State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
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Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

July 10, 2015

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Nashville, TN 37219

RE: In the Matter of: Carl Richard Points Docket No. 12.01-124452J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

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DEPT OF COMMERCE AND INSURANCE
LEGAL OFFICE

The Department of State is an equal opportunity, equal access, affirmative action employer.

BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

CARL RICHARD POINTS **DOCKET NO. 12.01-124452J**

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **July 27, 2015.**

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472.** PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:	
TENNESSEE INSURANCE DIVISION, ***Petitioner,***	**DOCKET NO: 12.01-124452J**
v.	
CARL RICHARD POINTS, ***Respondent.***	

INITIAL ORDER

This contested case was heard in Nashville, Tennessee, on December 18, 2014, before Ann M. Johnson, Administrative Judge. The Tennessee Insurance Division (Division), the Petitioner in this matter, was represented by James Randall Witham, attorney with the Tennessee Department of Commerce and Insurance. The Petitioner was present and was represented by attorney Gary F. Blackburn.

The issue in this matter concerned the proposed revocation of the Respondent's license to sell insurance in this state as an insurance producer, as well as civil penalties requested by the State. After consideration of the record and the arguments of the parties, it is determined that the Respondent's insurance producer license should be revoked and civil penalties assessed. This decision is based upon the following.

PROCEDURAL BACKGROUND

1. The Respondent was licensed by the Insurance Division to sell insurance in this state as an insurance producer, having obtained license number 0741627 on or about April 1994.

2. In addition to the insurance producer license, the Respondent has been a registered pre-need life insurance seller since on or about February 1998, and has been a licensed funeral director since on or about January 1999.

3. Based upon the same factual allegations present in this case, the Respondent participated in a contested case hearing before the State of Tennessee Board of Funeral Directors and Embalmers on December 11, 2012, and December 17, 2012.

4. A Final Order was entered on December 26, 2012, suspending the Respondent's funeral director license for a period of one year, assessing civil penalties in the amount of three thousand dollars ($3,000.00), and assessing the costs of the proceeding.

5. Also based upon the same factual allegation in the present matter, the Respondent entered into an Agreed Order on March 5, 2013, in regard to his pre-need sales agent registration. As a result, the Respondent's pre-need sales agent registration was revoked, and he was required to pay administrative and court reporter costs.

6. In rulings entered before the hearing of this matter, it was determined that the facts previously adjudicated in the hearing before the State of Tennessee Board of

Funeral Directors and Embalmers and those contained in the Agreed Order could not be relitigated or disputed in the instant case.

FINDINGS OF FACT

Factual Allegations Regarding Melba K. Sisk

1. On or about November 6, 2009, the Respondent was an employee of Williams Funeral Home (Williams).

2. On or about November 6, 2009, the Respondent received cash payment in the approximate amount of nine thousand dollars ($9,000.00) from Billy Carroll, Jr., to pay for the funeral expenses of Melba Kay Sisk, Mr. Carroll's mother-in-law.

3. The Respondent failed to remit the proceeds to his employer, and instead led his employer to believe that the family had not made payment. The contract was eventually written off as a "bad debt" by the Williams Funeral Home.

4. The Respondent failed to provide Mr. and Mrs. Carroll with copies of Mrs. Sisk's death certificate and was unable to provide a proper accounting to Williams for the funeral services which had been rendered for Mrs. Sisk's funeral.

5. The Respondent knowingly and improperly withheld, misappropriated, or converted the Carrolls' cash payment.

Factual Allegations Regarding the Spears Family

6. The Respondent was employed by Williams Funeral Home when the Spears (Spears) family approached him on or about March 23, 2011, to purchase pre-need life insurance coverage for Mr. and Mrs. Spears through Forethought Life Insurance Company.

7. On or about March 23, 2011, the Spears paid twelve thousand nine hundred ninety dollars ($12,990.00) in cash to the Respondent and received a receipt for payment for pre-need life insurance to fund future needs for funeral goods and services.

8. The Respondent failed to timely provide a record of the sale or a copy of the Insurance Enrollment Form and Statement of Funeral Goods and Services to Williams or to Forethought Life Insurance Company.

9. The Respondent and his wife used the the twelve thousand nine hundred ninety dollars ($12,900.00) for their personal benefit.

10. The Respondent improperly withheld, misappropriated, or converted the Spears' funds in the amount of twelve thousand nine hundred ninety dollars ($12,990.00).

11. When confronted by a Williams' representative regarding his actions, the Respondent withdrew twelve thousand nine hundred ninety dollars ($12,990.00) from his savings account and purchased a cashier's check, which was delivered to Williams on or about August 30, 2011.

RELEVANT LAW

1. In accordance with Tenn. Comp. R. and Regs. 1360-4-1-.02(7), the Petitioner bears the burden of proof to show by a preponderance of the evidence that the facts alleged in the Petition are true and that the issues raised therein should be resolved in its favor.

2. At all times relevant hereto, Tenn. Code Ann. § 56-6-112(a) (2002) and (2008) provided, in pertinent part, that 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 . . . 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;
>
> . . .
>
> (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[.]

3. For each violation occurring before July 1, 2011, Tenn. Code Ann. § 56-2-305 provided, in pertinent part:

> (a) 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, part 3, 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:
>
> . . .
>
> (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 subdivision (a)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (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;

(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.

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

> 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.

ANALYSIS and CONCLUSIONS OF LAW

The Petitioner has met its burden of proof, showing by a preponderance of the evidence that the Respondent used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business, as follows: (1) on or about November 6, 2009, the Respondent knowingly violated Tenn. Code Ann. § 56-6-112(a)(2) (2008), by failing to remit nine thousand nine hundred dollars to Williams; (2) on or about November 6, 2009, the Respondent knowingly violated Tenn. Code Ann. § 56-6-112(a)(8) (2008), by failing to remit nine thousand nine hundred dollars ($9,900.00) to Williams; (3) on or about March 23, 2011, the Respondent knowingly violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) by failing to remit twelve thousand nine hundred ninety dollars ($12,990.00) to Williams or to Forethought Life Insurance Company until on or about August 30, 2011; (4) on or about March 23, 2011, the Respondent knowingly violated Tenn. Code Ann. § 56-6-112(a)(8) (2008) by failing to remit twelve thousand nine hundred ninety dollars ($12,990.00) to Williams or to Forethought Life Insurance Company until on or about August 30, 2011.

The Respondent's wrongful actions were done knowingly with the intent to defraud. It is therefore **ORDERED** that the insurance producer license of Carl Richard Points, number

0741627, shall be **REVOKED**, and that the Respondent pay a **CIVIL PENALTY** of one thousand dollars ($1,000.00) for each of the four listed violations, for a total of four thousand dollars ($4,000.00), payable within sixty (60) days of the effectiveness of this Order. It is **FURTHER ORDERED** that the Respondent shall pay court reporter costs to be determined by an affidavit of costs to be submitted to both parties.

It is so **ORDERED**.

This Order entered and effective this 10TH day of JULY, 2015.

Ann M. Johnson
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 10TH day of JULY 2015.

J. Richard Collier

J. Richard Collier, Director
Administrative Procedures Division

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.