

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

FINAL ORDER

Effective: 04/13/04

In the Matter of the Application for)
Kansas Resident Insurance Agent's)
License of TODD E. SMITH)

Docket No. 3265-SO

NOTICE OF PROPOSED DEFAULT ORDER
(Pursuant to K.S.A. 2003 Supp. 40-4909 and K.S.A. 77-520)

Pursuant to authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 2002 Supp. 40-4909 and K.S.A. 77-520, the Commissioner hereby gives notice of her intent to issue a default order denying the application Todd E. Smith (“Smith”) for a resident agent’s license.

Facts

1. Records maintained by the Kansas Insurance Department (“KID”) indicate that Smith has applied for a license as a resident agent to transact the business of insurance in the State of Kansas. KID records further indicate a legal address of 320 West Center, Burrton, KS 67020 and mailing address of P.O. Box 316, Burrton, KS 67020.

2. Smith submitted a “clean” application for license, denying any pending misdemeanor or felony charges or prior misdemeanor or felony convictions, dated December 9, 2003.

3. Question 1 of the Background Information section of the application explicitly requires disclosure of any misdemeanor, felony, or military offense other than “misdemeanor traffic citations and juvenile offenses” and requires a written statement about each incident, a certified copy of the charging document, and a certified copy of the document that demonstrates resolution of the charges.

4. The application packet includes Guidelines for Answering Question 1.
5. The Guidelines clarify that minor traffic violations need not be disclosed and list traffic-related offenses that must be disclosed, including driving while suspended.
6. The Guidelines also provide that the applicant need not disclose misdemeanor convictions if 10 years have elapsed since the later of the date of conviction or the date of release from probation or parole unless the crime of conviction is one of the listed crimes or otherwise involves money, fraud, deceit, or untruthfulness.
7. In signing the application, Smith certified that all of the information was true and complete and that he was “aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license” and could subject him to civil or criminal penalties.
8. Subsequently, a criminal history check revealed that Smith was convicted of misdemeanor driving while suspended on October 9, 1986, and on March 19, 1987, and misdemeanor battery on June 4, 1992. In each case, Smith was fined and sentenced to five days in jail. According to the Guidelines, Smith was not required to disclose these convictions because of their nature and age.
9. Smith was also convicted of misdemeanor giving a worthless check on March 23, 1993, misdemeanor driving while suspended on April 21, 1994, and misdemeanor giving a worthless check on January 19, 1999. According to the Guidelines, the worthless check convictions should have been disclosed regardless of age, and the driving while suspended conviction should have been disclosed because it was less than ten years old.

10. In response to KID's inquiry, Smith stated that he was not aware that the offenses needed to be reported and that he did not think they were so severe that he would need to include them.

11. On January 13, 2004, KID served Smith with a Summary Order denying his application for a Kansas resident insurance agent's license.

12. Smith timely requested a hearing.

13. KID acknowledged the request by letter dated January 30, 2004, and enclosed a form Prehearing Questionnaire with instructions to file the completed form at least one week prior to the Prehearing Conference.

14. On February 9, 2004, the presiding officer served Smith notice of the prehearing conference to be held March 2, 2004, at 10:00 a.m. by teleconference.

15. Smith called KID at the appointed time, at which time a clerical error was discovered in the notice.

16. Smith was orally informed of the correct date and time, March 9 at 10:00 a.m., and reminded to file the prehearing questionnaire. Also, during the March 2 telephone call, Smith stated that he had not received the prehearing questionnaire form.

17. KID transmitted a copy of the prehearing questionnaire form by facsimile to the number Smith designated, 316-284-2196, at 11:00 a.m., on March 2, 2004.

18. The presiding officer served an Amended Notice of Prehearing Conference on March 3, 2004.

19. By letter faxed to KID on March 3, 2004, and by teleconference on March 9, 2004, Smith requested a continuance of the prehearing conference in order to obtain counsel.

20. By order served March 10, 2004, the continuance was granted, and Smith was instructed to contact KID by March 19, 2004, to reschedule unless an attorney had entered an appearance on his behalf by that date.

21. To date, Smith has not filed a prehearing questionnaire, and neither Smith nor an attorney on his behalf has contacted KID.

Applicable Law

22. If a party fails to participate at any stage of an adjudicative proceeding, the presiding officer may serve notice of a proposed default order. K.S.A. 77-520(a). Within seven days after service of a proposed default order, the respondent may file a written motion requesting that the proposed default order be vacated and stating the grounds relied upon. K.S.A. 77-520(b). If no motion is filed within seven days, the order shall become effective at the expiration of the time. If a motion is filed, the presiding officer shall either vacate the proposed order or issue the order as proposed. K.S.A. 77-520(c).

23. K.S.A. 2003 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: (1) Provided incorrect, misleading, incomplete or untrue information in the license application. . . . (3) Obtained or attempted to obtain a license under this act by misrepresentation or fraud. . . . (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. . . .” K.S.A. 2003 Supp. 40-4909(a).

Conclusions of Law

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

25. The Commissioner finds that good cause exists pursuant to K.S.A. 2003 Supp. 40-4909(a)(6) to deny Smith an insurance agent's license solely because Smith has provided incorrect, misleading, incomplete or untrue information in the license application.

26. The Commissioner further finds that that a conviction of the offense of driving while suspended or revoked is material because it indicates a disregard for regulatory authority and that the offense of giving a worthless check is material because it is a crime of financial dishonesty or irresponsibility. Furthermore, the convictions were numerous and repeated over an extended time period, giving rise to concern that the pattern will continue.

27. Therefore, the Commissioner concludes that good cause exists pursuant to K.S.A. 2003 Supp. 40-4909(a)(3) to deny Smith an insurance agent's license because, by providing incorrect, misleading, incomplete, or untrue material information in the license application, Smith attempted to obtain his license through fraud or misrepresentation.

28. The Commissioner finds that good cause exists pursuant to K.S.A. 2003 Supp. 40-4909(a)(6) to deny Smith an insurance agent's license solely because Smith has been convicted of six misdemeanors.

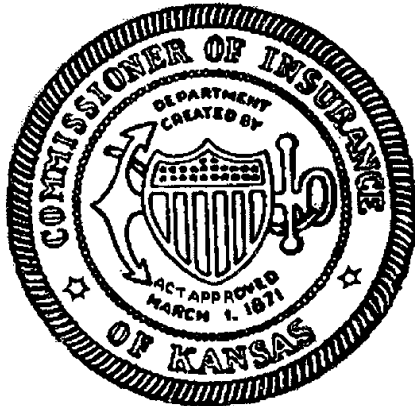
29. The Commissioner finds that omission of the misdemeanor convictions demonstrated either carelessness or dishonesty, either of which reflects negatively on Smith's fitness to hold a license and would provide cause to revoke the license pursuant to K.S.A. 2003 Supp. 40-4909(b) for the protection of the insurable interests of the public.

30. Although Smith timely requested a hearing in the matter of his application for an insurance agent's license, the Commissioner finds that an evidentiary hearing would be of little or no value in that Smith has not disputed the findings of fact included in the Summary Order, and the facts supporting denial of the license are established by documents in the record.

31. Finally, the Commissioner finds that Smith is in default of the March 10, 2004, order granting a continuance and requiring that Smith contact KID in person or through counsel by March 19, 2004.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT this administrative proceeding is dismissed, and the application for Kansas resident insurance agent's license of Todd E. Smith is hereby **DENIED**.

IT IS SO ORDERED THIS _31st_ DAY OF MARCH 2004, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



 /s/ Robert M. Tomlinson
Robert M. Tomlinson
Assistant Commissioner of Insurance
as agency head pursuant to
K.S.A. 40-547

NOTICE: 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 the above and foregoing **Notice of Proposed Default Order** on this 31st day of March 2004, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Todd E. Smith
P.O. Box 316
Burrton, KS 67020

and hand-delivered to the following:

Brenda J. Clary
Staff Attorney
Kansas Insurance Dept.
420 S.W. 9th Street
Topeka, KS 66612-1678

_s/ Jana Beethe _____
Jana Beethe