BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:
Roy Milton Pitt, Jr.

DOCKET NO.: 12.04-108671J

ORDER

THIS ORDER IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **December 22, 2010.**

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 EIGHTH AVENUE NORTH, 8th FLOOR
NASHVILLE, TENNESSEE 37243-0307

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472.** PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

TN-ID- 061 9683
NPN- 2480145

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

TENNESSEE INSURANCE DIVISION,	)	
Petitioner,	)	
	)	
vs.	)	**No: 12.04-108671J**
	)	
ROY MILTON PITT, JR.,	)	
Respondent.	)	

NOTICE OF DEFAULT AND INITIAL ORDER

This matter was heard on December 1, 2010, in Nashville, Tennessee before Steve R. Darnell, Administrative Law Judge assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Department of Commerce and Insurance. The Petitioner, the Tennessee Insurance Division (the "Division") was represented by Bruce Poag, Assistant General Counsel, Department of Commerce and Insurance. Neither the Respondent, Roy Milton Pitt, Jr., nor a representative 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. In support of the motion, Petitioner submitted oral testimony from Clifford Hargrove, Manager, Fraud Investigations, who personally served a copy of the Notice of Hearing and Rights of Respondent to Respondent on July 30, 2010. Furthermore, Respondent requested a continuance of the original hearing date of October 5, 2010. Petitioner did not oppose the continuance, and this matter was rescheduled for December 1, 2010 at 9:00 a.m. On October 5, 2010, an Order continuing this matter was sent to

Respondent at his address of record. The record, therefore, indicates 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-.06 and 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 entry of an order assessing civil penalties against Respondent for violations of Tenn. Code Ann. §§ 56-6-112(a)(4) and (8) (Supp. 2007); §§ 56-6-112(a)(4) and (8) (2008). After consideration of the evidence, affidavit testimony, and entire record in this matter, it is determined that: the Respondent's insurance producer license is **REVOKED**; and Respondent is **ORDERED** to pay a civil monetary penalty of twenty-five thousand dollars ($25,000.00) for knowingly committing two (2) violations of Tenn. Code Ann. § 56-6-112(a)(8) (2008), totaling FIFTY THOUSAND DOLLARS ($50,000.00). This decision is based upon the following findings of fact and Conclusions of Laws.

FINDINGS OF FACT

1. 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.

2. Ms. Josephine Justice, anticipating the expiration of her current insurance policy through Respondent, sent Respondent her renewal premium payment on June 7, 2008. Ms. Justice issued a check in the amount of one thousand seven hundred forty-six dollars ($1,746) made payable to the order of Pitt Insurance Agency, Respondent's agency. In September 2008, after having not received a copy of her insurance policy, Ms. Justice contacted Respondent. Ms. Justice met with Respondent personally on September 9, 2008 and discovered that Respondent

had failed to renew her insurance policy. Respondent convinced Ms. Justice to refrain from notifying the Department of Commerce and Insurance and to give him an opportunity to provide her with a valid insurance policy. On September 16, 2008, Ms. Pat Benson, Respondent's employee, informed Ms. Justice that proof of insurance was being mailed to her. On September 18, 2008, Ms. Justice received a document titled "Evidence of Property Insurance" that ostensibly indicated a policy effective date of September 16, 2008 and an expiration date of September 16, 2009. Ms. Justice, however, verified with the insurance company that her policy was canceled for non-payment of premiums. On December 1, 2008, Ms. Justice made an additional premium payment in the amount of one thousand two hundred dollars ($1,200) to obtain insurance coverage with another insurance company. To date, Respondent has not refunded any of Ms. Justice's money. Ms. Justice filed a criminal complaint with the Pleasant View Police Department and had Mr. Pitt arrested for theft of property for an amount greater than one thousand dollars ($1,000).

3. On January 13, 2009, Mark Evans made a cash payment of three hundred thirty dollars ($330) to Respondent for a three (3) month automobile insurance policy. On January 24, 2009, Hanover Insurance Company notified Mr. Evans that his insurance premium payment had not been received and that his policy was subject to cancellation. On February 26, 2009, Mr. Evans was able to contact Respondent after numerous attempts. Respondent informed Mr. Evans that he would refund his money within twenty-four (24) hours. To date, Respondent has not refunded any of Mr. Evans' money. Mr. Evans subsequently made an additional premium payment in the amount of three hundred thirty dollars ($330) directly to Hanover Insurance Company to prevent his insurance from being canceled. Mr. Evans filed a criminal complaint with the Springfield Police Department and had Mr. Pitt arrested for theft of property for an

amount less than five hundred dollars ($500).

4. On January 21, 2009, Ralph and Lanell White made a cash payment of five hundred eighty-six dollars ($586) to Respondent for an annual homeowner's insurance policy. Shortly thereafter, the Whites were notified by American Reliable Insurance Company that it had not received their annual insurance premium payment and that their real property was currently uninsured. Respondent assured the Whites that an insurance policy was in effect and that he would provide them with proof of insurance. The Whites have filed a criminal complaint with the Springfield Police Department and had Mr. Pitt arrested for theft of property for an amount greater than five hundred dollars ($500). Respondent has also been charged with insurance fraud.

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 that "[t]he 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:

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

. . . .

3. Tenn. Code Ann. § 56-2-305(a) provides as follows:

(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.

4. The Petitioner has met its burden of proof by a preponderance of the evidence that, on at least six (6) separate occasions, the Respondent improperly withheld, misappropriated or converted moneys or properties received in the course of doing insurance business and used fraudulent, coercive, or dishonest practices, constituting grounds for an order revoking Respondent's insurance producer license and levying civil penalties pursuant to Tenn. Code Ann. §§ 56-6-112(a)(4) and (8) and Tenn. Code Ann. §56-2-305.

It is therefore **ORDERED** that the insurance producer license of Roy Milton Pitt, Jr., numbered 619683, be **REVOKED**, and that the Respondent pay a civil penalty of twenty-five

thousand dollars ($25,000.00) for two (2) violations, for a total of **FIFTY THOUSAND DOLLARS ($50,000.00)**.

This Initial Order entered and effective this 7th day of Dec, 2010.

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 7th day of Dec 2010.

Thomas G. Stovall, 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.