

SEP 05 2013

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

IN THE MATTER REGARDING)

JOSEPH GRANT PIRKLE,)
Respondent,)

) TID No.: 13-064
)
)
)

CONSENT ORDER

The Tennessee Insurance Division ("Division") and Joseph Grant Pirkle ("Respondent") hereby stipulate and agree to the entry of this Consent Order subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner") as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of an order by the Commissioner.

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

3. This Consent Order is executed by the 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

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from further participation or resolution of these proceedings, nor shall it be used for any purpose in furtherance of this case.

4. Respondent fully understands 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 and/or omissions that do not arise from the facts or transactions herein addressed.

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

FINDINGS OF FACT

6. The Commissioner has jurisdiction over this matter pursuant to the Tennessee Insurance Law ("Law"), Title 56 of the Tennessee Code Annotated, (TENN. CODE ANN.) §§ 56-1-202 and 56-6-112. The Law places on the Commissioner the responsibility of the administration of its provisions.

7. 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.

8. Respondent is a licensee of the Division who has, at all times relevant hereto, been responsible for compliance with the insurance laws, rules and regulations of the State of Tennessee. At all times relevant hereto, Respondent maintained Insurance Producer/Surplus

license number 0741708 which expires on or about September 30, 2014. Upon information and belief, Respondent has an address at 260 Morgan Road, NW Charleston, TN 37310.

FINDINGS OF FACT REGARDING FARMERS INSURANCE

9. At all times relevant, Respondent was an insurance agent contracted to do business with Farmers Insurance ("Farmers"). Respondent sold Farmers' insurance policies to respective clients in Tennessee. Accordingly, Respondent had an obligation to timely remit premiums paid by these clients to Farmers Insurance.

10. On or about March 3, 2008, Respondent failed to timely remit one thousand eight hundred twenty-six dollars and thirty-four cents (\$1,826.34) in premiums to Farmers.

11. On or about July 14, 2008, Respondent failed to timely remit four hundred three dollars and fifty cents (\$403.50) in premiums to Farmers.

12. On or about February 24, 2009, Respondent failed to timely remit three hundred eighty-seven dollars and forty cents (\$387.40) in premiums to Farmers.

FINDINGS OF FACT REGARDING NATIONAL SECURITY FIRE & CASUALTY COMPANY

13. At all times relevant, Respondent was an insurance agent contracted to do business with National Security Fire and Casualty Company ("National Security"). Respondent sold National Security insurance policies to respective clients in Tennessee. Accordingly, Respondent had an obligation to timely remit premiums paid by these clients to National Security.

14. On or about February 6, 2009, Respondent failed to timely remit four hundred forty-five dollars (\$445) in premiums to National Security.

15. Upon receiving notice of Respondent's failure to remit \$445 in premiums, Respondent knowingly made a false statement to National Security.

16. Respondent told National Security that he re-brokered the insurance policy through Lloyds of London ("Lloyds") and remitted the \$445 premium to Lloyds.

17. This statement was false in that Lloyds never received any such application or insurance policy in regard to the above mentioned \$445 insurance premium owed to National Security.

18. On or about February 9, 2009, Respondent failed to timely remit eighty-six dollars and fifty cents (\$86.50) in premiums to National Security.

FINDINGS OF FACT REGARDING JEFFREY BREWER

19. On or about May, 2011, Mr. Jeffrey Brewer, a Tennessee resident and client of Respondent, paid Respondent a premium of thirty-one thousand seven hundred eighty-seven dollars and eighty-four cents (\$31,787.84) for a Northpoint Underwriter's insurance policy. This policy was designed to insure property owned by Mr. Brewer in Tennessee.

20. Unfortunately, the policy was later cancelled by Northpoint Underwriters because of Respondent's failure to remit Mr. Brewer's \$31,787.84 premium to Northpoint Underwriters.

21. On or about September 23, 2011, Respondent knowingly and fraudulently submitted an application for financing to Insurance Payment Company for an additional eleven thousand seven hundred sixty-nine dollars and forty-five cents (\$11,769.45). This was done without the permission of Mr. Brewer.

22. Furthermore, Respondent knowingly and fraudulently signed the application for financing to Insurance Payment Company with Mr. Brewer's signature without authorization from Mr. Brewer.

23. In the beginning of 2012, Mr. Brewer filed an insurance claim with Respondent for his property located in Cleveland, TN.

24. Respondent knowingly and falsely conveyed to Mr. Brewer that his old insurance policy was replaced with a new insurance policy with Lloyd's of London.

25. In reality, Respondent generated a counterfeit claims file that appeared as if it had been processed through a public adjustor, Bridgewater Claims Service.

26. Respondent paid Mr. Brewer three thousand five hundred fifty-five dollars (\$3,555). He knowingly and falsely claimed the remitter of said funds to be that of Bridgewater Claims Service and his own agency.

27. On or about May, 2012, Mr. Brewer paid Respondent thirty-three thousand twenty-five dollars and sixty-five cents (\$33,025.65) for a Southern General Agency insurance policy.

28. Respondent failed to remit Mr. Brewer's \$33,025.65 premium to the appropriate servicing insurance agency, thus resulting in a lapse in coverage for Mr. Brewer's property.

29. On or about May 31, 2012, Respondent, knowingly and without Mr. Brewer's permission, submitted an application for premium financing through Imperial Premium Finance Services.

30. In this application, Respondent requested financing from Imperial Premium Finance Services in the amount of twenty-two thousand fifty-six dollars and seventy-four cents (\$22,056.74).

31. Respondent knowingly and fraudulently signed the above mentioned application for premium financing to Imperial Premium Finance Services with Mr. Brewer's signature. Respondent was not authorized to sign on behalf of Mr. Brewer.

CONCLUSIONS OF LAW

32. At all relevant times TENN. CODE ANN. § 56-6-112(a) (2002) provides that, in pertinent part, "[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 this section 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: [and]
- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere:"

33. TENN. CODE ANN. § 56-6-112(g) (2011) provides:

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, the commissioner finds that any person required to be licensed, permitted, or authorized by the division of insurance pursuant to this chapter has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:

- (1) The person 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). This subdivision (g)(2) shall not

apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (g)(2), each day of continued violation shall constitute a separate violation; and

(3) The suspension or revocation of the person's license.

34. TENN. CODE ANN. § 56-2-305 (2007) provides:

(a) If . . . 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 person 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 subsection (a)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subsection (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.

35. Respondent used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in Tennessee and improperly withheld, misappropriated, or converted money received in the course of doing insurance business. As enumerated in the Findings of Fact above and the Conclusions of Law contained herein, Respondent failed to remit premiums due and owing to various business entities in violation of TENN. CODE ANN. §§ 56-6-112(a)(4), and 56-6-112(a)(8). Furthermore, Respondent engaged in fraudulent dishonest practices that demonstrate incompetence, untrustworthiness, and financial irresponsibility in the conduct of doing business in Tennessee when he knowingly: forged Mr. Brewer's signature; falsely provided insurance

coverage to Mr. Brewer; and made false representations of material fact to National Security. These facts constitute grounds for a Consent Order revoking Respondent's Insurance Producer/Surplus license in accordance with TENN. CODE ANN. § 56-6-112(a)(4)(8). Such facts also provide grounds for an order imposing civil penalties against Respondent in an amount not more than one thousand dollars (\$1,000) for each separate violation committed after July 1, 2011 in accordance with TENN. CODE ANN. § 56-6-112(g) and an amount not more than twenty-five thousand dollars (\$25,000) for each separate violation committed knowingly to all acts occurring prior to July 1, 2011 in accordance with TENN. CODE ANN. § 56-2-305.

36. Respondent agrees to the Findings of Fact and Conclusions of Law contained herein and agrees that they are fair and reasonable as outlined above. Respondent enters this Consent Order for the sole purpose of avoiding further administrative action with respect to this cause. Respondent hereby acknowledges the Commissioner's authority to administer the Law and concedes that the Commissioner's interpretations of the statutes cited in the Conclusions of Law are reasonable and enforceable.

37. Respondent hereby agrees to the entry of this Consent Order in the interest of cooperation and settlement, and to avoid the costs associated with future administrative and judicial proceedings with respect to the above mentioned matter.

ORDER

NOW, THEREFORE, based on the foregoing and Respondent's waiver of his rights to a hearing and appeal under the Law and Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 *et. seq.*, and the admission by Respondent of the jurisdiction of the Commissioner, the Commissioner finds that Respondent has agreed to the entry of this

Consent Order and that this Consent Order is appropriate, in the best interest of the public, and necessary for the protection of the public.

IT IS THEREFORE ORDERED, pursuant to TENN. CODE ANN. § 56-6-112 (2008) (2011) that:

1. The Insurance Producer/Surplus license, numbered 0741708, issued to Respondent is hereby **REVOKED**;

2. Respondent shall not, while without a license, conduct further business for which an insurance license is required under the Law;

3. Respondent shall pay the Division a penalty in the total sum of ten thousand dollars (\$10,000). Such penalty is to be paid according to the following schedule:

December 1, 2013	\$2,500.00
December 1, 2014	\$2,500.00
December 1, 2015	\$2,500.00
December 1, 2016	\$2,500.00

4. Any failure to timely make a payment under the terms of this agreed Consent Order may result in additional disciplinary action being taken against Respondent including, but not necessarily limited to, revocation, suspension, or probation of the above mentioned insurance producer license and/or the assessment of additional civil penalties. Failure to timely make any payment shall render all remaining payments under this Consent Order immediately due and collectible. Respondent may make any additional payments before the above mentioned due

dates. If this additional payment is received by the Tennessee Department of Commerce and Insurance and is in excess of the above mentioned amount(s) and scheduled payment date(s), such payment shall be considered payment for any subsequent scheduled payment date(s).

5. A payment shall be considered timely made if it was **received** by the Tennessee Department of Commerce and Insurance within seven (7) calendar days of the date such payment is due. All payments shall include a copy of the first page of this Order and shall be made out to "State of Tennessee." All payments shall be mailed to the following address:

Tennessee Department of Commerce and Insurance
Legal Division
Davy Crockett Tower
500 James Robertson Parkway
Nashville, TN 37243

6. 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 six through 31 above. However, this Consent Order shall in no way preclude a third party or other authority from pursuing civil remedies or criminal action against Respondent which may otherwise be available.

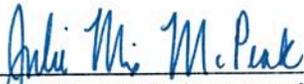
7. This Consent Order is in the public interest and in the best interest of the parties, represents a compromise and settlement of the controversy between the parties, and is for settlement purposes only. By signature affixed below, Respondent states that he has: (1) freely agreed to the entry of this Consent Order; (2) had the opportunity to effectively consult with legal counsel in this matter; (3) reviewed the Findings of Fact and Conclusions of Law contained herein; and (4) waived his right to a hearing on the matters underlying this Consent Order.

Respondent further states that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof with regard to this Consent Order.

By signing this Consent Order, the parties affirm their agreement to be bound by the terms of this Consent Order and confirm that no promises or offers relating to the circumstances described herein, other than the terms of the settlement set forth in this Consent Order, are binding upon them.

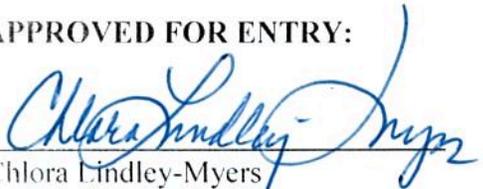
IT IS SO ORDERED.

ENTERED this the 16th day of October, 2013.

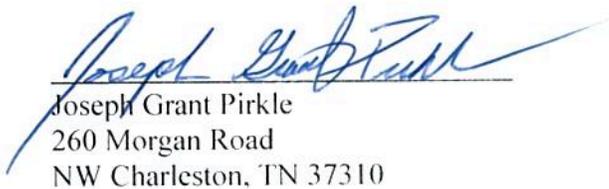


Julie Mix McPeak, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:



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