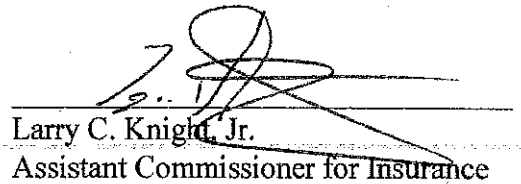
SO ORDERED.

ENTERED this the 22nd day of February, 2012.

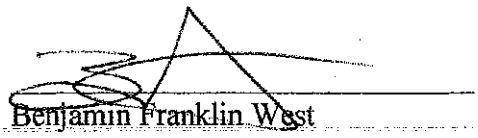
Julie Mix McPeak

Julie Mix McPeak, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:



Larry C. Knight, Jr.
Assistant Commissioner for Insurance
Department of Commerce and Insurance



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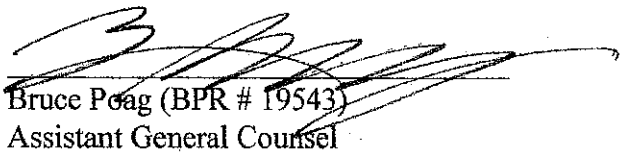

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