

BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

TENNESSEE INSURANCE DIVISION,
Petitioner,

DOCKET NO: 12.01-095562J

Vs.

DOUGLASS WAYNE SMITH,
Respondent.

INITIAL ORDER

This matter was heard on June 19, 2007, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Commerce and Insurance. Attorney Bruce Poag with the Department of Commerce and Insurance represent the State. The Petitioner was present and proceeded *pro se*.

After consideration of the record, the testimony of witnesses, and the arguments of the parties, it is determined that Respondent's insurance producer's license should be revoked. This determination is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent is 56 years old. He holds insurance producer's license number 616360. Respondent has been licensed to sale insurance since 1971. He has also been licensed to sale real estate in the past having a Tennessee real estate license for approximately 26 years. Respondent completed high school and has approximately two years of college.
2. Respondent currently only writes policies with United Home Life and Chesapeake Life Insurance Co. He infrequently writes new policies. He does have many policies that he has produced over the years and continues to service that pay him commissions. He works mainly

from his home and is involved in other business activities for income. He does have an office where he can meet clients if needed. He does not handle any money from his clients. Clients are bill directly by the insurance companies and the companies in turn pay Respondent his commission.

3. Respondent has never been convicted of a criminal offense other than the convictions which are the basis of this action. Respondent has never been subject to disciplinary action on either his insurance or real estate license. Respondent's real estate license has previously been revoked in relation to these convictions.

4. Respondent became involved in a business preparing tax returns in Memphis. At first he was in an association with another man who was an accountant. This gentleman left the business, and Respondent continued the business on his own. In total, Respondent was involved in the tax return filing business for two years. Respondent received \$40 on average for preparing federal tax returns.

5. Respondent prepared for filing approximately 100 federal income tax returns in which the clients received fraudulent tax credits. All of these returns were filed over a two month period. It is Respondent's position that the returns were prepared from information provided by the client and he had no knowledge that the information was false. There is no proof that Respondent received any additional compensation other than his normal \$40 fee for preparing these particular returns.

6. Respondent did not provide tax advice to his clients. He merely took the information provided by his clients and placed it into proper form to file with the IRS. He did not take steps to confirm the data supplied, nor did he believe it was his obligation to confirm the data provided.

7. Respondent did become concerned with the number of his clients wishing to claim the credit and stopped preparing returns that sought the credit. He took this action on his own accord presumably out of fear of illegal conduct on his behalf.

8. The IRS took notice of the large number of returns prepared by Respondent that claimed the credit and began a criminal investigation of him. Some of Respondent's clients were contacted and interviewed. These clients in turn notified Respondent. Respondent provided his clients false information and documentation to provide the IRS investigators in an attempt to cover up his role in preparing the returns.

9. Ultimately, Respondent pled guilty to two federal felonies in the United States District Court for the Western District of Tennessee in Memphis. Respondent pled guilty to "filing fraudulent claims with a government" in violation of 18 U.S.C. 287, and "agency, and aiding and abetting" in violation of 18 U.S.C. 2 on October 29, 2001.

10. In sentencing him for his conduct, the judge found Respondent's was guilty of "obstruction of justice" by providing his former clients false information and documentation to cover up his conduct. This qualified Respondent for different treatment under the sentencing guidelines.

11. Respondent was sentenced and served 12 months in a federal facility. He was on probation for three years after his release. He was also ordered to repay the IRS restitution not to exceed \$94,373.00. This amount will be adjusted downwards if the IRS recovers any money from Respondent's former clients.

12. Respondent undertook to report his convictions to the Department of Commerce and Insurance shortly after his guilty plea. It is unclear what happened, but for some reason the

Department did not move to revoke Respondent's license until 2007, when he attempted to secure a statement from the Department indicating that it knew of his conduct. This issue does not affect the outcome of this matter.

CONCLUSIONS OF LAW

1. The Department has the burden to introduce evidence that would by a preponderance of the evidence prove the issues should be resolved in its favor. Rule 1360-4-1-

.02.

2. T.C.A. §56-6-112 provides in part as follows:

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 subsection (e) or take any combination of such actions, for any one or more of the following causes:

(1) - (5).....

(6) Having been convicted of a felony.

ANALYSIS AND DISCUSSION

The statute noted above allows for probation, suspension or revocation of Respondent's insurance license. It is Respondent's position that he should be punished with something less than revocation of his license. Respondent does not assert that he is innocent in his conduct that led to his convictions, but he does takes the position that he did not willingly or knowingly take part in the illegal activities.

Respondent's argument is contrary to his actions. Firstly, although there is no proof that he benefited from the \$70,000 to \$95,000 (approximately) that the IRS was defrauded of, the proof is clear that he filed at least 100 of these claims and received compensation from each of them. Presumably these patrons came to him for his willingness to prepare the documents without inquiry as to the validity of the information. Secondly, once Respondent realized he was

producing a large number of these returns he stopped on his own. This indicates that he at least felt some uneasiness as to what he was doing. Thirdly, once his clients advised him the IRS was investigating his conduct, Respondent undertook to provide his clients false information and documentation in an attempt to hide his conduct. Lastly, Respondent, with the advice of counsel, pled guilty to the conduct in federal court which led to his incarceration. Each of these circumstances indicates that Respondent was a willing participant in the criminal conduct with ultimately resulted in significant financial loss to the IRS.

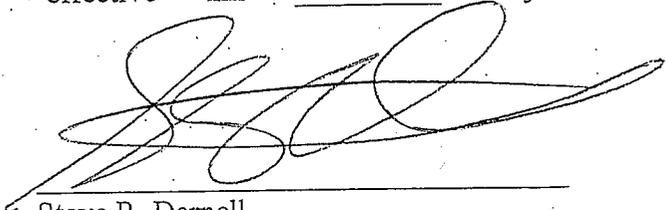
In addition, although Respondent's conduct did not involve the selling of insurance, the public is unable to separate his conduct in one area of his business from another. Respondent's enterprise of selling insurance, real estate, and preparing tax returns has one clear nexus. Each of these activities is personal to him. Respondent's clientele is built upon his personal trust, expertise, character, reputation, etc. in one or all of these areas. It is impossible for the public to believe he is subject to incarceration for one aspect of his business, but trustworthy in another.

It is unclear why the Department took so long to take action against Respondent. However, this was beneficial to Respondent. He has had several additional years to keep his insurance license and make adjustments in his life. Under the circumstance the only appropriate action is revocation of Respondent's insurance license.

IT IS THEREFORE ORDERED that Respondent's insurance producer's license bearing number 616360 is hereby revoked.

This Initial Order entered and effective this 21TH day of

OCTOBER 2007.


Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 24TH day of OCTOBER 2007.



Thomas G. Stovall, Director
Administrative Procedures Division