

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

**FINAL ORDER**

Effective: 11/08/2004

In the Matter of the Kansas Resident )  
Insurance Agent's License of )  
KEN CAMPBELL )

Docket No. 3391-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 resident agent's license of Ken Campbell ("Campbell" or "Respondent") by way of Summary Order as provided by K.S.A. 77-537.

**Findings of Fact**

The Commissioner has been shown the following:

1. Records maintained by the Kansas Insurance Department ("KID") indicate that Respondent is licensed as a resident agent to transact the business of insurance in Kansas, and has been so licensed since February 25, 2000.
2. KID records further indicate a legal address of 17524 W. 158<sup>th</sup> Street, Olathe, KS 66062.
3. On or about May 3, 2004, KID received a complaint from consumer Betty Ainsworth alleging misrepresentation by Respondent in the sale of two flexible premium deferred annuities issued by American Investors Life ("AIL").
4. KID requested a written response from Respondent and one from the company.
5. Respondent has not replied to KID.
6. AIL replied and provided a copy of Respondent's April 19, 2004, statement to the company in response to an earlier complaint Ainsworth had lodged directly with the company.

7. In an interview with KID representatives on June 8, 2004, Ainsworth described the following events: In the fall of 2003, at the age of 78, Ainsworth replied with a questionnaire to an advertisement for long term care (“LTC”) insurance. Not long afterward, her husband of 57 years became ill. Mr. Ainsworth died on January 1, 2004. Respondent contacted Mrs. Ainsworth in January or early February regarding LTC. Respondent took an application for LTC and accepted a check for the initial premium in the amount of \$148.28. Respondent expressed concern about Ainsworth’s stock holdings and cash held in a credit union account. He advised her that he could get her a better interest rate, 4 percent, with a “bank in Topeka” and that she should get the cash in “the bank” immediately. He followed her to the credit union, where she withdrew cash and handed it over to him for deposit in the “bank in Topeka.” Over the course of several weeks, she received death benefits from Mr. Ainsworth’s insurance policies and annuities. Respondent met with her a number of times. In addition to picking up checks for deposit in the “bank,” Respondent advised Ainsworth to sell various stock holdings and made telephone calls on her behalf to effect sales and transfers of long-term, highly appreciated investments. Ainsworth referred numerous time to the destination for the funds as “the bank,” yet Respondent never clarified that the account was an annuity.

8. Ainsworth says that she was “in a fog” at the time.

9. In all, Respondent transferred over \$315,000 into two AIL annuity contracts.

10. Ainsworth was rejected for LTC coverage.

11. Ainsworth estimates that the transactions will produce adverse income tax consequences as a result of approximately \$180,000 in realized capital gain.

12. In addition to the AIL annuities, Respondent submitted an unsigned annuity application, naming Ainsworth as the proposed owner and annuitant, dated March 13, 2004, without premium, to Fidelity and Guarantee Life Insurance Company.

13. On July 8, 2004, Respondent submitted a request to cancel the Fidelity and Guarantee Life application because Ainsworth “no longer wishes to transfer any funds.”

14. Ainsworth learned of the application when she received notice of the cancellation, dated August 5, 2004, from the company.

15. Without acknowledging agent misconduct, AIL cancelled the annuity contracts and refunded all premium on or about October 1, 2004.

16. By letter dated September 14, 2004, and directed to Respondent at his address of record, KID requested that Respondent address each allegation of Ainsworth’s original complaint, answer additional questions, and provide supporting documentation within 15 days of the date of the letter.

17. To date, KID has not received a reply, and the inquiry has not been returned.

18. Respondent’s Missouri insurance agent’s license was revoked effective July 23, 2004, for nonpayment of state income taxes.

#### **Applicable Law**

19. 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; . . . (7) Admitted to or been found to have committed any insurance unfair trade practice or fraud in violation of K.S.A. 40-2404 and amendments thereto. (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. (9) Had an insurance agent license, or its equivalent, denied, suspended or revoked in any other state, district or

territory. . . (14) Failed to pay any state income tax or comply with any administrative or court order directing payment of state income tax.” K.S.A. 2003 Supp. 40-4909(a).

20. The following acts are violations of K.S.A. 40-2404: Making a sales presentation that “[m]isrepresents the benefits, advantages, conditions or terms of any insurance policy,” K.S.A. 2003 Supp. 40-2404(1)(a), or “uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof,” K.S.A. 2003 Supp. 40-2404(1)(e).

21. The Commissioner has discretion to order redress of the injury caused by an agent’s violation of the trade practices act. K.S.A. 40-2407(a)(3).

22. The Commissioner may revoke any license issued under the Insurance Agents Licensing Act if the Commissioner finds that the interests of the insurer or the insurable interests of the public are not properly served under such license. K.S.A. 2003 Supp. 40-4909(b).

### **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. The Commissioner finds, based on the facts contained in paragraph 7 above and in the absence of Respondent’s account, that Respondent induced a consumer to pay premium on an annuity contract by falsely representing the annuity as an interest bearing bank account.

25. The Commissioner further finds that Respondent effected repeated transactions based on the false representations.

26. The Commissioner finds that Respondent’s conduct was an unfair trade practice and fraud as defined in and in violation of K.S.A. 40-2404 and, thus grounds for suspension or revocation pursuant to K.S.A. 2003 Supp. 40-4909(a)(7).

27. The Commissioner also concludes that the same conduct is grounds for suspension or revocation pursuant to K.S.A. 2003 Supp. 40-4909(a)(8) because it is a fraudulent,

coercive, or dishonest practice or demonstrates incompetence, untrustworthiness, or financial irresponsibility in the conduct of business.

28. The Commissioner also finds that Respondent submitted an application for an annuity to Fidelity and Guarantee Life, with the intent to fund the annuity through subsequent asset transfers, without the knowledge and consent of the proposed owner.

29. The Commissioner also concludes that such conduct is grounds for suspension or revocation pursuant to K.S.A. 2003 Supp. 40-4909(a)(8) because it is a fraudulent, coercive, or dishonest practice or demonstrates incompetence, untrustworthiness, or financial irresponsibility in the conduct of business.

30. The Commissioner finds that Respondent's insurance agent's license may be revoked or suspended pursuant to K.S.A. 2003 Supp. 40-4909(a)(9) because Respondent has had an insurance agent's license revoked in another state.

31. Furthermore, because that revocation was as a result of Respondent's failure to pay state income tax, respondent's Kansas insurance agent's license may be revoked pursuant to K.S.A. 2003 Supp. 40-4909(a)(14).

32. The Commissioner concludes that sufficient grounds exist for the suspension or revocation of the insurance agent's license of Ken Campbell pursuant to K.S.A. 2003 Supp. 40-4909(a).

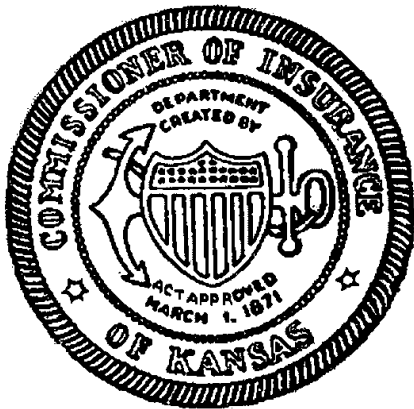
33. The Commissioner finds that Respondent's failure to respond to a proper inquiry from KID reflects a disregard for regulatory authority and concludes that Respondent's license may be revoked or suspended pursuant to K.S.A. 2003 Supp. 40-4909(b) for the protection of the interests of the insurer and the insurable interests of the public.

34. 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 Ken Campbell.

35. Accordingly, the Commissioner finds that Campbell's Kansas resident insurance agent's license should be revoked.

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the Kansas resident insurance agent's license of Ken Campbell should be and is hereby REVOKED.** It is further ordered that Ken Campbell shall pay restitution to Betty J. Ainsworth for tax liability resulting from realized capital gains on assets liquidated to fund annuities, the amount to be determined from Ainsworth's 2004 federal income tax return, and shall **CEASE AND DESIST** from engaging in the business of insurance in Kansas or with respect to Kansas consumers.

**IT IS SO ORDERED THIS 20th DAY OF OCTOBER, 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:** The person 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.

**Certificate of Service**

The undersigned hereby certifies that she served a true and correct copy of the above and foregoing **Summary Order** on this \_20th\_ day of October, 2004, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Ken Campbell  
17524 W. 158<sup>th</sup> Street  
Olathe, KS 66062

\_/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 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 incurred as a result of conducting any 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 *20th* October 2004.

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