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

TENNESSEE INSURANCE DIVISION,	)	
Petitioner,	)	
	)	
vs.	)	**TID No.: 14-165**
	)	
MARVIN LENARD BERRY,	)	
Respondent	)	
	)	

CONSENT ORDER

The Tennessee Insurance Division of the Department of Commerce and Insurance ("Division") and Marvin Lenard Berry ("Respondent") hereby stipulate and agree to the entry of this Consent Order 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 Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of an order by the Commissioner.

2. This Consent Order is executed by the 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.

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

4. Respondent fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner for violations of the Law addressed specifically in this Consent Order, against the Respondent for violations of the 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 may arise as a result of the execution of this Consent Order by the Respondent.

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

6. Respondent fully understands that this Consent Order, when entered, will constitute a public document for purposes of any applicable statutes governing access by the public to government records.

7. Respondent agrees that facsimiles of their respective signatures on this Consent Order—scanned in portable document format (PDF) or similar format—returned by electronic means, if accepted by the Division, are effective as original signatures and that the Consent Order may be issued with such facsimile signatures.

FINDINGS OF FACT

8. The Commissioner has jurisdiction over this matter pursuant to the Tennessee Insurance Law ("Law"), Title 56 of the Tennessee Code Annotated ("Tenn. Code Ann."), 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.

9. 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.

10. Upon information and belief, Respondent is a Tennessee resident with an address of 7756 Gosbrook Lane, Memphis, Tennessee 38125.

11. At all relevant times, Respondent also held the following addresses: 8820 Trinity Road, Suite 101, Memphis, Tennessee 38018 and 5840 Hickory Nutt Lane, Memphis, Tennessee 38141-5810, which are presently on file with the Division.

12. Respondent is a licensee of the Division, having been granted Tennessee insurance producer license number 8834.

13. At all times relevant, Respondent was responsible for being compliant with the insurance laws, rules, and regulations of the State of Tennessee.

14. As an insurance producer, Respondent has a fiduciary obligation to properly manage all money received from his respective clients during the course of doing insurance business.

15. At all relevant times, Respondent was a Tennessee licensed associate insurance producer for Monumental Life Insurance Company ("Monumental").

16. Respondent was appointed to sell insurance products as a general agent for Monumental.

17. On or about December 1, 2011, Respondent entered into an agreement with Monumental.

18. Respondent had several responsibilities owed to Monumental. He was responsible for collecting insurance premiums due and owing to Monumental. Furthermore, he was responsible for depositing these premiums into a designated Monumental bank account.

19. According to the above-mentioned agreement in Paragraph 17 of this Consent Order, Respondent had an obligation to collect premiums obtained from clients and hold these premiums in a fiduciary capacity.

20. Once Respondent collected the premiums, he was responsible for remitting them to Monumental on the next report day following collection.

21. Respondent failed to timely remit approximately four hundred forty-three dollars and fifteen cents ($443.15) in premiums owed to Monumental from two separate Tennessee resident Monumental insurance policyholders: Mary Mormon ("Mormon") and Priscilla Brownlee ("Brownlee").

MORMON

22. On or about June 7, 2013, Mormon made a payment of one hundred sixty-one dollars ($161.00) to Respondent via money order and cash.

23. On or about June 13, 2013, Respondent posted a payment of eighty-one dollars ($81.00) toward Mormon's policy; eighty dollars ($80.00) short.

24. On or about August 2, 2013, Mormon made a payment of eighty-one dollars ($81.00) to Respondent via money order and cash.

25. On or about August 7, 2013, Respondent posted a payment of eighty dollars and ten cents ($80.10) toward Mormon's policy; ninety cents ($0.90) short.

26. Mormon went to Respondent to discuss the payment issue and was told by Respondent that he would take care of the issue.

27. Thereafter, Mormon's policy was cancelled due to nonpayment.

28. Respondent was responsible for remitting the above-mentioned payments to Monumental; however, he failed to remit all of Mormon's payments to Monumental.

BROWNLEE

29. Brownlee had two separate policies for which she was paying Respondent cash.

30. On or about November 7, 2012, Brownlee made a cash payment of one hundred seventy dollars ($170.00) to Respondent.

31. On or about December 6, 2012, Brownlee made a cash payment of ninety-six dollars and twenty-five cents ($96.25) to Respondent.

32. On or about February 8, 2013, Brownlee made a cash payment of ninety-six dollars ($96.00) to Respondent.

33. The above-mentioned premium payments, annotated in paragraphs 30 through 32, were never posted to Brownlee's policies.

34. Respondent was responsible for remitting the above-mentioned payments to Monumental; however, he failed to remit Brownlee's payments to Monumental.

CONCLUSIONS OF LAW

35. At all times relevant hereto, Tenn. Code Ann. § 56-6-112(a) (2011) has provided that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license issued under Title 56, Chapter 6, Part 1, or issue a civil penalty for the following reasons:

. . . .

(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[.]

. . . .

36. Tenn. Code Ann. § 56-6-112 (2011), states in pertinent part:

(e) The commissioner shall retain the authority to enforce this part and impose any penalty or remedy authorized by this part and this title against any person who is under investigation for or charged with a violation of this part or this title, even if the person's license has been surrendered or has lapsed by operation of law.

(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 subsection (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.

37. As enumerated in the Findings of Fact above and the Conclusions of Law contained herein, Respondents violated Tenn. Code Ann. §§ 56-6-112(a)(4), and (a)(8).

38. The Findings of Fact contained herein constitute grounds for a Consent Order revoking Respondent Marvin Lenard Berry's Insurance Producer license in accordance with Tenn. Code Ann. § 56-6-112(g)(3). Such facts also provide grounds for an order imposing civil penalties against Respondent in an amount of two thousand dollars ($2,000) for violations in accordance with Tenn. Code Ann. § 56-6-112(g).

ORDER

NOW, THEREFORE, based on the foregoing and Respondent's waiver of 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 Respondent, admits to the Findings of Fact and

Conclusions of Law and have agreed to the entry of this Consent Order, and that this Consent Order is appropriate, in the best interest of the public, and necessary for the protection of the public.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 56-6-112 (2011) that:

1. The insurance producer license, numbered 8834, issued to Respondent Marvin Lenard Berry, is hereby placed on **PROBATION** for a period of twelve (12) months, beginning immediately upon final execution of this agreed Consent Order; and

2. Respondent Marvin Lenard Berry shall pay the Division a monetary civil penalty in the total sum of two thousand dollars ($2,000) according to the following schedule of payments:

March 1, 2016,	$333.33;
April 1, 2016,	$333.33;
May 1, 2016,	$333.33;
June 1, 2016,	$333.33;
July 1, 2016,	$333.33; and
August 1, 2016,	$333.35.

3. Respondent shall pay penalties in full on August 1, 2016.

4. Payments for civil penalties shall be considered timely made if it is **received** by the Tennessee Department of Commerce and Insurance according to the above-mentioned schedule of payments. A payment shall be considered timely made if it was **received** by the Tennessee Department of Commerce and Insurance within seven (7) calendar days of the date such payment is due. All payments shall include a copy of the first page of this Order and shall be made payable to "State of Tennessee." All payments shall be mailed to the following address:

Tennessee Department of Commerce and Insurance
ATTN: James R. Witham
Legal Division
Davy Crockett Tower

500 James Robertson Parkway, 8th Floor
Nashville, TN 37243

5. **IT IS FURTHER ORDERED**, pursuant to Respondent's agreement, that Respondent will pay eighty dollars and ninety cents ($80.90) in **RESTITUTION** to Ms. Mary Mormon and three hundred fifty-two dollars and twenty-five cents ($352.25) in **RESTITUTION** to Ms. Priscilla Brownlee by March 1, 2016.

6. A payment shall be considered timely made if it was **received** by Ms. Mormon, and Ms. Brownlee, within seven (7) calendar days of the date such payment is due. All restitution payments to Mary Mormon and Priscilla Brownlee will be sent to them by March 1, 2016. Respondent will provide proof to the Tennessee Department of Commerce and Insurance that payment was rendered to Ms. Mormon and Ms. Brownlee. Proof of payment may include, but is not limited to, mailing a copy of a negotiated checked made out to either Ms. Mormon or Ms. Brownlee to the Tennessee Department of Commerce and Insurance.

7. Any failure to timely make a payment or provide proof of payment under the terms of this agreed Consent Order may result in additional disciplinary action being taken against Respondent including, but not necessarily limited to, revocation, suspension, or probation of the above-mentioned insurance producer license and/or the assessment of additional civil penalties. Failure to timely make any payment shall render all remaining payments under this Consent Order immediately due and collectible.

8. **IT IS FURTHERED ORDERED** that all persons in any way assisting, aiding, or helping Marvin Lenard Berry 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 Consent Order represents the complete and final resolution and discharge of administrative remedies available to the Commissioner under Tenn. Code Ann.

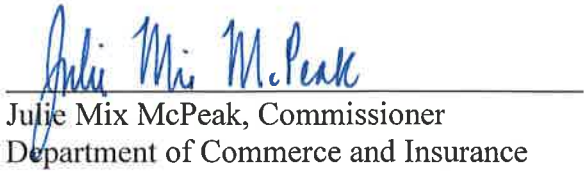
§ 56-6-112 against Respondent for violations of the Law arising out of the Findings of Fact set forth in Paragraphs 8 through 34 above. However, this Consent Order shall in no way preclude a third party or other authority from pursuing civil remedies or criminal action against Respondent which may otherwise be available.

This Consent Order is in the public interest, in the best interest of the parties, and represents a compromise and settlement of the controversy between the parties. By their signatures affixed below, Respondent Marvin Lenard Berry, states that he has: (1) freely agreed to the entry of this Consent Order; (2) had the opportunity to effectively consult with legal counsel in this matter; (3) reviewed the Findings of Fact and Conclusions of Law contained herein; and (4) waived his right to a hearing on the matters underlying this Consent Order. Respondent further states that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof with regard to this Consent Order.

By signing this Consent Order, the parties affirm their agreement to be bound by the terms of this Consent Order and confirm that no promises or offers relating to the circumstances described herein, other than the terms of the settlement set forth in this Consent Order, are binding upon them.

IT IS SO ORDERED.

ENTERED this the 2 day of March, 2016.



Julie Mix McPeak, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

Marvin Lenard Berry
7756 Gosbrook Lane
Memphis, TN 38125

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Deputy Commissioner
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