

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

<b>FINAL ORDER</b>
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Effective: 6-15-04
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In the Matter of the Kansas Nonresident )  
Insurance Agent's License of )  
FRANK J. CLARK )

Docket No. 3334-SO

**SUMMARY ORDER**

(Pursuant to K.S.A. 2003 Supp. 40-4909 and K.S.A. 77-537)

Pursuant to authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 2003 Supp. 40-4909, the Commissioner hereby revokes the nonresident agent's license of Respondent Frank J. Clark 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 Respondent is licensed as a nonresident agent to transact the business of insurance in the State of Kansas, and has been so licensed since September 25, 2003.
2. KID records indicate a legal and mailing address of 6704 E. 123<sup>rd</sup> Street, Grandview, MO 64030.
3. KID records further reflect that Respondent's appointments with six Farmers Insurance Group companies and exchanges were cancelled effective October 31, 2003, at the request of the companies and that no active appointments remain of record.
4. The National Association of Insurance Commissioners ("NAIC") Regulatory Information Retrieval System ("RIRS") database reflects the following actions against Respondent's license: Respondent's Missouri resident license expired October 29, 2001; upon

reinstatement April 9, 2003, Respondent was assessed a monetary penalty for demonstrated lack of fitness or trustworthiness.

5. The Missouri order reflects that Respondent was fined for selling insurance without a license.

6. On or about May 20, 2004, Susan A. Gilbert-Holloway submitted an audit report to KID on behalf of Farmers Insurance Group (“Farmers”) reflecting that, Respondent accepted premium and/or applications from consumers, both before and after termination of his appointment with Farmers, and failed to submit them to the company and continued to solicit business after his termination.

7. The Farmers report is contained in the record of the instant proceeding and incorporated by reference herein.

8. According to the report, complaints from four consumers were substantiated, and the company recovered nine additional checks issued by Farmers insureds and collected by Respondent after termination of his appointment.

9. According to the report, total dollar value of the loss, not including the recovered checks and a partial restitution Respondent made to a consumer, was \$541.20 to the company and \$120.00 to consumers.

### **Applicable Law**

10. 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. (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. 2003 Supp. 40-4909(a).

11. K.S.A. 2003 Supp. 40-2404(11) defines “[making] false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, broker or individual” as an unfair trade practice prohibited by K.S.A. 40-2403.

12. 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. 2003 Supp. 40-4909(b).

### **Conclusions of Law**

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

14. Based on information from Farmers that Respondent accepted applications and premium for insurance coverage after termination of his appointment with Farmers, the Commissioner concludes that Respondent has violated a provision of chapter 40 of the Kansas Statutes Annotated by falsely representing to consumers, either by false overt statements or by failure to disclose that he no longer represented the company, that he was authorized to accept applications on behalf Farmers Insurance Group companies for the purpose of obtaining money, in violation of K.S.A. 40-2403.

15. Based on information from Farmers that Respondent accepted premium before his termination and failed to forward it to the company, the Commissioner concludes that Respondent has improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business.

16. The Commissioner concludes that the conduct described in paragraphs 14 and 15 constitutes fraudulent and dishonest practices.

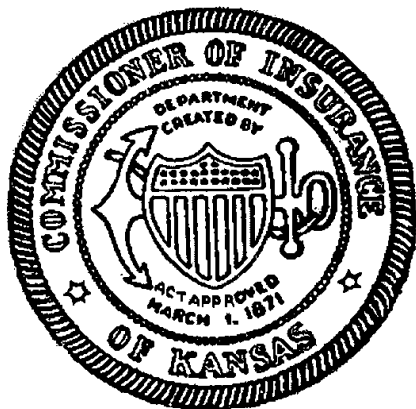
17. The Commissioner, therefore, concludes that good cause exists pursuant to K.S.A. 2003 Supp. 40-4909(a) to revoke Respondent's Kansas nonresident insurance agent's license.

18. In addition, the Commissioner concludes that Respondent's insurance agent's license should be revoked without delay for the protection of the insurable interests of the public pursuant to K.S.A. 2003 Supp. 40-4909(b).

19. 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 Frank J. Clark.

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the Kansas nonresident insurance agent's license of Frank J. Clark, is hereby REVOKED.**

**IT IS SO ORDERED THIS 28th DAY OF MAY 2004, 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:** In the event the Petitioner files 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. 9<sup>th</sup> 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 **Notice** and **Summary Order** on this 28th day of May 2004, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Frank J. Clark  
6704 E. 123<sup>rd</sup> Street  
Grandview, MO 64030

/s/ Brenda J. Clary  
Brenda J. Clary

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

In the Matter of the Kansas Nonresident        )  
Insurance Agent's License of                    )  
FRANK J. CLARK                                    )                   Docket No.    3334-SO

**NOTICE OF SUMMARY ORDER**

Notice is hereby given that the attached Summary Order will become effective fifteen (15) days after service of this Notice unless Respondent Frank J. Clark files with the Kansas Insurance Department ("KID") a written request for a hearing, as provided by K.S.A. 77-542. In the event a hearing is requested, the attached summary order will serve to give notice of the allegations upon which KID bases its proposed action.

A request for hearing should be directed to John W. Campbell, General Counsel, Kansas Insurance Department, 420 S.W. 9<sup>th</sup> Street, Topeka, KS 66612.

Any costs of an administrative hearing may be assessed against an agent who is the subject of the hearing as provided by K.S.A. 40-4909(f).

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.

The Final Order will constitute final agency action in this matter.

Dated this 28th day of May, 2004.

\_s/ Brenda J. Clary\_\_\_\_\_   
Brenda J. Clary  
Staff Attorney  
Kansas Insurance Department