

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

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SECRETARY OF STATE

IN THE MATTER OF:)
)
TENNESSEE INSURANCE DIVISION)
 Petitioner,) Docket No. 12.04-134536J
) TID No. 15-111
vs.)
)
TAMMY EVON MINCEY,)
 Respondent.)

FINAL ORDER

On or about November 21, 2017, Petitioner, the Tennessee Insurance Division, commenced this appeal of the Initial Order entered by the Honorable Kim Summers, Administrative Law Judge with the Department of State, Administrative Procedures Division, on October 2, 2017.

Judge Summers, in the Initial Order, found that Respondent Mincey had provided false and deceptive information to the Tennessee Department of Commerce and Insurance in her application to be an insurance producer in violation of both TENN. CODE ANN. § 56-6-112(a)(1) and (3) and assessed a civil penalty of \$1,000 for each violation. Judge Summers further revoked Respondent Mincey's insurance producer's license for these violations. Judge Summers found that any fraud and misconduct committed by Respondent Mincey that resulted in the judgment against her were "beyond the purview of the Department and do not warrant penalties within the context of this proceeding." As such, Respondent was assessed a total civil penalty of \$2,000 and her Tennessee insurance producer's license, number 0733791, was revoked. Subsequently, the

Tennessee Insurance Division filed an appeal to the Commissioner of the Initial Order pursuant to TENN. CODE ANN. § 4-5-316. As provided by TENN. CODE ANN. § 4-5-316(d), the Commissioner, in her review of the Initial Order, “shall exercise all the decision-making power that the agency would have had to render a final order had the agency presided over the hearing”.

In accordance with the Scheduling Ordered entered in this matter, the Tennessee Insurance Division filed a brief in support of its appeal on or about May 15, 2018. Respondent Mincey filed her brief on June 15, 2018.

Upon review of the briefs filed in this matter and the record, the Commissioner hereby enters the following Final Order, which shall completely replace the Initial Order entered by the Administrative Law Judge below.

FINDINGS OF FACT

As the Tennessee Insurance Division’s Motion for Partial Summary Judgment was granted and upon review of the record, the Commissioner hereby makes the following Findings of Fact, which shall replace in their entirety the Findings of Fact in the Initial Order in this matter:

1. Respondent Tammy Evon Mincey (“Respondent”) is a licensee of the Division who is responsible for being compliant with the insurance laws and regulations of the State of Tennessee. At the time of the hearing in this matter, she held an active Tennessee insurance producer license, number 0733791, which became active on or about September 7, 2012, and which was scheduled to expire on August 31, 2017. Upon information and belief, and records on file with the Division,

Respondent's address of record is 4800 Huffman Road, Goodlettsville, TN 37072-9695.

2. Franklin Mincey was an elderly gentleman who, as a result of illness and infirmity, went to live with his son, the late John P. Mincey, and the Respondent in April 2009. At some point in November 2007 before moving in with his son and Respondent, Respondent took over the management on some of Franklin Mincey's bank accounts while he was residing in nursing homes between late 2007 and early 2009.
3. In November 2007, Respondent began writing checks from Franklin Mincey's bank accounts to Dixie Compressor & Parts, Inc., a business which she and John Mincey owned ("Dixie Compressor"), and continued using funds from his accounts for her own personal benefit until approximately October 2011. On or about February 18, 2008, Franklin Mincey had both legs amputated.
4. Franklin Mincey paid for certain improvements to the Respondent's and John Mincey's residence located at 4800 Huffman Road in Goodlettsville, Tennessee. In return for these payments, John Mincey and Respondent agreed to provide Franklin Mincey with a place to live, meals, personal care, transportation for medical care and other services.
5. Respondent and John Mincey provided Franklin Mincey with some degree of personal care, meals, and transportation while John was living, but after John died in September, 2009, Respondent provided even less care for Franklin.
6. Franklin Mincey's medical condition deteriorated while living in the Respondent's home until he was admitted to the VA Hospital in March 2010 due

to bed sores which developed while Respondent was in charge of his care.

Franklin Mincey was later transferred to and resided in an assisted living facility in Portland, Tennessee.

7. During the time that Franklin Mincey lived in the Respondent's home, John Mincey and Respondent took away his telephone and would not allow him to see his own financial records. In September 2008, Franklin Mincey executed a Power of Attorney authorizing Respondent to act on his behalf relative to a sale of his home located in Greenbrier, Tennessee.
8. Respondent and John Mincey "borrowed" \$80,000 from Franklin Mincey which Franklin had obtained through securing a line of credit on Franklin's Greenbrier residence. This money has never been repaid to Franklin Mincey.
9. Respondent sold some of Franklin Mincey's personal property without his permission and diverted payment for same to her own benefit.
10. Further, Respondent diverted checks which were payable to Franklin Mincey to her own benefit without his permission, including rent checks for the rental of his residence prior to its sale, proceeds from the sale of his real property in South Carolina, and proceeds from a cashed-out money market account and a certificate of deposit.
11. Moreover, Respondent claims that she and her husband "borrowed" certain sums from Franklin Mincey's accounts and his credit card for the benefit of Dixie Compressor and her personal business, which Franklin Mincey did not recall.
12. Finally, Respondent used Franklin Mincey's credit card and made cash withdrawals on Franklin Mincey's ATM card to make purchases for her own

- benefit without Franklin's permission or authorization, including charges for casino and transportation expenses to Las Vegas, Metropolis, IL, and Tunica, MS, at times in which Franklin Mincey was physically and medically incapacitated. Respondent would then make payments on the credit card account using funds in Respondent's personal bank account.
13. With respect to removing funds from Franklin Mincey's personal checking account which were never accounted for and never restored, Respondent informed other persons that she was doing this in order to qualify Franklin Mincey for government funded health benefits.
 14. On April 27, 2012, Franklin Mincey filed a Complaint in the Circuit Court for Robertson County against Respondent relative to the above described matters, alleging fraud in a fiduciary capacity and conversion of Franklin Mincey's funds in the approximate sum of \$300,000. Respondent filed an answer to this lawsuit on June 14, 2012.
 15. Franklin Mincey's lawsuit against Respondent was tried before a jury on March 25 and 26, 2014, and the jury unanimously found that Franklin Mincey had proven his claims for conversion and for fraud/misrepresentation/concealment against Respondent by a preponderance of the evidence, and determined his damages to be \$102,449.83.
 16. On April 22, 2014, the Circuit Court for Robertson County entered its Judgment against Respondent incorporating the jury verdict, and Respondent did not appeal to the Tennessee Court of Appeals. Franklin Mincey's \$102,449.83 Judgment against her is now final.

17. As of the filing of the Notice of Hearing and Charges, Respondent has failed to pay this \$102,449.83 Judgment entered against her.
18. Due to the Circuit Court's Judgment for fraud entered against her as referenced above, at all times relevant herein, Respondent acted knowingly in misappropriating Franklin Mincey's funds for her own use. Respondent's fraud and conversion committed against Franklin Mincey occurred approximately from 2007 to October of 2011.
19. Respondent submitted an online application to the Division for an insurance producer license for the lines of Accident and Health on September 7, 2012, which was granted that same day. Further, Respondent answered no ("N") to the following question no. 5 on said application:
 5. Are you currently a party to, or have you ever been found liable in, any lawsuit, arbitration, or mediation proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty?
20. On September 7, 2012, Respondent was a party to the civil suit filed against her by Franklin W. Mincey in Robertson County Circuit Court alleging fraud in a fiduciary capacity and conversion of Franklin Mincey's funds, and had been for nearly five months.
21. Respondent's answer to question no. 5 on the online application for licensure she submitted to the Division on September 7, 2012, was materially untrue and misleading.
22. On or about February 10, 2016, Franklin Windell Mincey died.

CONCLUSIONS OF LAW

The Commissioner hereby adopts the following Conclusions of Law, which shall replace in their entirety the Conclusions of Law in the Initial Order in this matter:

1. Respondent is found to have committed one (1) violation of “Providing incorrect, misleading, incomplete or materially untrue information in the license application” in violation of TENN. CODE ANN. § 56-6-112(a)(1) by answering “No” to the question “Are you currently a party to, or have you ever been found liable in, any lawsuit, arbitration or mediation proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty?” on her 2012 insurance producer’s application for which the Commissioner may assess a civil penalty of not more than one thousand dollars (\$1,000) for each violation, with each day of a continued violation constituting a separate violation and suspend or revoke Respondent’s license, pursuant to TENN. CODE ANN. § 56-6-112(a)(8) (2011).
2. Respondent is found to have committed one (1) violation of “Obtaining or attempting to obtain a license through misrepresentation or fraud” in violation of TENN. CODE ANN. § 56-6-112(a)(3) by answering “No” to the question “Are you currently a party to, or have you ever been found liable in, any lawsuit, arbitration or mediation proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty?” on her 2012 insurance producer’s application for which the Commissioner may suspend or revoke Respondent’s license and may assess a civil penalty of not more than one thousand dollars (\$1,000) for each violation, with each day of a continued violation constituting a separate violation, pursuant to TENN. CODE ANN. § 56-6-112(a)(8) (2011).
3. Respondent is found to have committed one (1) violation of “Having admitted or been found to have committed ... fraud” in violation of TENN. CODE ANN. § 56-6-112(a)(7) as a result of the March 26, 2014, verdict in the Circuit Court of Robertson County that Respondent had committed conversion, which constitutes fraud within the meaning of that statute, for which the Commissioner may suspend or revoke Respondent’s license and may assess a civil penalty of not more than one thousand dollars (\$1,000) for each violation, with each day of a continued violation constituting a separate violation, pursuant to TENN. CODE ANN. § 56-6-112(a)(8) (2011).
4. Respondent is found to have committed one (1) violation of “Having admitted or been found to have committed ... fraud” in violation of TENN. CODE ANN. § 56-6-112(a)(7) as a result of the March 26, 2014, verdict in the Circuit Court of Robertson County that Respondent had committed fraud/misrepresentation/concealment, which constitutes fraud within the meaning of that statute, for which the Commissioner may suspend or revoke Respondent’s license and may assess a civil penalty of not more than one thousand dollars (\$1,000) for each violation, with each day of a continued violation constituting a separate violation, pursuant to TENN. CODE ANN. § 56-6-112(a)(8) (2011).

5. The Commissioner has authority to discipline Ms. Mincey for her actions as set out in the Findings of Fact, above, notwithstanding that the actions occurred prior to Ms. Mincey becoming re-licensed. TENN. CODE ANN. § 56-6-112(a)(8) states that it is a violation for a person required to be licensed, permitted, or authorized by the division of insurance to use “fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere”. There is no requirement in this subsection that the acts resulting in discipline must occur during the time of licensure. In fact, such a requirement would result in the absurd result that a person committing fraud prior to licensure and the fraud is discovered by the Commissioner only after granting a license could not have their license revoked for the previous fraud, as TENN. CODE ANN. § 56-6-112(a) (2002), 56-6-112(a) (2008), and 56-6-112(a) (2011) all contain both the authority to assess penalties and to revoke or suspend a license. As there can be no doubt that the Commissioner could revoke or suspend a license or such prior fraudulent activities, it must follow that the Commission may also assess civil penalties, as the Commissioner’s authority to take these disciplinary actions are concurrent.
6. The Commissioner has authority to discipline Ms. Mincey for her actions as set out in the Findings of Fact, above, notwithstanding that the actions were not performed in the practice of the insurance profession. As set out above, TENN. CODE ANN. § 56-6-112(a)(8) states that it is a violation for a person required to be licensed, permitted, or authorized by the division of insurance to use “fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere”. This subsection contains two different bases for discipline: (1) any “fraudulent, coercive, or dishonest practices” or (2) “demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere”. The placement of the second “or” creates two independent clauses and, as such, the clearest construction is that the phrase “in the conduct of business in this state or elsewhere” applies only to the second, independent clause of “demonstrating incompetence, untrustworthiness or financial irresponsibility”. If it had been intended to also apply to “fraudulent, coercive, or dishonest practices”, there would be no need for a conjoining “or”. Instead, the list could have been a single serial list of actions that are violations if they occurred in the conduct of business. Further, even as to “demonstrating incompetence, untrustworthiness or financial responsibility”, nothing in this second provision requires that the actions occur in the conduct of the business of insurance, only the conduct of business. As such, it follows that the Commissioner may take disciplinary action against Ms. Mincey for any actions that are found to be “fraudulent, coercive, or dishonest practices” whether those practices occur in her personal or business capacity and could also take disciplinary action for “demonstrating incompetence, untrustworthiness or financial responsibility” in the conduct of any business, not just the business of insurance.
7. Respondent’s acts and conduct as set out on Finding of Fact 9 in selling Mr. Mincey’s property without his permission and diverting those funds to her own

- benefit constitute “Using fraudulent, coercive, or dishonest practices...” in violation of TENN. CODE ANN. § 56-6-112(a)(8) for which the Commissioner may suspend or revoke Respondent’s license and may assess a civil penalty of not more than one thousand dollars (\$1,000) for each violation, with each day of a continued violation constituting a separate violation. As this penalty is supported by application of TENN. CODE ANN. § 56-6-112(a) (2002), 56-6-112(a) (2008), and 56-6-112(a) (2011), the Commissioner need not reach the question as to under which provision the penalties are assessed.
8. Respondent’s acts and conduct as set out on Finding of Fact 10 in diverting checks payable to Mr. Mincey for her own benefit and without permission constitute “Using fraudulent, coercive, or dishonest practices...” in violation of TENN. CODE ANN. § 56-6-112(a)(8) for which the Commissioner may suspend or revoke Respondent’s license and may assess a civil penalty of not more than one thousand dollars (\$1,000) for each violation, with each day of a continued violation constituting a separate violation. As this penalty is supported by application of TENN. CODE ANN. § 56-6-112(a) (2002), 56-6-112(a) (2008), and 56-6-112(a) (2011), the Commissioner need not reach the question as to under which provision the penalties are assessed.
 9. Respondent’s acts and conduct as set out on Finding of Fact 12 in using Mr. Mincey’s credit cards and making cash withdrawals on Mr. Mincey’s ATM card to make purchases for her own benefit constitute “Using fraudulent, coercive, or dishonest practices...” in violation of TENN. CODE ANN. § 56-6-112(a)(8) for which the Commissioner may suspend or revoke Respondent’s license and may assess a civil penalty of not more than one thousand dollars (\$1,000) for each violation, with each day of a continued violation constituting a separate violation. As this penalty is supported by application of TENN. CODE ANN. § 56-6-112(a) (2002), 56-6-112(a) (2008), and 56-6-112(a) (2011), the Commissioner need not reach the question as to under which provision the penalties are assessed.

The Commissioner hereby enters this Order, which shall replace in its entirety the Order in the Initial Order in this matter:

It is therefore **ORDERED** that the Insurance Producer’s license of Respondent Tammy Evon Mincey, numbered 0733791 be **REVOKED** and that she pay a total civil monetary penalty of one thousand dollars (\$1,000) for each violation set out in the Conclusions of Law 1 – 7, above, for an aggregate penalty of **seven thousand dollars (\$7,000)**. The Commissioner finds that this penalty is well-justified in reviewing the following factors set out under TENN. CODE ANN. § 56-6-112(h):

- (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.

IT IS FURTHER ORDERED that Respondent and all other persons in any way assisting, aiding, or helping Respondent in any of the aforementioned violations of TENN. CODE ANN. § 56-6-112, shall **CEASE AND DESIST** from all such activities in violation of the law. **Each party shall bear their own costs in this matter.**

NOTICE OF RECONSIDERATION AND APPEAL PROCEDURES

Within fifteen (15) days after this Final Order is entered, a party may file a Petition for Reconsideration of the Final Order, in which the party shall state the specific reasons why the Final Order was in error. If no action is taken within twenty (20) days of filing of the Petition for Reconsideration, the Petition is deemed denied. TENN. CODE ANN. § 4-5-317. A party may submit to the agency a petition for stay of effectiveness of the Final Order within seven (7) days after its entry unless otherwise provided by statute. The agency may take action on the petition for stay, either before or after the effective date of the Final Order. TENN. CODE ANN. § 4-5-316.

A party who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in the chancery court nearest to the place of residence of the person contesting the agency decision, in the chancery court nearest to the place where the cause of action arose, or in the Davidson County Chancery Court within sixty (60) days after the entry of the Final Order, or if a Petition for

Reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the Petition for Reconsideration. The filing of a Petition for Reconsideration does not itself act to extend the sixty (60) day period, if the petition is not granted. A reviewing court also may order a stay of the Final Order upon appropriate terms. TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

IT IS SO ORDERED.


This 8 day of August, 2018.



Julie Mix McPeak, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via hand delivery to Jesse Joseph, Esq., counsel for the Tennessee Insurance Division, has been filed with the Tennessee Administrative Procedures Division, and has been sent via Certified Mail, Return Receipt Requested, to Respondent, John B. Holt, Esq., Counsel for Respondent, at 121 5th Avenue West, Springfield, TN 37122 this 9th day of August, 2018.



Michael D. Driver