



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

**TENNESSEE INSURANCE DIVISION,** )

**Petitioner,** )

**v.** )

**BENJAMIN DAVIS,** )

**Respondent.** )

**TID No.: 20-089**

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**CONSENT ORDER**

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The Insurance Division of the Tennessee Department of Commerce and Insurance (“Division”) and Benjamin Davis (“Respondent”) hereby stipulate and agree to the entry and execution of this Consent Order, subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”) as follows:

**GENERAL STIPULATIONS**

1. It is expressly understood that this Consent Order is subject to the Commissioner’s acceptance and has no force and effect until such acceptance is evidenced by the entry and execution of an order by the Commissioner.

2. This Consent Order is executed by the parties for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. The Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Consent Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. The Respondent fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for alleged violations of the law addressed specifically in this Consent Order, violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the entry and execution of this Consent Order by the Respondent.

5. The Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry and execution of said Consent Order by the Commissioner.

#### **AUTHORITY AND JURISDICTION**

6. The Commissioner has jurisdiction of this action pursuant to the Tennessee insurance law, Title 56 of the Tennessee Code Annotated ("Tenn. Code Ann."), specifically Tenn. Code Ann. §§ 56-1-103 and 56-6-112 (the "Law"). The Division is the lawful agent through which the Commissioner discharges this responsibility.

#### **PARTIES**

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

8. The Respondent has been a licensee of the Division since August 11, 2005, and he is responsible for being compliant with the insurance laws and regulations of the State of Tennessee.

9. The Respondent is a Tennessee resident.

10. The Respondent holds Tennessee Resident Insurance Producer License Number 0925215.

11. The Respondent was assigned National Insurance Producer Number 8561436 by the National Insurance Producer Registry ("NIPR"), a service of the National Association of Insurance Commissioners ("NAIC").

#### **FINDINGS OF FACT**

12. On July 12, 2017, the Financial Services Investigations Unit received a telephone complaint from Maricela Sanchez ("Sanchez"). Sanchez alleged that her former insurance agent, the Respondent, had misappropriated over thirty thousand dollars (\$30,000.00) of insurance premiums paid by her in cash between 2015 and 2017.

13. Based upon the information provided by Sanchez, the Division entered Inquisitorial Order 17-068 on August 7, 2017, initiating an investigation concerning the Respondent.

14. The Respondent, Brent Smith ("Smith"), a former business associate of the Respondent, and Sanchez have each communicated with the Division and/or its legal counsel for the Division regarding the Respondent's alleged conduct.

15. The Respondent has denied the allegations in the complaint filed by Sanchez.

#### **CONCLUSIONS OF LAW**

16. At all times relevant hereto, Tenn. Code Ann. § 56-6-112 has provided that:

- (a) The [C]ommissioner may place on probation, suspend, revoke, or refuse to issue or renew a license issued under [T]itle 56, [P]art 6, [C]hapter 1, or issue a civil penalty for any one (1) or more of the following causes:

...

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

...

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

...

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

...

(e) The [C]ommissioner 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 [C]ommissioner 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 [C]ommissioner may, at the [C]ommissioner'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 [C]ommissioner 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.

**ORDER**

**NOW, THEREFORE**, on the basis of the foregoing, and the Respondent's waiver of the right to a hearing and appeal under the Law and the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et seq.*, and the Respondent's admission of jurisdiction of the Commissioner, the Commissioner finds that the Respondent, for the purpose of settling this matter, admits the Findings of Fact and agrees to the entry and execution of this Order.

**IT IS ORDERED**, pursuant to Tenn. Code Ann. § 56-6-112 of the Law, that:

1. The Respondent shall pay a total civil monetary penalty of **THREE THOUSAND DOLLARS (\$3,000)**. Payment shall be made within thirty (30) days of the date this agreement is entered and executed by the Commissioner. Payment shall be mailed to:

**State of Tennessee**  
**Department of Commerce and Insurance**  
**Attn: Vishan Ramcharan, Legal Division**  
**Davy Crockett Tower**  
**500 James Robertson Parkway**  
**Nashville, Tennessee 37243**

2. This Consent Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Commissioner against the Respondent for violations of the Law alleged by or currently known by the Division to have occurred with respect to the transactions involving the above referenced facts contained herein.

3. This Consent Order is in the public interest and in the best interests of the parties and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only.

4. By the signatures affixed below, the Respondent affirmatively states he has freely agreed to the entry and execution of this Consent Order, that the Respondent waives the right to a hearing on the matters underlying this Consent Order or the enforcement of this Consent Order, and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made to him by the Commissioner, the Division, or any agent or representative thereof.

5. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement as set forth in this Consent Order, are binding upon them.

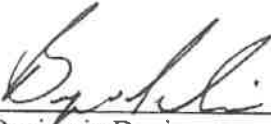
6. This Consent Order may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same

document. The facsimile, email, or other electronically delivered signatures of the parties shall be deemed to constitute original signatures, and facsimile or electronic copies shall be deemed to constitute duplicate originals.

August  
**ENTERED AND EXECUTED** ~~June~~ 13, 2020.

  
Hodgen Manda (Aug 13, 2020 16:52 CDT)  
Hodgen Manda, Commissioner  
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**



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Benjamin Davis  
Respondent



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Mark Donahoe  
Counsel for Respondent  
212 E. Lafayette St.  
Jackson, TN 38301



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Vishan J. Ramcharan (Aug 13, 2020 15:02 CDT)

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