

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

In the Matter of the Kansas Nonresident)
Insurance Agency License of) Docket No. 3251-SO
CLA-USA, Inc.)

CONSENT ORDER

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

The Kansas Insurance Department (“KID”) and Respondent Kansas nonresident insurance agency CLA-USA, Inc., wish to resolve all allegations of agency 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 agency license of CLA-USA, Inc., by way of agreed order.

Findings of Fact

Having been advised through counsel of the right to a hearing prior to the issuance of an order, CLA-USA, Inc., elects not to dispute the following facts:

1. CLA-USA, Inc. (“CLA-USA”), is licensed as a nonresident agency to transact the business of insurance in the State of Kansas and has been so licensed and in good standing since December 7, 1999.

2. CLA-USA, Inc., CLA Estate Services, Inc., CLA-USA Financial Services, Inc., and CLA Insurance Services, L.P., (collectively, “CLA”) also licensed as a Kansas nonresident agency, are or have been during relevant times, affiliated entities under common ownership and control.

3. From March 7, 1997, until her license was revoked, effective September 22, 2003, Rhonda L. Wilder (“Wilder”) was a Kansas resident insurance agent qualified to sell, solicit, and negotiate life and health insurance products in Kansas.

4. From an unknown time in 1999 until October 2002, Wilder was under contract with one or more entities of CLA, as an “estate planner” and was assigned by CLA to contact certain customers of CLA’s estate planning seminars for seniors to complete property transfers and initiate “planning.”

5. CLA trained its new agents, including Wilder, on procedures during an initial four-day training and conducted weekly conference calls with agents.

6. Companies provided training on their products.

7. Wilder did not receive extensive training in estate planning from CLA; however, Wilder was a licensed insurance agent in the state of Oklahoma before accepting employment with CLA.

8. While CLA seminars attendees are told that insurance products are used in an estate plan and may understand that an insurance agent will contact them at some future time, CLA does not specifically direct its agents to identify themselves explicitly as insurance agents upon their initial contact with the estate planning clients.

9. Wilder would have received a standard fee of \$75 to complete estate planning transactions, which fee was intended to compensate the agents for travel expenses.

10. Wilder’s primary compensation was a share of the commissions paid by the insurers to CLA for sales of insurance products.

11. Effective September 22, 2003, Wilder’s Kansas resident insurance agent’s license was revoked for forgery and/or fraudulent, coercive, and dishonest practices, following a

complaint from an elderly Kansas couple, Frederick and Ida Mae Sutton (“the consumers”), that Wilder had applied for four annuities with Fidelity & Guarantee Life Insurance Company on their behalf and transferred funds to pay premium.

12. The Suttons alleged they did not knowingly sign anything for the purpose of purchasing annuities.

13. The Suttons allege that Wilder told them that the documents they signed were required to transfer assets to fund a trust created in connection with their contract with CLA Estate Services, Inc.

14. Wilder admitted to a KID investigator that signatures on some of the documents were not authentic but maintained that sample documents were submitted in error, and the originals lost or discarded, and that she had notified CLA of the error.

15. Mark Pruitt (“Pruitt”), currently a vice president for sales of CLA-USA and “agent trainer” for CLA, was the manager for the state of Kansas and Wilder’s supervisor at the time of Wilder’s contact with the Suttons.

16. On or about December 18, 2001, Michael Sutton first contacted CLA on behalf of his parents, Frederick and Ida Mae, and spoke with Pruitt about getting the transactions reversed.

17. Pruitt said he instructed Wilder to get the transactions reversed.

18. Pruitt said he did not inquire further or attempt to verify that action had been taken.

19. Pruitt said that during a routine telephone call several months later, Wilder told him that she had accidentally submitted some training documents to a company.

20. Pruitt said he instructed Wilder to correct the error but did not attempt to verify that she had done so.

21. Pruitt said that he did not recognize that the Sutton inquiry and the conversation with Wilder involved the same documents and transactions.

22. In a letter dated December 11, 2002, Olaf Turek, General Counsel for CLA, responded within six days to an inquiry from the Kansas Securities Commissioner, that the Sutton complaint, which specifically alleged forgery, was under the jurisdiction of the Insurance Commissioner. On February 26, 2003, Olaf Turek, General Counsel for CLA, followed with a letter directed to the Kansas Securities Commissioner to inquire whether any additional information was required.

23. Through counsel, the Suttons alleged forgery and filed a lawsuit on November 19, 2003, and CLA filed its answer on December 17, 2003.

24. KID served CLA with a Summary Order initiating this action on December 16, 2003.

25. By letter of February 17, 2004, counsel for CLA stated, "Please consider this correspondence formal notification in conformity with K.S.A. §40-4909(d) of the violation of Rhonda L. Wilder . . ."

26. Wilder was charged in the District Court of Douglas County, Kansas, Case Number 03CR1611, with fourteen felony counts of forgery, making false information, and fraudulent insurance acts.

27. Wilder entered a plea of no contest to four counts of making false information, a severity level 8, nonperson felony, in violation of K.S.A. 21-3711, involving false representations on the applications and delivery receipts for two of the annuities, was found guilty of same on January 22, 2004, and was sentenced February 23, 2004.

28. The Commissioner finds that Pruitt knew or had reason to believe by April 2002 that Wilder had submitted documents to an insurer without authentic signatures yet failed to investigate, assure corrective action, and report the matter to KID.

29. The Commissioner finds that CLA's general counsel had knowledge of the allegations, yet CLA failed to investigate, assure corrective action, and report the matter to KID.

30. The Commissioner finds that CLA did not notify KID of a violation of Kansas law or insurance regulations on the part of Wilder until after having been served notice of a civil lawsuit and this administrative action.

Applicable Law

31. K.S.A. 2003 Supp. 40-4909(a) provides, in relevant part:

32. "In selling life insurance or annuities, an agent shall, at the beginning of a solicitation, inform the prospective purchaser that he or she is acting as an insurance agent." K.A.R. §40-2-14(b). Violation of the regulation constitutes a deceptive sales practice in violation of K.S.A. 2003 Supp. 40-2403. K.S.A. 40-2404a.

33. The term "solicit" includes "any attempt to sell insurance." K.S.A. 2003 Supp. 40-4902(v).

34. K.S.A. 2002 Supp. 40-4909(d) provides as follows:

"The license of any business entity may be suspended, revoked or refused renewal if the insurance commissioner finds that any violation committed by an individual licensee employed by or acting on behalf of such business entity was known by or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and:

- (1) Such violation was not reported to the insurance commissioner by such business entity; or
- (2) Such business entity failed to take any corrective action."

35. The commissioner may censure the licensee or impose an administrative penalty of \$500 per violation up to a maximum of \$2500 for the same violation occurring within six calendar months from the date of the original violation, or \$1000 for a knowing violation up to \$5000 for the same violation within six calendar months, in lieu of taking any action under subsection (a). K.S.A. 2003 Supp. 40-4909(h).

36. 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

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

38. By entering into this agreed order, CLA stipulates to the foregoing findings of fact and waives its 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.

39. Based on the finding that Mark Pruitt, a CLA manager, had reason to know that Wilder had submitted application and transfer documents without authentic signatures, should have known that Wilder had violated Kansas law and/or regulations governing the sale of insurance products, and neither notified KID nor took meaningful corrective action, the Commissioner concludes that sufficient cause exists to impose sanctions against CLA's agency license pursuant to K.S.A. 2003 Supp. 40-4909(d).

40. The Commissioner concludes that CLA trains its agents to refer to themselves as estate planners upon initial contact with a client and fails to train them to identify themselves as

insurance agents, in violation of K.A.R. §40-2-14(b) and K.S.A. 40-2403, which is cause for administrative action, including revocation of a license, pursuant to K.S.A. 2003 Supp. 40-4909(a).

41. The Commissioner also finds that the practice of marketing estate planning services in conjunction with insurance and annuity sales, by its nature, may enable abusive and deceptive practices on the part of agents and warrants a thorough investigation of any allegation of exploitation or abuse.

42. Because the Commissioner finds that CLA has demonstrated a willingness to make organizational changes designed to safeguard against future agent misconduct or negligence in training and supervision, the Commissioner concludes that the public is adequately served by the following agreement:

43. While CLA remains obligated to take corrective action in the event past agent misconduct is discovered, KID agrees not to pursue additional sanctions based on similar agent misconduct that may have occurred in Kansas prior to the effective date of this order.

44. CLA will resolve costs of this action and an administrative penalty for regulatory violations by paying a total of \$1000 to the Kansas Insurance Department.

45. In addition, CLA entities licensed as insurance agencies will immediately provide KID with a current list of affiliated Kansas agents and promptly give notice of additions or deletions of agents and of any future agent conduct known to the officers and management of CLA that would be grounds for action against the agent's license pursuant to K.S.A. 40-4909.

46. CLA agrees to conduct a thorough investigation of any allegation of exploitation or abuse by its agents in the sale of insurance products and promptly take any appropriate corrective action.

47. CLA also agrees to provide documentation to KID to verify corrective action.

48. Finally, CLA will require that its agents identify themselves as insurance agents at the beginning of an initial contact with a CLA client.

Based on the facts and circumstances set forth herein, **the COMMISSIONER HEREBY ORDERS** that the agreement between KID and CLA as stated in paragraphs 43 through 48 should be and is hereby adopted as the Commissioner's Order.

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

CLA-USA, Inc., hereby stipulates and agrees to the Commissioner's findings of fact, conclusions of law, and order. Further, CLA-USA, Inc., hereby waives judicial review of the order.

/s/ Charles Loper, Jr. 5/28/04 _____
Charles Loper, Jr. Date

SUBMITTED AND APPROVED BY:

/s/ Brenda J. Clary
Brenda J. Clary
Staff Attorney
Kansas Insurance Department

APPROVED BY:

/s/ Michael E. Waldeck
Michael E. Waldeck
Waldeck Matteuzzi & Sloan
Attorneys for CLA-USA, Inc.