

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

FINAL ORDER

Effective: 11/24/2004

In the Matter of the Kansas Nonresident)
Insurance Agent's License of)
SUSANNA DALEY)

Docket No. 3393-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 Susanna Daley ("Daley") 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 was licensed as a nonresident agent to transact the business of insurance in Kansas, and had been so licensed since January 4, 1985, until her license was suspended by summary order, docket number 3326, on June 8, 2004.

2. KID records further indicate a legal address of 3515 S. Hocker, Independence, MO 64055 and mailing address of 1225 N. 78th St. Suite F, Kansas City, KS 66112, for Respondent.

3. Allied Insurance Agency and Daley Insurance Agency ("Allied/Daley Agency") is a partnership licensed as a Kansas resident insurance agency with a legal and mailing address of 1225 N. 78th St. Ste F, Kansas City, KS 66112, and Respondent Susanna Daley is its designated person.

4. Patrick J. Daley was associated with the agency until his Kansas insurance agent's license was terminated effective May 10, 2000.

5. On May 18, 2004, KID served Respondent with a summary order alleging incompetence, untrustworthiness, or financial irresponsibility in the conduct of business and failure to respond to KID's inquiries in connection with a consumer complaint.

6. Specifically, the complaint alleged that Respondent accepted but failed to forward the application and premium for automobile insurance to the managing general agent for the insurer.

7. The order provided that Respondent must either pay a \$500 civil penalty or request a hearing by the date the order became final or her license would be suspended until the penalty provisions were satisfied in full.

8. Attached to the summary order was a notice containing the following statement:

“Notice is hereby given that the attached Summary Order will become effective fifteen (15) days after service of this Notice unless Respondent Susanna Daley 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 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.”

9. The time allowed for requesting a hearing expired at the close of business on June 7, 2004.

10. On or about June 7, 2004, KID received a Respondent's response to a KID's letter of inquiry dated February 27, 2004.

11. Respondent did not request a hearing.

12. The order became final at the close of business on June 7, 2004, and was entered as a final order on June 8, 2004.

13. Respondent did not petition for judicial review of the agency action.

14. On June 10, 2004, KID received a complaint from Curtis Burton, doing business as Acme Pest Control, that he had paid Respondent \$480 in premium for business liability insurance, was issued a binder, and later received notice from the insurer that his insurance was being cancelled for nonpayment.

15. Based on information provided by the company, Western World Insurance Company, and its Kansas wholesale agent, M.J. Kelly Insurance Agency, in response to KID's inquiries, it appears that Respondent placed the business through M.J. Kelly in December 2002 but failed to forward a January 2004 premium payment to M.J. Kelly for continuation of the policy.

16. By letter dated June 18, 2004, KID requested Respondent's response to the complaint.

17. To date, Respondent has not replied to the letter.

18. On October 15, 2004, at 9:45 a.m., a KID investigator contacted Respondent at the Allied/Daley agency and requested a quote for Kansas automobile coverage for himself and his wife on two vehicles.

19. Susanna Daley obtained employment and driver information, then gave the investigator a business card with handwritten figures on the back.

20. The card appears to reflect a quote of \$1392.10 for six months, or payments of \$478.03 down with four payments of \$232.02.

21. The card does not include the name of an insurer.

22. The card identifies “Pat and Sue Daley” as “owners” of the agency and “insurance brokers.”

Applicable Law

23. 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; (B) Any subpoena or order of the commissioner; . . . (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).

24. It is “unlawful for any person to sell, solicit or negotiate any insurance within this state unless such person has been issued a license as an insurance agent in accordance with this act.” K.S.A. 2003 Supp. 40-4905(a).

25. A person may not receive or share in commissions or other consideration for selling, soliciting, or negotiating insurance if that person is not licensed. K.S.A. 2003 Supp. 40-4910.

26. A designated person on behalf of an agency must be a licensed agent who is responsible for compliance with the insurance laws of this state, and any partner in the business who acts as an insurance agent must be licensed as an insurance agent. K.S.A. 40-4905(c).

27. The commissioner is not deprived of jurisdiction or right to institute or proceed with any disciplinary action against such license, to render a decision, suspending, revoking or refusing to renew such license, or to establish and make a record of the facts of a violation of law by prior imposition of administrative penalties or lapse or voluntary surrender of the license. K.S.A. 40-4909(e).

28. 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

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

30. The Commissioner finds that Respondent has demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in her failure to assure submission of a consumer's premium for insurance.

31. The Commissioner further finds that Respondent previously failed to submit an application and premium on behalf of a consumer.

32. The Commissioner concludes that these incidents indicate either misappropriation of premium or financial irresponsibility

33. The Commissioner finds that Respondent has failed to respond to a proper inquiry regarding the Burton complaint and was previously penalized for failing to respond to KID's inquiry, demonstrating ongoing irresponsibility and disregard for regulatory authority.

34. The Commissioner therefore concludes that sufficient grounds exist to revoke Respondent's Kansas nonresident insurance agent's license pursuant to K.S.A. 2003 Supp. 40-4909(a)(8).

35. The Commissioner finds that Respondent has engaged in the sale, solicitation, or negotiation of Kansas insurance business without a valid license to do so, thereby violating the Commissioner's order and one or more provisions of chapter 40 of the Kansas Statutes Annotated.

36. The Commissioner also finds that Respondent has shared commissions with a person who is not licensed by virtue of her partnership with an unlicensed person, thereby violating one or more provisions of chapter 40 of the Kansas Statutes Annotated.

37. In addition, the Commissioner concludes that Patrick J. and Susanna Daley continue to use the agency business card, which card is a solicitation of insurance that falsely represents that Patrick J. and Susanna Daley are authorized to act as insurance brokers, in violation of K.S.A. 40-4905(a).

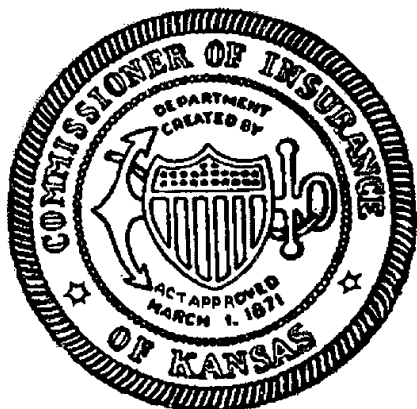
38. Accordingly, the Commissioner concludes that sufficient grounds exist to revoke Respondent's Kansas nonresident insurance agent's license pursuant to K.S.A. 2003 Supp. 40-4909(a)(2).

39. 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 Susanna Daley.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the Kansas nonresident insurance agent's license of Susanna Daley is hereby REVOKED.

IT IS FURTHER ORDERED THAT Susanna Daley shall immediately CEASE AND DESIST from selling, soliciting, and negotiating insurance in Kansas or with respect to risks located in Kansas and from holding herself out as an insurance agent or broker.

IT IS SO ORDERED THIS 5th DAY OF NOVEMBER, 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. 9th St., Topeka, KS 66612.

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 5th day of November 2004, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Susanna Daley
Allied/Daley Insurance Agency
1225 N. 78th St. Suite F
Kansas City, KS 66112

/s/ Brenda J. Clary _____

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Dated this 5th day of November 2004.

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