870214
NPN7359838

State of Tennessee
**Department of State**
Administrative Procedures Division
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

November 30, 2009

Commissioner Leslie Schecter Newman
TN Dept. of Commerce & Insurance
5th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243-5065

Bruce Poag
Dept of Commerce & Insurance
12th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, TN 37243

Mr. Gary Vandever
P.O. Box 642
5001 Park Ave. Suite B
Lebanon, Tennessee 37088

RE: In the Matter of: Jeffery Wayne Hess Docket No. 12.04-104274J

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

Administrative Procedures Division
Tennessee Department of State

/ef
Enclosure

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:

DOCKET NO.: 12.04-104274J

## ORDER

THIS ORDER 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 **December 15, 2009.**

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 EIGHTH AVENUE NORTH, 8th FLOOR
NASHVILLE, TENNESSEE 37243-0307

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 DEPARTMEN OF COMMERCE AND INSURANCE

| | |
|---|---|
| TENNESSEE INSURANCE DIVISION,<br>*PETITIONER*<br><br>VS.<br><br>JEFFERY WAYNE HESS,<br>*RESPONDENT* | DOCKET NO: 12.04-104274J |

## INITIAL ORDER

This matter was heard on November 3, 2009 before Lynn M. England, Administrative Judge, assigned by the Secretary of State and sitting for the Commissioner of the Department of Commerce and Insurance. Mr. Bruce Poag Assistant General Counsel for the Department of Commerce and Insurance represented the Tennessee Insurance Division. Respondent, Jeffery Wayne Hess was not present, nor was anyone present on his behalf.

The subject of this hearing was the proposed revocation of Respondent's insurance producers license pursuant to T.C.A §56-6-155(a)(1) (2000) and 56-6-112(a) (Supp. 2007).

The State showed that it had served notice of the hearing upon the Respondent at the office of his attorney of record (Mr. Gary Vandever, P. O. Box 642, 501 Park Avenue, Suite B, Lebanon, Tennessee 37088). The return mail receipt showing that the notice of hearing was mailed to the Respondent was made Exhibit 1 (collective) at the hearing.

It is determined that the Department complied with applicable laws and regulations regarding notice to Respondent.

Upon motion of the State, the Respondent was held in **DEFAULT**. The motion for default having been granted, the proceedings were conducted without the participation of the Respondent.

**NOTICE OF DEFAULT**

NOTICE IS HEREBY GIVEN THE RESPONDENT THAT HE HAS BEEN HELD IN DEFAULT FOR HIS/HER FAILURE TO APPEAR AT A HEARING ON THE MERITS AFTER RECEIVING ADEQUATE NOTICE. T.C.A. §4-5-309. RESPONDENT HAS 15 DAYS FROM THE EFFECTIVE DATE OF THIS ORDER TO REQUEST THAT THIS FINDING OF DEFAULT BE SET ASIDE. THIS REQUEST MUST BE RECEIVED IN THE OFFICE OF THE SECRETARY OF STATE, ADMINISTRATIVE PROCEDURES DIVISION, WILLIAM R. SNODGRASS TOWER, 312 ROSA PARKS BLVD., NORTH, NASHVILLE, TENNESSEE 37243. THE REQUEST TO HAVE THE FINDING OF DEFAULT SET ASIDE SHOULD INCLUDE THE REASONS TO JUSTIFY THE RESPONDENT'S FAILURE TO ATTEND. IF RESPONDENT DOES NOT REQUEST THE DEFAULT BE SET ASIDE OR OTHERWISE APPEAL THE ACCOMPANYING INITIAL ORDER, THEN THE INITIAL ORDER WILL BECOME A FINAL ORDER. ANY QUESTIONS REGARDING THIS NOTICE OF DEFAULT OR THE STEPS NECESSARY TO HAVE IT SET ASIDE SHOULD BE SUBMITTED TO THE ADMINISTRATIVE JUDGE SIGNING THIS ORDER BY LETTER OR BY TELEPHONING (615) 741-7008.

## FINDINGS OF FACT

1. Jeffery Wayne Hess ("Respondent") is a citizen and resident of Tennessee, residing at 66 Barton Brook Lane, Lebanon, Tennessee 37087. Respondent is licensed by the Insurance Division to sell insurance in Tennessee, having obtained said license, numbered 870214, in 2002.
2. On September 23, 1993, Respondent pleaded guilty to theft of property over one thousand dollars ($1,000) in the Criminal Court of Wilson County, Tennessee. Respondent received a two (2) year suspended sentence and was immediately placed on supervised probation for two (2) years.
3. On June 24, 2002, the Department received Respondent's Resident Insurance Agent Application. Respondent falsely indicated on his application that he had never been convicted of a felony. Based on Respondent's failure to disclose to the Department that he had been convicted of theft of property over one thousand dollars ($1,000), a felony, in 1993, his application to sell accident and health insurance was unwittingly approved by the Department.
4. On May 5, 2003, the Department received Respondent's Uniform Application for Resident Individual Insurance Producer License. Again, Respondent falsely indicated on his application that he had never been convicted of committing a crime. Based on Respondent's failure to disclose to the Department that he had been convicted of theft of property over one thousand dollars ($1,000), a felony, in 1993, his application to sell life and property insurance was unwittingly approved by the Department.

## CONCLUSIONS OF LAW AND ANALYSIS

1. TENN. CODE ANN. § 56-6-155(a)(1) (2000) provides that the Commissioner may suspend, revoke or refuse to issue or renew a license for anyone who makes a materially untrue statement in the license application.
2. TENN. CODE ANN. § 56-6-155(b) (2000)
3. Respondent violated TENN. CODE ANN. § 56-6-155(a)(1) (2000) by making a materially untrue statement in the license application submitted to the Department on June 24, 2002 by failing to disclose that he had been convicted of theft of property over one thousand dollars ($1,000), a felony, in 1993.
4. Respondent violated TENN. CODE ANN. § 56-6-112(a)(1) (Supp. 2007) by providing incorrect, misleading, incomplete or materially untrue information in the license application submitted to the Department on May 5, 2003 by failing to disclose that he had been convicted of theft of property over one thousand dollars ($1,000), a felony.
5. Respondent was convicted of theft of property over one thousand dollars ($1,000), a felony, in 1993.
6. TENN. CODE ANN. § 56-6-112(b) (2000) provides in addition to or in lieu of any applicable denial, suspension or revocation of a license, the commissioner may assess a civil penalty against such person in an amount not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000.00) for each separate violation.

It is therefore ORDERED that Respondent's insurance producer license, numbered 870214, is hereby REVOKED and CIVIL PENALTIES in the amount of two thousand dollars ($2,000.00) are assessed for each separate violation

IT IS SO ORDERED.

This Initial Order entered and effective this 30th day of November 2009.

Lynn M. England
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 30th day of November 2009.

Thomas G. Stovall, 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 Eighth Avenue N., Nashville, Tennessee, 37243. (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.