

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

TENNESSEE INSURANCE DIVISION,)
Petitioner)
vs.)
VINCENT JOSEPH ZITO,)
License # 948068,)
Respondent)

Docket No.: 12.01-096114J

NOTICE OF DEFAULT AND INITIAL ORDER

This matter was heard on August 21, 2007, in Nashville, Tennessee, before Mattielyn B. Williams, Administrative Judge, assigned to the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Commerce and Insurance. Ms. Dakasha K. Winton, Staff Attorney, Department of Commerce and Insurance, represented the State. The Respondent, Vincent Joseph Zito, was not present at the hearing, nor did an attorney appear on his behalf. Respondent had not moved for a continuance of the hearing.

The State moved that Respondent be held in default. The State submitted Exhibit 1, a certified mail return receipt, showing that a Notice of Proposed Action was delivered to Respondent's address of record on July 12, 2007, and signed for by "Shandrew Widmayer," acknowledging its receipt. The Notice of Hearing, per Collective Exhibit 3, was delivered to Respondent's address of record on July 21, 2007, and signed for by "Ryan Good," acknowledging its receipt. The State also sent the Notice of Hearing by UPS. Collective Exhibit 3 includes a copy of the UPS delivery receipt, showing that the copy sent by UPS was received on July 20th and signed for by "John," at Respondent's address of record.

It is **NOTED** that the State also searched the Cookeville telephone directory and engaged in other conduct, designed to verify Respondent's proper address and provide Respondent notice. Although Respondent was incarcerated, at one point, the State did not attempt to serve Respondent at that location, because his stay was brief.

It was **DETERMINED** that the State had made an adequate and reasonable effort to notify Respondent of the date and time for the hearing, consistent with the provisions of Tenn. Code Ann. § 56-6-112. The State's Motion for Default was **GRANTED**.

NOTICE OF DEFAULT

NOTICE IS HEREBY GIVEN THE RESPONDENT THAT THE RESPONDENT HAS BEEN HELD IN DEFAULT FOR THE RESPONDENT'S FAILURE TO APPEAR AT A HEARING ON THE MERITS AFTER RECEIVING ADEQUATE NOTICE. T.C.A. §4-5-309. RESPONDENT HAS FIFTEEN (15) DAYS FROM THE EFFECTIVE DATE OF THIS ORDER TO REQUEST THAT THIS FINDING OF DEFAULT BE SET ASIDE. THIS REQUEST MUST BE RECEIVED IN THE OFFICE OF THE SECRETARY OF STATE, ADMINISTRATIVE PROCEDURES DIVISION, SUITE 800, WILLIAM R. SNODGRASS BUILDING, 312 EIGHTH AVENUE NORTH NASHVILLE, TENNESSEE 37243, WITHIN THAT 15-DAY PERIOD. THE REQUEST TO HAVE THE FINDING OF DEFAULT SET ASIDE SHOULD INCLUDE THE REASONS TO JUSTIFY THE RESPONDENT'S FAILURE TO ATTEND. IF SUFFICIENT REASONS ARE GIVEN, THE ORDER MAY BE SET ASIDE AND A NEW HEARING SCHEDULED. IF THE RESPONDENT DOES NOT REQUEST THE DEFAULT TO BE SET ASIDE OR OTHERWISE APPEAL THE ACCOMPANYING INITIAL ORDER, THEN THE INITIAL ORDER WILL BECOME A FINAL ORDER SUBJECT TO COURT REVIEW. ANY QUESTIONS REGARDING THIS NOTICE OF

DEFAULT OR THE STEPS NECESSARY TO HAVE IT SET ASIDE SHOULD BE SUBMITTED TO THE ADMINISTRATIVE JUDGE SIGNING THIS ORDER BY LETTER OR BY TELEPHONING (615) 741-4469.

Should good cause exist for Respondent's failure to appear/participate, Respondent may move to have the Default Set Aside within fifteen (15) days.

INITIAL ORDER

With Respondent Vincent Joseph Zito in **DEFAULT**, the State moved to proceed in the absence of the Respondent. State/Petitioner's motion to proceed uncontested was **GRANTED**.

The subject of this hearing is the proposed revocation of the Respondent's Tennessee insurance producer license. After consideration of the argument of counsel and the record in this matter, it is **DETERMINED** that Respondent's insurance producer license should be **REVOKED** and that Respondent should be ordered to pay Three Thousand Dollars (\$3,000) in civil penalties. This decision is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Respondent, Vincent Joseph Zito, is a citizen of Tennessee and a resident of Cookeville, with his mailing address of record being 370 South Lowe Avenue, Unit A-167, Cookeville, Tennessee 38501.
2. The Respondent's limited insurance producer license, to act as a bail bondsman, numbered 948068, was issued by the Commissioner on March 17, 2006.
3. On September 20, 2006, the Vermont Department of Banking, Insurance,

Securities and Health Care Administration (hereinafter referred to as the "Vermont Department") instituted an Order of Summary Suspension against Respondent's Vermont license. As the basis for the Order of Summary Suspension, the Vermont Department alleged that Respondent entered into a sexual relationship with a client, who was subject to Respondent's legal custody, and over whom Respondent had the coercive power to return to jail.

4. Further, the Order of Summary Suspension (hereinafter referred to as the "Order") noted that the Respondent threatened to kill the client, struck her in the head, and pointed a loaded firearm at another person, during an altercation. The Order continued that Respondent was untruthful to police when answering questions regarding the incident.

5. The Respondent requested a hearing before the Vermont Department, but then requested numerous continuances to allow for resolution of criminal charges. At some point, Respondent discontinued contact with both his attorney and the Vermont Department.

6. On April 9, 2007, the Vermont Department revoked the Respondent's insurance agent license to act as a non-resident bail bond agent. The Vermont Department reasoned that Respondent's untruthful answers to the police, violent altercation(s) associated with his improper sexual relationship with a client, and his subsequent flight from justice, warranted the revocation. Exhibit 4 is a certified copy of that revocation.

7. Respondent did not inform the Tennessee Commissioner of the Vermont Department's action.

CONCLUSIONS OF LAW

1. Petitioner, as the entity/person seeking a change in Respondent's licensure status, has the burden of proof, under Rule 1360-4-1-.02(7) of the Official Compilation of Rules and Regulations of the State of Tennessee (O.C.R.R.S.T.), to prove that it is legally entitled to that result.

2. Tenn. Code. Ann. § 56-6-112(a)(8) provides that the Commissioner may place on suspension, revoke, or refuse to renew any license under this part if she finds that one holding an insurance producer license, or its equivalent, uses fraudulent, coercive, or dishonest practices, or demonstrates incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business, in this state or elsewhere.

3. Tenn. Code Ann. § 56-6-112(a)(1) provides that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license under this part if she finds that one holding an insurance producer license, or its equivalent, violates any law, rule, regulation, subpoena or order of the Commissioner.

4. It is **CONCLUDED** that the State met its burden of proof, by a preponderance of the evidence, in showing that the Respondent engaged in dishonest practices and acted in an untrustworthy fashion, in the conduct of insurance business, by engaging in an improper/inappropriate relationship with an individual over whom he had legal custody and by failing to cooperate with the police.

5. Tenn. Code Ann. § 56-6-112(a)(9) provides that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license under this part if she finds that one holding an insurance producer license, or its equivalent, had their license denied, suspended or revoked in any other state, province, district, or territory.

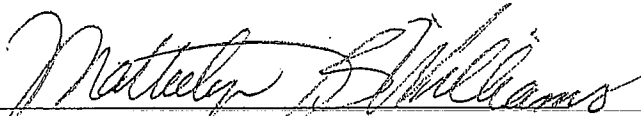
6. Tenn. Code Ann. § 56-6-119(a) states, in pertinent part, that a producer shall report to the Commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter.

7. It is **CONCLUDED** that the State met its burden of proof, by a preponderance of the evidence, that the Respondent had his non-resident insurance license to act as a bail bond agent revoked by the Vermont Department, and then failed to report such revocation to the Tennessee Commissioner.

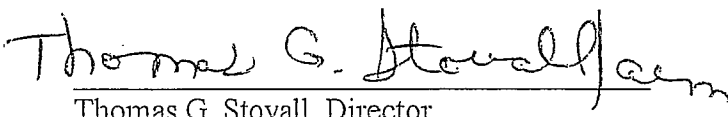
8. Based on the entirety of the record, and consistent with past practices in similar cases, it is hereby **ORDERED** that license number 948068, issued to Vincent Joseph Zito, is **REVOKED**.

9. Based on the entirety of the record, and consistent with past practices in similar cases, it is hereby further **ORDERED** that the Respondent **PAY A CIVIL PENALTY** of One Thousand Dollars (\$1000) each, for violation of Tenn. Code Ann. §§ 56-6-112(a)(8), 56-6-112(a)(9) and 56-6-119(a), for a total of **Three Thousand Dollars (\$3,000)**.

This Initial Order entered and effective this 22ND day of August, 2007.


Mattielyn B. Williams
Administrative Judge

Filed in the Administrative Procedures Division, this 22ND day of August, 2007.


Thomas G. Stovall, Director
Administrative Procedures Division