TN. agent #0684874
NPN- 5936721

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

TENNESSEE INSURANCE DIVISION, Petitioner,	)	
vs.	)	Docket No.: 12.04-100569J
RANDALL LYNN SHERRITZE, Respondent.	)	

NOTICE OF DEFAULT AND INITIAL ORDER

This matter was heard on January 16, 2009 in Nashville, Tennessee before Margaret Robertson, Administrative Judge assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of Commerce and Insurance. The Insurance Division (referred to herein as "Petitioner") was represented by Dan Birdwell, Assistant General Counsel, Department of Commerce and Insurance. Neither the Respondent, Randall Lynn Sherritze, nor an attorney appearing on his behalf, was present at the hearing.

NOTICE OF DEFAULT

Petitioner moved for default based on failure of the Respondent or his representative to appear at the scheduled hearing after receiving proper notice thereof. The hearing on December 11, 2008 previously scheduled to hear this matter was adjourned upon the Administrative Judge concluding that notice of hearing as of such date was insufficient to proceed with default. The record indicates that the Petitioner diligently attempted to complete service of the notice as of the date of this hearing in a manner reasonably calculated to achieve actual notice and that service was legally

sufficient in accordance with Tenn. Code Ann. § 4-5-307 and § 56-6-112(f), and Tenn. Comp. R. & Regs. 1360-4-1-.15(c). The Respondent was held in **DEFAULT** and Petitioner was permitted to proceed on an uncontested basis.

INITIAL ORDER

The subject of this hearing was the proposed revocation of Respondent's Tennessee insurance producer license and assessment of civil penalties against Respondent for multiple violations of Tenn. Code Ann. § 56-6-112(a), § 56-6-116, and § 56-53-103(a). After consideration of the evidence, testimony, and arguments of counsel presented, and the entire record in this matter, it is determined that the Respondent's insurance producer license should be, and is hereby, REVOKED and that Respondent be ORDERED to pay a civil penalty of one thousand dollars ($1,000.00) for each violation committed, totaling nine thousand dollars ($9,000.00) in civil penalties, plus the costs of this action.

This decision is based upon the following findings of fact and Conclusions of Law.

FINDINGS OF FACT

1. The Respondent, Randall Lynn Sherritze, is a citizen and resident of Tennessee with an address of record with the Division of 7400 Royal Springs Blvd., Knoxville, Tennessee 37918. At all times relevant to the facts set forth herein, Respondent has been licensed by the Division to sell insurance in Tennessee, having been

issued an insurance producer license, numbered 684874, in February 1989. Respondent has conducted insurance business under the name of "11-40 Insurance Services, Inc."

2. In February 2007, Respondent received fifteen thousand one hundred twenty-six dollars ($15,126.00) from Ronnie and Judy Freeman (the "Freemans"), the amount due for the insurance premium for a cargo and vehicle liability insurance policy issued by Northland Insurance Company ("Northland") for the policy period February 7, 2007 through February 7, 2008. Of the total amount paid to Respondent by the Freemans, Respondent failed to remit nine thousand five hundred seventy-two dollars and twenty-two cents ($9,572.22) to Northland.

3. Respondent falsely represented to the Freemans in May 2007 that the Northland policy he agreed to place was in effect after such policy had, in fact, been cancelled.

4. Although Respondent had already received the full amount due for their insurance coverage paid to him by the Freemans, Respondent prepared, or caused to be prepared, without the Freemans' knowledge or consent a premium finance agreement to pay such premiums. Respondent submitted the premium finance agreement bearing the forged signature of Ronnie Freeman to Universal Premium Acceptance Corporation.

5. In December 2007, Respondent received seven thousand seven hundred dollars ($7,700) from Wayne Miller ("Mr. Miller"), an amount which Respondent represented was needed to make a down payment for a workers compensation policy for Mr. Miller's trucking business.

6. Respondent failed to a procure workers' compensation policy on behalf of Mr. Miller and failed to remit or return any of the money paid to him by Mr. Miller.

7. In response to inquiries from Mr. Miller regarding his insurance coverage, Respondent sent to Mr. Miller a fictitious "Certificate of Liability Insurance" which falsely represented that workers' compensation coverage was in effect.

CONCLUSIONS OF LAW

1. In accordance with Tenn. Comp. R. and Regs. 1360-4-1-.02(7), Petitioner bears the burden of proof in proving by a preponderance of the evidence that the facts alleged in the Petition are true and that the issues raised therein should be resolved in its favor.

2. Tenn. Code Ann. § 56-6-112(a) provides, in pertinent part:

> The commissioner may place on probation, suspend, revoke or refuse to issue or renew a license issued under this part or may levy a civil penalty in accordance with § 56-2-305 or take any combination of those actions, for any one (1) or more of the following causes:
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> (2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;
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> (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
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> ***
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> (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
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> ***
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> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial

irresponsibility in the conduct of business in this state or elsewhere;

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(10) Forging another's name to an application for insurance or to any document related to an insurance transaction.

3. Tenn. Code Ann. § 56-2-305(a) provides, in pertinent part:

If, after providing notice consistent with the process established by § 4-5-320(c) and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act . . . the commissioner finds that any insurer, person, or entity required to be licensed, permitted, or authorized by the division of insurance has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:

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(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), unless the insurer, person, or entity knowingly violates a statute, rule or order, in which case the penalty shall not be more than twenty-five thousand dollars ($25,000) for each violation, not to exceed an aggregate penalty of two hundred fifty thousand dollars ($250,000). This subdivision (a)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (a)(2), each day of continued violation shall constitute a separate violation; and

(3) The suspension or revocation of the insurer's, person's, or entity's license."

4. Tenn. Code Ann. § 56-53-103(a) provides, in pertinent part, as follows:

Any person who commits, or participates in any of the following acts with an intent to induce reliance, has committed an unlawful insurance act:

(1) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, by or on behalf of an insured,

claimant or applicant to an insurer, insurance professional or a premium finance company in connection with an insurance transaction or premium finance transaction, any information which the person knows to contain false representations, or represents the falsity of which the person has recklessly disregarded, as to any material fact, or which withholds or conceals a material fact, concerning any of the following:

(A) The application for, rating of, or renewal of, any insurance policy;

(B) A claim for payment or benefit pursuant to any insurance policy;

(C) Payments made in accordance with the terms of any insurance policy; or

(D) The application for the financing of any insurance premium."

5. Tenn. Code Ann. § 56-6-116 provides as follows:

Any money which an insurance producer receives for soliciting, negotiating or selling insurance shall be held in a fiduciary capacity, and shall not be misappropriated, converted or improperly withheld. Any violation of this section shall be considered grounds for the denial, suspension, or revocation of insurance producer's license and shall subject the insurance producer to the sanctions and penalties set forth under §56-6-112.

6. The Petitioner has met its burden of proof by a preponderance of the evidence that Respondent in at least two (2) instances improperly withheld, misappropriated or converted money received in the course of doing insurance business and failed to hold money received for soliciting, negotiating or selling insurance in a fiduciary capacity. Respondent misappropriated nine thousand five hundred seventy-two dollars and twenty-two cents ($9,572.22) from the Freemans which he failed to remit to

the insurer, and seven thousand seven hundred dollars ($7,700.00) from Mr. Miller which he failed to remit to premium finance company.

7. The Petitioner has met its burden of proof by a preponderance of the evidence that Respondent forged the name of Ronnie Freeman on a premium finance agreement.

8. The Petitioner has met its burden of proof by a preponderance of the evidence that Respondent on at least three (3) occasions intentionally misrepresented to the Freemans that the liability insurance coverage for their business was in effect when such coverage had already been cancelled by the insurer.

9. The Petitioner has met its burden of proof by a preponderance of the evidence that Respondent on at least two (2) occasions misrepresented to Mr. Miller that insurance coverage would be placed or was in effect and provided to him a fictitious "Certificate of Liability Insurance" which misrepresented the actual status of Mr. Miller's insurance coverage.

10. The Petitioner has met its burden of proof by a preponderance of the evidence that Respondent prepared, or caused to be prepared, a Premium Finance Agreement in order to pay premiums for which the Freemans had already paid Respondent, thereby violating Tenn. Code Ann. § 56-6-112(a)(8) and § 56-53-103(a)(1)(D).

11. The Petitioner has met its burden of proof by a preponderance of the evidence that the Respondent engaged in fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct

of business in this state or elsewhere; and has committed an unlawful insurance act, constituting grounds for an order revoking Respondent's insurance producer license and levying civil penalties pursuant to Tenn. Code Ann. §§ 56-6-112(a)(2), (4), (5), (8) and (10); § 56-6-112(e), § 56-6-116 and § 56-53-103(a)(1)(D).

It is therefore **ORDERED** that the insurance producer license of Randall Lynn Sherritze, numbered 684874, be **REVOKED** and that Respondent pay civil penalties of **NINE THOUSAND DOLLARS ($9,000.00)** payable within thirty (30) days of entry of this Order. The costs of this action are also assessed against Respondent.

This Initial Order entered and effective this 29TH day of JAN. 2009.

Margaret R. Robertson
Margaret R. Robertson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 29TH day of JANUARY 2009.

Thomas G Stovall
Thomas G. Stovall, Director
Administrative Procedures Division