BEFORE THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:	)	**Tennessee Division Insurance Fraud**
	)	
JOHN WINSTON FISHER,	)	**DOCKET NO. 12.01-131907J**
	)	
	)	***Judge Sitting Alone***
Respondent.	)	

INITIAL ORDER

This matter came on to be heard on October 22, 2015 before the undersigned Judge. Ms. Stephanie M. Crenshaw, Assistant General Counsel, Department of Commerce and Insurance, was present and ready to proceed with the hearing on behalf of the State. The Respondent was not present at the hearing, nor was anyone present on Respondent's behalf.[1]

The State presented a "Notice of Filing Return on Service" which reflected that the Respondent was mailed a Notice of Hearing and Charges via U.S. First Class Mail on July 2, 2015 and such Notice of Hearing and Charges was signed as "delivered" and returned to the Department of Commerce and Insurance as "delivered" on July 8, 2015.

The "proof of service" of the Notice of Hearing and Charges was moved into evidence as "Exhibit 1" at the hearing. Additionally, a letter written by Respondent on July 7, 2015 noted that he had received the Department's Notice of Hearing and Charges. Respondent's letter was entered into evidence as "Exhibit 2" at the hearing.

It was determined that Respondent had received actual notice of the hearing. Accordingly, the State moved for a Default and requested permission to present its

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[1] It is noted that Respondent received the Pre-Hearing Order, and did not file any type of request asking to appear at the trial/hearing via teleconference or deposition. Nor did Respondent ask for a continuance or otherwise attempt to participate in this case as instructed in the Pre-Hearing Order.

proof in the absence of Respondent. There being evidence of adequate Notice to the Respondent of the Trial/Contested Case Hearing, the Department's Motion to proceed in Default was considered well-taken and was **GRANTED.**

The subject of this hearing was whether the undersigned, sitting on behalf of the Tennessee Commissioner of Commerce and Insurance, should take disciplinary action against the Respondent for alleged violations of TENN. CODE ANN. §56-6-910, and/or any rule or regulation promulgated by the Board.

Respondent failed to appear and contest the charges against him. Respondent's Tennessee Public Adjuster's license is **REVOKED**, Respondent is **ASSESSED** $2000.00 in civil penalties ($1000.00 per felony conviction), and Respondent is assessed the costs of the State's investigating, prosecuting this action, and conducting the contested case hearing, pursuant to T.C.A. §56-1-311, T.C.A. §56-6-901, *et seq.*, and applicable RULES & REGS. for the Tennessee Department of Commerce and Insurance. This determination is based upon the following Findings of Fact and Conclusions of Law.

AUTHORITY

Authority and jurisdiction are conferred upon the undersigned sitting for the Tennessee to take appropriate disciplinary action, including the revocation or suspension of a certificate of registration or the refusal to issue or renew a certificate of registration and/or the imposition of civil penalties against any person required to be registered by the State pursuant to the TENNESSEE

PUBLIC ADJUSTER LICENSING ACT OF 2006, TENN. CODE ANN. §56-6-901, *et seq.*, for the violation of any provision of that chapter or any rule or regulation duly promulgated

thereunder. *See* TENN. CODE ANN. §56-6-910, TENN. COMP. R. & REGS. R. 0780-1-91-.01, *et seq.*

NOTICE OF DEFAULT

As noted above, the State, by and through counsel, moved that a default be entered against Respondent for failure to appear and participate in the hearing after due notice. It appearing that proper notice was sent to Respondents, and that Respondent failed to appear at the hearing, the State's Motion for Default is well taken and is hereby **GRANTED** pursuant to TENN. CODE ANN. § 4-5-309(a). *See also* RULE 1360-4-1-.15(1) of the UNIFORM RULES OF PROCEDURE FOR HEARING CONTESTED CASES BEFORE STATE ADMINISTRATIVE AGENCIES, TENN. Comp. R. & REGS. CH. 1360-4-1 (June 2004 (Revised)).

SUMMARY OF WITNESSES AND EXHIBITS

The State called the following witnesses: (1) Renee Powell via Affidavit; and (2) Mr. Thomas Smith, Manager Division of Insurance, Fraud. The State entered the following exhibits into evidence at the hearing of this matter:

(Ex.1) Notice of Filing Return on Service, (Ex. 2) Letter from Respondent; (Ex.3) Affidavit of Renee Powell; (Ex. 4) Federal Criminal Indictment of Respondent; (Ex. 5) Criminal Plea Agreement, United States District Court of the Middle District of Tennessee; and (Ex. 6) Criminal Judgment entered against Respondent in the United States District Court of the Middle District of Tennessee.

FINDINGS OF FACT

1. Respondent was issued a "Public Adjuster License" in Tennessee on June 4, 2014. His Public Adjuster license number is #2243404.[2]

2. "Public Adjusters" are persons licensed by the State of Tennessee whom insureds (individuals or business entities with insurance coverage) can hire to represent such insureds in documenting and negotiating insurance claims with insurance companies. See T.C.A. §56-6-903(8)(A).

3. The Tennessee Department of Commerce and Insurance, Insurance Fraud Division, received a complaint that Respondent had conspired to commit arson (burn down a residential building) in Tennessee, and had further conspired to present an insured's claim for fire insurance to the State Farm Insurance Company.

4. Thereafter, the Insurance Fraud Division investigator, Thomas Smith, in the course and scope of the Division's investigation of Respondent, obtained a United States District Court Criminal Indictment against Respondent for a conspiracy to burn down a residential property located at 2004 Lynn Haven Court, Mt. Juliet, Tennessee,

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[2] Respondent's Public Adjuster's license expired on June 3, 2015.

and present a false claim for fire insurance coverage to the State Farm Insurance Company on behalf of the owner of the property ("the insured").

5. Respondent entered a "Plea Agreement" in the United States District Court, Middle District of Tennessee, on June 21, 2014, in which Respondent entered voluntary pleas of guilty to two separate counts of mail fraud.

6. A criminal judgment was entered on January 30, 2015 in the U.S. District Court of Tennessee, Middle District, which found Respondent guilty of two separate felonious counts of mail fraud, in violation of 18 U.S.C. §1341, which occurred on April 27, 2010 and May 19, 2010. Respondent was sentenced to incarceration in a federal correctional institution for a total of five (5) years, and was ordered to pay restitution to State Farm and Casualty Company in the amount of $582,836.23.

7. Respondent violated T.C.A. §56-6-910's provisions governing Public Adjusters. Specifically, Respondent's actions violated T.C.A. §56-6-910(6).

CONCLUSIONS OF LAW

1. Respondent's acts and conduct, as set forth in the foregoing "Findings of Fact," constitute a violation of TENN. CODE ANN. §56-6-910 which provides:

> (a) The commissioner may place on probation, cancel, terminate, suspend, revoke or refuse to issue or renew a public adjuster's license, or may levy a civil penalty, in accordance with this section, or any combination of actions, for any one (1) or more of the following causes:
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> (6) Having been convicted of a felony or other offense involving dishonesty, fraud, deceit or misrepresentation, in a final decision of a court of competent jurisdiction[.]

2. As set forth in the Findings of Fact, above, Respondent committed acts of dishonesty, fraud, deceit and misrepresentation which resulted in felony convictions in the United States District Court of Tennessee, Middle District.

3. Accordingly, due to Respondent's using his position as a "Public Adjuster" in the commission of felonies involving dishonesty, fraud, deceit and misrepresentation, and his subsequent convictions for the same, the appropriate discipline in this matter is the **REVOCATION** of Respondent's Public Adjuster's license ##2243404.[3]

4. Due to the egregious nature of Respondent's violations of the TENNESSEE PUBLIC ADJUSTER'S LICENSURE ACT, as set forth above, said violations constitute grounds for the imposition of other lawful discipline, including the imposition of civil penalties pursuant to TENN. CODE ANN. §56-6-910(e). Accordingly, a civil penalty of thousand dollars ($1,000.00) is imposed for each felony conviction, for a total in $2000.00 in civil penalties assessed against Respondent.

It is hereby **ORDERED** that Respondent Fisher's Public Adjuster's license is **REVOKED**.

It is further **ORDERED** that Respondent shall pay civil penalties totaling **Two Thousand Dollars ($2,000.00.)**

It is so ordered.

This order entered and effective this 26th day of October, 2015.

Joyce Grimes Safley
Administrative Judge

[3] With regard to Respondent's license expiration on June 3, 2015, Tennessee law supports that a license may be revoked by a licensing authority despite the license's past or imminent expiration. *Tennessee Real Estate Commission v. Godwin*, 378 S.W. 439, 445 (Tenn. Ct. App. 1963). It is noted that after a license has "expired", renewal of the license is largely administrative. Generally, an "expired" license is reinstated by paying licensure fees, and any interest or penalties associated with allowing the license to "expire". Revocation of an "expired license", as a disciplinary action by a commissioner, licensing authority, governing board or commission, serves also to revoke the automatic "right to renewal" (by simply paying a fee and having the "expired license" administratively renewed automatically without review by the licensing authority).

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 26th day of October 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.