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TENNESSEE INSURANCE DIVISION, Petitioner, vs. HEATHER FRAZIER HOLLAND, Respondent.

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BEFORE THE TENNESSEE DEPARTMENT
OF COMMERCE AND INSURANCE

TENNESSEE INSURANCE DIVISION, **Petitioner,** **vs.** **HEATHER FRAZIER HOLLAND,** **Respondent.**	**Docket No: 12.01-115956J**

NOTICE OF DEFAULT and INITIAL ORDER

This contested case was heard in person in Nashville on May 1, 2012, by Administrative Judge Kim Summers, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Commerce and Insurance (the Commissioner). Bruce Poag, Assistant General Counsel, represented the Department in this matter. The Respondent was not present or represented by counsel at the hearing.

Because Respondent failed to appear for the hearing, the Petitioner, through Counsel, moved for a default. The default was granted based on acceptable proof of service of the Notice of Charges and Hearing, and the Department was granted leave to proceed with the hearing unopposed.

The issue in this matter is Respondent's alleged violation of Tenn. Code Ann. § 56-6-112(a) and the appropriate penalty to be imposed for any such violation pursuant to Tenn. Code Ann. § 56-6-112(g). After consideration of the entire record, it is determined that Respondent's actions have been in violation of Tenn. Code Ann. § 56-6-112(a) and that penalties shall issue as further specified below.

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

SUMMARY OF EVIDENCE

One witness testified at the hearing on behalf of the Petitioner: Kelly White, Fraud Investigator with the Department of Commerce and Insurance. Four exhibits were entered into evidence: Exhibit 1, Proof of Service of the Petition on Respondent; Exhibit 2, Affidavit of Clayton Cooper, entered into evidence, effectively as live witness testimony; Exhibit 3, Affidavit of Kimberly Biggs, entered into evidence, effectively as live witness testimony; Exhibit 4, collectively sixty (60) applications from fifteen (15) identified individuals submitted by Respondent to American Family Life Assurance Company of Columbus, also known as AFLAC.

FINDINGS OF FACT

1. Insurance producer license number 960001 was issued to Respondent on September 29, 2006, and is set to expire on January 13, 2013.

2. Respondent's agent / associate number with AFLAC was SY089.

3. Respondent's address of record is 6605 Silverbriar Court, Bartlett, TN 38135.

4. On December 17, 2007, four insurance applications were submitted[1] to AFLAC on behalf of William Smith by Respondent as an associate of AFLAC.

5. The address specified for William Smith and his spouse Sherrie was in Arlington, Tennessee.

6. Submitted with each application was a Payment Authorization Agreement charging the monthly insurance premium to a MasterCard with the number 9529[2], for a total monthly premium of $ 543.09.

7. Respondent received a commission of $ 1505.16 for these four applications. No premium was ever received by AFLAC for these policies.

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[1] Throughout the order, "submitted" refers to the date of the application.
[2] Only the last 4 digits of all credit card numbers will be used throughout this order.

8. On December 17, 2007, four insurance applications were submitted to AFLAC on behalf of Tracy Smith by Respondent as an associate of AFLAC.

9. The address specified for Tracy Smith was 6484 Eastbrier, Bartlett, TN 38134.

10. Submitted with each application was a Payment Authorization Agreement charging the monthly insurance premium to a MasterCard with the number 9529, for a total monthly premium of $ 247.33.

11. Respondent received a commission of $ 640.39 for these four applications. No premium was ever received by AFLAC for these policies.

12. On December 18, 2007, four insurance applications were submitted to AFLAC on behalf of Richard Frazier by Respondent as an associate of AFLAC.

13. The address specified for Richard Frazier and his spouse Robin was 6605 Silverbriar Court, Bartlett, TN 38135.

14. Submitted with each application was a Payment Authorization Agreement charging the monthly insurance premium to a MasterCard with the number 1147, for a total monthly premium of $ 497.

15. Respondent received a commission of $ 1379.40 for these four applications. No premium was ever received by AFLAC for these policies.

16. Five insurance applications were submitted to AFLAC on behalf of Michael Wallace by Respondent as an associate of AFLAC – four applications on December 18, 2007, and one application on January 9, 2008.

17. The address specified for Michael Wallace was 6484 Eastbrier, Bartlett, TN.

18. Submitted with each application was a Payment Authorization Agreement charging the monthly insurance premium to a MasterCard with the number 8931, for a total monthly premium of $ 338.53.

19. Respondent received a commission of $ 824.47 for these five applications. No premium was ever received by AFLAC for these policies.

20. On December 28, 2007, four insurance applications were submitted to AFLAC on behalf of Kimberly Barcafer by Respondent as an associate of AFLAC.

21. Submitted with each application was a Payment Authorization Agreement charging the monthly insurance premium to a Visa card with the number 5027, for a total monthly premium of $321.14.

22. Respondent received a commission of $ 828.43 for these four applications. No premium was ever received by AFLAC for these policies.

23. On December 28, 2007, three insurance applications were submitted to AFLAC on behalf of Stacy Birdsong by Respondent as an associate of AFLAC.

24. Submitted with each application was a Payment Authorization Agreement charging the monthly insurance premium to a Visa card with the number 4020, for a total monthly premium of $ 215.97.

25. On January 14, 2008, one insurance application was submitted to AFLAC on behalf of Stacy Birdsong by Respondent as an associate of AFLAC.

26. Submitted with the application was a Payment Authorization Agreement charging the monthly insurance premium to a Visa card with the number 4032, for a monthly premium of $ 55.50.

27. Respondent received a commission of $ 638.70 for these four applications for Stacy Birdsong. No premium was ever received by AFLAC for these policies.

28. On January 2, 2008, three insurance applications were submitted to AFLAC on behalf of Lindsey Adams by Respondent as an associate of AFLAC.

29. Submitted with each application was a Payment Authorization Agreement charging the monthly insurance premium to a Visa card with the number 5027, for a total monthly premium of $ 222.97.

30. Respondent received a commission of $ 520.87 for these three applications. No premium was ever received by AFLAC for these policies.

31. On January 7, 2008, three insurance applications were submitted to AFLAC on behalf of Chris Beard by Respondent as an associate of AFLAC.

32. Submitted with each application was a Payment Authorization Agreement charging the monthly insurance premium to a Visa card with the number 5027, for a total monthly premium of $ 214.86.

33. Respondent received a commission of $ 497.57 for these three applications. No premium was ever received by AFLAC for these policies.

34. On January 7, 2008, three insurance applications were submitted to AFLAC on behalf of David Beard by Respondent as an associate of AFLAC.

35. Submitted with each application was a Payment Authorization Agreement charging the monthly insurance premium to a Visa card with the number 4020, for a total monthly premium of $ 327.18.

36. On January 9, 2008, one insurance application was submitted to AFLAC on behalf of David Beard by Respondent as an associate of AFLAC.

37. Submitted with the application was a Payment Authorization Agreement charging the monthly insurance premium to a Visa card with the number 5027 for a monthly premium of $ 67.50.

38. Respondent received a commission of $ 900.63 for these four applications for David Beard. No premium was ever received by AFLAC for these policies.

39. On January 9, 2008, five insurance applications were submitted to AFLAC on behalf of Brian Thompson by Respondent as an associate of AFLAC.

40. The address specified for Brian Thompson and his wife Amy was 6484 Eastbrier, Bartlett, TN.

41. Submitted with each application was a Payment Authorization Agreement charging the monthly insurance premium to a MasterCard with the number 8931, for a total monthly premium of $ 462.15.

42. Respondent received a commission of $ 1094.46 for these five applications. No premium was ever received by AFLAC for these policies.

43. On January 17, 2008, four insurance applications were submitted to AFLAC on behalf of Joey Gallo by Respondent as an associate of AFLAC.

44. Submitted with each application was a Payment Authorization Agreement charging the monthly insurance premium to a Visa card with the number 4032, for a total monthly premium of $ 213.10.

45. Respondent received a commission of $ 189.90 for these four applications. No premium was ever received by AFLAC for these policies.

46. On January 17, 2008, four insurance applications were submitted to AFLAC on behalf of Paula Gallo by Respondent as an associate of AFLAC.

47. Submitted with each application was a Payment Authorization Agreement charging the monthly insurance premium to a Visa card with the number 4032, for a total monthly premium of $ 466.47.

48. Respondent received a commission of $ 1160.06 for these four applications. No premium was ever received by AFLAC for these policies.

49. On January 30, 2008, four insurance applications were submitted to AFLAC on behalf of Marcia Birdsong by Respondent as an associate of AFLAC.

50. Submitted with each application was a Payment Authorization Agreement charging the monthly insurance premium to a Visa card with the number 6584 for a total monthly premium of $ 371.90.

51. Respondent received a commission of $ 701.42 for these four applications. No premium was ever received by AFLAC for these policies.

52. On February 27, 2008, four insurance applications were submitted to AFLAC on behalf of Clint Duggard by Respondent as an associate of AFLAC.

53. Submitted with each application was a Payment Authorization Agreement charging the monthly insurance premium to a Visa card with the number 4032 for a total monthly premium of $ 477.27.

54. Respondent received a commission of $ 931.97 for these four applications. No premium was ever received by AFLAC for these policies.

55. On April 3, 2008, four insurance applications were submitted to AFLAC on behalf of Jerry Kline by Respondent as an associate of AFLAC.

56. Submitted with each application was a Payment Authorization Agreement charging the monthly insurance premium to a Visa card with the number 6584 for a total monthly premium of $ 544.29.

57. Respondent received a commission of $ 919.24 for these four applications. No premium was ever received by AFLAC for these policies.

58. The Department was unable to make contact with any of the aforementioned individuals during its investigation of Respondent.

59. AFLAC terminated its contract with Respondent on June 27, 2008.

60. The Respondent was sent a subpoena to appear at the Department on January 20, 2010, for questioning regarding the aforementioned activities. Respondent signed for the subpoena on January 4, 2010, but has never appeared or made any attempts to comply with the subpoena.

APPLICABLE LAW

1. RULE 1360–4–1–.02(3) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies states, in pertinent part:

> The "petitioner" in a contested case proceeding is the "moving" party, i.e., the party who has initiated the proceedings. The petitioner usually bears the ultimate burden of proof.

2. RULE 1360–4–1–.15(1)(a) states:

> The failure of a party to attend or participate in a prehearing conference, hearing or other stage of contested case proceedings after due notice thereof is cause for holding such party in default pursuant to T.C.A. §4-5-309.

3. Tenn. Code Ann. § 4-5-309(a) states:

> ***If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge…may hold the party in default*** and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings. (Emphasis added.)

4. TENN. CODE ANN. § 56-6-112(a) authorizes the Commissioner to place on probation, suspend, revoke or refuse to issue or renew a license or level a civil penalty for any of the following conduct:

(1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

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

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(6) Having been convicted of a felony;

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

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(10) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(11) Improperly using notes or any other reference material to complete an examination for an insurance license;

(12) Knowingly directing any person to submit an application for health care benefits through the TennCare program at a time when the person is covered by a group policy or when the policy is being renewed, and then quoting a rate for a group health insurance policy if the insurance producer knows the person would otherwise have been eligible to participate or continue participation in the group policy;

(13) Knowingly accepting insurance business from an individual who is not licensed;

(14) Selling, soliciting or negotiating insurance for a company that is not authorized to transact the business of insurance in this state; and

(15) Violating the unfair trade practices as enumerated in § 56-6-125.

5. TENN. CODE ANN. § 56-6-112(g)(2) permits a penalty of $1000 per violation of TENN. CODE ANN. § 56-6-112(a), up to a total penalty of $100,000.

6. In deciding the appropriate penalty, TENN. CODE ANN. § 56-6-112(h) requires the Commissioner to consider the following:

(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.

ANALYSIS and CONCLUSIONS OF LAW

1. Even though Respondent did not participate in the hearing after the requisite notice was provided, the burden was still on the Petitioner to prove by a preponderance of the evidence that Respondent's has violated the provisions of TENN. CODE ANN. § 56-6-112(a) and is subject to civil penalties and / or the revocation of her insurance producer's license.

2. The same home address was specified on the application for Tracy Smith, Michael Wallace, and Brian Thompson. There is no evidence in the record of any connection between these individuals.

3. The same credit card was specified for payment of the premium for Tracy Smith and William Smith. There is no evidence in the record of any connection between these individuals.

4. The same credit card was specified for payment of the premium for Brian Thompson and Michael Wallace. There is no evidence in the record of any connection between these individuals.

5. The same credit card was specified for payment of one premium for Stacy Birdsong and all premiums for Joey Gallo, Paula Gallo, and Clint Duggard. There is no evidence in the record of any connection between these individuals.

6. The same credit card was specified for payment of three premiums for both Stacy Birdsong and David Beard. There is no evidence in the record of any connection between these individuals.

7. The same credit card was specified for payment of one premium for David Beard, three premiums for Chris Beard and Lindsay Adams, and four premiums for Kimberly Barcafer. There is no evidence in the record of any connection between these individuals.

8. The same credit card was specified for payment of the premium for Marcia Birdsong and Jerry Kline. There is no evidence in the record of any connection between these individuals.

9. Respondent's home address was specified as the home address on the application for Richard Frazier with bad payment information provided.

10. The Department **HAS** shown by a preponderance of the evidence sixty insurance applications and associated payment authorizations amount to sixty (60) violations of TENN. CODE ANN. § 56-6-112(a)(1), (8), and (10) for providing materially untrue information in an insurance application, using fraudulent practices in the conduct of the insurance business, and forging another's name to an application for insurance.

11. The Department **HAS** shown by a preponderance of the evidence sixty insurance applications and associated payment authorization agreements submitted to AFLAC on which she received a commission payment but for which AFLAC never received even one monthly premium.

12. The total commission paid by AFLAC for the sixty fraudulently obtained applications was $12,732.67.

13. The Department **HAS** shown by a preponderance of the evidence that Respondent has committed one violation of TENN. CODE ANN. § 56-6-112(a)(2) by failing to comply with a validly issued subpoena from the Commissioner.

14. The Department **HAS** shown by a preponderance of the evidence sixty-one total violations of TENN. CODE ANN. § 56-6-112(a) by Respondent.

15. Based on Respondent's willful and intentional conduct, her failure to accept responsibility for her actions, the best interest of the public, and the need to deter future violations, a civil penalty of $625 per violation is deemed appropriate. This penalty amount times sixty-one separate violations equals a total civil penalty of $ 38,125, an amount approximating three times the total commission erroneously paid to Respondent by AFLAC, and falls within the perimeters of TENN. CODE ANN. § 56-6-112(g)(2).

16. For all these reasons, Respondent's insurance producer's license shall also be revoked.

17. Based upon the foregoing, the Department's Petition to impose on Respondent civil penalties and to revoke her insurance producer's license is hereby **GRANTED**.

18. Should good cause exist for Respodent's failure to appear / participate in the hearing, Respondent may move to have this order set aside no later than fifteen (15) days after entry.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the _____ day of _____ 2012.

DKSummers

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KIM SUMMERS
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 _____ day of _____ 2012.

Thomas G Stovall

_____

THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE