NPN - 5942037
TN - 0735098

STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE INSURANCE DIVISION,	)	
Petitioner,	)	
	)	**Docket No. 12.04-136970J**
vs.	)	**TID No. 16-014**
	)	
DAVID RYAN OLIVER,	)	
Respondent.	)	

AGREED FINAL ORDER

The Insurance Division ("Division") of the State of Tennessee Department of Commerce and Insurance ("Department"), by and through undersigned counsel, and David Ryan Oliver ("Respondent") hereby stipulate and agree, subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"), as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Agreed Final 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. This Agreed Final Order is executed by the parties for the purpose of avoiding further administrative action with respect to this cause. The parties stipulate to entry of the Findings of Fact stated herein for the sole purpose of settling this matter. If the Commissioner does not accept this Order, then both parties expressly reserve the right to a hearing, with the opportunity for the Division to present all available evidence of alleged violations as contained in

the Notice of Hearing and Charges, and the opportunity for the Respondent to present any and all alleged factual and legal defenses to all matters raised in the Notice of Hearing and Charges. Furthermore, should this Agreed Final Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Agreed Final Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondent fully understands that this Agreed Final Order will in no way preclude additional proceedings by the Commissioner for acts and/or omissions not specifically addressed in this Agreed Final Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Other than this proceeding brought by the Commissioner for violations of Title 56 of Tennessee Code Annotated addressed specifically in this Agreed Final Order, Respondent fully understands that this Agreed Final Order will in no way preclude proceedings by state or local officers, agencies, or civil or criminal law enforcement authorities against Respondent for violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which arise as a result of the execution of this Agreed Final Order by Respondent.

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

AUTHORITY AND JURISDICTION

6. The Commissioner has jurisdiction over this matter pursuant to the Tennessee Insurance Law ("Law"), Title 56 of the Tennessee Code Annotated, specifically Tenn. Code Ann. §§ 56-1-101, 56-1-202, 56-2-305 and 56-6-112. The Law places on the Commissioner the responsibility of the administration of its provisions.

PARTIES

7. The 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 citizen of the State of Tennessee, with an address of record on file with the Division of 7133 Cheshire Drive, Knoxville, TN 37919. Respondent holds a Tennessee resident insurance producer license, number 0735098, which became active on or about March 1, 1993, and which is scheduled to expire on January 31, 2017.

FINDINGS OF FACT

9. During 2014, Respondent was an employee-agent of Direct General Insurance Agency ("DGIA") in the Knoxville, Tennessee area. Respondent's job duties at that time included working as a mobile agent where he produced business directly from people purchasing vehicles from automobile dealerships, proper handling of cash he received, and maintenance of his cash drawer or box.

10. On or about October 21, 2014, Respondent's supervisor and District Sales Manager, Jennifer Schmaltz, received a complaint from DGIA's customer service department concerning V.P., one of DGIA's customers.

11. V. P. reported to DGIA's customer service department that she purchased insurance from Respondent in September 2014 in connection with her purchase of a car while she was at Airport Auto Sales/Mountain Acceptance Corporation in Alcoa, Tennessee ("the dealership"), and that Respondent told her the premium down payment was $128.

12. On or about September 17, 2014, V.P. left $128 in cash with a representative of the dealership, understanding that the dealership would deliver the money to Respondent on her behalf.

13. On September 17, 2014, the dealership issued a handwritten receipt to V.P. bearing what appear to be Respondent's initials for the $128 this customer left for Respondent.

14. Upon closer review of her paperwork from DGIA, V.P. noticed that the actual down payment required on her policy was $95.33.

15. Ms. Schmaltz reviewed V.P.'s account with DGIA and verified that Respondent, despite his receipt of $128 for this customer, only applied $95.33 to V.P.'s account according to a separate DGIA computer-generated receipt created by Respondent dated September 17, 2014.

16. On or about October 21, 2014, Ms. Schmaltz discussed the allegations concerning V.P.'s account with Respondent, and Respondent agreed at that time to pay the overage amount ($32.67) out of his pocket to satisfy this customer complaint.

17. After conducting an investigation, DGIA determined that three (3) additional incidents occurred between August 23, 2014, and September 26, 2014, where cash was paid by three (3) new policy applicants (customers S.M., A.B., and C.H.) to the dealership for premiums, handwritten receipts for such amounts were signed or initialed as received by Respondent, and where the full amounts paid were not properly applied to the insureds' accounts.

18. DGIA terminated Respondent's employment for theft of funds on November 10, 2014.

19. The total amount of Respondent's misappropriations as to these four (4) incidents was $120.37, and to date, he has not paid back to DGIA the total cash premiums of $87.70 for the benefit of customers S.M., C.H., and A.B., which he converted to his own use.

20. On April 13, 2016, the Division, through counsel, filed a Notice of Hearing and Charges against the Respondent relating to his misappropriations of DGIA customers' cash premium payments as set forth above.

CONCLUSIONS OF LAW

21. Respondent's actions as set forth above in the foregoing Findings of Fact, have violated TENN. CODE ANN. §§ 56-6-112(a)(4) & (a)(8) (2011), which read as follows:

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

22. Respondent's violations of TENN. CODE ANN. §§ 56-6-112(a)(4) & (a)(8), constitute grounds for the imposition of lawful discipline, including the assessment of civil penalties, as prescribed at TENN. CODE ANN. §§ 56-6-112(g)(1), (2) & (3), which read as follows:

(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.

23. Based upon the above Findings of Fact and Conclusions of Law, the Commissioner considers that the Respondent's actions warrant the imposition of lawful discipline, to include assessment of a civil penalty in accordance with Tenn. Code Ann. § 56-6-112(g)(1), (2) & (3).

24. In order to avoid further expenses or costs associated with additional administrative litigation of this matter or judicial review, Respondent hereby acknowledges the Commissioner's authority to administer the statutes cited herein, concedes that the Commissioner's interpretation of the statutes cited in the Conclusions of Law are reasonable and enforceable, and agrees to the entry of this Agreed Final Order including each of the following sanctions ordered by the Commissioner.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and Respondent's waiver of the right to a hearing and appeal under the Act and the Uniform Administrative Procedures Act,

TENN. CODE ANN. §§ 4-5-101 to 4-5-404 (2011), and Respondent's admission of jurisdiction of the Commissioner, the Commissioner finds that Respondent, for the purpose of settling this matter, admits the Findings of Fact and Conclusions of Law, agrees to the entry of this Agreed Final Order and agrees that this Order is in the public interest and is consistent with the purposes fairly intended by the Act.

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

1. Respondent's Tennessee resident insurance producer license (No. 0735098) **is hereby REVOKED.**

2. Respondent **is ASSESSED a CIVIL PENALTY** in the amount of one thousand dollars ($1,000.00), and is **REQUIRED to PAY RESTITUTION** to DGIA in the amount of eighty-seven dollars and seventy cents ($87.70).

3. All payments to the Department of the one thousand dollar ($1,000.00) civil penalty assessment shall be mailed to:

State of Tennessee
Department of Commerce and Insurance
Insurance Division
Attn: Assistant Commissioner for Insurance
500 James Robertson Parkway
Nashville, TN 37243

4. Respondent's payment of the civil penalty to the Department and his payment of the restitution to DGIA shall be in installments over one (1) year as follows:

(a) Respondent shall deliver an **initial two hundred dollar ($200.00) payment** to the Department toward the civil penalty assessment **and written evidence that the above restitution has been paid in full to DGIA, by August 1, 2016;**

(b) Respondent shall deliver a **four hundred dollar ($400.00) payment** to the Department toward the civil penalty assessment by **January 15, 2017**; and

(c) Respondent shall deliver the final **four hundred dollar ($400.00) payment** to the Department toward the civil penalty assessment by **July 31, 2017.**

5. Respondent is permitted to pay the civil penalty assessment sooner than required by the above schedule, and in larger installment payment amounts if he chooses.

6. All persons in any way assisting, aiding, or helping Respondent in any of the aforementioned violations of Tenn. Code Ann. § 56-6-112 shall **CEASE AND DESIST** from all such activities in violation of the Law.

IT IS ORDERED that this Agreed Final Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Commissioner against Respondent for violations of Tenn. Code Ann. §§ 56-6-112(a)(4) & (a)(8) alleged by the Division to have occurred with respect to the transactions involving the facts contained herein.

This Agreed Final 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 the signatures affixed below, Respondent affirmatively states he has freely agreed to the entry of this Agreed Final Order, that he waives the right to a hearing on the matters underlying this Agreed Final Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made to him by the Commissioner, the Division, or any agent or representative thereof. The

parties, by signing this Agreed Final Order, affirmatively state their agreement to be bound by the terms of this Agreed Final Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of the settlement as set forth in this Agreed Final Order, are binding upon them.

ENTERED this 3 day of August, 2016.

Julie Mix McPeak, Commissioner
TN Department of Commerce and Insurance

APPROVED FOR ENTRY:

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Filed in the Office of the Secretary of State, Administrative Procedures Division, this 3 day of August, 2016.

J. Richard Collier

J. Richard Collier, Esq., Director, Administrative Procedures Division