

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

IN THE MATTER OF:

Roy Daniel Webb

DOCKET NO: 12.01-115954J

INITIAL ORDER

This matter was heard on December 4, 2012 in Nashville, Tennessee, before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State to sit for the Commissioner of the Tennessee Department of Commerce and Insurance ("Department"). Sharon K. Hawkins, Assistant General Counsel, represented the Department. The Grievant, Roy Daniel Webb, was represented by legal counsel, Daniel D. Warlick.

The issue in this matter is the appropriate penalty to be imposed based upon Respondent's violations of the insurance laws.

After consideration of all of the evidence, arguments of counsel and the entire record in this matter, it is determined that Respondent is **ASSESSED** and shall pay a civil penalty to the State of Tennessee in the aggregate amount of **Two Hundred Fifty Thousand Dollars (\$250,000.00)**, with per occurrence penalties for each of the forty-nine (49) illegal acts by Respondent.

This decision is based upon the following:

FINDINGS OF FACT

1. Respondent is a citizen and resident of the state of Tennessee. Respondent was licensed by the Insurance Division to sell insurance in this state as an insurance producer, having

obtained license number 0624866 in 1977. Respondent was the responsible insurance producer for his own agency, Security Risk Management in Brentwood, Tennessee.

2. On May 17, 2012, the Department filed a "Motion for Summary Judgment with Request for Assessment of Civil Monetary Penalties and License Revocation." **Respondent did not contest the factual allegations propounded by the Department.**

3. Summary Judgment was granted to the Department on October 29, 2012, as to each alleged violation of the insurance law by Respondent, and Respondent's license was revoked.

4. Liability having been established, a hearing was held regarding civil monetary penalty determination on December 4, 2012.

5. Respondent is currently serving thirty-seven (37) months in prison for violating 18 USC §1343, Wire Fraud, and was ordered to pay restitution in the total amount of \$300,464.35 to the victims.

APPLICABLE LAW

1. In a fifth step level hearing, an administrative law judge presides to take proof and render an initial order which is subject to review by the Commissioner of the Department of Commerce and Insurance.

2. The Department bears the burden of proof, which is a preponderance of the evidence standard, to show that the requested civil monetary penalties are appropriate.

3. **T.C.A. §56-6-112(a)(1) provides:**

(a) 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 this section or take any combination of those actions, for any one (1) or more of the following causes:

(1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

(2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;

- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;...
- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

4. T.C.A. §56-6-119(a) provides:

- (a) A producer shall report to the commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of any order entered or other relevant legal documents.

5. T.C.A. §56-8-103 provides:

No person shall engage in an unfair trade practice from, in or into this state that is defined in § 56-8-104 or § 56-8-106 or determined by rule pursuant to § 56-8-108 to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance...

6. Pursuant to §56-8-104(1)(A), an unfair trade practice in the business of insurance is defined as:

Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement, sales presentation, omission or comparison that:

(A) Misrepresents the benefits, advantages, conditions or terms of any policy;...

(F) Is a misrepresentation, including any intentional misquote of premium rate, for the purpose of inducing or tending to induce the purchase, lapse, forfeiture, exchange, conversion or surrender of any policy.

7. T.C.A. §56-2-305 provides:

(a) 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, compiled in title 4, chapter 5, part 3, 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:

(1) The insurer, person, or entity 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), 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.

(b) In determining the amount of penalty to assess under this section, or in determining whether the violation was a knowing violation for the purpose of subdivision (a)(2), the commissioner shall consider any evidence relative to the following criteria:

(1) Whether the insurer, person or entity could reasonably have interpreted its 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) Whether the amount imposed would put the violator in a hazardous financial condition;

(4) The circumstances leading to the violation;

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

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

(7) The interest of the public; and

(8) The insurer's, person's, or entity's efforts to cure the violation.

ANALYSIS

The Department set forth its evidence in the form of verified affidavits with documents attached, which explained the number of infractions, penalties requested, dates of infractions, names of companies involved and dollar amounts misappropriated. The burden then shifted to Respondent to establish mitigating circumstances in his response.

Respondent attached the United States District Court's judgment against him for wire fraud in his Response to the Department's Motion. The order contained a criminal restitution provision which is to be paid to various victims of Respondent's fraudulent activities. This is not a factor to be considered when assessing penalties pursuant to the insurance laws.

CONCLUSIONS OF LAW

1. It is **concluded** that the Department has carried its burden of proof by a preponderance of the evidence that Respondent's conduct violated the provisions of the regulations as set forth above.
2. The evidence has shown that Respondent knowingly violated insurance laws including misappropriating funds, failing to bind multiple commercial insurance policies on behalf of companies that had been assured they had coverages in place for millions of dollars, falsifying numerous documents and making misrepresentations regarding the terms of these policies, failing to respond to the Commissioner's subpoena and failing to make truthful statements on applications for his insurance license.
3. It is **concluded** that Respondent submitted no evidence of material facts which warranted the mitigation of penalty assessment.
4. Based on the evidence presented, it is **ORDERED** that Respondent is **ASSESSED** and **shall pay** a civil penalty to the State of Tennessee in the aggregate amount of Two Hundred Fifty Thousand Dollars (\$250,000.00), with per occurrence penalties for each of the forty-nine (49) illegal acts by Respondent.
5. The Department is awarded costs of hearing this contested matter.

IT IS SO ORDERED.

This Initial Order entered and effective this 1ST day of MARCH, 2013.



Joyce Carter-Ball
Administrative Judge

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.

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

IN THE MATTER OF:

**TENNESSEE INSURANCE DIVISION,
Petitioner,**

vs.

**ROY DANIEL WEBB,
Respondent.**

DOCKET NO: 12.21-115954J

ORDER

This contested case is before Joyce Carter-Ball, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division. Sharon Hawkins, Assistant General Counsel, represents the Tennessee Insurance Division (the "Division"). The Respondent, Roy Daniel Webb, is represented by legal counsel, Daniel D. Warlick.

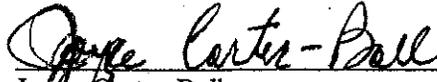
On May 17, 2012, Petitioner filed the "Motion for Summary Judgment with Request for Assessment of Civil Monetary Penalties and License Revocation". On September 25, 2012, Respondent filed the "Response to Motion for Summary Judgment". The Respondent does not contest the factual allegations propounded by the Division, and agrees that his license should be revoked.

It is concluded that there are no material facts in dispute as to the impropriety of Respondent's behavior, therefore the Petitioner's Motion for Summary Judgment is GRANTED, and Respondent's license is REVOKED.

Respondent has requested a hearing on the Division's Motion to determine penalty assessment. Accordingly, this matter is set to be heard on **Tuesday, December 4, 2012, at 1:00 p.m.** The hearing will be held in the **8th Floor Conference Room of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243.**

IT IS SO ORDERED, this the 29TH day of OCT., 2012.

This Order entered and effective this 29TH day of OCT., 2012.



Joyce Carter-Ball
Administrative Judge