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

TENNESSEE INSURANCE DIVISION	)	
Petitioner,	)	
	)	**No. 12.01-116917J**
vs.	)	
	)	
JOHN PORTER FRANKLIN, JR.	)	
Respondent.	)	

FINAL ORDER

Respondent, John Porter Franklin, Jr., commenced this appeal of the Initial Order entered by Steve R. Darnell, Administrative Law Judge within the Department of State, Administrative Procedures Division, on March 19, 2013. The March 4, 2013 Initial Order held that Petitioner, the Tennessee Insurance Division, had proven by a preponderance of the evidence that Respondent was convicted of a felony involving dishonesty. The Order also held that Respondent's insurance producer license should be revoked, a civil penalty in the amount of $1,000.00 assessed, and Respondent required to pay Petitioner's cost of prosecuting the case.

The Administrative Law Judge found that, in May 2009, Respondent pled guilty in the United States District Court for the Eastern District of Tennessee to one (1) count of conspiracy to obstruct justice, a ground for discipline pursuant to TENN. CODE ANN. § 56-6-112(a)(6).

In accordance with a Scheduling Order entered on April 25, 2013, the parties submitted briefs in support of, and in opposition to, this appeal.

Upon careful review of the record in this matter and due consideration of the briefs filed by the parties, the following findings are made:

FINDINGS OF FACT

1. The Findings of Fact 1-17 of the Initial Order are adopted and an additional Finding of Fact is made:

2. Although Respondent allowed his license to expire on February 12, 2012, this action did not render the revocation of his license moot.

CONCLUSIONS OF LAW

1. The Conclusions of Law 1-6 of the Initial Order are adopted and the additional Conclusions of Law are made:

2. A case becomes 'moot' when 'by an act of the parties, or a subsequent law, the existing controversy has come to an end . . . and a court [or an administrative agency] is not empowered to declare . . . principles or rules of law which cannot affect the result as to the thing in issue in the case before it . . . a controversy is moot when a court cannot render an effective decree responsive to the complaint . . . because there is 'no longer a subject matter on which the judgment can operate." *Caldwell v. Craighead, 432 F.2d 213, (6th Cir. 1970)*. A 'moot case' has also been defined as follows: 'a case is 'moot' when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy,' or, 'when it no longer presents a justifiable controversy because the issues involved have become academic or dead.' Black's Law Dictionary, 5th Edition, 1979.

3. TENN. CODE ANN. § 56-6-107(d) provides:

> An insurance producer who allows the license to lapse, may within twelve (12) months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination;...

4. Although Respondent chose to allow his license to lapse, his property interest in the license continued to exist for up to twelve (12) months from the date of lapse.

5. TENN. CODE ANN. § 56-6-112(e) provides:

> The commissioner shall retain the authority to enforce this part and impose any penalty or remedy authorized by this part and this title against any person who is under investigation for or charged with a violation of this part or this title, even if the person's license has been surrendered or has lapsed by operation of law.

5. The ALJ erred by finding that the revocation of Respondent's license was moot. By statute, Petitioner's regulatory interest in Respondent's conduct and license was preserved and remained viable because Petitioner was conducting an investigation at the time Respondent decided to allow his license to lapse. Under these circumstances, an insurance producer cannot avoid regulatory consequences by choosing to allow his license to lapse because he knows of an ongoing investigation.

6. The ALJ did not err by referencing TENN. CODE ANN. § 56-53-106(b)(1) and 18 U.S.C. § 1033(e)(2) in the Initial Order. There is nothing in the record to indicate that the ALJ considered these statutory provisions while hearing this action and determining the appropriate discipline to be assessed.

7. "An arbitrary decision is one that is not based on any course of reasoning or exercise of judgment, or one that disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion." *Mosley v. Tennessee Dept. of Commerce and Ins., 167 S.W.3d 308, 318 (2004).*

8. The discipline assessed in the Initial Order is not arbitrary and capricious. Rather

the egregiousness of Respondent's conduct and the public interest provide appropriate basis for the discipline. None of the case examples proffered by Respondent involved licensees against whom enforcement actions were initiated based on felony convictions. Consequently, the cases are not comparable to Respondent's case.

ORDER

The citizens of Tennessee are entitled to expect and trust in the honesty and law abiding conduct of the individuals authorized to engage in the business of insurance in this state. The acts of Respondent as set forth above require action on the part of the Department of Commerce and Insurance in order to protect the public interest.

WHEREFORE, it is hereby **ORDERED AND ADJUDGED** the Respondent's insurance producer license is **REVOKED**. It is also **ORDERED** that a **CIVIL PENALTY** be assessed in the amount of **ONE THOUSAND DOLLARS ($1,000.00)**, and that the costs of this action be assessed. This Final Order is made pursuant to TENN. CODE ANN. §4-5-313 and marks the disposition of this matter.

NOTICE OF RECONSIDERATION AND APPEAL PROCEDURES

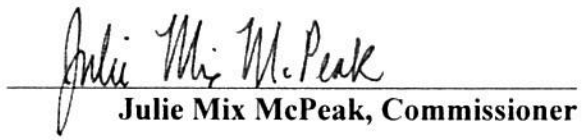
Within fifteen (15) days after the Final Order is entered, a party may file a Petition for Reconsideration of the Final Order with the Commissioner of Commerce and Insurance, in which the Petition shall state the specific reasons why the Final Order was in error. If no action is taken by the Commissioner of Commerce and Insurance within twenty (20) days of filing of the Petition for Reconsideration, the Petition is deemed denied. TENN. CODE ANN. § 4-5-317.

A party 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 Davidson County Chancery

Court within sixty (60) days after the entry of the 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 for Reconsideration. The filing of a Petition for Reconsideration does not itself act to extend the sixty (60) day period, if the petition is not granted. A reviewing court also may order a stay of the Final Order upon appropriate terms. TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

IT IS SO ORDERED.

This 10th **day of** September**, 2013.**



Julie Mix McPeak, Commissioner