082 1960

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

TENNESSEE INSURANCE DIVISION, **Petitioner,**	)	
vs.	)	**No.: 09-038**
CORY LAMONT FLEMING, SENIOR **Respondent.**	)	

CONSENT ORDER

The Insurance Division of the Department of Commerce and Insurance of the State of Tennessee (the "Division") and Cory Lamont Fleming, Senior ("Respondent") hereby stipulate and agree, subject to the approval of the Commissioner 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 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 acts 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 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 of Tennessee whose residence is 2507 Moore Way, LaVergne, Tennessee 37086. Respondent has been licensed by the Division to sell insurance in the State of Tennessee, having been issued license number 821960 in January 2000.

4. Respondent sold preneed insurance policies issued by National Guardian Life Insurance Company ("NGL") to clients of Dennis Funeral Home, located at 2214 Whites Creek Pike, Nashville, Tennessee.

5. From April 2008, through October 2008, Respondent submitted thirty-seven (37) applications for insurance policies to NGL, thirty-six (36) of which were prepared by Respondent solely for the purpose of generating commissions and did not represent valid insurance transactions. Respondent submitted names of clients of Dennis Funeral Home without their knowledge or permission, used fictitious Social Security account numbers and, in one instance, submitted an application for insurance on behalf of a person who was deceased. To avoid disclosure of the acts, Respondent provided the address information of Dennis Funeral Home in place of that of the named policyholders on the applications to ensure that notices and other correspondence from the insurer would be sent to the Respondent, rather than to the policyholders.

6. In a letter to the Division dated February 19, 2009, Jerie A. Olson, NGL Compliance Officer, stated that Respondent received thirty-one thousand four hundred sixty-seven dollars and five cents ($31,467.05) which was paid to him in commissions based on fraudulent applications that, as of the date of the letter, were not repaid.

7. On his January 2002 application for a Tennessee resident insurance producer license, Respondent answered "no" in response to the following question: "Have you ever been convicted of any misdemeanor or felony or are there now pending any criminal proceedings against you?" Respondent was, however, convicted of driving under the influence in 1999, for which he was sentenced to two (2) year probation (constituting a felony).

8. In a sworn statement provided to Division investigators on February 19, 2009 Respondent admitted that he prepared and submitted applications for preneed insurance policies using the names of clients of Dennis Funeral Home and that, at least in some instances: (a) submitted applications without the knowledge or permission of the named policyholders; (b)

changed addresses on the applications of the named policyholders to ensure that all notices and correspondence from the insurer, NGL, would be sent to Dennis Funeral Home rather than the named policyholders; (c) paid the initial premium due on policies in order to place insurance policies and generate commissions paid to Respondent; and (d) engaged in other fraudulent and dishonest acts in the business of insurance. Respondent further stated to Division investigators that he wished to voluntarily surrender his Tennessee insurance producer license.

CONCLUSIONS OF LAW

1. TENN. CODE ANN. § 56-6-112(a) provides, in pertinent part:

> The 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:
>
> (1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;
>
> (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;
>
> ***
>
> (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
>
> ***
>
> (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(a) provides, in pertinent part, as follows:

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 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)(1), (2), (4), (5), (7), and (8); and § 56-53-103(a)(1) and (3). Therefore, Respondent is subject to sanctions set forth in TENN. CODE ANN. §56-6-112(a) and §56-6-112(e).

5. Respondent hereby admits to all Findings of Fact stated in paragraphs 1-8, above, understands that such Findings subject him to sanctions pursuant to TENN. CODE ANN. § 56-6-112, and acknowledges the Commissioner's authority to administer the Law, concedes that the Commissioner's interpretation of the statutes cited herein, as set forth in the Conclusions of Law, is correct 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 Law and Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*, and acknowledgement 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, Cory Lamont Fleming, license numbered 821960, is hereby **REVOKED**. Respondent hereby agrees to 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 best interests of the parties, 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: (a) freely agreed to the entry of this Consent Order; (b) been advised of his right to legal counsel and afforded the opportunity to do so; (c) reviewed the Findings of Fact and Conclusions of Law contained herein; and (d) waived his right to a hearing on the matters set forth in such Findings

of Fact and Conclusions of Law herein. Respondent further states that no threat(s), inducement(s) or promise(s) of any kind have been made by the Commissioner or on the part of any agent or representative thereof or the Division with regard to this Consent Order.

In signing this Consent Order, each party affirms its agreement to be bound by its terms and avers that no promises or offers have been made other than those terms of settlement set forth herein.

SO ORDERED.

ENTERED this the 24th day of MARCH, 2009.

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

Cory Lamont Fleming, Senior

Dan Birdwell (BPR# 010743)
Assistant General Counsel for Insurance
Insurance Division
Department of Commerce and Insurance
Davy Crockett Tower, Second Floor
500 James Robertson Parkway
Nashville, Tennessee 37243