

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

FINAL ORDER

Effective: 4-7-03

In the Matter of the Kansas Resident)	
Insurance Agent's License of)	Docket No. 3132-SO
KELLI M. SMITH)	

SUMMARY ORDER

(Pursuant to K.S.A. 2002 Supp. 40-4909 and K.S.A. 77-537)

Pursuant to authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 2002 Supp. 40-4909, the Commissioner hereby revokes the resident agent's license of Kelli M. Smith ("Smith") by way of Summary Order as provided by K.S.A. 77-537.

Findings of Fact

The Commissioner has been shown the following facts:

1. Records maintained by the Kansas Insurance Department ("KID") indicate that Smith is licensed as a resident agent to transact the business of insurance in the State of Kansas. KID records further indicate a legal mailing address of 4545 S. Oak, Wichita, KS 67217.
2. By letter dated January 7, 2003, and signed by Jim Newhouse, M&M Insurance Associates advised KID that the agency terminated Smith, effective December 13, 2002, as a result of her fraudulent acts.
3. Newhouse advised that Smith uploaded a Progressive Insurance Company (Progressive) automobile policy on November 11, 2002, for David Dyer, the father of her child, that the policy was dated November 8, 2002, and that Dyer contacted Progressive directly on November 11, 2002, to make a claim for damage to his vehicle.

4. Newhouse advised that Smith generated an agency computer receipt for \$332.88, that Dyer admitted he only gave Smith \$150, and that Smith caused \$332.88 in agency funds to be transmitted to Progressive.

5. Newhouse advised that Smith produced the receipt by modifying an existing receipt dated November 8, 2002, and that the Dyer receipt was not made on that date.

6. Newhouse also reported that Smith accepted money from and provided proof of insurance to her friend, Chalise Olsen, but never sent the application or money to the insurance company and that Smith falsified proof of insurance on her own vehicle.

7. On January 14, 2003, KID sent a letter to Smith's last known address requesting a response to Newhouse's allegations but received no reply.

8. On February 12, 2003, KID sent a second letter requesting a response. That letter was returned on February 19, 2003, marked, "MOVED LEFT NO ADDRESS UNABLE TO FORWARD RETURN TO SENDER."

9. To date, KID has not received notification of Smith's change of address.

Conclusions of Law

10. K.S.A. 2002 Supp. 40-4909(a) provides, in relevant part:

"The commissioner may deny, suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the applicant or license holder has . . . (2) Violated: (A) Any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or any rule or regulation promulgated thereunder . . . (7) Admitted to or been found to have committed any insurance unfair trade practice or fraud in violation of K.S.A. 40-2404 and amendments thereto. (8) Used any fraudulent, coercive, or dishonest practice, or demonstrated any incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere." K.S.A. 2002 Supp. 40-4909(a).

11. The Commissioner may revoke any license issued under the Insurance Agents Licensing Act if the Commissioner finds that the insurable interests of the public are not properly served under such license. K.S.A. 2002 Supp. 40-4909(b).

12. The Commissioner has jurisdiction over Smith and the subject matter of this proceeding, and such proceeding is held in the public interest.

13. Although K.A.R. § 40-7-9 requires agents to notify KID of a change of address within 30 days, to date, KID has not received notification of Smith's change of address.

14. K.S.A. 2002 Supp. 40-2404(5) prohibits publication of a false statement of material fact as to the financial condition of a person. The Commissioner finds that Smith falsely represented that she and Olsen had insurance coverage when they, in fact, did not; that each such representation was a false statement of material fact as to the financial condition of a person with respect to purpose for which it was made; and that each false statement was an act of fraud in violation of K.S.A. 2002 Supp. 40-2404(5).

15. The Commissioner finds that Smith used a fraudulent and dishonest practice and demonstrated untrustworthiness and financial irresponsibility in the conduct of business in this state when she backdated a policy for Dyer and altered a previously-issued receipt to show a false payment date and amount, in violation of K.S.A. 2002 Supp. 40-4909(a)(8).

16. Moreover, the Commissioner finds that Smith's license should be revoked pursuant to K.S.A. 2002 Supp. 40-4909(b) for the protection of the insurable interests of the public.

17. Accordingly, the Commissioner finds that sufficient grounds exist for the revocation of the resident insurance agent's license of Kelli M. Smith.

18. Based on the facts and circumstances set forth herein, it appears that the use of summary proceedings in this matter is appropriate, in accordance with the provisions set forth in K.S.A. 77-537(a), in that the use of summary proceedings does not violate any provision of the law and the protection of the public interest does not require the KID to give notice and opportunity to participate to persons other than Kelli M. Smith.

19. **IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT** the Kansas resident insurance agent's license of Kelli M. Smith is hereby **REVOKED.**

Notice and Opportunity for Hearing

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

John W. Campbell
General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, KS 66612

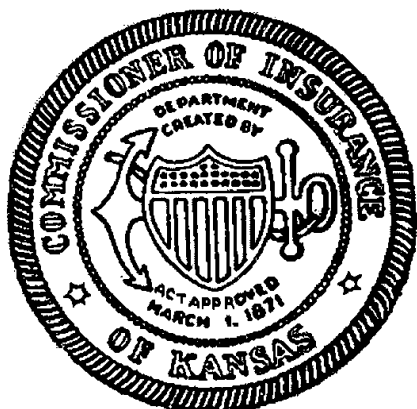
Any costs incurred as a result of conducting any administrative hearing shall be assessed against the agent who is the subject of the hearing as provided by K.S.A. 2002 Supp. 4909(f). Costs shall include witness fees, mileage allowances, any costs associated with the reproduction of documents which become part of the hearing record, and the expense of making a record of the hearing.

21. 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-day period for requesting a

hearing. Such Final Order will constitute final agency action in this matter, and the filing of a petition for reconsideration is not a prerequisite for judicial review.

22. The Petitioner may, within thirty (30) days of the date the order becomes final, file a petition for judicial review in the appropriate court, as provided for by K.S.A. 77-613. In the event the Petitioner files a petition for judicial review, the agency officer to be served on behalf of the Kansas Insurance Department is: John W. Campbell, General Counsel, Kansas Insurance Department, 420 S.W. 9th Street, Topeka, Kansas 66612-1678.

IT IS SO ORDERED THIS 17th DAY OF March, 2003, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



_____/s/ Sandy Praeger_____
Sandy Praeger
Commissioner of Insurance
BY:

_____/s/ John W. Campbell_____
John W. Campbell
General Counsel

Certificate of Service

The undersigned hereby certifies that he served the above and foregoing Summary Order on this 20th day of March, 2003, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Kelli M. Smith
4545 S. Oak
Wichita, KS 67217

_____/s/ John W. Campbell_____
John W. Campbell