06663905

State of Tennessee
Department of State
Administrative Procedures Division
312 Eighth Avenue North
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243
Phone: (615) 741-7008/Fax: (615) 741-4472

February 22, 2006

Commissioner Paula A. Flowers
Dept. of Commerce and Insuarance
500 James Robertson Parkway
Nashville, Tennessee 37243-5065

Dakasha K. Winton
Staff Attorney
Department of Commerce and Insurance
500 James Robertson Parkway
Davy Crockett Tower, Fifth Floor
Nashville, TN 37243

Charles T. Kimery
102 N. Main St.
Erwin, TN 37650

RE: In the Matter of: Charles T. Kimery Docket No. 12.01-083485J

Dear Parties:

Please find enclosed a copy of the Initial Order rendered in connection with the above-styled case.

Sincerely,

Charles C. Sullivan, II
Administrative Procedures Division

/ncp
Enclosure

The Department of State is an equal opportunity, equal access, affirmative action employer.

BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

CHARLES T. KIMERY **DOCKET NO.: 12.01-083485J**

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 **March 9, 2006.**

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.

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

TENNESSEE INSURANCE DIVISION,	)	
Petitioner,	)	
	)	
vs.	)	**No.: 12.01-083485J**
	)	
CHARLES T. KIMERY,	)	
Respondent.	)	

NOTICE OF DEFAULT AND INITIAL ORDER

This matter came to be heard on January 26, 2006, before Jina C. Shoaf, an Administrative Judge assigned to the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Commerce and Insurance in Nashville, Tennessee. Dakasha K. Winton, Staff Attorney, Department of Commerce and Insurance, represented the State. The Respondent, Charles T. Kimery, was not present at the hearing, nor did an attorney appear on his behalf.

ORDER OF DEFAULT

This matter was heard upon the Petitioner's Motion for Default due to a failure of the Respondent, Charles T. Kimery, to appear or to be represented at the hearing on January 26, 2006, after receiving proper notice thereof. The record indicates that the Respondent, Charles T. Kimery, was properly served under the provisions of Tenn. Code Ann. § 56-6-112. After consideration of the record, it was determined that the Petitioner's motion was proper. The Respondent, Charles T. Kimery, was held in **DEFAULT**, and the Petitioner was permitted to proceed with an uncontested case.

INITIAL ORDER

The subject of this hearing was the proposed revocation of the Respondent's insurance producer license in Tennessee. After consideration of the argument of counsel and the record in this matter, it is the determination of this administrative judge that the Respondent's insurance producer license should be **REVOKED** and the Respondent is ordered to pay Three Thousand Dollars ($3,000) in civil penalties. This decision is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Respondent, Charles T. Kimery, is a citizen of Tennessee and a resident of Erwin, at the mailing address of 102 North Main Street, Erwin, Tennessee 37650, and at the last address provided by Mr. Kimery to the Department of Commerce and Insurance, 620 Galax Street, Erwin, Tennessee 37650.

2. The Respondent holds an insurance producer license, numbered 663905, issued by the Commissioner on September 5, 1985.

3. On or around October 28, 2005, the Respondent was found guilty and was convicted of the crime of theft of services in Unicoi County Tennessee. Pursuant to Tenn. Code Ann. § 39-14-104, the Respondent was convicted of committing a felony in this State.

4. As basis for the October 28, 2005 Order, a jury found that the Respondent knowingly diverted approximately One Thousand Four Hundred Sixteen Dollars ($1416) from Connie G. Silvers in the Respondent's capacity as an insurance producer in this State.

5. Additionally, the jury found that the Respondent knowingly diverted Six Hundred Sixty Seven Dollars ($667) from James Tibbitts in the Respondent's capacity as an insurance producer in this State.

CONCLUSIONS OF LAW

1. Tenn. Code Ann. § 56-6-112(a)(4) states, in pertinent part, that the commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license under this part if she finds that one holding an insurance producer license has improperly withheld, misappropriated or converted any moneys or property received in the course of doing insurance business.

2. Tenn. Code. Ann. § 56-6-112(a)(6) provides, that the Commissioner may place on suspension, revoke, or refuse to renew any license under this part if she finds that an insurance producer has been convicted of a felony.

3. Tenn. Code. Ann. § 56-6-112(a)(8) provides, that the Commissioner may place on suspension, revoke, or refuse to renew any license under this part if she finds that an insurance producer used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business in this state or elsewhere.

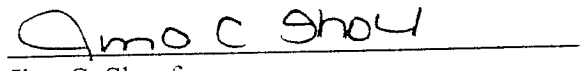
4. The State has met its burden of proof by a preponderance of the evidence that the Respondent improperly withheld, misappropriated or converted the monies received from Connie G. Silvers and James Tibbitts in the course of doing insurance business.

5. The State has met its burden of proof by a preponderance of the evidence that the Respondent was convicted of committing a felony.

6. The State has met its burden of proof by a preponderance of the evidence that the Respondent used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business in this state.

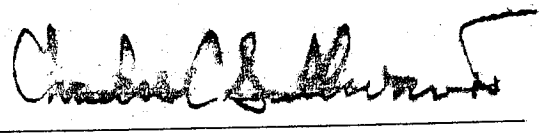
It is therefore **ORDERED** that license number 663905, issued to Charles T. Kimery, be **REVOKED** and that the Respondent be ordered to pay One Thousand Dollars ($1000) for each violation of Tenn. Code Ann. §§ 56-6-112(a)(4), 56-6-112(a)(6), and 56-6-112(a)(8) for a total amount of Three Thousand Dollars ($3,000).

This Initial Order entered and effective this 22nd day of February, 2006.



Jina C. Shoaf
Administrative Judge

Filed in the Administrative Procedures Division, this 22nd day of February, 2006.



Charles C. Sullivan, II, 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 Eighth Avenue N., Nashville, Tennessee, 37243. (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.