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

TENNESSEE INSURANCE DIVISION,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**APD No.: 12.01-129355J**
	)	**TID No.: 14-197**
ELIZABETH NICOLE SHORT,	)	
	)	
Respondent	)	

INITIAL ORDER

This matter was heard on May 14, 2015, in Nashville, Tennessee before the Honorable Michael Begley, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"). Kathleen Dixon, Assistant General Counsel, represented the Petitioner, the Tennessee Insurance Division ("Division"). Respondent was not present, nor was an attorney or other representative present on her behalf.

NOTICE OF DEFAULT

Petitioner moved for default based on failure of Respondent, or her representative, to appear at the scheduled hearing after receiving proper notice thereof. In support of the motion, Petitioner submitted: (1) a certified mail receipt showing that the Division's 320(c) Letter with attached the attached Proposed Notice of Hearing and Charges ("320(c) Letter") was sent to Respondent's most current known address on December 11, 2014; (2) a certified mail receipt showing that the 320(c) Letter was signed for on December 16, 2014, by an individual at that residence; (3) a certified mail receipt showing that the Notice of Hearing and Charges ("Notice")

was sent to Respondent's most current known address on December 29, 2014; (4) a certified mail receipt showing that such Notice was signed for on December 31, 2014, by an individual at that residence; (5) a unclaimed document, containing the Notice, mailed via certified mail to Respondent's address of record on January 5, 2015; (6) a returned document, containing the Notice, mailed via U.S. Mail, postage prepaid, to Respondent's address of record on January 5, 2015; (7) a certified mail receipt showing that the First Amended Notice of Hearing and Charges ("First Amended Notice") was sent to Respondent's address of record on April 6, 2015; (8) a refused document, containing the First Amended Notice, mailed via certified mail to Respondent's address of record on April 6, 2015; (9) a certified mail receipt showing that the First Amended Notice was sent to Respondent's address of record on April 6, 2015; and (10) a returned document, containing the First Amended Notice, mailed via U.S. Mail, postage prepaid, on April 6, 2015, containing a notation on it indicating Respondent does not reside at her address of record. Despite Respondent's failure to update her address of record, the Division made all reasonable attempts to discover Respondent's current address and effectuate service upon her at that residence.

The record indicates that service was legally sufficient in accordance with Tenn. Code Ann. §§ 4-5-307 and 56-6-112(f); and Tenn. Comp. R. & Regs. 1360-4-1-.06 and 1360-4-1-.15(c). The Respondent was held in **DEFAULT** and Petitioner was permitted to proceed on an uncontested basis.

INITIAL ORDER

The subject of this hearing was the proposed revocation of Respondent's Tennessee insurance producer license and entry of an order assessing civil penalties against Respondent for violations of Tennessee Code Annotated ("Tenn. Code Ann.") §§ 56-6-112(a)(2), (a)(4), (a)(6),

(a)(7), and (a)(8) and Tenn Code Ann. § 56-6-119(b). After consideration of the evidence, testimony, and entire record in this matter, it is determined that:

a. Respondent's insurance producer license is **REVOKED;**

b. Respondent be assessed a civil monetary penalty of **one-hundred thousand dollars ($100,000.00)** for knowing violations of Tenn. Code Ann. §§ 56-6-112(a)(2), (a)(4), (a)(6), (a)(7) and (a)(8) (2008) and Tenn. Code Ann. § 56-6-119(b); and

Respondent shall have **one year** from receipt of this Initial Order to pay the above mentioned civil monetary penalties plus the Division's litigation costs pursuant to Tennessee Rules of Civil Procedure ("TRCP") 54.04.

This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. 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 people.

2. Respondent is a citizen and resident in the state of Tennessee.

3. Respondent is licensed by the Division to sell insurance in this state as an insurance producer, having obtained said license, numbered 0909367, in 2005.

4. Respondent's insurance producer license is currently in active status with an expiration date of May 31, 2015.

5. From on or about June 2003 to on or about March 2013, Respondent worked as a Commercial Lines Customer Service Representative ("CSR") at Capital Risk Management ("CRM").

6. As a CSR at CRM, Respondent was tasked with receiving premium payments from customers.

7. In receiving and processing customer premium payments, Respondent was to: (1) obtain the payment by cash or check; (2) deposit the payment in the cash register; (3) give the customer a payment receipt; (4) enter the payment information on the designated "Cash Sheet;" (5) enter the payment information in the agency's computer accounting system ("AMS"); and (6) upload the premium payment to the insurance provider's website or send the check to the provider.

8. As a CSR at CRM, at the end of each day, Respondent was required to: (1) total out the cash register, which creates a tape listing the amounts deposited for each insurance provider throughout the business day; (2) attach the cash register tape to the "Cash Sheet;" (3) file the cash register tape and "Cash Sheet;" and (4) fill out a deposit slip for the business day's received payments to be deposited into CRM's sweep account.

9. During January 2013, approximately two thousand, one hundred forty-five dollars and sixty-seven cents ($2,145.67) in unspecified customer cash premium deposits were made to CRM's premium deposit account.

10. The approximate two thousand, one hundred forty-five dollars and sixty-seven cents ($2,145.67) in unspecified customer cash deposits related to the customer cash premium payments taken by Respondent during January 2013.

11. From on or about January 1, 2013, through on or about January 31, 2013, Respondent kept approximately five thousand, nine hundred seventy-seven dollars and nine cents ($5,977.09) of customer cash premium payments from CRM for her personal use.

12. During February 2013, approximately four thousand, six hundred twenty-one dollars and four cents ($4,621.04) in unspecified customer cash premium deposits were made to CRM's premium deposit account.

13. The approximate four thousand, six hundred twenty-one dollars and four cents ($4,621.04) in unspecified customer cash deposits related to the customer cash premium payments taken by Respondent during February 2013.

14. From on or about February 1, 2013, through on or about February 28, 2013, Respondent kept approximately four thousand, nine hundred ninety-three dollars and fifty-nine cents ($4,993.59) of customer cash premium payments from CRM for her personal use.

15. From on or about March 1, 2013, through on or about March 7, 2013, Respondent took approximately one thousand, eight hundred seventy dollars and eighty-two cents ($1,870.82) of customer cash premium payments from CRM for her personal use.

16. In sum, from on or about January 1, 2013, through on or about March 7, 2013, Respondent took approximately twelve thousand, eight hundred forty-one dollars and fifty cents ($12,841.50) of customer cash premium payments from CRM for her personal use.

17. Respondent resigned from CRM on or about March 7, 2013, after being confronted by Angie Wakefield ("Wakefield"), CRM's accountant, and Daryl Holt ("Holt"), owner of CRM, about irregularities in documentation of premium payments.

18. In an interview with Fraud Investigators at the Department, on or about July 15, 2013, Respondent admitted to stealing premium payments made in cash form from CRM for personal use, starting in December 2012 until March 2013.

19. In an interview with Fraud Investigators at the Department, on or about July 15, 2013, Respondent stated she stole cash premium payments from CRM for the purpose of paying her bills and rent.

20. On or about August 28, 2014, Respondent pled guilty to felony theft of property in the amount of ten thousand dollars ($10,000) to sixty thousand dollars ($60,000), a Class C

Felony, in Sumner County, Tennessee, for the aforementioned cash premiums payments she stole from CRM.

21. Upon information and belief, none of the aforementioned cash premium payment funds taken by Respondent have been repaid to CRM.

CONCLUSIONS OF LAW

1. In accordance with Tennessee Compilation Rules and Regulations 1360-4-1-.02(7), the Division bears the burden of proof in proving by a preponderance of the evidence that the facts alleged in the First Amended Notice of Charges are true and that the issues raised therein should be resolved in its favor.

2. At all times on or after July 1, 2011, Tenn. Code Ann. § 56-6-112(a) provided 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:

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> (2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;
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> . . . .
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> (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
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> (6) Having been convicted of a felony;
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> (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
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> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]"

3. At all times on or after July 1, 2011, Tenn. Code Ann. § 56-6-112(g) provided that: "[i]f, 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."

4. At all times on or after July 1, 2011, Tenn Code Ann. § 56-6-112(h) provided that: "[i]n determining the amount of penalty to assess under this section, the commissioner shall consider:

(1) Whether the person could reasonably have interpreted such person's actions to be in compliance with the obligations required by a statute, rule or order;

(2) Whether the amount imposed will be a substantial economic deterrent to the violator;

(3) The circumstances leading to the violation;

(4) The severity of the violation and the risk of harm to the public;

(5) The economic benefits gained by the violator as a result of noncompliance;

(6) The interest of the public; and

(7) The person's efforts to cure the violation."

5. At all times relevant hereto, Tenn. Code Ann. § 56-6-119(b) has provided that "[w]ithin thirty (30) days of the initial pretrial hearing date, a producer shall report to the commissioner any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents."

6. The Petitioner has met its burden of proof by a preponderance of the evidence that Respondent engaged in a total of **eighty-four (84)** violations of Tennessee insurance laws. The record shows that Respondent knowingly engaged in: **one (1)** violation of Tenn. Code Ann. § 56-6-112(a)(2) (2011); **thirty-eight (38)** violations of Tenn. Code Ann. § 56-6-112(a)(4) (2011); **one (1)** violation of Tenn. Code Ann. § 56-6-112(a)(6) (2011); **five (5)** violations of Tenn. Code Ann. § 56-6-112(a)(7) (2011); **thirty-eight (38)** violations of Tenn. Code Ann. § 56-6-112(a)(8) (2011); and **one (1)** violation of Tenn. Code Ann. § 56-6-119(b) (2002).

7. From on or about January 3, 2013, to on or about March 5, 2015, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2011) on multiple occasions by intentionally misappropriating cash premiums from her employer in the course of doing insurance business. This misappropriation, remaining uncured, constitutes a continuing violation pursuant to Tenn. Code Ann. § 56-6-112(g)(2).

8. From on or about January 3, 2013, to on or about March 5, 2015, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in violation of Tenn.

Code Ann. § 56-6-112(a)(8) (2011) by stealing multiple amounts of money on a number of different occasions from her employer.

9. On or about July 15, 2013, Respondent violated Tenn. Code Ann. § 56-6-112(a)(7) by having admitted to insurance fraud when she admitted to Division investigators that she stole cash premium payments from CRM for her personal use, from December 2012 to March 2013.

10. On or about August 28, 2014, Respondent violated Tenn. Code Ann. § 56-6-112(a)(6) by pleading guilty to felony theft of property in the amount of ten thousand dollars ($10,000) to sixty thousand dollars ($60,000), a Class C Felony, in Sumner County, Tennessee, for the aforementioned cash premium payments she stole from CRM.

11. On or about August 28, 2014, Respondent violated Tenn. Code Ann. § 56-6-112(a)(7) by being found to have committed insurance fraud, specifically, theft of property in the amount of ten thousand dollars ($10,000) to sixty thousand dollars ($60,000), a Class C Felony, in Sumner County, Tennessee, for the aforementioned cash premium payments she stole from CRM.

12. Respondent violated Tenn. Code Ann. § 56-6-119(b) by failing to report to the Division within thirty (30) days of her initial pretrial hearing date the criminal prosecution associated with the felony theft of property in the amount of ten thousand dollars ($10,000) to sixty thousand dollars ($60,000) charges brought against her in Sumner County, Tennessee.

13. Respondent violated Tenn. Code Ann. § 56-6-112(a)(2) by violating Tenn. Code Ann. § 56-6-119(b).

It is therefore **ORDERED** that the insurance producer license of Respondent Elizabeth Nicole Short, numbered 0909367, be **REVOKED**, and that the Respondent pay a total civil

monetary penalty of **one hundred thousand dollars ($100,000)** plus the Division's litigation costs pursuant to TRCP 54.04. This penalty is assessed as follows:

1. One thousand dollars ($1,000.00) for each violation and continuing violation of §§ 56-6-112(a)(2), 56-6-112(a)(4), 56-6-112(a)(6), 56-6-112(a)(7), 56-6-112(a)(8), and Tenn. Code Ann. § 56-6-119(b) as described in the Conclusions of Law annotated in paragraphs one through ninety of this Order for a total of one hundred thousand dollars ($100,000.00).

Respondent shall have **one (1) year** from receipt of this Initial Order to pay the above mentioned civil monetary penalty plus the Division's litigation costs.

This Initial Order entered and effective this 14TH day of JULY, 2015.

Michael Begley
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 14TH day of JULY 2015.

J. Richard Collier

J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

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 Rosa L. Parks Avenue, Nashville, Tennessee, 37243-1102. (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.