Before the State of South Carolina
Department of Insurance

In the matter of:	File Number 2004-123479
David D. Toxey	**Default Order Revoking All Licensing Privileges**
1799 N. Mayflower Drive Charleston, South Carolina 29412.	

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 (Supp. 2004), by the State of South Carolina Department of Insurance upon David D. Toxey by both certified mail, return receipt requested, and by regular mail on June 27, 2005.

That letter informed David D. Toxey of his right to request a public hearing upon the allegations of impropriety contained within the letter against him. The letter further 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 producer within the State of South Carolina. **Despite that warning, David D. Toxey has failed to respond to the Department's letter.** On September 28, 2005, therefore, counsel for the Department filed an Affidavit of Default, and submitted the entire matter 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 producer within the State of South Carolina for American General Life and Accident Insurance Company, David D. Toxey "failed to forward $582.01 in premiums collected from various consumers to that insurer."

Section 38-43-130 of the South Carolina Code provides the Director or his designee "may revoke or suspend a producer's license after ten day's notice...when it appears that a producer...has violated this title or any regulation promulgated by the department, or has willfully deceived or dealt unjustly with the citizens of this State." This Code Section goes on within Subsection (4) to describe "deceived or dealt unjustly with the citizens of this State" specifically to include, "improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business."

In accordance with my findings of fact, and considering David D. Toxey's failure to avail himself of his opportunity to be heard, I now conclude, as a matter of law, that David D. Toxey violated S.C. Code Ann. § 38-43-130 (Supp. 2004) and that his resident insurance producer'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. §§ 30-4-10, *et seq.* (1991 and Supp. 2000). 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 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." S.C. Code Ann. § 38-3-110(3) (Supp. 2000).

It is, therefore, ordered that the license of David D. Toxey to do business as a resident insurance producer 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 shall be transmitted to the National Association of Insurance Commissioners for distribution to its current member states and to each insurer for which David D. Toxey 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 becomes effective as of the date of my signature below.

Eleanor Kitzman

Eleanor Kitzman
Director

October 5th, 2005 at
Columbia, South Carolina

Before the State of South Carolina
Department of Insurance

In the matter of:

David D. Toxey

1799 N. Mayflower Drive
Charleston, South Carolina 29412

SCDOI File Number 2004-123479

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 the attorney representing the State of South Carolina Department of Insurance (the Department) in this administrative action. He further stated the following:

The Department served notice on David D. Toxey 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 that 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 letter further notified David D. Toxey of his opportunity, within thirty days, to request in writing a public hearing.

The Department mailed the notice concerning the right to a hearing by certified mail, return receipt requested, and by regular mail, on or about June 27, 2005. The United States Postal Service returned the certified mail on July 27, 2005 marked, "Return to Sender, Unclaimed". The Notice sent via regular mail was not returned. David D. Toxey 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
(803) 737-6132

Sworn to and subscribed before me
this 5 day of October, 2005

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