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

TENNESSEE INSURANCE DIVISION Petitioner,	)	
vs.	)	No. 12.01-57586J
MICHAEL D. VERBLE Respondent.	)	

FINAL ORDER

This case was remanded to the Commissioner of Commerce and Insurance by the Chancery Court for the State of Tennessee, Twentieth Judicial District, Davidson County, Part IV on August 7, 2007. The Court ordered the Commissioner to reconsider whether a sanction is appropriate against the Respondent, Michael D. Verble, under TENN. CODE ANN. § 56-6-112 and, if so, to impose the same.

The Initial Order was entered by Administrative Law Judge Joyce Carter-Ball on August 17, 2005. The ALJ held that Respondent's insurance producer license should neither be revoked nor sanctioned. Petitioner appealed the Initial Order to the Commissioner of Commerce and Insurance. The appeal was considered by Deputy Commissioner D. Scott White due to the recusal of Commissioner Paula A. Flowers. The Deputy Commissioner issued the Final Order on November 9, 2006, reversing the Initial Order in part, and ordering a six (6) month suspension of Respondent's insurance producer license.

On November 29, 2006, Respondent filed a Petition for Judicial Review of the Final Order with the Chancery Court of Davidson County, Tennessee. Chancellor

Richard Dinkins issued a Memorandum Opinion and Order on August 7, 2007. The Chancellor upheld the Final order in part and reversed in part. Finding that Respondent had violated Tennessee insurance law when he "allowed his background and qualifications to be inflated and used by others to promote various business endeavors that resulted in investors losing substantial funds," Chancellor Dinkins remanded this case to the Commissioner of Commerce and Insurance for consideration and imposition of appropriate sanctions pursuant to TENN. CODE ANN. § 56-6-112.

On April 2, 2008, the Commissioner of Commerce and Insurance ordered the parties to file briefs to address whether sanctions are appropriate in this matter. The briefs were timely filed by both parties. On July 30, 2008, a Second Scheduling Order was issued by the Commissioner of Commerce and Insurance instructing the parties to file reply briefs addressing the issue of whether Respondent was given sufficient notice that alleged misrepresentations of his educational background and credentials were potential grounds for the sanctioning of his insurance producer license.

Upon careful review of the entire record in this matter and due consideration of the briefs filed by the parties, the Commissioner finds as follows:

FINDINGS OF FACT

1. The Commissioner adopts and incorporates by reference the Chancellor's Factual Background and makes the conclusions of law as set forth below.

CONCLUSIONS OF LAW

1. TENN. CODE ANN. § 56-6-112(a)(8) provides that the Commissioner may suspend, revoke, or refuse to issue or renew any insurance producer license upon finding that the insurance producer or applicant has used fraudulent, coercive, or dishonest

practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

2. The State has met its burden of proof by a preponderance of the evidence that Respondent demonstrated incompetence, untrustworthiness, and financial irresponsibility by allowing his educational background and qualifications to be inflated and used by others to promote various business endeavors that resulted in investors losing substantial funds. Moreover, Respondent's conduct assisted the furtherance of a scheme designed and intended to induce citizens of the state of Tennessee to invest in companies that were either fraudulent enterprises or otherwise not advisable investments for any person.

3. Respondent had sufficient notice of the alleged violative conduct and assented to the consideration of the related evidence introduced during the hearing. The petition outlining the charges against Respondent alleges that "respondent . . . was engaged in a scheme to fraudulently induce citizens of this state to invest in companies that were either fraudulent themselves, or certainly were not advisable for any person to invest." During the course of the administrative hearing, Respondent made no objections to the line of questioning that elicited testimony regarding the misrepresentations and truth about the Respondent's educational background and qualifications. Moreover, Respondent did not object to Petitioner's Motion to Conform the Pleadings to the Evidence.

4. Respondent should have known or had reason to know that either misrepresenting, or allowing others to misrepresent, his educational background and qualifications during the course of soliciting financial transactions and otherwise

conducting business could be considered incompetent, untrustworthy or financially irresponsible, and serve as grounds for disciplinary action based on TENN. CODE ANN. § 56-6-112(a)(8).

5. The egregious and intolerable nature of Respondent's conduct provides appropriate basis for the assessment of sanctions pursuant to TENN. CODE ANN. § 56-6-112(a)(8).

ORDER

The citizens of Tennessee are entitled to rely upon the competency, financial responsibility, and trustworthiness of those individuals licensed to engage in the business of insurance in this state. The acts of the Respondent as set forth above require action on the part of the Department in order to protect the public welfare.

THEREFORE, based on the above findings of fact, conclusions of law, and the entire record of this matter, it is hereby **ORDERED** that Michael D. Verble, Respondent, be placed on **PROBATION FOR A PERIOD OF SIX (6) MONTHS.** It is further **ORDERED** that a **CIVIL PENALTY** be assessed in the amount of **TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500.00)** per violation and that the cost of this action be assessed. It is also **ORDERED** that the Respondent shall satisfy the **INSURANCE PRODUCER CONTINUING EDUCATION REQUIREMENTS FOR THE NEXT SIX (6) YEARS**. It is **ORDERED** that all probationary terms, including payment of the civil penalty and costs, shall be completed by Respondent within six (6) months from the date of this Final Order. This Final Order is made pursuant to TENN. CODE ANN. §4-5-313 and marks the disposition of this matter.

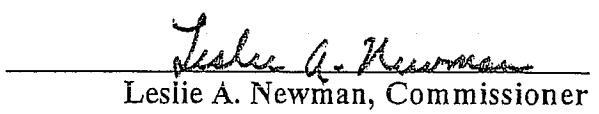
NOTICE OF RECONSIDERATION AND APPEAL PROCEDURES

Within fifteen (15) days after the Final Order is entered, a party may file a Petition for Reconsideration of the Final Order, in which the Petitioner shall state the specific reasons why the Final Order was in error. If no action is taken within twenty (20) days of filing of the Petition for Reconsideration, the Petitioner is deemed denied. TENN. CODE ANN. § 4-5-317. The Petition for Reconsideration of the Final Order must be timely filed with the Commissioner of Commerce and Insurance.

A party 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 Davidson County Chancery Court within sixty (60) days after the entry of the 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 for Reconsideration. The filing of a Petition for Reconsideration does not itself act to extend the sixty (60) day period, if the petition is not granted. A reviewing court also may order a stay of the Final Order upon appropriate terms. TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

IT IS SO ORDERED.

This 17th day of September, 2008.



Leslie A. Newman, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order has been filed in the Administrative Procedures Division, Department of State, and sent via hand I hereby certify that a true and correct copy of the foregoing has been sent via hand delivery to Barbara A. Doak, the attorney for the Department of Commerce & Insurance and via Certified, Return Receipt Requested and by United States Mail, First Class, Postage Prepaid, to Phillip Byron Jones, Attorney for the Respondent, Evans, Jones & Reynolds, PC, Sun Trust Plaza, Suite 710, 401 Commerce Street, Nashville, TN 37219 on this 26th day of September, 2008.

Certifying Attorney