



State of Tennessee
Department of State
Administrative Procedures Division
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December 15, 2020

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General Civil - Legal Division
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Brian Uthe
3482 Wynnmont Grove
Collierville, TN 38017

Brian Uthe
775 Green Oaks Lane
Collierville, TN 38017

**RE: TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE V. BRIAN
UTHE, APD Case No. 12.01-202731J**

Enclosed is an *Initial Order*, including a *Notice of Appeal Procedures*, rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
COMMERCE AND INSURANCE,**

Petitioner,

v.

BRIAN UTHE,

Respondent.

APD Case No. 12.01-202731J

INITIAL ORDER

This matter came to be heard on November 5, 2020, before the Honorable Richard Murrell, assigned by the Secretary of State, Administrative Procedures Division, sitting on behalf of the Commissioner of Commerce and Insurance. Associate General Counsel for the Department, Renita Hollins, represented the Insurance Division (“Division”) of the Tennessee Department of Commerce and Insurance (“Department”). The Respondent did not appear, and no one appeared on his behalf.

ORDER OF DEFAULT

The State presented proof that the Notice of Hearing and Charges (“NOHC”) was served to the Respondent via certified mail and regular U.S. mail. The Division initially sent certified mail to the Respondent’s address listed with the Division, which is 775 Green Oaks Lane, Collierville, TN 38017. The mail was sent March 5, 2020; but was returned March 11, 2020. The Division located a new address on the CLEAR database and sent the NOHC by certified mail and regular U.S. mail to the Respondent at 3482 Wynmont Grove, Collierville, TN 38017. The regular U. S. mail was not returned and the Respondent signed for the certified mail July 18, 2020. After the Division received the certified mail return receipt, the Division filed the NOHC. Subsequent to the Division’s filing of the NOHC, the Honorable Judge Murrell issued an Order

setting a prehearing conference. The Order contained a phone number for the parties to call in to participate in the prehearing conference. In addition, the Order informed the parties that failure to participate in the prehearing conference or any part of the proceedings at any stage may result in a default pursuant to T.C.A. § 4-5-309. The Respondent failed to call and participate in the prehearing conference on September 14, 2020. Additionally, the Respondent failed to appear and participate in the hearing on November 5, 2020.

INITIAL ORDER

After consideration of the entire record, evidence, and testimony presented, it is determined that the State has shown by a preponderance of the evidence that the Respondent's actions were in violation of Tenn. Code Ann. § 56-6-112(a)(2) and (8). As a result, the Respondent's insurance producer license number 633000 is permanently banned, and the Respondent is ordered to pay a civil penalty of fifteen thousand dollars (\$15,000), which represents five (5) violations of Tenn. Code Ann. § 56-6-103, five (5) violations of Tenn. Code Ann. § 56-6-112(a)(2) and five (5) violations of Tenn. Code Ann. § 56-6-112(a)(8). The Respondent is also ordered to pay all court costs and investigatory costs in this matter. This determination is based on the following Findings of Facts and Conclusions of Law.

FINDINGS OF FACT

1. The Respondent previously worked as an insurance producer; license number 633000.
2. The Respondent's insurance producer license was revoked pursuant to a consent order in 2009. The Respondent's license was revoked due to fraud and theft.
3. Despite the fact that the Respondent's insurance license was revoked, he continued to engage in the sale of insurance products. Furthermore, the Respondent used his father's name, Marvin Uthe, as the name of the insurance producer on general liabilities and worker's compensation insurance policies. His father had also been an insurance producer before his

death. 4. The Respondent engaged in this fraudulent behavior for over five (5) years. The Respondent's actions to continue to sell insurance products is a violation of Tenn. Code Ann § 56-6-103.

5. Also, The Respondent's use of his father's name to sell insurance is a violation of Tenn. Code Ann. § 56-6-112(a)(2) and (8).

CONCLUSIONS OF LAW

1. The State has shown, by a preponderance of the evidence as set forth in the above Findings of Fact, that the Respondent's actions are in violation of Tenn. Code Ann § 56-6-103 which provides:

A person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this part.

2. The Respondent's actions are also in violation of Tenn. Code Ann. § 56-6-112(a)(2) and (8) which provides:

(a) The commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license issued under this part or may levy a civil penalty in accordance with this section or take any combination of those actions, for any one (1) or more of the following causes:

...

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

...

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

3. Tenn. R. Civ. P. 54.04(1) and Tenn. Comp. R. & Regs. 1360-04-01-.01(1) respectively, provide as follows:

54.04. Costs. -

(1) Costs included in the bill of costs prepared by the clerk shall be allowed to the prevailing party unless the court otherwise directs, but costs against the state, its officers, or its agencies shall be imposed only to the extent permitted by law.

1360-04-01-.01(3) SCOPE.

(3) In any situation that is not specifically addressed by these rules, reference may be made to the Tennessee Rules of Civil Procedure for guidance as to the proper procedure to follow, where appropriate and to whatever extent will best serve the interests of justice and the speedy and inexpensive determination of the matter at hand.

4. It is further determined, pursuant to the above authorities, that the hearing costs incurred by the Division to the Administrative Procedures Division of the Secretary of State, and to the court reporter in this matter, should be assessed against the Respondent.

JUDGMENT

IT IS, THEREFORE, ORDERED that:

1. The Respondent, David Brian Uthe's insurance license number 633000 remains revoked and the Respondent is permanently banned from the sale of insurance in the state of Tennessee.
2. The Respondent, and any and all persons who may have assisted him in any of the aforementioned violations of Tenn. Code Ann. § 56-6-112, shall **CEASE and DESIST** from any such activities.
3. The Respondent shall pay a civil penalty sum of fifteen thousand dollars (\$15,000) for five (5) violations of Tenn. Code Ann. § 56-6-103, five (5) violations of Tenn. Code Ann. § 56-6-112(a)(2) and five (5) violations of Tenn. Code Ann. § 56-6-112(a)(8).

4. The Respondent is **ASSESSED all such costs** incurred by the Division herein pursuant to Tenn. Code Ann. § 56-1-110(b)(1) and Tenn. R. Civ. P. 54.04(1) and Tenn. Comp. R. & Regs. 1360-04-01-.01(3).

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **15th day of December, 2020**.



**RICHARD M. MURRELL
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 **15th day of December, 2020**.



**STEPHANIE SHACKELFORD, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE**

NOTICE OF FILING PROCEDURES

Due to the COVID-19 pandemic, APD has changed its filing procedures. Until further notice, filings should be made by **email** to APD.Filings@tn.gov or by **facsimile** to 615-741-4472. Paper filings should only be made by mail if a litigant has no access to either email or facsimile. If you are filing by email, documents should be saved in PDF format prior to filing. Each document to be filed must be a separate PDF. Only one filing method should be used. Please name PDFs for filing in the following format:

“APD CASE NUMBER YOUR NAME ABBREVIATED NAME OF DOCUMENT BEING FILED AGENCY NAME”

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case **BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE (COMMISSIONER)**, called an Initial Order, was entered on **December 15, 2020**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and states the specific reasons why you think the decision is incorrect. The APD must receive your written Petition no later than 15 days after entry of the Initial Order, which is no later than **December 30, 2020**. A new 15 day period for the filing of an appeal to the **COMMISSIONER** (as set forth in paragraph (2), below) starts to run from the entry date of an order disposing of a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal. Such an Appeal must be received by the APD no later than 15 days after the date of denial of the Petition. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the **COMMISSIONER**. Mail to the APD a document that includes your name and the above APD case number, and states that you want to appeal the decision to the **COMMISSIONER**, along with the specific reasons for your appeal. The APD must receive your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **December 30, 2020**. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.
3. **The COMMISSIONER decides to Review the Initial Order:** In addition, the **COMMISSIONER** may give written notice of the intent to review the Initial Order, within 15 days after the entry of the Initial Order.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the **COMMISSIONER** renders a Final Order.

If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for a stay must be received by the APD within 7 days of the date of entry of the Initial Order, which is no later than **December 22, 2020**. *See* TENN. CODE ANN. § 4-5-316.

NOTICE OF APPEAL PROCEDURES

REVIEW OF A FINAL ORDER

1. **A Party may file a Petition for Reconsideration of the Final Order:** When an Initial Order becomes a Final Order, a party may file a Petition asking for reconsideration of the Final Order. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and states the specific reasons why you think the Final Order is incorrect. If the Initial Order became a Final Order without an Appeal being filed, and without the **COMMISSIONER** deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the **COMMISSIONER** rendered a Final Order, the **COMMISSIONER** will consider the Petition. The APD must **receive** your written Petition for Reconsideration no later than 15 days after: (a) the issuance of a Final Order by the **COMMISSIONER**; or (b) the date the Initial Order becomes a Final Order. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing the Final Order will be adjusted. If no action is taken within 20 days of filing of the Petition, it is deemed denied. *See* TENN. CODE ANN. § 4-5-317.
2. **A Party Files an Appeal of the Final Order:** A person who is aggrieved by a Final Order 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 action or alternatively, at the person’s discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County,” within 60 days of (a) the date of entry of a Final Order; or (b) the date the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.
3. **A Party may request a stay of the Final Order:** A party may file a Petition asking for a stay that will delay the effectiveness of the Final Order. If the Initial Order became a Final Order without an Appeal being filed, and without the **COMMISSIONER** deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the **COMMISSIONER** rendered a Final Order, the **COMMISSIONER** will consider the Petition. A Petition for a stay of a Final Order must be **received** by the APD within 7 days after the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-316.

FILING

To file documents with the Administrative Procedures Division, use this address:

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