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Brian Keith Miller vs. COMMERCE AND INSURANCE

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

**TENNESSEE SECURITIES DIVISION and
TENNESSEE INSURANCE DIVISION,
Petitioners.**

Docket # 12.06-120728J

vs.

**BRIAN KEITH MILLER,
Respondent.**

INITIAL ORDER

This contested case was heard on September 24, 2013 before Rob Wilson, Administrative Judge, under the auspices of the Tennessee Uniform Administrative Procedures Act (UAPA) as codified at TENN. CODE ANN. Section 4-5-101 to Section 4-5-325. At issue were the actions sought by the Petitioners, the Tennessee Securities Division and the Tennessee Insurance Division, both within the Tennessee Department of Commerce and Insurance.

Specifically, the Petitioners seek the revocation of the Securities Broker/Dealer and/or Agent and Insurance Producer Licenses of the Respondent, as well as the imposition of civil penalties against the Respondent. The Petitioners were represented by Counsel, Charles S. Herrell, and the Respondent, Brian Keith Miller, appeared *pro se*.

ORDER

Grounds for the revocation for these licenses were stated by the Petitioner as the conviction of the Respondent on three felony counts. Conviction of a felony is a sufficient basis for revocation of the insurance producer license of any person under the provisions of TENN. CODE ANN. Section 56-6-112(a)(6) (2008 and Supp. 2012). The only remedy available to a

person whose insurance producer's license has been denied, suspended or revoked is to obtain a waiver by the Commissioner of the Insurance Regulatory Authority in the applicable state, pursuant to TENN. CODE ANN. Section 56-53-106(b)(1) and 18 U.S.C. Sections 1033 and 1034. After consideration of the argument of counsel, the representations of the Respondent, and the entire record in this matter, it is determined that Respondent Miller is **PERMANENTLY BARRED** from seeking a securities registration as an agent of a broker-dealer, or as an investment adviser representative in Tennessee. Further, it is determined that Respondent Miller's insurance producer's license is hereby **REVOKED** and Respondent Miller is **PERMANENTLY BARRED** from seeking an Insurance Producer's license in Tennessee. These determinations result in an **ORDER** to respondent Miller to pay **CIVIL PENALTIES** in the amount of **FORTY THOUSAND DOLLARS (\$40,000.00)**. This decision is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Tennessee Securities Act of 1980, as amended, TENN. CODE ANN. Section 48-2-101, *et seq.* (the "Act"), places the responsibility for the administration of the Act on the Commissioner of the Department of Commerce and Insurance ("Commissioner"). The Tennessee Securities Division ("TSD") is the lawful agent through which the Commissioner discharges this responsibility. TENN. CODE ANN. Sections 48-2-112 and 48-2-115.
2. The Tennessee Insurance Law, TENN. CODE ANN. Sections 56-1-101 *et seq.* (the "Law"), places the responsibility of the administration of the Law on the Commissioner. The Tennessee Insurance Division ("TID") is the lawful agent through which the Commissioner discharges this responsibility. TENN. CODE ANN. Sections 56-1-202 and 56-6-112.

3. Respondent Miller is not currently registered as a broker-dealer, broker-dealer agent, investment advisor, or investment advisor representative with the TSD. Mr. Miller was formerly registered as a broker-dealer agent through the Financial Industry Regulatory Authority (“FINRA”)’s Central Registration Depository (“CRD”), as CRD #2121346. Mr. Miller was previously registered as a broker-dealer agent with Anderson & Strudwick (CRD # 48) from April 1, 2010 through January 13, 2011. On March 23, 2011, pursuant to Financial Industry Regulatory Authority (“FINRA”) Rule 9552(H) and in accordance with FINRA’s Intent to Suspend and Notice of Suspension Letter, Dated December 20, 2010, Mr. Miller was permanently barred from association with any FINRA member in any capacity. The effective date was March 23, 2011.

4. It was asserted, and not contested, that the Financial Institution Regulatory Authority (FINRA) is the securities industry authority empowered to discipline broker/dealers, agents, and others involved in the securities industry as contemplated by TENN. CODE ANN. §48-1-112. (Exhibit 2)

5. The Respondent allowed his Tennessee insurance producer's license to expire, effective January 11, 2011.

6. The Respondent admitted that he pled guilty to three felony counts in the United States District Court for Eastern Tennessee. Specifically, the Respondent pled guilty to mail fraud, wire fraud, and the filing of a false federal income tax return.

7. TENN. CODE ANN. Section 48-1-112 states that the Commissioner of the Department of Commerce and Insurance may by order deny, suspend, or revoke the registration under this part if the commissioner finds that, inter alia, the registrant has been convicted of any felony, or within the previous ten (10) years has been convicted of a misdemeanor involving a security or

any aspect of the securities business or any investment-related business. This code section also provides for the denial, suspension, or revocation of the registration of any person involved in the securities industry who is the subject of an order suspending or expelling such person from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934. (Exhibit 3)

8. The Petitioners established by competent proof that the Respondent has been suspended by FINRA subsequent to the felony convictions by the United States District Court for Eastern Tennessee. (Exhibit 2)

9. TENN. CODE ANN. Section 56-53-106 authorizes the Commissioner of Commerce and Insurance to impose civil penalties of up to \$10,000.00 on broker/dealers, agents or other participants in the securities industry who have been suspended from FINRA registration. (Exhibit 3)

10. TENN. CODE ANN. Section 56-53-106(b)(1) and 18 U.S.C. Sections 1033 and 1034 provide a mechanism for the waiver by the Commissioner of the Insurance Regulatory Authority in any given state to allow a person convicted of felonies to obtain or hold an insurance producer's license. The waiver provisions of TENN. CODE ANN. Section 56-53-106(b)(1) and 18 U.S.C. Sections 1033 and 1034 are permissive, and are not mandatory. (Exhibit 3)

11. The Respondent has presented no evidence of a waiver by the Commissioner of the Tennessee Department of Commerce and Insurance as contemplated by TENN. CODE ANN. Section 56-53-106(b)(1) and 18 U.S.C. Sections 1033 and 1034 that would permit the reinstatement of the Respondent's insurance producer's license.

CONCLUSIONS OF LAW

1. TENN. CODE ANN. Section 48-2-112(a)(1)(B), authorizes the Commissioner of the Tennessee Department of Commerce and Insurance to order the denial, suspension, or revocation of any securities registration under if the Commissioner finds that "[t]he order is in the public interest and necessary for the protection of investors, and [h]as willfully violated or willfully failed to comply with any provision of this part or a predecessor chapter.

2. It is **CONCLUDED** that Mr. Miller has been convicted of three (3) felonies and is subject to a **PERMANENT BAR** from the securities industry under TENN. CODE ANN. §§ 48-2-112(a)(2)(C). The actions of Respondent Miller, taken together as a whole, establish unlawful conduct that subjects a securities registration to revocation, and gives the Commissioner sufficient grounds to deny any new application for such a securities registration in the future. As such, Respondent Miller is **PERMANENTLY BARRED** from the securities industry.

3. TENN. CODE ANN. Section 48-2-104(b) provides that the Commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation.

4. It is **CONCLUDED** that the Commissioner may order payment of civil penalties for three (3) violations of TENN. CODE ANN. § 48-2-104(a) The TSD has shown by a preponderance of the evidence that Miller pled guilty to three separate felonies and was barred from association with any FINRA member as described and detailed in Exhibit 2.

5. It is **CONCLUDED** that the insurance producer's license of the Respondent with the Insurance Division of the Tennessee Department of Commerce and Insurance is hereby **REVOKED** as requested in the Petition of the Petitioner.

6. TENN. CODE ANN. Section 48-2-104(b) provides that the Commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation.

7. It is **CONCLUDED** that the Commissioner may order payment of civil penalties for one (1) violation of TENN. CODE ANN. Section 56-53-106. The TID has shown by a preponderance of the evidence that Mr. Miller pled guilty to three separate felonies and is liable for a civil penalty in the amount of \$10,000.00 as a result.

8. Accordingly, the imposition of (\$10,000.00) per violation or **FORTY THOUSAND (\$40,000.00) IN CIVIL PENALTIES** is **ORDERED** assessed to Respondent under TENN. CODE ANN. Section 48-2-104(b) and TENN. CODE ANN. Section 56-53-106.

IT IS SO ORDERED.

This Initial Order entered and effective this _____ day of _____ 2014.

Rob Wilson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this _____ day of _____ 2013.

A handwritten signature in black ink that reads "J. Richard Collier". The signature is written in a cursive style with a large, looped initial "J".

J. Richard Collier, Director
Administrative Procedures Division