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

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| **TENNESSEE INSURANCE DIVISION,** **Petitioner,** | ) | |
| **vs.** | ) | **APD No.: 12.01-122864J** |
| | ) | **TID No.: 13-078** |
| **ALLAN R. HARRIS,** **Respondent** | ) | |

## CONSENT ORDER

The Tennessee Insurance Division of the Department of Commerce and Insurance ("Division") and Mr. Allan R. Harris ("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. 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. This Consent Order will in no way preclude additional proceedings by the Commissioner against Respondent for acts or omissions not specifically addressed in the Second Amended Notice of Hearing and Charges.

4. This Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner for allegations of violations of the law addressed specifically in this Consent Order, against the Respondent for allegations of 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.

5. Respondent and the Division expressly waive the right to 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. This Consent Order, when entered, will constitute a public document for purposes of any applicable statutes governing access by the public to government records.

## AUTHORITY AND JURISDICTION

7. 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, and § 56-6-112. The Law places on the Commissioner the responsibility of the administration of its provisions.

## STIPULATION OF FACTS

8. The Commissioner of the Department of Commerce and Insurance for the State of Tennessee has jurisdiction in this matter.

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. Respondent has been a licensee of the Division since 1977. He presently holds Tennessee insurance producer/surplus lines license number 0784274 and is a Tennessee resident.

11. Until the Division filed a Notice of Hearing and Charges against Respondent on September 24, 2013, he had not been the subject of any disciplinary action.

12. For several years prior to September, 2010, Respondent had a business relationship with Mr. Roy Cook, a policy holder, as Mr. Cook's producing agent.

13. In September, 2010, Respondent, on behalf of Mr. Cook, undertook to renew a homeowner's insurance policy on Mr. Cook's property located at 141 Twin Oaks Drive, Rockwood, Tennessee. This was a renewal of a policy which Mr. Cook had held since September 6, 2005.

14. Premiums on Mr. Cook's homeowner's insurance policy were paid by Wells Fargo, Mr. Cook's mortgagee, through an escrow account.

15. On or about September 2, 2010, Respondent completed Mr. Cook's homeowner's insurance application for Mr. Cook's property located at 141 Twin Oaks Drive, Rockwood, Tennessee, and submitted the application to a carrier in order to obtain a quote. Later, Respondent signed Mr. Cook's name to the application and submitted the application to the carrier in order to obtain homeowner's coverage for Mr. Cook.

16. Respondent was not authorized to sign on behalf of Mr. Cook, and he did not review Mr. Cook's homeowner's insurance application with Mr. Cook before submitting Mr. Cook's homeowner's insurance application to the carrier.

17. The application which Respondent submitted included this question: "Has applicant had a foreclosure, repossession, bankruptcy, judgment or lien during the past five years?" Respondent answered the question, "No."

18. In fact, Mr. Cook had a foreclosure within the five years preceding the time of the application. Mr. Harris did not know this because he failed to review the application with Mr. Cook.

19. Respondent did not provide a copy of Mr. Cook's homeowner's policy to Mr. Cook and did not review Mr. Cook's homeowner's insurance policy with him. As a result, Mr. Cook was unaware of the terms and conditions of his new homeowner's insurance which was improperly procured by Respondent.

20. On November 18, 2011, Mr. Cook cancelled the homeowner's coverage which Respondent had assisted in obtaining on Cook's property at 141 Twin Oaks Drive, Rockwood, Tennessee.

21. On November 18, 2011, Mr. Cook requested the refund of his remaining insurance premium be forwarded to his escrow account with Wells Fargo.

22. On or about January 27, 2012, the underwriter for Mr. Cook's homeowner's insurance policy forwarded a refund check for seven hundred sixty-three dollars and twenty cents ($763.20) to Respondent.

23. Respondent deposited Mr. Cook's refund check of seven hundred sixty-three dollars and twenty cents ($763.20) to his account. The check was made payable to the Respondent. The Respondent did not realize that this payment by the underwriter for Cook's homeowner's insurance in fact was a premium refund for the benefit of Cook.

24. On or about June 28, 2012, Mr. Cook realized that the refund check which was due from his November, 2011, cancellation of his homeowner's policy had been sent to Respondent.

25. Respondent promptly determined that he had deposited Mr. Cook's refund check into his own account in error and that the funds should be paid to Wells Fargo, Mr. Cook's mortgagee.

26. On July 9, 2012, Respondent sent to Wells Fargo a seven hundred sixty-three dollar and twenty cent ($763.20) check representing the full refund of the premium refund resulting from Mr. Cook's November 2011 cancellation of his homeowner's policy.

27. Respondent failed to promptly and properly refund Mr. Cook's premium.

28. Respondent improperly withheld Mr. Cook's refund premium during the course of his business as an insurance producer in the State of Tennessee.

29. Respondent failed to disclose the contractual terms or conditions associated with Mr. Cook's homeowner's insurance policy

30. Respondent completed a homeowner's insurance application on behalf of Mr. Cook without Mr. Cook's review or signature.

31. Respondent, without Mr. Cook's authorization, signed Mr. Cook's name to a homeowner's insurance application.

32. Respondent's above mentioned actions were untrustworthy, incompetent, and financially irresponsible in the conduct of doing business in Tennessee. Respondent did not, however, act with fraudulent intent, and he did not personally profit at the expense of Mr. Cook or any other individual or entity.

## CONCLUSIONS OF LAW

33. At all times relevant hereto, Tenn. Code Ann. § 56-6-112(a) 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;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

. . .

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

. . .

(10) Forging another's name to an application for insurance or to any document related to an insurance transaction.

34. For each violation occurring before July 1, 2011, Tenn. Code Ann. § 56-2-305 (2008) states in pertinent part:

(a) If . . . the commissioner finds that any insurer, person, or entity required to be licensed, permitted or authorized by the division of insurance 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), unless the insurer, person or entity knowingly violates a statute, rule or order, in which case the penalty shall not be more than twenty-five thousand dollars ($25,000) for each violation, not to exceed an aggregate penalty of two hundred fifty thousand dollars ($250,000). This subsection (a)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subsection (a)(2), each day of continued violation shall constitute a separate violation; and

(3) The suspension or revocation of the insurer's, person's, or entity's license.

(b) In determining the amount of penalty to assess under this section, or in determining whether the violation was a knowing violation for the purpose of subdivision (a)(2), the commissioner shall consider any evidence relative to the following criteria:

(1) Whether the insurer, person, or entity could reasonably have interpreted its 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) Whether the amount imposed would put the violator in a hazardous financial condition; [1]

(4) The circumstances leading to the violation;

(5) The severity of the violation and the risk of harm to the public;

(6) The economic benefits gained by the violator as a result of noncompliance;

(7) The interest of the public; and

(8) The insurer's, person's, or entity's efforts to cure the violation.

35. At all times relevant hereto, Tenn. Code Ann. § 56-6-112(e) (2008) provided that:

> 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.

36. For all violations occurring on or after July 1, 2011, Tenn. Code Ann. § 56-6-112 (2011), states in pertinent part:

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[1] "Hazardous financial condition" is an insurance industry term which refers to the financial condition of an insurance company, and the term is inapplicable to an individual insurance producer's economic affairs. (*see generally,* Tenn. Comp. R. & Regs. 0780-1-78-.03).

(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. The Findings of Fact contained herein constitute grounds for a Consent Order placing Respondent's Insurance Producer/Surplus license on probation for a period of one (1) year in accordance with Tenn. Code Ann. §§ 56-2-305 (2008) and 56-6-112 (2011). Such facts also provide grounds for an order imposing civil penalties against Respondent in an amount of two thousand dollars ($2,000).

## ORDER

**NOW, THEREFORE,** based on the foregoing and Respondent's waiver of his rights to a hearing and appeal under the Law and Tennessee's Uniform Administrative Procedures Act ("UAPA"), 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 the Findings of Fact and Conclusions of Law and has 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. §§ 56-2-305 (2008) and 56-6-112 (2011) that:

1. Respondent's insurance producer/surplus lines license number 0784274 is hereby placed on **PROBATION** for a period of one (1) year beginning immediately upon final execution of this agreed Consent Order.

2. **Terms of Probation:**

   a. Respondent's probation will be conditioned upon the satisfactory completion of all the terms specified in this mutually agreeable Consent Order.

   b. Should Respondent violate any of the terms of this Consent Order or any other Tennessee insurance law by a preponderance of the evidence, then he will be

subject to the Commissioner's remedies as codified under Tenn. Code Ann. § 56-6-112(a) without any other due process of law afforded to him under the UAPA or other applicable law.

c. Respondent will reasonably cooperate with the Division during his period of probation.

d. Respondent will be subject to random audits by the Division and participate in extra training and continuing education as reasonably required by the Division during his period of probation.

3. **Civil Monetary Penalty:** Respondent shall pay the Division a monetary civil penalty in the total sum of two thousand dollars ($2000). Such penalty is to be paid according to the following schedule:

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| October 15, 2014, | $1000.00; and |
| January 15, 2015, | $1000.00. |

4. Any failure to timely make a 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 license and/or the assessment of additional civil monetary penalties.

5. Failure to timely make any payment shall render all remaining payments under this Consent Order immediately due and collectible. Respondent may make any additional payments before the above mentioned due dates. If this additional payment is received by the Tennessee Department of Commerce and Insurance and is in excess of the above mentioned

amount(s) and scheduled payment date(s), such payment shall be considered payment for any subsequent scheduled payment.

6. A payment shall be considered timely made if it is **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 out to "State of Tennessee." All payments shall be mailed to the following address:

Tennessee Department of Commerce and Insurance
Legal Division
Davy Crockett Tower
500 James Robertson Parkway
Nashville, TN 37243

**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 allegations made in the Second Amended Notice of Hearing and Charges.

This Consent Order is in the public interest and in the best interest of the parties, and it represents a compromise and settlement of the controversy between the parties. By signature affixed below, Respondent Allan R. Harris 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 15th day of July, 2014.

Julie Mix McPeak, Commissioner
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**

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7-11-2014

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Respectfully Submitted,

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