TN - 0802224
NPN - 7291886

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DEPT OF COMMERCE AND INSURANCE
LEGAL OFFICE

STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

IN THE MATTER OF:	)	
	)	
PERRY LEE BAILEY	)	**TID Order No. 15-130**
	)	
	)	

CONSENT ORDER

The Insurance Division of the Tennessee Department of Commerce and Insurance ("Division"), by and through counsel, and Perry Lee Bailey ("Bailey") hereby stipulate and agree, subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"), as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent 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. This Consent Order is executed by Bailey for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Bailey fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner for acts and/or omissions not specifically addressed in this Consent Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Bailey fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for violations of Title 56 of the Tennessee Code Annotated addressed specifically in this Consent Order, against Bailey for violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which arise as a result of the execution of this Consent Order by Bailey.

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

AUTHORITY AND JURISDICTION

6. The Commissioner has jurisdiction over this matter pursuant to the Tennessee Insurance Law ("Law"), Title 56 of the Tennessee Code Annotated, specifically Tenn. Code Ann. §§ 56-1-101, 56-1-202, 56-2-305 and 56-6-112. The Law places on the Commissioner the responsibility of the administration of its provisions.

PARTIES

7. The Division is the lawful agent through which the Commissioner administers the Law and is authorized to bring this action for the protection of the public.

8. Bailey is a citizen and resident of the State of Tennessee. Bailey's address of record on file with the Division is 295 Countryside Drive, Oakland, Tennessee 38060. Bailey obtained his resident insurance producer license number 0802224, on or about October 28, 2013. Bailey's insurance producer license expired on October 31, 2015, with a one (1) year right to renewal remaining.

FINDINGS OF FACT

9. On or about February 20, 2015, the Department of Commerce and Insurance received a complaint from United Insurance Company of America ("United") alleging that Bailey had collected three thousand seven hundred eighty-eight dollars and eighty cents ($3,788.80) from policyholders, but failed to deposit the money with United.

10. Bailey's agent cash bond was applied to the outstanding amount owed to United leaving a balance of three thousand five hundred two dollars and ninety-two cents ($3,502.92)

11. On November 14, 2014, Bailey's appointment with United was terminated.

12. Bailey entered into an agreement with United to pay the total outstanding amount owed by March 24, 2016.

CONCLUSIONS OF LAW

13. Tenn. Code Ann. § 56-6-112(a) provides that the commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license issued under this part and/or

may levy a civil penalty in accordance with this section or take any combination of those actions, for any one (1) or more of the following causes:

> ....
>
> (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business; [and,]
>
> ....
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]
>
> ....

14. Tenn. Code Ann. § 56-6-112 (2011), states in pertinent part:

> ....
>
> (e) The commissioner shall retain the authority to enforce this part and impose any penalty or remedy authorized by this part and this title against any person who is under investigation for or charged with a violation of this part or this title, even if the person's license has been surrendered or has lapsed by operation of law.
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> ....
>
> (g) If . . . the commissioner finds that any person required to be licensed, permitted, or authorized by the division of insurance pursuant to this chapter has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:
>
> (1) The person to cease and desist from engaging in the act or practice giving rise to the violation.
>
> (2) Payment of a monetary penalty of not more than one thousand dollars ($1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars ($100,000). This subdivision (g)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (g)(2), each day of continued violation shall constitute a separate violation; and
>
> (3) The suspension or revocation of the person's license.

(h) In determining the amount of penalty to assess under this section, the commissioner shall consider:

(1) Whether the person could reasonably have interpreted such person's actions to be in compliance with the obligations required by a statute, rule or order;

(2) Whether the amount imposed will be a substantial economic deterrent to the violator;

(3) The circumstances leading to the violation;

(4) The severity of the violation and the risk of harm to the public;

(5) The economic benefits gained by the violator as a result of noncompliance;

(6) The interest of the public; and

(7) The person's efforts to cure the violation.

15. Based upon the Findings of Fact stated above and the Conclusions of Law contained herein, the Commissioner considers the actions of Bailey to be in violation of Tenn. Code Ann. §§ 56-6-112(a)(4) and (8) for improperly withholding premiums in the course of doing insurance business. Such facts provide grounds for the refusal to renew Bailey's license and the imposition of a two thousand dollar ($2,000) civil penalty in accordance with Tenn. Code Ann. § 56-6-112(g).

16. In order to avoid any further expenses or costs associated with litigating this matter in any administrative or judicial proceedings, Bailey hereby acknowledges the Commissioner's authority to administer the statutes cited herein, concedes that the Commissioner's interpretation of the statutes cited in the Conclusions of Law are reasonable and enforceable, and agrees to the entry of this Consent Order including each of the sanctions ordered by the Commissioner.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and Bailey's waiver of the right to a hearing and appeal under the Law and the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 to 4-5-404, and Bailey's admission of jurisdiction of the Commissioner, the Commissioner finds that Bailey, for the purpose of settling this matter admits to the Conclusions of Law, agrees to the entry of this Order and agrees that this Order is in the public interest, necessary for the protection of consumers and consistent with the purposes fairly intended by the policy and provisions of the Law.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 56-6-112(g), that Bailey:

1. Pay **CIVIL PENALTIES** in the amount of two thousand dollars ($2,000), if Bailey should fail to pay full restitution to United by March 24, 2016. The civil penalty payment must include a copy of the first page of this Order, shall be payable to "State of Tennessee" and mailed to:

State of Tennessee
Department of Commerce and Insurance
Legal Office, Attn: Stephanie Crenshaw
Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243

If Bailey should fail to timely pay United, this civil penalty of two thousand dollars ($2,000) shall be due to the Division by June 1, 2016. Failure to pay the civil penalty by the due date will release the Commissioner from the terms of this Order to pursue the full legal remedy in this matter.

2. It is further **ORDERED** that Bailey shall **CEASE AND DESIST** from all such activities in violation of Tenn. Code Ann. § 56-6-112.

3. In addition, it is further **ORDERED** that all persons in any way assisting, aiding, or helping Bailey in any of the aforementioned violations of Tenn. Code Ann. § 56-6-112 shall **CEASE AND DESIST** from all such activities in violation of the Law.

IT IS ORDERED, pursuant to Bailey's Affidavit, that:

1. Bailey's insurance producer license number 0802224, is hereby **SURRENDERED.**

IT IS ORDERED that this Consent Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Commissioner against Bailey for violations of Tenn. Code Ann. § 56-6-112 alleged by the Division to have occurred with respect to the transactions involving the facts contained herein.

This Consent 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 the signatures affixed below, Bailey affirmatively states he has freely agreed to the entry of this Consent Order, that he waives the right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made to him by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent

Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of the settlement as set forth in this Consent Order, are binding upon them.

ENTERED this 26 day of February, 2016.

Julie Mix McPeak, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

Perry L. Bailey
Respondent

Michael Humphreys
Assistant Commissioner for Insurance
Department of Commerce and Insurance

Stephanie M. Crenshaw, BPR # 031517
Assistant General Counsel
500 James Robertson Parkway
Nashville, Tennessee 37243