

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

FINAL ORDER

Effective: 6-14-04

In the Matter of the Kansas Nonresident)
Insurance Agent's License of)
MARK A. SMITH)

Docket No. 3336-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 imposes sanctions against Kansas nonresident insurance agent Respondent Mark A. Smith 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 July 8, 1991.
2. KID records reflect a legal address for Respondent of 228 NE Hidden Ridge Court, Lees Summit, Missouri, and mailing address of Twin Lakes Insurance Agency, P.O. Box 970, Lees Summit, MO 64063-7970.
3. KID records reflect that Respondent's application for an excess lines license was received on March 29, 2004, and an excess lines license was issued to Respondent on May 3, 2004.
4. KID records further reflect that Respondent filed an excess lines premium tax reporting statement, dated March 17, 2004, reporting a sale to Johnson County Exteriors of

Policy Number 3CJ6918, with an inception date of March 8, 2004, issued by Essex Insurance Company, a nonadmitted insurer.

Applicable Law

5. 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: . . . (2) Violated: (A) Any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation promulgated thereunder . . .” K.S.A. 2003 Supp. 40-4909(a).

6. “The commissioner may, in the manner prescribed by law, revoke or suspend the license of any agent issued pursuant to sections 40-241 and 40-246 [superceded by 40-4901 *et seq.*] of the Kansas Statutes Annotated when such agent shall engage in any transaction permitted only to licensees under the provisions of K.S.A. 40-246b, without first obtaining the license as required by K.S.A. 40-246b.” K.S.A. 40-246d.

7. K.S.A. 40-246b defines requirements for obtaining a license to place risks with nonadmitted insurers and reporting obligations for excess lines agents.

8. 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).

Conclusions of Law

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

10. The Commissioner finds, based on the May 3, 2004, issue date of Respondent’s excess lines license and Respondent’s reported sale of excess lines coverage with an inception date of March 8, 2004, that respondent violated the provisions of K.S.A. 40-246b.

11. The Commissioner finds that Respondent's agent license may be revoked or suspended pursuant to K.S.A. 2003 Supp. 40-4909(a)(2)(A) as a result of a violation of a provision of chapter 40 of the Kansas Statutes Annotated.

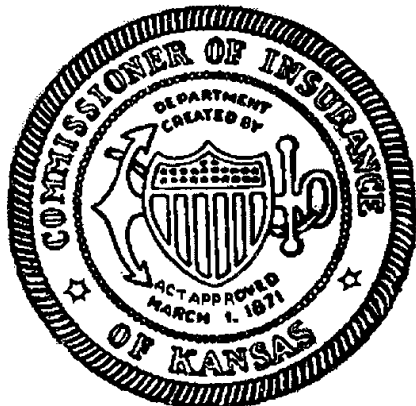
12. The Commissioner, however, finds that Respondent was qualified for an excess lines license at the time he placed the business, the violation was technical in nature, and Respondent self-reported the violation.

13. Therefore, the Commissioner concludes that the interests of insurers and protection of the insurable interests of the public are adequately served by a lesser sanction.

14. 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 Mark A. Smith.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT Kansas nonresident insurance agent Mark A. Smith is hereby ordered to pay an administrative penalty of **\$500 (five hundred dollars)** on or before the effective date of this order, which shall be fifteen days after the date of personal service or eighteen days after the date of service by mail. It is further ordered that, in the event that the penalty is not paid by the effective date of this order, Respondent's Kansas nonresident insurance agent's license shall be suspended until such time as the penalty is paid in full.

IT IS SO ORDERED THIS 14th DAY OF JUNE 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. 9th 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 14th day of June 2004, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Mark A. Smith
Twin Lakes Insurance Agency
P.O. Box 970
Lees Summit, MO 64063-7970

/s/ Brenda J. Clary
Brenda J. Clary

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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 Mark A. Smith 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. 9th 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 14th day of June 2004.

_s/ Brenda J. Clary _____
Brenda J. Clary
Staff Attorney
Kansas Insurance Department