

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of the Kansas)	
Resident Agent's License of)	Docket No. 2871-CO
TIMOTHY A. SPAIN)	

CONSENT ORDER

Timothy A. Spain ("Spain") wishes to resolve this matter without formal adjudicative proceedings by entering into this Consent Order. The Commissioner of Insurance ("Commissioner") hereby makes the following findings of fact, conclusions of law and order, to-wit:

Findings of Fact

1. Records maintained by the Kansas Insurance Department ("KID") indicate that Spain is a resident of the State of Colorado, and has a current mailing address of 14298 E. Mississippi Pl. #6-107, Aurora, Colorado 80012, and that he is licensed to transact the business of insurance as a resident insurance agent in the State of Kansas.
2. The Commissioner has jurisdiction over the subject matter of this proceeding and this proceeding is held in the public interest.
3. On February 23, 2000, KID was notified by Shelter Insurance Companies ("Shelter Insurance") that they had reason to believe Spain, a former agent, had engaged in acts which violated statutes prohibiting insurance fraud.
4. Spain was terminated from Shelter Insurance after an investigation in September 1999 revealed he failed to properly submit premium from policyholders to the

company. Subsequently, an application was made to KID by Shelter Insurance to cancel his appointment, effective September 24, 1999.

5. On February 24, 2000, KID responded to Shelter Insurance requesting that they provide details of the investigation.

6. On March 13, 2000, Shelter Insurance sent to KID the details of their investigation on Spain. They had identified three questionable claim drafts for hail claims. Spain acknowledged he had issued a false claims draft for \$2,445.12 on September 7, 1999 on policy no. 15-1-3392891-2 and had received the proceeds from the draft. He also acknowledged he had submitted a false claims draft documentation supporting a hail claim payment of \$2,477.75 on September 9, 1999 on policy no. 5-1-3583655-3, but did not cash the claim draft. Spain denied issuing a false claim draft in the amount of \$1,997.28 on May 23, 1999, on policy #15-1-3421959-9. But Shelter Insurance's further investigation confirmed with the insured that it too was a false claim.

7. Shelter Insurance's investigation also revealed a total of seventeen (17) policies where premium was withheld from the company in the amount of \$4,496.50.

8. Shelter Insurance sent a demand letter dated February 17, 2000 to Spain with a promissory note allowing him to pay the money back within two (2) years.

9. On March 21, 2000, KID sent a letter to Spain requesting he explain the circumstances involved and how the situation occurred.

10. On March 31, 2000, KID received a letter from Spain enclosing his Kansas resident agent's license. Spain indicated he had signed and sent the promissory note back to Shelter Insurance.

11. All the appointments Spain had to transact the business of insurance have been terminated. He has not been certified or appointed by any other company.

Conclusions of Law

12. K.S.A. 1999 Supp. 40-241 provides in relevant part:

“...If the commissioner of insurance finds that the individual applicant is trustworthy, competent and has satisfactorily completed the examination, the commissioner shall forthwith issue to the applicant a license as an insurance agent but the issuance of such license shall confer no authority to transact business in this state until the agent has been certified by a company pursuant to K.S.A. 40-241i, and amendments thereto...”

13. K.S.A. 40-241e provides in relevant part:

“The term ‘agent,’ as used herein, means a resident of this state holding a valid insurance agent’s license and a certification by at least one company...”

14. K.S.A. 1999 Supp. 40-242 provides in relevant part:

“(a) The commissioner of insurance may impose a penalty prescribed by subsection (e) or revoke or suspend the license of any broker or agent in the event that investigation by the commissioner discloses that...

(7) the interests of the insurer or the insurable interests of the public are not properly served under such license...

(b) The imposition of a penalty, or the lapse or suspension of any license by operation of law, by failure to renew or by its voluntary surrender shall not deprive the commissioner of jurisdiction or right to institute or proceed with any disciplinary proceeding against such licensee, to render a decision suspending or revoking such license, or to establish and make a record of the facts of any violation of law for any lawful purpose....”

15. K.S.A. 1999 Supp. 40-247 provides in relevant part:

“(a) An insurance agent or broker who acts in negotiating or renewing or continuing a contract of insurance including any type of annuity by an insurance company lawfully doing business in this state, and who receives any money or substitute for money as a premium for such a contract from the insured, whether such agent or broker shall be entitled to an interest in same or otherwise, shall be deemed to hold such premium in trust for the

company, making the contract. If such agent or broker fails to pay the same over to the company after written demand made upon such agent or broker, less such agent's or broker's commission and any deductions, to which by the written consent of the company such agent or broker may be entitled, such failure shall be prima facie evidence that such agent or broker has used or applied the premium for a purpose other than paying the same over to the company...."

16. K.S.A. 1999 Supp. 40-2,118 provides in relevant part:

"(a) For purposes of this act a 'fraudulent insurance act' means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto...."

17. Based upon the information contained in paragraph 11 above, it appears that Timothy A. Spain has not been certified by a company and, therefore, has no authority to transact the business of insurance in the State of Kansas, in violation of K.S.A. 1999 Supp. 40-241.

18. Based upon the information contained in paragraphs 1 and 11 above, it appears that Timothy A. Spain is not a resident of the State of Kansas, has not been certified by a company and, therefore, has not authority to transact the business of insurance in the State of Kansas, in violation of K.S.A. 40-241e.

19. Based upon the information contained in paragraphs 3 through 11 above, it appears that Timothy A. Spain has engaged in acts and practices in the business of insurance that are contrary to the interests of the insurer or the insurable interests of the

public, and that such interests are not properly being served under the continued licensure of Timothy A. Spain, in violation of K.S.A. 1999 Supp. 40-242(7).

20. Based upon the information contained in paragraph 7 above, it appears that Timothy A. Spain collected money from insureds as premiums for insurance, when, in fact, such premiums were used or applied for purposes other than obtaining insurance and not remitted to the appropriate insurers, in violation of K.S.A. 1999 Supp. 40-247.

21. Based upon the information contained in paragraph 6 above, it appears that Timothy A. Spain knowingly and with intent to defraud, presented, caused to be presented or prepared with the knowledge or belief that it will be presented to an insurer, written statements as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which he knew to contain materially false information concerning facts material thereto; or concealed, for the purpose of misleading, information concerning facts material thereto, in violation of K.S.A. 1999 Supp. 40-2,118.

22. Based upon the information contained in paragraphs 1 and 3 through 11 above, it appears that sufficient evidence exists for the revocation or suspension of Timothy A. Spain's insurance agent license pursuant to K.S.A. 1999 Supp. 40-242, in accordance with the procedures set forth in the Kansas Administrative Procedure Act, K.S.A. 77-501, et seq., as amended.

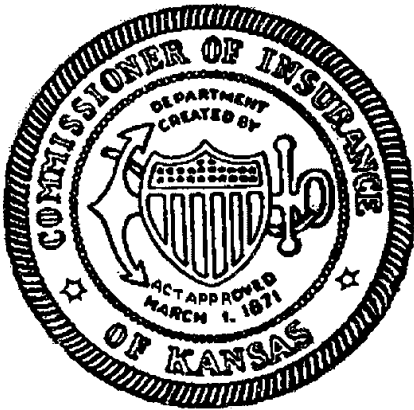
23. Timothy A. Spain admits to the allegations set forth herein this order as described above.

24. For the purposes of this Consent Order, Timothy A. Spain waives his right to a formal adjudicative proceeding and notice thereof and voluntarily consents to the following order of the Commissioner of Insurance.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

1. The Kansas resident insurance agent's license of Timothy A. Spain is hereby revoked and has been surrendered to the Kansas Insurance Department, the receipt of which is hereby acknowledged.

IT IS SO ORDERED THIS 11th DAY OF MAY, 2000 IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Kathleen Sebelius _____
Kathleen Sebelius
Commissioner of Insurance

BY:

/s/ Kathy Greenlee _____
Kathy J. Greenlee
General Counsel

/s/ Timothy A. Spain _____
Timothy A. Spain

SUBMITTED AND APPROVED BY:

_____/s/JaLynn Copp_____

JaLynn Copp

Attorney for Petitioner

Kansas Insurance Department