

TN - # 1035363
NPN - 15698056

**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE**

IN THE MATTER OF:

**TENNESSEE INSURANCE DIVISION,
Petitioner,**

v.

**ABDULAZIZ JAFER ISANI,
Respondent.**

**DOCKET NO: 12.04-134934J
TID NO: 15-127**

INITIAL ORDER

This contested case was heard on March 15, 2016, before Administrative Judge Elizabeth D. Cambron, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Commerce and Insurance. The Petitioner was represented by Assistant General Counsel Jesse D. Joseph. The Respondent, Mr. Abdulaziz Jafer Isani, appeared at the hearing without representation of an attorney and was fully advised of his right to an engage an attorney for the proceedings. The Respondent waived his right to an attorney and proceeded without legal representation.

FINDINGS OF FACTS

1. The Tennessee Insurance Producer Licensing Act of 2002, TENN. CODE ANN. §§ 56-6-101 to 56-6-126 ("the Act"), places responsibility for administration of the Act on the Commissioner of the Department of Commerce and Insurance. The Tennessee Insurance Division ("the Division") is the lawful agent through which the Commissioner discharges this responsibility.
2. Abdulaziz Jafer Isani ("the Respondent") is a licensee of the Division who is responsible for being compliant with the insurance laws and regulations of the State of

Tennessee. The Respondent holds a Tennessee insurance producer license (number 1035363), which became active on or about June 4, 2013.

3. The Respondent's insurance producer license expired on January 31, 2015; according to the Division's official agent licensing records, as of the time of the hearing, the Respondent's mailing address was 58 N. Iron Creek, Apt. 102, Collierville, TN 38017. During the investigation of this matter, the Respondent informed Fraud Investigator Thomas Smith that his current mailing address is 7846 Kenwick Way, Apt. 105, Memphis, TN 38119-3102.

4. On February 11, 2014, the U.S. Attorney for the Western District of Tennessee filed a one (1) count Information against the Respondent alleging that, between March 19, 2013, and June 19, 2013, the Respondent committed a Misprison of felony in violation of 18 U.S.C. § 4, by concealing and failing to make known to a judge or other person in civil authority under the United States, his knowledge of a conspiracy involving others to distribute mixtures containing controlled substance analogues intended for human consumption.

5. The Respondent and the United States also filed a Plea Agreement on February 11, 2014, in which the Respondent pled guilty to this one (1) count Information.

6. On May 22, 2014, the U.S. District Court of the Western District of Tennessee accepted this Plea Agreement and entered its judgment of conviction against the Respondent for Misprison of felony in violation of 18 U.S.C. § 4. The Respondent was sentenced to probation for eighteen (18) months for this felony offense.

7. The Respondent feels great remorse for his actions, he was honest with the Department in reporting his conviction, he is currently in poor health, and he has very limited financial means.

CONCLUSIONS OF LAW

1. In accordance with TENN. COMP. R. & REG. 1360-04-01-.02(7), the Division bears the burden of proving by a preponderance of the 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. TENN. CODE ANN. § 56-6-112 provides:

(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:

(2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;

(6) Having been convicted of a felony;

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud[.]

TENN. CODE ANN. § 56-6-112(a)(2), (6)-(7).

3. The Division has shown by a preponderance of the evidence that the Respondent had knowledge of the commission of a felony by others, and had a legal duty to disclose his knowledge to the United States, but instead engaged in fraud by concealing the commission of the felony in violation of TENN. CODE ANN. § 56-6-112(a)(7).

4. The Division has shown by a preponderance of the evidence that the Respondent was convicted of Misprision of felony in violation of 18 U.S.C. § 4, a felony in violation of TENN. CODE ANN. § 56-6-112(a)(6), and that his sentence for this offense was eighteen (18) months on supervised probation.

5. It is determined that the Respondent's violations of TENN. CODE ANN. § 56-6-112(a)(6) and (a)(7) also result in violation of TENN. CODE ANN. § 56-6-112(a)(2), since the Respondent's actions violate the laws of the Commissioner.

6. TENN. CODE ANN. § 56-6-112(g) provides:

(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.

7. TENN. CODE ANN. § 56-6-112(h) provides:

(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.

8. It is determined that the proof adduced at the hearing provides adequate grounds for the revocation of the Respondent's Tennessee insurance producer license.

9. It is determined that the proof adduced at the hearing provides adequate grounds for the imposition of a single one thousand dollar (\$1,000.00) civil penalty for violation of TENN.

CODE ANN. § 56-6-112(a)(7). While the Division requested imposition of three civil penalties, all of the facts in this case revolve around a single act – the Respondent’s conviction for a single count of Misprision of felony. Accordingly, it is appropriate to award one civil penalty.

10. Further, based on the factors of TENN. CODE ANN. § 56-6-112(h), it is determined that a one thousand dollar (\$1,000.00) civil penalty will be a substantial economic deterrent to the Respondent, the Respondent’s actions pose minimal risk of harm to the public, and there has been no economic benefit to the Respondent. The Respondent’s felony conviction has already had an enormous toll on him both financially and physically.

11. TENN. R. CIV. P. 54.04(1) and TENN. COMP. R. & REG. 1360-04-01-.01(3) allow for the imposition of costs as follows:

Costs included in the bill of costs prepared by the clerk shall be allowed to the prevailing party unless the court otherwise directs, but costs against the state, its officers, or its agencies shall be imposed only to the extent permitted by law.

TENN. R. CIV. P. 54.04(1).

12. It is determined that the hearing costs incurred by the Division to the Administrative Procedures Division of the Secretary of State, and to the court reporter in this matter, should be assessed against the Respondent.

JUDGMENT

WHEREFORE, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. The Respondent’s Tennessee insurance producer license (No. 1035363) is hereby **REVOKED**, due to his actions in violation of TENN. CODE ANN. §§ 56-6-112(a)(2), (a)(6), and (a)(7).

2. The Respondent is **ASSESSED a single \$1,000.00 civil penalty**, due to his actions in violation of TENN. CODE ANN. §§ 56-6-112(a)(2), (a)(6), and (a)(7), for which execution shall issue if necessary. The Respondent shall pay said civil penalty to the Department of Commerce and Insurance with one (1) year of the filing date of this Initial Order.

3. The 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.

4. The Division shall file its Itemized Assessed Bill of Costs including the Administrative Procedures Division costs, and those of the court reporter, within fifteen (15) days after the filing of the Initial Order in this matter, and said costs are hereby incorporated within this Initial Order.

5. The Respondent is **ASSESSED all hearing costs** incurred in this matter pursuant to TENN. R. CIV. P. 54.04(1) and TENN. COMP. R. & REG. 1360-04-01-.01(3), and shall pay same within one (1) year after the State files and serves Respondent with its Itemized Assessed Bill of Costs, for which execution may issue if necessary.

6. This Initial Order shall take effect upon filing with the Administrative Procedures Division of the Office of the Secretary of State.

It is so ORDERED.

Entered and effective this the 23rd day of JUNE 2016.

Elizabeth D. Cambron
ELIZABETH D. CAMBRON
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 23rd day of JUNE 2016.

J. Richard Collier
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.