TN Agent# 0733726

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

TENNESSEE INSURANCE DIVISION	)	
Petitioner,	)	
	)	
vs.	)	**No. 12.01-073408J**
	)	
BART M. BERRETTA,	)	
Respondent.	)	

FINAL ORDER

The Respondent, Bart M. Berretta, has appealed the Initial Order entered by Anthony Adgent, Administrative Law Judge ("ALJ") within the Department of State, Administrative Procedures Division on September 26, 2007. The ALJ found that the Petitioner had met its burden of proof by a preponderance of the evidence that the Respondent had engaged in fraudulent, coercive, or dishonest practices by representing to customers that they were purchasing group health insurance through Employers Mutual, grounds for discipline pursuant to TENN. CODE ANN. § 56-6-155(a)(8); demonstrated incompetence and financial irresponsibility in the conduct of his insurance business by allowing insureds to be without health insurance and selling them an unlicensed insurance product, grounds for discipline pursuant to TENN. CODE ANN. § 56-6-155(a)(10); and failed to comply with a law of the commissioner by not being appointed as an agent with an insurance company prior to selling the company's insurance product, grounds for discipline pursuant to TENN. CODE ANN. § 56-6-155(a)(13).

The ALJ's Initial Order held that the Respondent's insurance producer license should be suspended for one (1) year and that he should be assessed a civil penalty in the amount of two thousand ($2,000.00) dollars. Respondent appealed the Initial Order to

the Commissioner of Commerce and Insurance ("Commissioner") on October 10, 2007. In accordance with a Scheduling Order entered on November 27, 2007, the parties submitted briefs in support of and in opposition to this appeal. In fulfillment of the request of the Petitioner, oral arguments were made on April 22, 2008.

Upon careful review of the entire record in this matter and due consideration of the briefs filed by the parties and the oral arguments, the Commissioner finds as follows:

FINDINGS OF FACT

1. The Commissioner adopts and incorporates by reference the ALJ's Findings of Fact paragraphs 1 through 80, with the exception of paragraph 43, and makes the Conclusions of Law as set forth below.

CONCLUSIONS OF LAW

1. TENN. CODE ANN. § 56-6-155(a)(8) provides that the Commissioner may suspend, revoke, or refuse to issue or renew any insurance producer license upon finding that the insurance producer or applicant was using fraudulent, coercive, or dishonest practices in the conduct of the insurance business.

2. TENN. CODE ANN. § 56-6-155(a)(10) provides that the Commissioner may suspend, revoke, or refuse to issue or renew any insurance producer license upon finding that the insurance producer or applicant has demonstrated incompetence, untrustworthiness or financial irresponsibility.

3. TENN. CODE ANN. § 56-6-155(a)(13) provides that the Commissioner may suspend, revoke, or refuse to issue or renew any insurance producer license upon finding that the insurance producer or applicant violated or failed to comply with any insurance

laws, or any lawful rule or order of the commissioner or the commissioner of another state.

4. The ALJ erred in finding that the State met its burden of proof by a preponderance of the evidence that the Respondent used fraudulent, coercive, or dishonest practices in the conduct of the insurance business.

5. The State met its burden of proof by a preponderance of the evidence that Respondent demonstrated an unacceptable level of incompetence and financial irresponsibility by allowing the employees of MedVantage and Elite Abstract to be without health insurance coverage by placing them with Employers Mutual and failing to determine whether an insurance policy was issued covering MedVantage and Elite Abstract's employees. Respondent sold an unlicensed health insurance product to citizens of this state and those citizens suffered harm because of his actions. Respondent was a licensed professional insurance producer in this state since 1993 and failed to perform due diligence on Employers Mutual before selling its product.

6. Respondent further displayed incompetence by providing MedVantage and Elite Abstract with documents that contained inaccurate and inconsistent statements. The various documents provided to MedVantage and Elite Abstract said the plan was "fully funded", "self-insured", or "self-funded," and that an insurance policy through an A-(Excellent) or better insurance company was purchased on behalf of each participant. Respondent never explained the terms "fully funded," "self-insured," or "self-funded" to the employers and never told them of another insurance company purchasing a policy on their behalf except for Employers Mutual. Moreover, as a licensed professional selling insurance in this state since 1993, Respondent demonstrated financial irresponsibility by

not verifying that the Employers Mutual plan was a licensed and legitimate product before selling it to citizens of this state. This failure caused the insureds to make misguided insurance purchasing decisions and to experience significant and unnecessary financial losses.

7. The State met its burden of proof by a preponderance of the evidence that Respondent violated or failed to comply with insurance laws, or lawful rules or orders of the commissioner or the commissioner of another state. The Respondent sold the insurance offered by Employers Mutual, an unlicensed company in this state, at a time when the Respondent did not have an agency appointment in place with Employers Mutual. TENN. CODE ANN. § 56-6-155(a)(13) required the Respondent to have an agency appointment in place prior to selling insurance on behalf of Employers Mutual. Respondent had a duty to ensure that he was not selling insurance for an unlicensed company.

ORDER

The citizens of Tennessee are entitled to rely upon the competency, financial responsibility, and regulatory compliance of those individuals licensed to engage in the business of insurance in this state. The acts of the Respondent as set forth above require action on the part of the Department of Commerce and Insurance in order to protect the public welfare.

THEREFORE, based on the above Findings of Fact, Conclusions of Law, and the entire record of this matter, it is hereby **ORDERED** that the Insurance Producer License No. ~~0666759~~ 0733726 issued to Respondent shall be **SUSPENDED FOR THREE (3) CONSECUTIVE MONTHS.** It is further **ORDERED** that immediately upon

completion of the suspension Respondent shall be placed on **PROBATION FOR A PERIOD OF FOUR (4) YEARS**. During the probation term, Respondent shall complete **FORTY-EIGHT (48) HOURS OF CONTINUING EDUCATION**. It is also **ORDERED** that a **CIVIL PENALTY** be assessed in the total amount of **TWO THOUSAND DOLLARS ($2,000.00)**, and that the costs of this action be assessed. It is **ORDERED** that all probationary terms, including payment of the civil penalty and costs, shall be completed by Respondent within four (4) years and three (3) months from the date of this Final Order. This Final Order is made pursuant to TENN. CODE ANN. §4-5-313 and marks the disposition of this matter.

NOTICE OF RECONSIDERATION AND APPEAL PROCEDURES

Within fifteen (15) days after the Final Order is entered, a party may file a Petition for Reconsideration of the Final Order, in which the Petitioner shall state the specific reasons why the Final Order was in error. If no action is taken within twenty (20) days of filing of the Petition for Reconsideration, the Petitioner is deemed denied. TENN. CODE ANN. § 4-5-317.

A party 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 Davidson County Chancery Court within sixty (60) days after the entry of the 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 for Reconsideration. The filing of a Petition for Reconsideration does not itself act to extend the sixty (60) day period, if the petition is not granted. A reviewing court also may order a stay of the Final Order upon appropriate terms. TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

IT IS SO ORDERED.

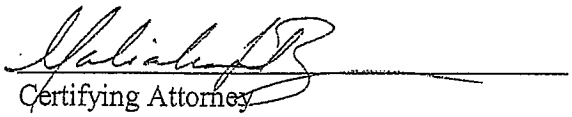
This 20th day of June, 2008.

Leslie A. Newman

Leslie A. Newman, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order has been filed in the Administrative Procedures Division, Department of State, and sent via hand delivery to Amy Smith, the attorney for the Department of Commerce & Insurance and via Certified, Return Receipt Requested, United States Mail, Postage Prepaid, to Tim Edwards, Attorney for the Respondent, 26 No. Second Street, Memphis, TN 38103 on this 23rd day of June, 2008.



Certifying Attorney