

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

In the Matter of the Kansas Resident)
Insurance Agent’s License of)
DAVID R. CHILES) Docket No. 3220-CO

CONSENT ORDER

The Kansas Insurance Department (“KID”) and resident insurance agent David R. Chiles (“Chiles”) wish to resolve allegations of misconduct without formal adjudicative proceedings by entering into this consent order. Having been advised of his right to a hearing prior to the issuance of an order, Chiles stipulates to the following facts, upon which the Commissioner of Insurance (“Commissioner”) bases her conclusions of law and issues the order, and Chiles voluntarily waives hearing and review of the order.

Facts

1. Records maintained by the Kansas Insurance Department (“KID”) indicate that Chiles is licensed as a resident agent to transact the business of insurance in the State of Kansas and has been so licensed since July 16, 1971. KID records further indicate a legal and mailing address of 10507 W. 54th, Shawnee, KS 66203.
2. In 1990, Chiles became manager of the Lehman Agency.
3. From 1991 until termination of his employment with the agency July 9, 2003, Chiles has held an ownership interest of ten percent in the agency.
4. Chiles admits to depositing commission checks belonging to the agency in his personal account.

5. Chiles admits to collecting undisclosed fees from the Gardner school district and depositing the fees in his personal account.

6. Pursuant to a settlement agreement with the agency, Chiles has refunded \$17,960.92, the undisclosed fees plus interest, to the school district and remitted \$20,011.87 to the agency.

Applicable Law

7. 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 and regulation promulgated thereunder; . . . (4) Improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business. . . . (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).

8. Insurance agents may receive “compensation other than commissions from any insured or prospective insured on account of negotiation or procurement of or other services in connection with contracts of insurance policies . . . if such compensation is based upon a written agreement between the insurance agent and insured specifying the amount of such compensation.” K.S.A. 2002 Supp. 40-4911.

9. 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).

Conclusions of Law

10. The Commissioner has jurisdiction over Chiles as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

11. The Commissioner finds that good cause exists to revoke or suspend Chiles' insurance agent's license in that Chiles, by his own admission, has violated K.S.A. 2002 Supp. 40-4911 by collecting an undisclosed fee for the procurement of contracts of insurance and has misappropriated moneys received in the course of doing insurance business.

12. The Commissioner finds that good cause exists to revoke or suspend Chiles' license in that his conduct, at a minimum, demonstrates dishonest practices and untrustworthiness in the conduct of business.

13. However, the Commissioner finds that Chiles' misconduct stemmed from a conflict with the agency over compensation, full restitution has been paid, and no consumer has ultimately suffered a loss.

14. The Commissioner, therefore, concludes that, pursuant to K.S.A. 40-4909(h)(2), Chiles shall pay an administrative penalty of \$500 for violations of K.S.A. 2002 Supp. 40-4911 and an additional penalty of \$500 for misappropriation of commissions belonging to the agency.

15. Moreover, the Commissioner and Chiles stipulate and agree that the facts are sufficient to support revocation of Chiles' license but that Chiles shall retain his Kansas insurance agent's license during a probationary period of two calendar years from the effective date of this order. The Commissioner and Chiles stipulate and agree that any violation of statute or regulation during the two-year probation, including a merely technical violation, whether the violation becomes known or is committed during the probationary period, shall be cause for suspension or revocation of the license at the Commissioner's discretion.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT David R. Chiles shall immediately pay an administrative penalty of \$1000. It is further

ordered that David R. Chiles shall retain his Kansas resident insurance agent's license only on a probationary basis for two years from the date of this order.

IT IS SO ORDERED THIS 22nd DAY OF SEPTEMBER, 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

/s/ David R. Chiles
David. R. Chiles Date

Submitted and approved by:

/s/ Brenda J. Clary
Brenda J. Clary
Staff Attorney

NOTICE: This order shall constitute a final agency action on the date it is signed by the Commissioner or her designee. In the event the Petitioner desires to file a petition for judicial review, the agency officer designated pursuant to K.S.A. 77-613(e) to receive service of a petition for judicial review on behalf of the KID is John W. Campbell, General Counsel, Kansas Insurance Department, 420 S.W. 9th St., Topeka, KS 66612-1678.

Certificate of Service

The undersigned hereby certifies that she served a true and correct copy of the above and foregoing Consent Order on this 22nd day of September, 2003, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Richard S. Wetzler
Holman Hansen & Colville, P.C.
P.O. Box 7490
Overland Park, KS 66211
Attorney for Respondent David R. Chiles

/s/ Brenda J. Clary
Brenda J. Clary