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Jimmy Lee Clark vs. Commerce and Insurance

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

IN THE MATTER OF:

**Tennessee Insurance Division,
Petitioner,**

DOCKET NO: 12.01-128648J

Vs.

**Jimmy Lee Clark,
Respondent.**

INITIAL ORDER

This matter came to be heard on February 5, 2015, in Nashville, Tennessee, before Steve R. Darnell, Administrative Law Judge, assigned by the Department of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Commerce and Insurance. Attorney James R. Witham represented the Department of Commerce and Insurance (Department), and Petitioner was represented by attorney Gerald S. Green.

ISSUES FOR DETERMINATION

1. Did the Department show, by a preponderance of the evidence, that Respondent was convicted of a felony?
2. What, if any, civil penalty should be assessed against Respondent?

SUMMARY OF DETERMINATION

It is **DETERMINED** that the Department showed, by preponderance of the evidence, that Respondent was convicted of a felony. Revocation of Respondent's license and assessment of the cost of these proceedings is appropriate under the circumstances. This determination is made upon the following findings of fact and conclusion of law:

FINDINGS OF FACT

1. Respondent holds insurance producer's license No. 0655746 issued by the Department. This license expires September 30, 2015.
2. Between September 1, 2009 and April 15, 2010, Respondent was owner and operator of a Mo' Money Taxes franchise in St. Louis, Missouri. Mo' Money Taxes is a franchise engaged in the business of preparing tax returns for a fee.
3. Respondent and his employees prepared a total of 494 federal tax returns for clients for the 2009 tax year. Over one-half of these returns claimed the American Opportunity (AO) educational tax credit against due and owing taxes. Respondent and his employees were trained on the AO credit.
4. Forty-seven of these returns fraudulently claimed false or inflated AO tax credits. Respondent and his employees were indicted in the Eastern District of Missouri by the U.S. Attorney on charges associated with fraudulently claiming the AO tax credit.
5. Respondent pled guilty and was convicted of one felony charge of "Conspiracy to Defraud the United States" in the U.S. District Court for the Eastern District of Missouri on July 24, 2013.
6. Respondent was sentenced to 20 months of incarceration and ordered to pay \$352,224.00 in restitution to the U.S. jointly with his co-defendants.
7. The Department has shown, by a preponderance of the evidence, that Respondent was convicted of a felony.

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. Tenn. Code Ann. §56-6-112(a) authorizes the Commissioner to place on probation, suspend, revoke or refuse to issue or renew a license where the license holder has been convicted of a felony.

3. Tenn. Code Ann. §56-6-112(g)(2) allows the Commissioner to assess a penalty of \$1,000 per violation of Tenn. Code Ann. §56-6-112(a). Tenn. Code Ann. §56-6-112(h) requires the Commissioner to consider the following factors in determining an appropriate penalty:

- (i) whether the person could reasonably have interpreted such person's actions to be in compliance with the obligations required by statute, rule or order;
- (ii) whether the amount imposed will be a substantial economic deterrent to the violator;
- (iii) the circumstance leading to the violation;
- (iv) the severity of the violation and the risk of harm to the public;
- (v) the economic benefits gains by the violator as a result of non-compliance;
- (vi) the interest of the public; and
- (vii) the person's efforts to cure the violation.

IT IS CONCLUDED that the Department has shown, by a preponderance of the evidence, that Respondent was convicted of a felony. Respondent's insurance license should be revoked and Respondent required to pay the Department's cost of prosecuting this case. No civil penalty is imposed. Respondent's conviction was not related to his insurance business. Additionally, Respondent must make restitution to the U.S. as noted above and this decision will place additional economic hardship on Respondent.

IT IS THEREFORE ORDERED that Petitioner's insurance producer's license No. 0655746 is revoked and he is to pay the Department's cost of prosecuting this case.

This Order entered and effective this _____ day of _____, 2015.

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this _____ day of _____ 2015.

A handwritten signature in cursive script that reads "J. Richard Collier".

J. Richard Collier, Director
Administrative Procedures Division