BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

JIMMY LEE CLARK **DOCKET NO. 12.01-128648J**

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 **February 25, 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 COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF: **Tennessee Insurance Division,** **Petitioner,** **Vs.** **Jimmy Lee Clark,** **Respondent.**	**DOCKET NO: 12.01-128648J**

INITIAL ORDER

This matter came to be heard on February 5, 2015, in Nashville, Tennessee, before Steve R. Darnell, Administrative Law Judge, assigned by the Department of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Commerce and Insurance. Attorney James R. Witham represented the Department of Commerce and Insurance (Department), and Petitioner was represented by attorney Gerald S. Green.

ISSUES FOR DETERMINATION

1. Did the Department show, by a preponderance of the evidence, that Respondent was convicted of a felony?

2. What, if any, civil penalty should be assessed against Respondent?

SUMMARY OF DETERMINATION

It is **DETERMINED** that the Department showed, by preponderance of the evidence, that Respondent was convicted of a felony. Revocation of Respondent's license and assessment of the cost of these proceedings is appropriate under the circumstances. This determination is made upon the following findings of fact and conclusion of law:

FINDINGS OF FACT

1. Respondent holds insurance producer's license No. 0655746 issued by the Department. This license expires September 30, 2015.

2. Between September 1, 2009 and April 15, 2010, Respondent was owner and operator of a Mo' Money Taxes franchise in St. Louis, Missouri. Mo' Money Taxes is a franchise engaged in the business of preparing tax returns for a fee.

3. Respondent and his employees prepared a total of 494 federal tax returns for clients for the 2009 tax year. Over one-half of these returns claimed the American Opportunity (AO) educational tax credit against due and owing taxes. Respondent and his employees were trained on the AO credit.

4. Forty-seven of these returns fraudulently claimed false or inflated AO tax credits. Respondent and his employees were indicted in the Eastern District of Missouri by the U.S. Attorney on charges associated with fraudulently claiming the AO tax credit.

5. Respondent pled guilty and was convicted of one felony charge of "Conspiracy to Defraud the United States" in the U.S. District Court for the Eastern District of Missouri on July 24, 2013.

6. Respondent was sentenced to 20 months of incarceration and ordered to pay $352,224.00 in restitution to the U.S. jointly with his co-defendants.

7. The Department has shown, by a preponderance of the evidence, that Respondent was convicted of a felony.

CONCLUSIONS OF LAW

1. The Department has the burden to introduce evidence that would, by a preponderance of the evidence, prove the issues should be resolved in its favor. Rule 1360-4-1-.02.

2. Tenn. Code Ann. §56-6-112(a) authorizes the Commissioner to place on probation, suspend, revoke or refuse to issue or renew a license where the license holder has been convicted of a felony.

3. Tenn. Code Ann. §56-6-112(g)(2) allows the Commissioner to assess a penalty of $1,000 per violation of Tenn. Code Ann. §56-6-112(a). Tenn. Code Ann. §56-6-112(h) requires the Commissioner to consider the following factors in determining an appropriate penalty:

(i) whether the person could reasonably have interpreted such person's actions to be in compliance with the obligations required by statute, rule or order;
(ii) whether the amount imposed will be a substantial economic deterrent to the violator;
(iii) the circumstance leading to the violation;
(iv) the severity of the violation and the risk of harm to the public;
(v) the economic benefits gains by the violator as a result of non-compliance;
(vi) the interest of the public; and
(vii) the person's efforts to cure the violation.

IT IS CONCLUDED that the Department has shown, by a preponderance of the evidence, that Respondent was convicted of a felony. Respondent's insurance license should be revoked and Respondent required to pay the Department's cost of prosecuting this case. No civil penalty is imposed. Respondent's conviction was not related to his insurance business. Additionally, Respondent must make restitution to the U.S. as noted above and this decision will place additional economic hardship on Respondent.

IT IS THEREFORE ORDERED that Petitioner's insurance producer's license No. 0655746 is revoked and he is to pay the Department's cost of prosecuting this case.

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

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 10th day of FEBRUARY 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.