BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS

In the Matter of the Kansas Resident Insurance Agent's License of RICHARD M. BANISTER	)))	Docket No. 3009-SO

FINAL ORDER

SUMMARY ORDER
(Pursuant to K.S.A. 242 and K.S.A. 77-537) Effective: 8-6-01

Pursuant to authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 40-242, the Commissioner hereby suspends the resident insurance agent's license of Richard M. Banister ("Banister"), by way of Summary Order, as provided by K.S.A. 77-537.

The Commissioner has been shown the following facts, and takes the following action:

1. Records maintained by the Kansas Insurance Department ("KID") indicate that Banister is a resident of the State of Kansas, and has a current mailing address of 2605 Wilderness Cir., Wichita, Kansas 67226, and that he is licensed to transact the business of insurance as a resident insurance agent in the State of Kansas.

2. Accordingly, the Commissioner has jurisdiction over Banister and the subject matter of this proceeding, and such proceeding is held in the public interest.

3. On March 14, 2001, received a complaint from IMA of Kansas, Inc. ("IMA") against Banister.

4. Banister was an employee of IMA from July 1, 1998 to January 25, 2001. His role as an Account Executive in the Employee Benefits Department was to service clients to include communicating with insurance carriers on renewals.

5. One such renewal was on Emergency Medical Services, Inc. ("EMS") located in Kansas City, Missouri. Although the employee benefit program did not renew until January 1,

2001, Banister and Alan T. Schumacher ("Schumacher"), vice-president/senior benefits consultant with IMA, conducted a pre-renewal meeting on August 14, 2000.

6. As a result of the meeting, a marketing plan to prepare the request for proposal was developed on August 16, 2000 wherein IMA was to market the EMS account to eleven health/dental carriers. Banister handled all communications with the carriers and, on September 21, 2000, presented his findings to the EMS management.

7. Initial indications were that EMS would be extended a 40% increase from the incumbent carrier. Banister recommended a multi-option (PPO/HMO/Core Buy up) plan through Blue Cross Blue Shield of Kansas City (BCBSKC), a carrier that IMA had not done business with in the past.

8. EMS selected the BCBSKC plan and, on December 5th through the 7th, 2000, enrollment meetings were conducted to implement the plan effective January 1, 2001.

9. Completed enrollment forms were received by IMA on January 2, 2001, and communication from Banister indicated the forms had been overnighted to BCBSKC that same day.

10. Throughout the majority of January 2001, Banister indicated delays with BCBSKC due to filing requirements with the KID. According to Banister, BCBSKC could not provide a group ID# nor issue employee ID cards until the plan design selected by EMS was approved by the KID.

11. With growing concern due to the continuing delays in receiving information from BCBSKC, both from EMS and Schumacher, Schumacher demanded from Banister a full accounting of his activities.

12. Through e-mail correspondence on January 15, 2001; January 17, 2001 and January 19, 2001, Banister communicated that he was frustrated with the individual he was dealing with at BCBSKC and that he was going to go "up the ladder" to attempt to resolve the issues.

13. On January 23, 2001, Banister communicated that he was personally going to drive to Kansas City to meet with the BCBSKC representatives and demand full cooperation and resolution of the group ID#, employee ID cards, PPO/HMO directories and claim forms. The BCBSKC representative did not meet with Banister on January 23, 2001 so an additional trip to Kansas City was made on January 24, 2001 at which time Banister met with Susan Jones ("Jones") at BCBSKC.

14. On January 25, 2001, Banister communicated to Schumacher that all of his activities relative to the EMS renewal were "fabricated" and that no insurance existed. Plan design and rates were "made-up," and BCBSKC had not seen any information on the account prior to his visit on January 24, 2001 wherein he requested that BCBSKC quote the account for a February 1, 2001 effective date even though the account had been told coverage was in place on January 1, 2001.

15. When asked why he had taken the action that he had since August 2000 and misrepresented everything pertaining to the renewal, Banister indicated he had no excuses nor did he offer any further explanation of his actions.

16. Banister was terminated immediately by IMA, and a review of the EMS file was undertaken. A request for proposal was formulated the weekend of January 26th through the 28th and e-mailed/sent to the marketplace.

17. On February 1, 2001, IMA faxed a revised comparison of estimated costs along with recommendations on coverage placement to EMS. It is IMA's belief that coverage was placed with Benefit Administrators ("BA") of Springfield, Missouri, the current third party administrator who had performed administration/claims services on the EMS account since January 1, 1999 and who had arranged for the stop loss coverage, retroactive to January 1, 2001.

18. At the request of EMS, IMA was "released" as broker of record with BA, and IMA agreed to such release. The transition was further facilitated by IMA requesting that all product placed on behalf of EMS be written net of commission.

19. Banister was also responsible for servicing an account by the name of Berexco Inc. ("Berexco"). That account renewed on October 10, 2000.

20. After obtaining quotes, Banister moved the account to Blue Cross and Blue Shield of Kansas effective October 1, 2000. Coverages to be effective were medical and life.

21. Upon Banister's termination, a call was made to various vendors for an audit of all outstanding items regarding Banister's clients.

22. On February 5, 2001, IMA's employee benefits manager was notified by Blue Cross and Blue Shield that enrollment paperwork for Berexco's life insurance had never been received nor completed. Blue Cross and Blue Shield required 75% participation and the enrollment had not met that level. Banister was aware of the situation but had not taken steps to increase the participation and resolve the issue nor did he notify the client in writing that they had no coverage, nor had he advised IMA of the problem.

23. Berexco had been payroll deducting the employees' share of the premium since October 10, 2000 and was unaware coverage was not in force. After receiving the phone call

from Blue Cross and Blue Shield, IMA's employee benefits manager notified Berexco and steps were quickly taken to complete the enrollment and coverage became effective February 1, 2001.

24. On March 16, 2001, the KID sent a letter to Banister enclosing a copy of the complaint from IMA and asking him to respond by April 6, 2001.

25. On April 9, 2001, the KID received more information about Banister from Karen S. Cox, vice-president of employee benefits for IMA.

26. During Banister's employment, he was responsible for servicing Foley Equipment ("Foley") which renewed on January 1, 2001. Foley was self-insured with BA for the plan year of January 1, 2000 through December 31, 2000.

27. The renewal quote was delivered by Banister and Dyan Thornton, the producer, on November 16, 2000. At that time, the renewal quote included the usual stipulations and necessary disclosure statements.

28. Under Foley's plan for the 2000 year, Foley's individual stop loss was $25,000; however, they also had two individuals lasered, one at $50,000 and one at $75,000. How these individuals were to be handled for the 2001 plan year was still under review at the time the renewal quote was delivered.

29. On November 16, 2000, Foley advised IMA that another employee, Todd Leiker ("Leiker"), had just been diagnosed with cancer. Therefore, BA also had this claim under review for the 2001 plan.

30. On December 7, 2000, Banister e-mailed Foley that the renewal rates as initially presented in the quote at the renewal meeting November 16, 2000 had held and there were no lasers. However, IMA had not received any communication from BA conveying this information; and in fact, upon subsequent discussions with BA, after Banister was termination, it

was confirmed to IMA that there was no authorization by BA for this information. Foley proceeded to develop enrollment materials based on these rates. Updated disclosure statements were signed by Foley on December 8, 2000.

31. On January 8, 2001, BA sent IMA the revised renewal quote via e-mail. This revised renewal quote indicated a need to change stop loss carriers because American National, the current carrier, had increased the aggregate factors and was going to add a third laser, Leiker. BA negotiated a better deal with Standard Life which would still laser the original two individuals at $50,000 and $75,000. The aggregate factors still increased over the renewal factors a total of $130,000. $75,000 of this included the additional lasered amounts plus an increase due to claims experience from the prior year. This was better than the final renewal quote American National came back with.

32. On January 23, 2001, after several follow-up calls to Banister from BA, Foley signed the renewal paperwork the same day they received it. This paperwork was overnighted to BA on January 29, 2001 by IMA when it was found in Banister's office after his termination. Once the renewal paperwork was sent in, it appeared everything was in order.

33. In early March of 2001, Foley commented to other personnel in IMA's office that they had no lasers this year. Knowing this conflicted with the renewal paperwork, IMA reviewed its file with Foley.

34. The renewal paperwork that included the new aggregate factors and referenced continuation of the two lasers had never before been seen by Foley. In fact, IMA had in their files a page which referenced this information and also included the initials of Kathy Smith ("Smith"), the human resources director. Upon viewing the paperwork, Smith quickly verified that the initials were not in her handwriting. She had never been given that page in the renewal

paperwork, she had never been told there were still lasers, that the aggregate factors had gone up or that Foley had a new stop loss carrier. As a result, there was an additional $130,000 in liability (increase in aggregate factors) that Foley was unaware of. This is a potential errors and omissions claim due to Banister's actions that IMA will have to address.

35. KC Bell was another IMA client that Banister served. On June 1, 1999, Banister moved KC Bell from Humana to BA, a third party administrator for medical, dental and life.

36. KC Bell had life insurance with Humana but it was never placed when Banister moved the medical and dental coverages to BA. KC Bell was under the impression they had life insurance with BA since June 6, 1999.

37. IMA was able to remedy the situation by placing this coverage with UNUMProvident effective April 1, 2001.

38. On April 10, 2001, the KID sent a letter by certified mail to Banister. It contained the original complaint by IMA which Banister had not responded to, as well as the additional complaint by IMA. The KID requested that Banister respond to both complaints by April 25, 2001. Banister signed for the certified letter.

39. On or about May 11, 2001, IMA sent to the KID evidence of insurance documents purporting to show that Banister had auto insurance through Mid-Century Insurance Company as follows:

(a) Policy number 04 14298-48-41 effective September 9, 1998 through March 9, 1999 for a 1989 Audi 100;
(b) Policy number 04 14298-48-3 effective January 1, 1999 through April 14, 1999 for a 1992 GEO Prizm;
(c) Policy number 04 14298-48-42 effective March 1, 2000 through February 28, 2001 for a 1990 Dodge Grand Caravan SE; and
(d) Policy number 04 14298-48-43 effective March 1, 2000 through February 28, 2001 for a 1993 Mazda 4X4 Pick-up.

40. The evidence of insurance documents were found in Banister's electronic files which he had created for his own use. IMA verified with Mid-Century Insurance Company that all of the policies shown in the evidence of insurance documents were cancelled in 1997.

41. On or about the latter half of May 2001, Ed Mailen, investigator with the KID, tried to contact Banister to interview him or get a response to the complaints from him. Mr. Mailen had no success in contacting Banister.

Conclusions of Law

42. K.S.A. 40-241 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:...
>
> > (2) the holder of such license had misrepresented the provisions, terms and conditions contained in any contract of insurance;...
> >
> > (4) the holder of such license has intentionally omitted any material fact in such presentation;...
> >
> > (7) the interests of the insurer or the insurable interests of the public are not properly served under such license.

43. K.S.A. 40-2404 provides in relevant part:

> The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:
>
> > (1) Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission or comparison which:
> >
> > > (a) Misrepresents the benefits, advantages, conditions or terms of any insurance policy;....

44. Based upon the allegations contained in paragraphs 7-8, 14, 20, 23, 30 and 34-35 above, it appears that Richard M. Banister misrepresented the provisions, terms and conditions contained in contracts of insurance, in violation of K.S.A. 40-242(2).

45. Based upon the allegations contained in paragraphs 7-8, 14, 30 and 34-35 above, it appears that Richard M. Banister intentionally omitted material facts in such presentations, in violation of K.S.A. 40-242(4).

46. Based upon the allegations contained in paragraphs 39 through 40 above, it appears that Richard M. Banister made, generated, distributed or drew, or caused to be made, generated, distributed or drew a written instrument with knowledge that such information falsely stated or represented some material matter or was not what it purported to be, and with intent to defraud which reflects adversely on the agent's honesty, trustworthiness or fitness as an insurance agent in other respects and 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 Richard M. Banister, in violation of K.S.A. 40-242(7).

47. Based upon the allegations contained in paragraphs 3 through 41 above, it appears that the interests of the insurer and insurable interests of the public are not properly being served under Richard M. Banister's license due to his misrepresentations of insurance policies during sales presentations, misrepresentation of insurance policies sold and his repeated refusals and/or failures to respond to the Kansas Insurance Department, all in violation of K.S.A. 40-242(7).

48. Based upon the allegations contained in paragraphs 7-8, 14, 20, 23, 30 and 34-35 above, it appears that Richard M. Banister made or caused to be made statements which misrepresented the benefits, conditions or terms of insurance policies, in violation of K.S.A. 40-2404(1)(a).

49. Accordingly, sufficient grounds exist for the revocation of the insurance agent's license of Richard M. Banister, pursuant to K.S.A. 40-242.

50. Based upon the facts and circumstances set forth hereinabove, it appears that the use of summary proceedings in the manner set forth herein does not violate any provision of law, and the protection of the public interest does not require the Kansas Insurance Department to give notice and opportunity to participate to persons other than Richard M. Banister, all in accordance with the provisions set forth in K.S.A. 77-537(a).

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

1. The Kansas resident insurance agent's license of Richard M. Banister is hereby revoked.

Notice and Opportunity for Hearing

Richard M. Banister, may within fifteen (15) days of service of this Summary Order, may file with the Kansas Insurance Department written request for a hearing on this Summary Order, as provided for by K.S.A. 77-542. In the event a hearing is requested, such request should be directed to:

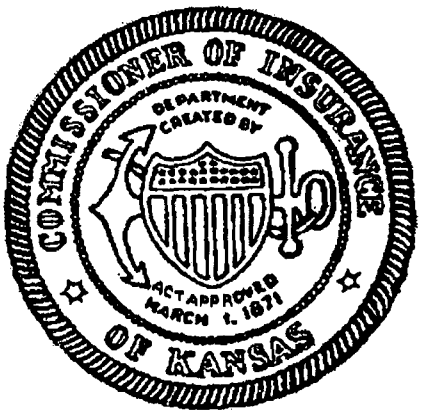
Kathy J. Greenlee
General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612-1678

If a hearing is not requested, this Summary Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period for requesting a hearing.

Any costs incurred as a result of conducting any administrative hearing, authorized under the provisions of K.S.A. 40-242 shall be assessed against the agent who is the subject of the

hearing, as provided for under K.S.A. 40-242(c). Costs shall include witness fees, mileage allowances, any costs associated with the reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

IT IS SO ORDERED THIS 18th DAY OF JULY 2001 IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



Kathleen Sebelius
Commissioner of Insurance

BY:

Kathy J. Greenlee
General Counsel

Certificate of Service

The undersigned hereby certifies that the above and foregoing Summary Order was served this 18th day of July 2001, by depositing the same in the United States Mail, first class postage prepaid, addressed to the following:

Richard M. Banister
2605 Wilderness Cir.
Wichita, Kansas 67226

Kathy J. Greenlee