STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE INSURANCE DIVISION,	)		
Petitioner,	)		
	)		
vs.	)	**APD No.:**	**12.04-135071J**
	)	**TID No.:**	**15-099**
RANDALL TODD GREGORY,	)		
Respondent.	)		

INITIAL ORDER

This matter was heard on April 11, 2016, 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"). James R. Witham, Assistant General Counsel, represented Petitioner, the Tennessee Insurance Division ("Division"), in this matter. Respondent, Randall Todd Gregory, did not have counsel present and represented himself.

SUMMARY OF DETERMINATION

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)(7), and (a)(8). After consideration of the evidence, testimony, and entire record in this matter, it is determined that:

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

b. Respondent be assessed a total civil monetary penalty of **thirty-nine thousand five hundred and ninety-nine dollars and seventeen cents ($39,599.17)** for one hundred five (105) violations of Tenn. Code Ann. §§ 56-6-112(a)(2), (a)(7), and (a)(8) (2011), **plus court reporter costs.**

Respondent shall have **twelve (12) months** from receipt of this Initial Order to pay the above mentioned civil monetary penalty plus the Division's court reporter costs pursuant to Tennessee Rules of Civil Procedure ("Tenn R. Civ. P.") 54.04. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Title 56 of Tenn. Code Ann. §§ 56-1-202 and 56-6-112 (the "Law"), places the responsibility of the administration of the Law on the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

2. The Commissioner administers the Law through the Division and authorized the Division to bring this action for the protection of the public.

3. Respondent is a licensee of the Division and is responsible for being compliant with the insurance laws and regulations of the State of Tennessee.

4. Respondent, at all relevant times, held a Tennessee insurance producer license, number 0666542.

5. Respondent resides at 1207 Choctaw Trail, Brentwood, Tennessee 37027.

6. Respondent served as the Secretary of the Treasury for the Tennessee Association of Health Underwriters ("TNAHU") from July 2007 until his forced resignation in January 2015.

7. TNAHU is a non-profit organization of volunteers that are committed to informing Tennessee consumers and insurance producers about applicable Tennessee insurance regulations and best industry practices.

8. While Respondent was treasurer for TNAHU, he was the only person with access to the association's bank account and financial records.

9. The members of TNAHU entrusted Respondent with the responsibility of properly accounting for funds within TNAHU's account.

10. As treasurer, Respondent was responsible for the accounting of TNAHU funds and for accurately conveying the organization's finances through financial reports at board meetings.

11. TNAHU depended upon Respondent's financial reports so that it could conduct business and serve the better interests of Tennessee consumers and insurance producers.

12. From February 23, 2011, to November 28, 2014, Respondent knowingly omitted financial information and gave false financial reports for the purpose of defrauding TNAHU of its money for Respondent's own personal use.

13. From February 23, 2011, to November 28, 2014, Respondent wrote unauthorized checks to himself from the TNAHU account and used the TNAHU check card for his own personal use.

14. From February 23, 2011, to November 28, 2014, Respondent knowingly engaged in one hundred five (105) unauthorized transactions resulting in the fraudulent misappropriation of TNAHU funds for his own personal use.

15. These funds were supposed to be used for TNAHU related business activities.

16. Respondent violated his fiduciary duty to TNAHU by taking its funds without authorization for his own personal use.

17. In January 2015, Ms. Darlene Tucker, President of the Board of TNAHU, discovered that Respondent had been embezzling thousands of dollars from the association from February 23, 2011, to November 28, 2014.

18. On January 9, 2015, Respondent was confronted by the Board of TNAHU for embezzling eleven thousand dollars ($11,000) in unauthorized expenses. That same day, Respondent admitted to taking the eleven thousand dollars ($11,000).

19. On January 25, 2015, Respondent emailed Ms. Tucker and admitted that he had knowingly taken a grand total of thirty-nine thousand five hundred ninety-nine dollars and seventeen cents ($39,599.17) from TNAHU's account without authorization and used it for his own personal use and enjoyment.

20. During the Division's investigation, Respondent admitted that he wrongfully took the money for his own personal use.

21. Respondent's wrongful actions caused severe harm to the reputation of TNAHU which likely resulted financial hardship due to the loss of sponsorships for TNAHU programs.

CONCLUSIONS OF LAW

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

2. At all times relevant hereto, Tenn. Code Ann. § 56-6-112(a) has provided that the

Commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license issued under Title 56, Part 6, Chapter 1, or issue a civil penalty for the following reasons:

....

(2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;

....

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud; [and,]

(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. For all violations occurring on or after July 1, 2011, Tenn. Code Ann. § 56-6-112 (2011) states:

....

(e) 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.

....

(g) If . . . 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.

(h) In 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.

4. Petitioner has met its burden of proof by a preponderance of the evidence that from February 23, 2011, to November 28, 2014, Respondent engaged in one hundred five (105) violations of Tennessee insurance laws.

5. From February 23, 2011, to November 28, 2014, Respondent knowingly engaged in one hundred five (105) violations of Tenn. Code Ann. §§ 56-6-112(a)(2), (a)(7), and (a)(8) (2011) when he took various amounts of money for his own personal use on one hundred five (105) separate occasions from TNAHU's account.

6. From February 23, 2011, to November 28, 2014, Respondent violated Tenn. Code Ann. §§ 56-6-112(a)(2), (a)(7), and (a)(8) (2011) by fraudulently taking a total of thirty-nine

thousand five hundred ninety-nine dollars and seventeen cents ($39,599.17) from TNAHU's account without authorization and using it for his own personal use.

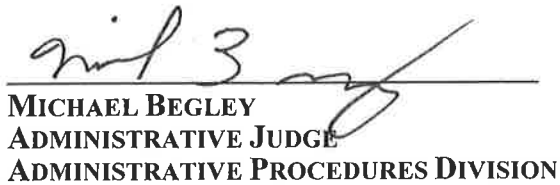
7. Respondent's actions were fraudulent, dishonest, untrustworthy, and financially irresponsible in the conduct of business in Tennessee.

It is therefore **ORDERED** that the insurance producer license of Respondent Randall Todd Gregory, numbered 0666542, be **REVOKED**, and that the Respondent pay a total civil monetary penalty of **thirty-nine thousand five hundred and ninety-nine dollars and seventeen cents ($39,599.17)** plus the Division's court reporter costs pursuant to Tenn R. Civ. P. 54.04. This amount is **intended as a penalty and shall be paid in addition to the $39,599.17 that has already been paid in restitution.**

Respondent shall have twelve (12) months from receipt of this Initial Order to pay the above mentioned civil monetary penalty plus the Division's court reporter costs.

It is so ORDERED.

This INITIAL ORDER entered and effective this the 15th day of JUNE, 2016.



MICHAEL BEGLEY
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 1st day of JUNE 2016.

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.