

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

FINAL ORDER

Effective: 11/14/03

In the Matter of the Kansas Agency License)
of CARMAN INSURANCE AGENCY; and)
the Kansas Resident Insurance Agent's)
License of STEPHEN C. CARMAN)

Docket No. 3086-RA

Docket No. 3085-RA

SUMMARY ORDER

Pursuant to authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 2002 Supp. 40-4909, the Commissioner hereby revokes agency license of the Carman Insurance Agency ("Agency") and the resident insurance agent's license of Stephen C. Carman ("Carman") by way of Summary Order as provided by K.S.A. 77-537.

Findings of Fact

1. Records maintained by the Kansas Insurance Department ("KID") indicate that the Agency is an insurance agency with a business address of 210 N. Missouri, Selden, Kansas 67757, and mailing address of P.O. Box 136, Selden, Kansas 67757. According to KID records, the Agency was licensed to transact the business of insurance as an insurance agency in the State of Kansas until December 23, 2002, when the license was cancelled for failure to respond to an agency status letter.

2. Records maintained by the KID indicate that Carman is a resident of the State of Kansas, and has a legal address of 201 S. Kansas Avenue, Selden, Kansas 67757, and mailing address of P.O. Box 48, Selden, Kansas 67757, and that he was licensed to transact the business of insurance as a resident insurance agent in the State of Kansas from June 21, 1968, until the license was terminated on March 16, 2003, for failure to comply with continuing education requirements.

3. Records maintained by the KID indicate that Carman was the designated officer responsible for the management and operation of the Agency, and for its compliance with the insurance laws and rules and regulations of the State of Kansas.

4. On May 8, 1997, Carman became an appointed agent with Great American Alliance Insurance Company (“Great American”), which is an affiliate of the Great American Insurance Companies. (“GAIC”).

8. On February 7, 2002, Darlene Hughes (“Hughes”), GAIC Crop Hail Accounting, reported to GAIC Corporate Security that Carman might have misappropriated collected crop hail premium.

9. Hughes advised that Carman’s crop/hail insureds were on direct bill. When Accounting sent out billing statements, they received feedback from the insureds that Carman told them to pay him instead of the company. At that time, Carman had not remitted the collected premium to GAIC.

10. GAIC sent a certified letter to Carman requesting information about the allegations. They received no response from Carman.

11. Larry Alstrom (“Alstrom”) provided GAIC with copies of two (2) checks for premium payments.

12. Alstrom’s first payment was with check #2364 to GAIC, dated August 5, 2001, in the amount of \$573.00, for policy no. 622466. The check appears to have been cashed by GAIC.

13. Alstrom’s second payment was with check #2413 to the Agency, dated October 10, 2001, in the amount of \$17,427.00, for policy no. 763858. The check appears to have been cashed by the Agency on October 24, 2001 in Colby, Kansas.

14. On December 11, 2001, Don Juenemann ("Juenemann") called GAIC and advised that he received a billing statement for \$1,454.00 on policy no. 763826, but he had paid his premium to Carman a long time ago. He provided a copy of his premium payment, check #5280, in the amount of \$1,366.77, paid to Carman.

15. On February 19, 2002, Corporate Security of GAIC interviewed Carman. He was confronted with the information that he had collected premium from two (2) insureds (Alstrom and Juenemann) who were on direct bill and GAIC had not received the premium.

16. Carman admitted collecting the premium from Alstrom, Juenemann, and five (5) other insureds and failing to remit it to GAIC.

17. Carman admitted collecting the following premium payments and failing to remit premium to GAIC and agreed that the amounts, taken from direct billing statements, were probably correct:

| <u>Insured</u> | <u>Policy#</u> | <u>Amount</u> |
|-----------------------|-----------------------|----------------------|
| MCR Farms | 763824 | \$3,707.00 |
| Wilbur Reichert | 763825 | 811.00 |
| | 763939 | 2,451.00 |
| | 763940 | 1,046.00 |
| <u>Insured</u> | <u>Policy#</u> | <u>Amount</u> |
| Don Juenemann | 763826 | 1,454.00 |
| Larry Alstrom | 763858 | 18,254.00 |
| Galen Tacha | 763926 | 2,986.00 |
| | 763937 | 1,486.00 |
| Todd Jacobs | 763938 | 914.00 |
| | 765273 | 322.00 |
| Emigh Brothers | 765298 | <u>2,387.00</u> |
| | | \$35,818.00 |

18. Carman could only explain that he had collected premium and used it for expenses. The money was not placed in a trust account and he no longer had it. Carman did advise that he was trying to get a loan from the bank to pay GAIC.

19. On April 18, 2002, GAIC sent a demand letter to Carman. The letter demanded immediate payment of \$31,904.68 in collected premium outstanding after commissions and threatened collection if payment was not received by April 30, 2002.

20. Carman refused or failed to remit the above amount of premium to GAIC.

21. In addition, GAIC discovered that Carman had forged the signature of an insured, Don Ritter ("Ritter"), to a claim check from GAIC and cashed the check. A forged signature affidavit has been filed with the bank.

22. On March 22, 2002, Western Surety Company ("Western Surety") sent a letter to the KID that indicated that Western Surety was terminating its appointments (agency and agent) and relationship with Carman for nonpayment of premium owed. The principal for Bond #22492774, Wachendorfer Construction ("Wachendorfer"), provided Western Surety with copies of checks paid to Carman for payment of Wachendorfer's bond. The payments were never remitted to Western Surety.

23. On July 31, 2002, the KID received a complaint against Carman from Estrella Harold ("Harold"). Carman had been Harold's insurance agent since approximately 1994. Harold's homeowner's policy was with Farmers Alliance Mutual Insurance Company ("Farmers Alliance"). The policy ran out on May 19, 2002. Carman informed Harold that he was dropping Farmers Alliance and that he would place her homeowner's policy with another company. Carman informed Harold that her premium would be \$1,300.00, and she wrote a check in that amount to Carman Insurance and gave it to Carman on April 29, 2002. Harold spoke to Carman

after that date to inform him that she had not received the policy from the company. He reassured her at that time she should be receiving the policy soon. Carman cashed the check on May 1, 2002. Harold discovered that he did not use this money to insure her with any company.

26. On August 2, 2002, Ed Mailen (“Mailen”), an investigator with the KID, sent Carman a letter requesting that he respond to the complaint filed by Harold.

25. On August 12, 2002, the KID received a response from Carman. Carman indicated that he remembered being at Harold’s farm taking pictures and measuring buildings and remembered filling out an application to Farmers Mutual Insurance Company. Carman also stated that he was going to send Harold the money he owes her as soon as possible. Carman did not indicate what happened to the money Harold paid him as premium for her homeowner’s insurance or have any explanation regarding the fact that he took premium money from Harold and in turn did not obtain her homeowner’s insurance. Carman indicated that he was severely depressed and suicidal at the time. He also stated that since that time he has spent time in the Richard Young Hospital in Kearney, Nebraska and is now on medication for depression. Carman is also seeing a therapist at the Hi-Plains Mental Health Center in Colby, Kansas.

26. On July 8, 1991, Carman entered into and signed a Consent Order with the KID based on the fact that on August 16, 1989 he was convicted of five (5) counts of Willful Misapplication of Bank Funds, a violation of 18 U.S.C. §656. He was placed on probation on November 3, 1989 for a period of three (3) years and assessed a fine of \$250.00. Among other conditions in the Consent Order, it was ordered that Carman: (1) shall cease and desist, directly or indirectly, from engaging in any untruthful, dishonest, or misleading conduct or acts; and (2) shall obey the laws of the United States, the State of Kansas, and any other jurisdiction whose laws he may be subject to.

Applicable Law

27. K.S.A. 40-247(a) provides in relevant part:

“An insurance agent...who acts in negotiation 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...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...fails to pay the same over to the company after written demand made upon such agent..., less such agent’s...commission and any deductions, to which by the written consent of the company such agent...may be entitled, such failure shall be prima facie evidence that such agent...has used or applied the premium for a purpose other than paying the same over to the company...”

28. 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 or any rule and regulation promulgated thereunder; (B) any subpoena or order of the commissioner; . . . (3) Obtained or attempted to obtain a license under this act through misrepresentation or fraud; (4) Improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business... (6) Been convicted of a misdemeanor or felony; (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.... (10) Forged another person’s name to an application for insurance or to any document related to an insurance transaction....

29. In addition, the commissioner may deny, suspend, revoke, or refuse to renew any license issued under this act if the commissioner finds that the interests of the insurer or the insurable interests of the public are not properly served under such license.

K.S.A. 2002 Supp. 40-4909(b).

30. The failure to renew a license does not deprive the Commissioner of jurisdiction to proceed with disciplinary action against the license.

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

32. Based upon the information contained in paragraphs 8 through 20, and 22 through 25 above, it appears that the Carman Insurance Agency and Stephen C. Carman collected money from insureds as premium 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. 40-247.

33. Based upon the information identified in paragraph 32, the Commissioner finds that the Carman Insurance Agency and Stephen C. Carman improperly withheld, misappropriated or converted moneys or properties received in the course of doing insurance business.

34. Based upon the information contained in paragraph 26 and the information identified in paragraph 32, the Commissioner finds that the Carman Insurance Agency and Stephen C. Carman used fraudulent, coercive, or dishonest practice, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state.

35. Based upon the information contained in paragraph 21 above, it appears that the Agency and Stephen C. Carman forged another person's name to a document related to an insurance transaction.

36. The Commissioner finds that such conduct is sufficient to support revocation of the agency license of the Carman Insurance Agency and the Kansas resident insurance agent's license of Stephen C. Carman pursuant to K.S.A. 2002 Supp. 40-4909(a)(2)(A), 40-4909(a)(4),

40-4909(a)(8), and 40-4909(a)(10), and the Commissioner finds that both licenses should be revoked.

37. Moreover, the Commissioner finds that the agency license of the Carman Insurance Agency and the Kansas resident insurance agent's license of Stephen C. Carman should be revoked pursuant to K.S.A. 2002 Supp. 40-4909(b) because the interests of the insurer and the insurable interests of the public are not properly served under the Carman Insurance Agency's license and Stephen C. Carman's license.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the Kansas agency license of the Carman Insurance Agency and the Kansas resident insurance agent's license of Stephen C. Carman are hereby **REVOKED**.

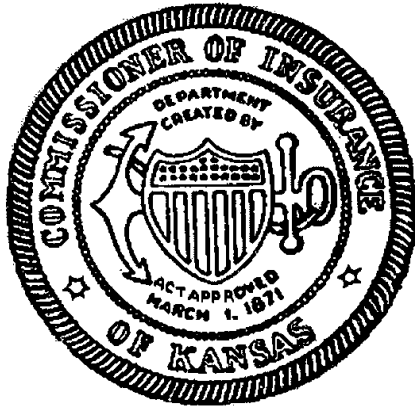
Notice and Opportunity for Hearing

The Carman Insurance Agency and/or Stephen C. Carman, 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. 40-4909(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.

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.

IT IS SO ORDERED THIS 27th DAY OF OCTOBER 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

NOTICE: The person 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.

Certificate of Service

The undersigned hereby certifies that she served the above and foregoing Summary Order on this 27th day of October 2003, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Carman Insurance Agency
C/o Stephen C. Carman
P.O. Box 136
Selden, KS 67757

Stephen C. Carman
P.O. Box 48
Selden, KS 67757

/s/ Brenda J. Clary
Brenda J. Clary