TN ID# 06008946

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

TENNESSEE INSURANCE DIVISION,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No.: 12.01-090198J
	)	
D. W. POINTER,	)	
	)	
Respondent.	)	

AGREED ORDER

WHEREAS, Petitioner, the Tennessee Insurance Division (hereinafter referred to as the "Division"), and the Respondent, D. W. Pointer (hereinafter referred to as the "Respondent"), hereby stipulate and agree, subject to the approval of the Commissioner of Commerce and Insurance (hereinafter referred to as the "Commissioner") as follows.

GENERAL STIPULATIONS

1. It is expressly understood that this Agreed Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

2. The Commissioner has determined that the resolution set forth in this Agreed Order is fair and reasonable and in the best public interest.

3. This Agreed Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Agreed Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Agreed

Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

4. Respondent fully understands that this Agreed Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Agreed Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed. Respondent also understands that this Agreed Order may be used by the Commissioner or any Department, Board, or Commission to revoke, suspend, or refuse to issue or renew any license the Respondent currently holds or for which he applies in the future.

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

FINDINGS OF FACT

6. The Tennessee Insurance Law, as amended, Tennessee Code Annotated (hereinafter referred to as "Tenn. Code Ann."), Title 56 (hereinafter referred to as the "Law") places the responsibility for the administration of the Law on the Commissioner. Tenn. Code Ann. §§ 56-1-202, 56-6-112. The Division is the lawful agent through which the Commissioner discharges this responsibility.

7. The Respondent is a citizen and resident of Tennessee, with his mailing address being 1847 Cloverdale, Memphis, Tennessee 38114, and at all times relevant to the events herein has been a citizen and resident of Tennessee licensed by the Division as an insurance producer, having obtained said license, numbered 600846, prior to 1976.

8. On or around November 14, 2002 Respondent received Three Thousand One Hundred Eighty-Five Dollars ($3,185.00) from Universal Life Insurance Company, a mortgage holder, for a one (1) year term of homeowners insurance on property located at 917 Summer Shade Lane, Memphis, Tennessee 38116 and owned by Edmund and Myrna Ford. Respondent failed to forward the payment to Lexington Insurance Company or any other insurance company.

9. On or around May 16, 2003 Respondent received Five Hundred Ninety-Four Dollars ($594.00) from Robbie Thomas Butler for homeowners insurance on his residence located at 2203 S. Wellington, Memphis, Tennessee 38106. Respondent failed to forward the payment to Lloyds of London or any other underwriter or insurer.

CONCLUSIONS OF LAW

10. Tenn. Code Ann. § 56-6-112(a)(8) states, in pertinent part, that the commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license or levy a civil penalty or take any combination of such actions if she finds that one holding an insurance producer license has used fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business.

11. Based upon the Findings of Fact, stated above, the Commissioner finds that Respondent demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business when he failed to forward the premium payments for insurance on the Ford and Butler properties to any insurer or underwriter. Such facts would constitute grounds for an order revoking Respondent's license and levying a civil penalty pursuant to Tenn. Code Ann. § 56-6-112(a)(8).

12. Tenn. Code Ann. § 56-6-112(a)(4) provides, in pertinent part, that the commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license or levy a civil penalty or take any combination of such actions if she finds that one holding an insurance producer license has improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business.

13. Based upon the Findings of Fact, stated above, the Commissioner finds that Respondent improperly withheld, misappropriated or converted the payment of Three Thousand One Hundred Eighty-Five Dollars ($3,185.00) received by Respondent from Universal Life Insurance Company for a one (1) year term of homeowners insurance on property located at 917 Summer Shade Lane, Memphis, Tennessee 38116 and owned by Edmund and Myrna Ford and that Respondent improperly withheld, misappropriated or converted the payment of Five Hundred Ninety-Four Dollars ($594.00) received by Respondent for homeowners insurance on property located at 2203 S. Wellington, Memphis, Tennessee 38106 and owned by Robbie Thomas Butler. Such facts constitute grounds for an order revoking Respondent's license and levying a civil penalty pursuant to Tenn. Code Ann. § 56-6-112(a)(4).

ORDER

NOW THEREFORE, on the basis of the foregoing, and the waiver of the Respondent of his rights to a hearing and appeal under Tennessee Insurance Law and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101, *et seq.*, and the admission by the Respondent of the jurisdiction of the Commissioner, the Commissioner finds that the Respondent has agreed to the entry of this Order and that this Order is appropriate and in the public interest.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 56-6-112 of the Tennessee Insurance Law, that:

1. The insurance producer license, numbered 600846, held by the Respondent, D. W. Pointer, is hereby **REVOKED**, and

2. The Respondent, D. W. Pointer, shall pay to the Commissioner of the Tennessee Department of Commerce and Insurance a **CIVIL PENALTY** in the total amount of **Five Hundred Dollars ($500)** as the sole and exclusive penalty for the violation of Tenn. Code Ann. § 56-6-112. Said amount is to be paid within thirty (30) days of the entry of this Order.

This Agreed Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By his signature affixed below, D. W. Pointer affirmatively states that he has freely agreed to the entry of this Agreed Order, that he has been advised that he may consult legal counsel in this matter and has had the opportunity to consult with legal counsel, that he waives his right to a hearing on the matters underlying this Agreed Order, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof.

The parties, by signing this Agreed Order, affirmatively state their agreement to be bound by the terms of this Agreed Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Agreed Order, are binding upon them.

SO ORDERED.

ENTERED this the 3rd day of October, 2006.

Paula A. Flowers

Paula A. Flowers, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

Larry C. Knight, Jr.
Assistant Commissioner for Insurance
Department of Commerce and Insurance
500 James Robertson Parkway
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D. W. Pointer
Respondent

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