

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

In the Matter of the Kansas Nonresident)
Insurance Agent's License of) Docket No. 3355-CO
Michael W. Rowe)

CONSENT ORDER

(Pursuant to K.S.A. 2003 Supp. 40-4909)

Whereas the Kansas Insurance Department (“KID”) and Respondent Kansas nonresident insurance agent wish to resolve all allegations of agent misconduct by entering into this consent order, pursuant to authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 2002 Supp. 40-4909, the Commissioner hereby imposes sanctions against the nonresident agent’s license of Michael W. Rowe by way of agreed order.

Findings of Fact

Having been advised of the right to a hearing prior to the issuance of an order, Respondent elects not to dispute the following facts:

1. Respondent was originally licensed to transact the business of insurance in the State of Kansas as a Kansas resident agent in 1986. He moved to Missouri in 1997, allowed his Kansas license to lapse in May 2001, and has been licensed again as a nonresident agent since September 17, 2002.

2. On October 11, 2002, Fannie M. Dyer signed an application for life insurance with Bankers Life Insurance Company (“Company”).

3. Dyer’s application denied history within the previous 24 months of a number of medical conditions, including congestive heart failure.

4. At the time of the application, Dyer had a history of congestive heart failure, hypertension, and diabetes, as well as other health conditions, and used a wheelchair.

5. According to history contained in Dyer's physician's clinic note from June 27, 2002, Dyer had been hospitalized in February and March 2002 with congestive heart failure.

6. The same note indicates that Dyer was "wheelchair-bound" and had increasing lower extremity edema.

7. Respondent signed the application certifying that he personally asked the questions and duly recorded the answers and that, to the best of his knowledge, there was nothing adversely affecting the insurability of the proposed insured except as stated on the application.

8. Whole life policy number 22967A for \$7000 was issued and premium was paid monthly by automatic draft.

9. Dyer died on February 12, 2004.

10. Dyer's death certificate identifies the cause of death as cardiac arrest due to anoxic brain injury but does not identify a cause of the anoxia.

11. Based on medical records, the Company denied the family's claim for death benefits and refunded premium paid.

12. Tracy Dyer ("Tracy"), son of the deceased and sole beneficiary, filed a complaint with the Kansas Insurance Department ("KID") alleging, in substance, that Respondent was truthfully informed of Dyer's medical problems and that Respondent advised Dyer that the Company was not interested in those facts and that she should answer "no," which is the response Respondent marked on the application.

13. Tracy also alleged that Respondent was given a complete list of Dyer's current medications but noted only Cardizem on the application.

14. In response to KID's inquiry, Respondent stated that he informed Dyer of "what was required to qualify for that particular insurance plan" and explained that it would be issued without medical exam if all health questions were answered no.

15. Respondent also stated in his response, "You can have [a] health condition but the key is to qualify on the application."

16. In reliance upon the policy, Tracy incurred an obligation of \$5,933.00 for funeral goods and services.

17. In addition, Tracy has incurred an additional obligation of \$2085.00 for interment rights and burial fees.

18. The Commissioner finds, based on Respondent's own account of the presentation, that Respondent's presentation more likely than not led the consumer to believe that her health conditions were not material to the application or responsive to the questions.

19. The Commissioner finds that Respondent represented the Company as its agent and certified that, to his knowledge, nothing adversely affected Dyer's insurability except what was disclosed on the application.

20. The Commissioner finds that Respondent either knew, from Dyer's lack of mobility, physical appearance, or statements, or remained willfully ignorant of the general condition of Dyer's health.

21. The Commissioner further finds that Respondent's conduct was motivated by a desire to help the consumer obtain coverage, that Respondent failed to recognize the potential for harm to the Company and the consumer, the company has agreed to pay the claim, and Respondent has agreed to pay restitution of \$3500 to the company at a rate of \$200 per month until paid in full.

Applicable Law

22. 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 . . . (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

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

24. By entering into this agreed order, Respondent stipulates to the foregoing findings of fact and waives his statutory right to an evidentiary hearing to determine facts, consents to the Commissioner’s conclusions of law and order, and waives any statutory right to judicial review.

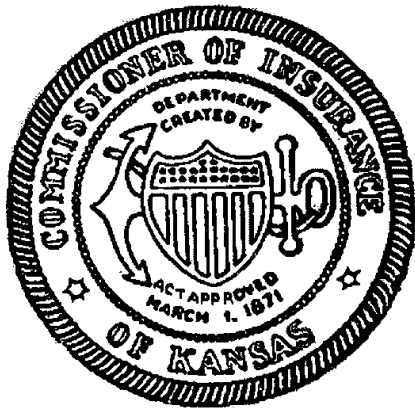
25. Based on Respondent’s statements about his presentation, the Commissioner concludes that Respondent demonstrated untrustworthiness or financial irresponsibility in the conduct of business.

26. While Respondent’s conduct constitutes sufficient cause for revocation or suspension of his license pursuant to K.S.A. 2003 Supp. 40-4909(a), the Commissioner notes that Respondent has not been the subject of prior complaints, that the Dyer transaction appears to be an isolated event, and that Respondent has agreed to pay restitution.

27. In light of Respondent’s cooperation and willingness to take responsibility for harm to the consumer and the Company, the Commissioner finds that the interests of the insurer and the insurable interests of the public are properly served by a lesser sanction.

Based on the facts and circumstances set forth herein, **the COMMISSIONER HEREBY CENSURES Michael W. Rowe for irresponsibility in the conduct of business and ORDERS** that the **restitution** agreement between Respondent and Bankers Life Insurance Company, as stated in paragraph 21 above should be and is hereby adopted as the Commissioner's Order.

IT IS SO ORDERED THIS 27th DAY OF JULY 2004, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



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

_____/s/ Robert M. Tomlinson
Robert M. Tomlinson
Assistant Commissioner of Insurance

SUBMITTED AND APPROVED BY:

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

I, Michael W. Rowe, hereby stipulate and agree to the Commissioner's findings of fact, conclusions of law, and order. Further, I hereby waive judicial review of the order.

_____/s/ Michael W. Rowe _____ 7/27/04_____
Michael W. Rowe Date