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May 19, 2015

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RE: In the Matter of: Corporate Moving Specialists, LLC and Hartford Underwriters Insurance Company
Docket No. 12.28-129841A

Enclosed is an order rendered in the above-styled cause of action.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

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TN POLICY ANALYSIS SECTION

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

IN THE MATTER OF: **CORPORATE MOVING SPECIALISTS, LLC,** **APPELLANT/PETITIONER,** **and** **HARTFORD UNDERWRITERS INSURANCE COMPANY** **APPELLEE/RESPONDENT**	**Doc. No.:12.28-129841A** **Workers Compensation Insurance Rate Appeal**

ORDER GRANTING RESPONDENT HARTFORD'S MOTION TO DISMISS CORPORATE MOVING SPEICALISTS, LLC'S APPEAL

Pending before the undersigned is Appellee/Respondent Hartford Underwriter's Insurance Company (hereinafter "Hartford") "Motion to Dismiss" the Workers' Compensation Insurance Rate Appeal filed by Appellant Corporate Moving Specialists, LLC, (hereinafter "CMS".) Appellant CMS did not file a response to Respondent Travelers' "Motion to Dismiss." A telephone conference call was held on April 30, 2015 to hear argument on the motion. Conference call participants included the undersigned, Ben Rose, Esq., on behalf of Hartford, and Landon Jones, CPA, on behalf of CMS.

Respondent Hartford filed its "Motion to Dismiss" on April 22, 2015. Pursuant to TENN. COMP. R. & REG. 1360-04-01-.09(3), a party may file a written response to a motion, provided that the written response is filed within seven (7) days of the date the motion was filed.

STATEMENT OF FACTS

On December 23, 2014, Ms. Kim Zersen with AON ("Plan Administrator") denied CMS's appeal regarding a premium Hartford claimed was owed in the amount of $57,669.57 pursuant to the terms of an assigned risk workers' compensation insurance policy issued by Hartford under the Tennessee Workers' Compensation Insurance Plan ("TWCIP").

The Plan Administrator's ruling concluded by stating, "If you would like to continue to dispute this matter, you will need to file a formal appeal to the Commissioner, through Mike Shinnick, ***according to the procedures outlined in the Bulletin attached. See the paragraph titled 'Procedure for Appealing to the Commissioner for review' on the second page."*** A copy of the August 26, 2005, Bulletin ("Bulletin") issued by the Tennessee Department of Commerce and Insurance ("Department") was enclosed with the ruling.

As provided in Tenn. Code Ann. § 56-5-309(b) and further explained in the Bulletin, an appeal to the Department is timely only ***if*** the appeal is made in writing "within thirty (30) days after the decision is made by the . . . Plan Administrator . . ." In this particular matter, CMS was required to file a valid appeal in writing on or before January 23, 2015.

Tenn. Code Ann. § 56-5- 309(b) provides, in pertinent part, as follows:

> Every insurer and rate service organization shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard on written request to review the manner in which the rating system has been applied in connection with the insurance afforded. If the insurer fails to grant or reject the request within thirty (30) days, the applicant may proceed in the same manner as if the application had been rejected. Any party affected by the action of the insurer on the request may, within thirty (30) days after written notice of the action, appeal to the commissioner who, after a hearing held upon not less than ten (10) days' written notice to the appellant and to the insurer, may affirm, modify, or reverse such action.

In a letter written by CMS's accountant, Mr. Landon Jones, CPA, which was filed with the Department on January 21, 2015, CMS attempted to perfect such an appeal to the Department.

RELEVANT LAW AND ANALYSIS

CMS is a Tennessee limited liability company in good standing with the Department of State, Division of Business Services. As a formal corporate entity, CMS cannot be represented by its accountant, Mr. Jones, pro se in these proceedings. *See* Rule 1360-4-1.08 ("A party to a contested case hearing may not be represented by a non-attorney, except in any situation where federal law so requires or state law specifically so permits.") *See also* Tennessee Environmental Council, Inc. v. Tennessee Water Quality Control Board, (In re: Tosh Farms), 254 S.W.3d 396 (Tenn. Ct. App. 2007); In re Cumberland Yacht Harbor, 2007 WL 2827470 (Sept. 27, 2007); and, Old Hickory Engineering & Machine v. Henry, 937 S.W.2d 782 (Tenn. 1996).

In Tosh Farms, the Court stated "we have determined that a non-attorney may not participate as the representative of a corporation if doing so requires the non-attorney to exercise the professional judgment of an attorney." Tosh Farms at 400. Like filing a Petition for Declaratory Judgment or a Complaint, the attempt to file a Notice of Appeal in a contested case such as this one necessarily requires the professional judgment of a lawyer. Old Hickory Engineering & Machine v. Henry, 937 S.W.2d 782, 787 (Tenn. 1996) (citing Petition of Burson, 909 S.W.2d 768, 776 (Tenn. 1995)). *See also* Legens v. Marshall, 2004 WL 442903 (Mar. 9, 2004).

Appellee/Respondent Hartford is correct that the appeal in this case was not properly filed pursuant to the procedure set forth by the Tennessee Department of Commerce and Insurance. An "appeal" was filed by the Petitioner's accountant. Respectfully, unless the

Petitioner's accountant is an attorney, he could not lawfully file the "appeal" on behalf of Appellant/Petitioner CMS. Based upon the foregoing, the only "appeal" lodged by CMS in this matter was attempted through its accountant, Mr. Jones, which is not allowed under Tennessee law. CMS was required to file an appeal through legal counsel on or before January 23, 2015, or 30 days from the Plan Administrator's ruling on December 23, 2014. No such appeal was timely lodged by an attorney as of January 23, 2015, or even as of this writing. Thus, this appeal must be dismissed and Hartford's premium determination affirmed.

Appellant/Petitioner CMS's worker's compensation rate appeal is DISMISSED. Petitioner/Appellant is ORDERED to pay the amount in dispute, $57,669.57, to Respondent Hartford within thirty (30) days.

It is so ordered.

This order entered and effective this 19th day of May, 2015.

Rob Wilson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 19th day of MAY 2015.

J. Richard Collier

J. Richard Collier, Director
Administrative Procedures Division