

In the Matter of the)
Kansas Resident Insurance Agent's)
License Of)
IVAN D. THOMPSON and)
LOREN THORMODSGARD AGENCY, INC.)
d/b/a/ VIKING BAIL BONDS)

FINAL ORDER

Effective: 7-30-01

On January 30, 2001, an Order to Show Cause was issued by the Commissioner of Insurance directing that the Respondents appear before the Commissioner of Insurance and to show cause why an order directing them to cease and desist the unauthorized business of insurance should be issued or in the alternative why they should not be required to be licensed as a surety insurance company.

STIPULATED FINDINGS OF FACT

1. Ivan D. Thompson ("Thompson")) is an individual residing at 2400 Happy Hollow Road, Topeka, Shawnee County, Kansas 66617.
2. Loren Thormodsgard Agency, Inc. (LTA) is a Kansas corporation doing business in the State of Kansas as Viking Bail Bonds ("Viking") with its principal place of business at 114 S.E. 8th Street, Topeka, Shawnee County, Kansas 66603.
3. All of the assets of Viking are owned by LTA.

4. All of the issued and outstanding stock of LTA is owned by Loren E. Thormodsgard and M. Charlene Thormodsgard, husband and wife.
5. Loren E. Thormodsgard and M. Charlene Thormodsgard (the "Thormodsgards") are individuals residing at 5316 S.W. 25th Terrace, Topeka, Shawnee County, Kansas 66614.
6. Loren E. Thormodsgard serves as President and Director and M. Charlene Thormodsgard serves as Secretary-Treasurer and Director of LTA, d/b/a Viking Bail Bonds.
7. Viking contracts with fourteen (14) individuals who are independent contractors authorized by it to sell and place bail bonds for Viking with Kansas courts in thirty-one (31) counties.
8. Bail bonds are a third party's pledge of money to the appropriate court to secure the release of a prisoner and guarantee his or her future appearance before that court as a specific date and time for further court action on criminal charges or traffic violations.
9. If the prisoner does not appear before the court as ordered, the face amount of his or her appearance bond may be ordered forfeited to the court.
10. The statute authorizing domestic or admitted foreign insurance companies through their appointed license insurance agents, to issue bail bonds is K.S.A. §40-1102(d).
11. Such insurance agents are required to meet Kansas statutory requirements for licensing at K.S.A. §§40-239 through 40-247, and amendments thereto.
12. The statute authorizing unlicensed individuals to be recognized by courts and law enforcement agencies to post uninsured bail and appearance bonds, also known as "pocket bonders," is K.S.A. §22-2806.
13. On or about April 11, 2000, LTA, d/b/a Viking Bail Bonds, Loren E. Thormodsgard and M. Charlene Thormodsgard, husband and wife, and Thompson entered into an agreement (the "Agreement") in which LTA and the Thormodsgards are collectively referred to as "Principal" and Thompson is referred to as "Surety."

14. Under the Agreement, Thompson agreed to be the surety on all bail bonds made by Viking, up to and including One Hundred Thousand Dollars (\$100,000.00), and further agreed to execute a Limited Power of Attorney appointing the Thormodsgards as his attorneys in fact with limited power and authority to execute and deliver and affix his signature on bail bonds made by Viking.
15. Under the Agreement, Thompson is paid ten percent (10%) of the gross receipts of Viking in making bail bonds as compensation for appointing the Thormodsgards as his attorneys-in-fact under the Limited Power of Attorney and acting as surety on the bail bonds written by Viking.
16. Under the Agreement, Viking is required to segregate and pay a minimum of twenty percent (20%) of the net income it receives for making bail bonds into a "Build Up Fund" which serves as a reserve account to cover any bail bonds that need to be paid by Viking.
17. Under the Agreement, in the event that Thompson, as surety, is called upon to pay any sums on bail bonds issued by Viking, Viking must indemnify Thompson from any and all losses by repayment from the Build Up Fund.
18. Under the Agreement, Thompson has the right to terminate the agreement upon ninety- (90) days written notice to LTA and the Thormodsgards.
19. Viking's fourteen (14) independent contractors claim power of attorney to bind the assets of Thompson, as surety, on bail bonds issued by Viking to courts in thirty-one (31) Kansas counties.
20. The independent contractors, who act as Viking's agents or "pocket bonders," pledge Thompson's assets to the court as surety for the release and future appearance of released prisoners.
21. The individuals who purchase bail bonds from Viking's agents pay a non-returnable premium or fee of at least ten percent (10%) of the amount of the bond and may deposit collateral and pay other expenses to the agent for the bond.
22. Viking's agents are required by the terms of their agreement with Viking to remit fifty percent (50%) of the collected premiums or fees to Viking.

23. Viking's agents are required by terms of their agreement with Viking to segregate and pay twenty percent (20%) of their half of the premiums or fees to a "Build Up Fund" to be used to pay forfeitures when ordered by the courts.
24. Viking's agents, by the terms of their agreement with Viking, agree to hold harmless and indemnify Viking for any losses due to forfeiture or other expenses of a bail bond written by them.
25. By allowing Viking's "pocket bond" agents to present his financial statement with his limited power of attorney to bind those assets Thompson declares to the courts his financial ability to act as surety for Viking bail bonds.
26. The Commissioner of Insurance asserts that Thompson and LTA, d/b/a Viking, are collectively operating as an insurance company in violation of K.S.A. §40-214 and K.S.A. §40-2701, et seq.
27. Viking asserts that it is a "pocket bonder" and operates pursuant to K.S.A. §22-2806.

Applicable Law

1. Kansas Statutes Annotated (K.S.A.) 40-1102(d) provides as follows:

Any insurance company, other than a life insurance company, organized under the laws of this state or authorized to transact business in this state may make all or any one or more of the kinds of insurance and reinsurance comprised in any one of the following numbered classes, subject to and in accordance with its articles of incorporation and the provisions of this code.

(1)(d). . . to become a surety or guarantor for the performance by any person, copartnership or corporation of any lawful obligation, undertaking, agreement or contract of any kind, except contracts or policies of insurance; . . . [Emphasis added.]
2. K.S.A. 40-201 provides as follows:

For purposes of this article the term "insurance company" shall, unless otherwise provided, apply to all corporations, companies, associations, societies, persons or partnerships writing

contracts of insurance, indemnity or suretyship upon any type of risk or loss. . .

3. K.S.A. 40-214 provides as follows:

It shall be unlawful for any person, company, corporation or fraternal benefit society to transact the business of insurance, indemnity or suretyship, or do any act toward transacting such business, unless such person, company, corporation or fraternal benefit society shall have been duly authorized under the laws of this state to transact such business and shall have received proper written authority from the commissioner of insurance. . .

4. K.S.A. 40-2701(b) provides as follows:

- (a) Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer is deemed to constitute the transaction of an insurance business in this state: (1) The making of or proposing to make as an insurer, an insurance contract; (2) the taking or receiving of any application for insurance; (3) the receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof; (4) the issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state; (5) directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications or delivery of policies or contracts or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and rising out of or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident in this state . . . [Emphasis added.]

5. K.S.A. 22-2806 provides as follows:

"Every surety, except an insurance company authorized to transact business pursuant to subsection (d) of K.S.A. 40-1102 and acts

amendatory thereof, shall justify by affidavit and may be required to describe in the affidavit the property by which he proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by him and remaining undischarged and all his other liabilities. No bond shall be approved unless the surety thereon appears to be qualified. The appearance bond and the sureties thereon may be approved and accepted by a magistrate, by the clerk of the court where the action is pending or by the sheriff of the county."

Conclusions of Law

1. Clearly, it is the general principle that in Kansas a person, company, corporation or other entity must be licensed by the commissioner of insurance in order to transact business of insurance, indemnity or surety. K.S.A. 40-214.
2. The Kansas Criminal Code in Chapter 22 recognizes that bonding sureties may be licensed as insurance companies as provided by K.S.A. 40-1102 or a bonding surety may be excepted from the provisions of K.S.A. 40-1102(d). K.S.A. 22-2806 allows for a surety to be unlicensed and allows the surety to justify by affidavit properly pledged by surety for the appearance of a criminal defendant.
3. In this case, Ivan D. Thompson is the surety pledging his property to insure the appearance of criminal defendants in various courts in the state of Kansas. Mr. Thompson is the surety as envisioned in K.S.A. 22-2806. K.S.A. 22-2806 allows Thompson to act as a surety without meeting the licensing requirements of K.S.A. 40-1102.
4. While there is a complex and detailed contractual agreement between Thompson, the Thormodsgards, and Viking Bail Bonds, as well as the independent contractors operating through Viking Bail Bonds, the paramount fact is that Thompson remains the surety in each case. Thompson has pledged his property in each case. The fact that Thompson has appointed others with a limited power of attorney does not change the fact that Thompson is the surety. There has been nothing presented to the Presiding Officer that prohibits a surety, such as Thompson, from granting others a limited power of attorney to approve bonds.


5. The Attorney General's opinion cited by the Petitioner regarding K.S.A. 22-2806 for the principal that only individual and natural persons were authorized as sureties and not companies does not support the Petitioner's position. This is because the simple fact remains that Mr. Thompson is the individual acting as a surety. Although Mr. Thompson is acting as a surety under a limited power of attorney he granted others, he remains the surety pursuant to K.S.A. 22-2806.
6. The Petitioner's argument that allowing Thompson, the Thormodsgards and Viking Bail Bond to operate as they are allows them to evade the licensing provisions required by other insurance companies and constitutes unfair competition may have merit. However, unless the statutes prohibit the conduct of Thompson, the Thormodsgards and Viking Bail Bond, the Presiding Officer may not find that the action of the respondents is in violation of the law.
7. Certainly, it may be argued that the legislature in enacting K.S.A. 22-2806 did not envision the complex and extensive contractual arrangements as set forth between Thompson, Thormodsgards and Viking Bail Bonds and perhaps the legislature did not envision that one surety (Thompson) would become a surety serving thirty-one (31) counties in Kansas. However, the action of Thompson, Thormodsgards, and Viking Bail Bonds is permitted by K.S.A. 22-2806 and the Presiding Officer may not read into the statute prohibitions merely because of the complex contractual arrangements between the parties.
8. As stated above, the paramount factor remains that Ivan D. Thompson is the surety on these bonds. He is acting as surety pursuant to K.S.A. 22-2806 and as such is not required to be licensed as a surety as defined in K.S.A. 40-1102(d).

Conclusion

The Presiding Officer concludes that the Respondents are operating under the authority of K.S.A. 22-2806 and are not engaged in the unauthorized business of insurance nor are they required to be licensed by the Petitioner. The Petitioner's request for an order directing the Respondents to cease and desist from issuing bail bonds is not warranted as the Respondents are not conducting any unlawful acts or procedures. IT IS SO ORDERED.

The Respondents' request for cost of this action is denied as the Presiding Officer does not have statutory or regulatory authority to award cost. IT IS SO ORDERED.

Pursuant to K.S.A. 77-527, either party may appeal this Initial Order. A petition for review must be filed within 15 days from the date of this Initial Order. Failure to timely request review may preclude further judicial review. If neither party requests a review, this Initial Order becomes final and binding on the 30th day following its mailing. Petitions for review shall be mailed or personally delivered to: Kansas Insurance Department, Commissioner of Insurance, Kathleen Sebelius, 420 S.W. 9th Street, Topeka, Kansas 66612.

A handwritten signature in dark ink, appearing to read 'E. Gaschler', is written over a horizontal line.

Edward J. Gaschler
Presiding Officer
Office of Administrative Hearings

CERTIFICATE OF SERVICE

On 06/27, 2001, I mailed by U.S. mail, a copy of this initial order to:

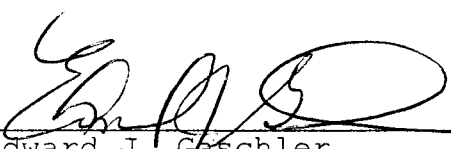
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