Before the State of South Carolina
Department of Insurance

In the matter of:

Donald Gene Tomczak,

210 St. Stephens E.
Irmo, South Carolina 29063.

SCDOI File Number 2004-123772

Default Order Revoking Resident Insurance Producer's Licensing Privileges

This matter comes before me pursuant to a Letter of Allegation and Notice of Opportunity for Public Hearing served, as required within S.C. Code Ann. § 38-3-170 (2004), by the State of South Carolina Department of Insurance upon Donald G. Tomczak by both certified mail, return receipt requested, and by regular mail on or about January 4, 2005.

By that letter, Donald Gene Tomczak was informed of his right to request a public hearing upon the allegations of impropriety contained within the letter against him. Further, he was warned that his failure to make a timely, written request would result in my summary revocation of his license to do business as a resident insurance agent within the State of South Carolina. Despite that warning, Mr. Tomczak has failed to respond to the Department's letter, On March 1, 2005, therefore, counsel for the Department filed an Affidavit of Default, and the entire matter was submitted directly to me for my summary decision based solely on the record.

The letter alleged, and I now find as fact, that while licensed to do business as a resident insurance agent within the State of South Carolina, Donald G. Tomczak was convicted by a South Carolina Circuit Court of General Sessions, Richland County, of the crime of "Neglect of Vulnerable Adult", in The State v. Donald G. Tomczak; Criminal Docket Number: 2004GS4003861. S.C. Code Ann. § 38-43-130 (2004) provides: "The director or his designee may revoke or suspend an agent's license after ten day's notice...when it appears that an agent has been convicted of a crime of moral involving moral turpitude.... The crime of "Neglect of Vulnerable Adult", involves moral turpitude.

In accordance with my findings of fact, and considering Mr. Tomczak's failure to avail himself of his opportunity to be heard, I now conclude, as a matter of law, that Donald Gene Tomczak was convicted of a crime of moral turpitude, and that his resident insurance agent's license should be revoked.

This administrative disciplinary order is a public record subject to the disclosure requirements of the State of South Carolina's *Freedom of Information Act*, S.C. Code Ann. §§ 30-40-10, *et seq*. (1991 and 2004). Nothing contained within this administrative disciplinary order should be construed to limit or to deprive any person of any private right of action under the law. Nothing contained within this administrative disciplinary order should be construed to limit, in any manner, the criminal jurisdiction of any law enforcement or judicial officer. Nothing contained within this administrative disciplinary order should be construed to limit the statutory duty, pursuant to S.C. Code Ann. § 38-3-110 (4) (2004), of the Director of Insurance, exercised either directly or through the Department of Insurance, to "report to the Attorney General or other appropriate law enforcement officials criminal violations of the law relative to the business of insurance or the provisions of this title which he considers necessary to report."

It is therefore ordered that Donald G. Tomczak's license to transact business as a resident insurance agent within the State of South Carolina be, and is hereby, revoked, and that no license, issued through the State of South Carolina Department of Insurance is to be issued to him.

It is further ordered that a copy of this order be transmitted to the National Association of Insurance Commissioners for distribution to its current member states and to each insurer for which Donald Tomczak is currently licensed, through the State of South Carolina Department of Insurance, as a resident insurance agent within the State of South Carolina.

This order takes effect upon the date of my signature below.

Eleanor Kitzman
Director

1st. March, 2005 at
Columbia, South Carolina

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Affidavit of Default

Personally appeared before me John B. O'Neal, III, who, being duly sworn, stated that at all times relevant to this Affidavit of Default he was an attorney representing the State of South Carolina Department of Insurance in this administrative action. He further stated the following:

The Department served notice on Donald G. Tomczak at the address detailed above, by a Letter of Allegation and Notice of Opportunity for a Public Hearing that the Department would request the Director of Insurance to summarily revoke his license to act as a resident insurance producer within the State of South Carolina in thirty days. The Department served the Notice, pursuant to S.C. Code Ann. § 38-3-170 (Supp. 2004), by "depositing it in the United States mail, postage prepaid, addressed to the last known address of the person and registered with the return receipt requested." That Notice further informed Donald G. Tomczak of his opportunity, within thirty days, to request in writing a public hearing.

The United States Postal Services attempted to effect service of the Notice by certified mail, return receipt requested, and by regular mail, on or about January 4, 2005, at the last known address. However, after several attempts, our letters were returned to our Department marked "unclaimed" by the Postal Services. Donald G. Tomczak has made no request for a public hearing or any other response to the Notice. The time in which to do so has expired. He is now in default.

John B. O'Neal, III
Associate General Counsel

South Carolina Department of Insurance
Post Office Box 100105
Columbia, South Carolina 29202-3105
(803) 737-6132

Sworn to and subscribed before me
This 1st. day of March, 2005.

Steven R. DuBois
Notary Public for the State of South Carolina
My Commission Expires May 10, 2009