0682637

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

TENNESSEE INSURANCE DIVISION, Petitioner,	)	
vs.	)	No.: 08-131
WENDELL EARL REED, Respondent.	)	

CONSENT ORDER

The Insurance Division of the Department of Commerce and Insurance of the State of Tennessee (the "Division") and Wendell Earl Reed (the "Respondent") hereby stipulate and agree, subject to the approval of the Commissioner of Commerce and Insurance (the "Commissioner"), as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and shall have no force and effect until such acceptance is evidenced by its entry by the Commissioner.

2. The Commissioner has determined that the resolution set forth in this Consent Order is fair and reasonable, and in the best public interest.

3. This Consent Order is executed by Respondent 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.

4. Respondent fully understands and agrees that this Consent Order will in no way

preclude additional proceedings by the Commissioner against Respondent for acts or omissions not specifically addressed in this Consent Order or for facts or omissions that do not arise from the facts or transactions specified herein. Respondent further understands and agrees that this Consent Order may be used and taken in consideration by the Commissioner, or other Commissioner, Department or Board to revoke or refuse issuance of any license any license currently held by Respondent or for which the Respondent may in the future apply.

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

FINDINGS OF FACT

1. The Commissioner of the Department of Commerce and Insurance for the State of Tennessee (the "Commissioner") has jurisdiction pursuant to the Tennessee Insurance Law (the "Law"), TITLE 56 of the Tennessee Code, and the Law places responsibility for administration of its provisions on the Commissioner.

2. 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.

3. Respondent is a citizen and resident of Tennessee, residing at 1555 King Road, Friendship, Tennessee 38034. Respondent has been licensed by the Division to sell insurance in the State of Tennessee, having been issued license number 682637 January 29, 1990.

4. Respondent was employed as an insurance producer for American General Life and Accident Insurance company ("AGLA"), a member of American International Group, Inc., from

2006 until January 14, 2008, selling AGLA insurance products in Dyer, Lauderdale, Tipton, Haywood and Crockett Counties in West Tennessee.

5. On July 30, 2008, the Division received information from Overton Campbell, Associate General Counsel for AGLA, stating that an audit conducted by AGLA in January 2008 had disclosed a deficiency in Respondent's account, indicating that Respondent had diverted seventy thousand four hundred dollars ($70,474.66) in premium payments from policyholders, which he failed to deposit in the account established for such payments. Respondent's actions resulted in deficiency notices being sent to policyholders in error.

6. AGLA provided to the Division a copy of the Summary of Deficiency report which confirmed a deficiency in Respondent's account, indicating that Respondent had diverted premium payments and attempted to conceal such acts by applying the premium payments from some policyholders to the accounts of others.

7. Respondent paid AGLA two thousand one hundred eighty dollars and sixteen cents $2,180.16 on his last day of employment, resulting in a total deficiency in Respondent's account as of such date of sixty-seven thousand eight hundred ninety-four dollars and sixty-eight cents ($67,894.68).

8. In an affidavit given August 14, 2008, Respondent admitted to diverting premium payments collected from AGLA policyholders and acknowledged that he retained some of such money for his personal use. Respondent further stated that he wanted to repay AGLA and demonstrate his good faith by surrendering his insurance producer's license.

CONCLUSIONS OF LAW

1. 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 subsection (e) or take any combination of such actions, for any one or more of the following causes:

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

. . . .

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

. . . .

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

. . . .

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

. . . . .

2. TENN. CODE ANN. § 56-6-112(e) provides as follows:

With respect to any person licensed or required to be licensed under this part, and in addition to or in lieu of any applicable denial, suspension or revocation of a license, the commissioner may assess a civil penalty against such person in an amount not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each separate violation of a statute, rule or order pertaining to the sale, solicitation or negotiation or insurance in this state. Each day of continued violation constitutes a separate violation.

3. TENN. CODE ANN. § 56-53-103 provides, in pertinent part, that 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.

. . . .

4. Based upon the Findings of Fact cited above and the Conclusions of Law contained herein, the Commissioner considers the actions of Respondent to be in violation of TENN. CODE ANN. § 56-6-112(a) (2), (4), (7), (8) and § 56-53-103. Respondent is therefore subject to sanctions set forth in TENN. CODE ANN. § 56-6-112(a).

5. Respondent hereby admits to all Findings of Fact stated in paragraphs 1-8, above and understands that such Findings subject him to sanctions pursuant to TENN. CODE ANN. § 56-6-112. Respondent hereby acknowledges the Commissioner's authority to administer said statutes and concedes that the Commissioner's interpretation of the statutes cited herein, as set forth in the Conclusions of Law, is reasonable and enforceable. Therefore, Respondent, in order to avoid any further expenses or costs associated with litigating this matter, hereby agrees to entry of this Consent Order.

ORDER

NOW, THEREFORE, on the basis of the foregoing and the waiver by Respondent of his rights to a hearing and appeal under the Tennessee Insurance Law and Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*, and acknowledgment of the jurisdiction of the Commissioner, the Commissioner finds that Respondent has agreed to the entry of this Consent Order and that such Order is appropriate, in the public interest and necessary for the protection of the public.

IT IS ORDERED, pursuant to TENN. CODE ANN. § 56-6-112(a), that the insurance producer license held by Respondent, Wendell Earl Reed, license numbered 682637, is hereby **REVOKED**. Respondent agrees to cease soliciting or negotiating insurance and conduct no further business for which a license is required under the Law.

This Consent Order represents the complete and final resolution and discharge of administrative remedies available to the Commissioner under TENN. CODE ANN. § 56-6-112 against Respondent for violations of the Law arising out of the Findings of Fact set forth in paragraphs 1-8 above. However, this Order shall in no way preclude a third party from pursuing civil remedies or criminal action against Respondent which may otherwise be available.

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, Respondent affirmatively states that he has freely agreed to the entry of the Consent Order, that he has been advised that he may consult legal counsel in this matter and has had the opportunity to consult with legal counsel should he have desired to do so, has reviewed the Findings of Fact and Conclusions of Law contained herein, waives his right to a hearing on the matters underlined in this Consent Order and the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. In signing this Consent Order, the parties affirm their agreement to be bound by the terms of such Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in the Consent Order, are binding upon them.

SO ORDERED.

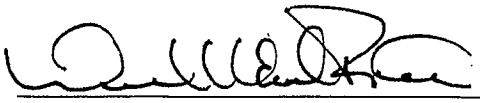
ENTERED this the 10th day of October, 2008.

Leslie A. Newman

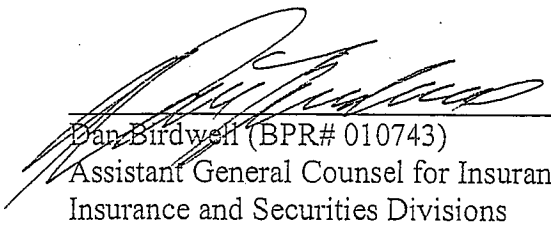
Leslie A. Newman, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

Larry C. Knight, Jr.
Assistant Commissioner for Insurance
Department of Commerce and Insurance
Davy Crockett Tower, Fourth Floor
500 James Robertson Parkway
Nashville, Tennessee 37243



Wendell Earl Reed
Respondent



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