072.5276

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

TENNESSEE INSURANCE DIVISION,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No.: 12.01-081908J
	)	
JAMES EDWARD BROOKS,	)	
	)	
Respondent.	)	

AGREED ORDER

WHEREAS, Petitioner, the Tennessee Insurance Division (hereinafter referred to as the "Division"), and the Respondent, James Edward Brooks (hereinafter referred to as the "Respondent"), hereby stipulate and agree, subject to the approval of the Commissioner of Commerce and Insurance (hereinafter referred to as the "Commissioner") as follows:

GENERAL STIPULATIONS

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

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

3. This Agreed Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Agreed Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Agreed

Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

4. Respondent fully understands that this Agreed Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Agreed 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 expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreed Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Agreed Order by the Commissioner.

FINDINGS OF FACT

6. The Tennessee Insurance Law, as amended, Tenn. Code Ann. §§ 56-1-101, *et seq.* (hereinafter referred to as the "Law"), places the responsibility for the administration of the Law on the Commissioner. The Insurance Division of the Department of Commerce and Insurance is the lawful agent through which the Commissioner discharges this responsibility.

7. The Respondent is a citizen and resident of the State of Tennessee, having an address of record and residing at 2710 Rest Camp Road, Lenoir City, Tennessee 37772.

8. At all times relevant the Respondent has had an insurance producer's license numbered 725276, issued December 10, 1991.

9. On January 31, 2000, a Consent Order (hereinafter referred to as the "Consent Order") was entered by the Commissioner, placing Respondent's insurance agent license in probationary status for a period of three (3) years from the date of the entry of the Order, assessing civil penalties, and declaring that the Respondent's insurance agent license shall be

revoked, should the Commissioner find the Respondent to be in violation of any provision of the Tennessee Insurance Law during the probationary period.

10. The Consent Order was based on findings of fact and conclusions of law that Respondent violated a law that prohibited an insurance agent from using, in the conduct of affairs under such license, fraudulent, coercive, or dishonest practices, or for being demonstrably incompetent, untrustworthy, or financially irresponsible. Specifically, the Consent Order found that the Respondent executed bank draft authorizations for a policyholder without her knowledge or consent.

11. On or about November 12, 2002, Respondent billed Superior Contractors, Knoxville, Tennessee in the amount of one thousand two hundred thirty-five dollars and ninety cents ($1,235.90) for a builder's risk policy on premises located at 130 Chahyga Way, Loudon, Tennessee, although the actual premium for the policy was only three hundred fifty dollars ($350.00). On or about November 25, 2002, Respondent received payment as billed. On or about May 29, 2003, Respondent refunded to Superior Contractors the overcharged amount of eight hundred eighty-five dollars and ninety cents ($885.90).

12. On or about November 12, 2002, Respondent billed Superior Contractors, Knoxville, Tennessee in the amount of one thousand three hundred ten dollars and twenty-four cents ($1,310.24) for a builder's risk policy on premises located at 172 Saloli Way, Loudon, Tennessee, when the actual premium for the policy was only three hundred fifty dollars ($350.00). On or about November 25, 2002, Respondent received payment as billed. On or about May 29, 2003, Respondent refunded to Superior Contractors the overcharged amount of nine hundred sixty dollars and twenty-four cents ($960.24).

13. On or about November 15, 2002, Respondent billed Superior Contractors, Knoxville, Tennessee in the amount of eight hundred ninety-seven dollars and twenty-four cents ($897.24) for a builder's risk policy on premises located at 300 Misty Ridge, Lenoir City, Tennessee, although the actual premium for the policy was only three hundred fifty dollars ($350.00). On or about November 25, 2002, Respondent received payment as billed. On or about May 29, 2003, Respondent refunded to Superior Contractors the overcharged amount of five hundred forty-seven dollars and twenty-four cents ($547.24).

14. On or about November 19, 2002, Respondent billed Superior Contractors of Knoxville, Tennessee in the amount of six hundred eighty-one dollars and forty-five cents ($681.45) for a builder's risk policy on premises located at 416 Huxley, Knoxville, Tennessee, although the actual premium for the policy was only three hundred ninety dollars ($390.00). On or about December 17, 2002, Respondent received payment as billed. On or about June 2, 2003, Respondent refunded to Superior Contractors the overcharged amount of two hundred ninety-one dollars and forty-five cents ($291.45).

15. On or about November 21, 2002, Respondent billed Superior Contractors of Knoxville, Tennessee in the amount of eight hundred ninety-seven dollars and twenty-four cents ($897.24) for a builder's risk policy on premises located at 200 Misty Ridge Road, Lenoir City, Tennessee, although the actual premium for the policy was only three hundred fifty-dollars ($350.00). On or about November 25, 2002, Respondent received payment as billed. On or about May 29, 2003, Respondent refunded to Superior Contractors the overcharged amount of five hundred forty-seven dollars and twenty-four cents ($547.24).

16. On or about November 21, 2002, Respondent billed Superior Contractors of Knoxville, Tennessee in the amount of seven hundred fifty-one dollars and sixty-six cents

($751.66) for a builder's risk policy on premises located at 1423 Andrea Drive, Maryville, Tennessee, although the actual premium for the policy was only three hundred fifty dollars ($350.00). On or about November 25, 2002, Respondent received payment as billed. On or about May 29, 2003, Respondent refunded to Superior Contractors the overcharged amount of four hundred one dollars and sixty-six cents ($401.66).

17. On or about December 17, 2002, Respondent billed Superior Contractors of Knoxville, Tennessee in the amount of two thousand six hundred ninety-one dollars ($2,691.00) for a builder's risk policy on premises located at 400 – 500 – 1400 Misty Ridge Road, Lenoir City, Tennessee, although the actual premium for the policy was only five hundred fifty-eight dollars ($558.00). On or about January 22, 2003, Respondent received payment as billed. On or about June 2, 2003, Respondent refunded to Superior Contractors the overcharged amount of two thousand one hundred thirty-three dollars ($2,133.00).

CONCLUSIONS OF LAW

18. Tenn. Code Ann. § 56-6-112(a)(8) provides, in pertinent part, that the Commissioner may revoke a license issued under this part, or may levy a civil penalty in accordance with subsection (e), or take any combination of such actions, if she finds that a licensee has demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

19. Based upon the Findings of Fact cited above, the Commissioner finds the Respondent demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in this state when he improperly withheld funds he received from a policyholder for insurance. Such facts constitute grounds for an order revoking Respondent's license pursuant to Tenn. Code Ann. § 56-6-112(a)(8) and assessing civil penalties in accordance with Tenn. Code

Ann. § 56-6-112(e).

20. Tenn. Code Ann. § 56-6-112(a)(2) provides, in pertinent part, that Commissioner may revoke a license issued under this part, or may levy a civil penalty in accordance with subsection (e), or take any combination of such actions, if she finds that a licensee has violated any law, rule, regulation, subpoena or order of the Commissioner.

21. Based upon the Findings of Fact cited above, the Commissioner finds that Respondent violated an order of the Commissioner when he improperly withheld, misappropriated and converted moneys he received from a policyholder for insurance policies during the probationary period, and that such facts demonstrate grounds for an order revoking the Respondent's license in accordance with Tenn. Code Ann. § 56-6-112(a)(2) and assessing civil penalties in accordance with Tenn. Code Ann. § 56-6-112(e).

22. Tenn. Code Ann. § 56-6-112(a)(4) provides, in pertinent part, that Commissioner may revoke a license issued under this part, or may levy a civil penalty in accordance with subsection (e), or take any combination of such actions, if she finds that a licensee has improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business.

23. Based upon the Findings of Fact cited above, the Commissioner finds that Respondent improperly withheld, misappropriated and converted money he received in the course of doing insurance business and that such facts demonstrate grounds for an order revoking the Respondent's license in accordance with Tenn. Code Ann. § 56-6-112(a)(4) and assessing civil penalties in accordance with Tenn. Code Ann. § 56-6-112(e).

24. The Respondent admits to the Findings of Fact, above, and further admits that such findings subject him to sanctions pursuant to Tenn. Code Ann. § 56-6-112. The Respondent

further admits that the Conclusions of Law, above, are fair and reasonable. In order to avoid any further expenses or costs associated with litigating this matter, the Respondent hereby desires to enter into this Agreed Order.

ORDER

NOW THEREFORE, on the basis of the foregoing, and the waiver of the Respondent of his rights to a hearing and appeal under Tennessee Insurance Law and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101, *et seq.*, and the admission by the Respondent of the jurisdiction of the Commissioner, the Commissioner finds that the Respondent has agreed to the entry of this Order and that this Order is appropriate and in the public interest.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 56-6-112 of the Tennessee Insurance Law, that:

1. The insurance producer license, numbered 725276, held by the Respondent, James Edward Brooks, is hereby **REVOKED**, and

2. The Respondent, James Edward Brooks, shall pay to the Commissioner of the Tennessee Department of Commerce and Insurance a **CIVIL PENALTY** in the total amount of **Two Thousand Dollars ($2,000)** as the sole and exclusive penalty for the violation of Tenn. Code Ann. § 56-6-112. Said amount is to be paid within thirty (30) days of the entry of this Order.

This Agreed Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signature affixed below, James Edward Brooks, affirmatively states that he has freely agreed to the entry of this Agreed Order, that he has been advised that he may consult legal counsel in this matter, and has had the opportunity to consult with legal counsel, that he waives his right to a hearing on the matters underlying this Agreed Order, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof.

The parties, by signing this Agreed Order, affirmatively state their agreement to be bound by the terms of this Agreed Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Agreed Order, are binding upon them.

SO ORDERED.

ENTERED this the 28th day of October, 2006.

Paula A. Flowers

Paula A. Flowers, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

Larry C. Knight, Jr.
Assistant Commissioner for Insurance
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James Edward Brooks
Respondent

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