

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

<b>Final Order</b> Effective: 1/31/05
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In the Matter of the Kansas Resident )  
Insurance Agent's License of )  
JAMES F. MACK )

Docket No. 3417-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 James F. Mack ("Mack" 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 August 1, 2002.
2. KID records indicate a legal address for Respondent of 16333 S. Warwick, Olathe, KS 66062, and a mailing address of P.O. Box 3452, Olathe, KS 66063.
3. KID records further indicate that Respondent's qualification for life, health, and variable insurance products was not renewed and terminated November 15, 2004, but Respondent remains licensed and qualified to sell, solicit, and negotiate property and casualty products.
4. By letter dated January 14, 2004, KID formally admonished Respondent for use of potentially misleading materials in marketing annuities to senior consumers.

5. By letter dated September 2, 2004, Penn Treaty Network America Insurance Company (“Penn Treaty”) notified KID of Respondent’s termination and provided documentation indicating that Respondent had submitted only three applications for long term care insurance to the company and all three, dated November and December 2003, contained false information.

6. Penn Treaty documented its repeated unsuccessful attempts to contact the purported applicants and their physicians at the addresses and telephone numbers provided on the applications and its inability to locate the named applicants independently.

7. According to Penn Treaty records, Respondent was contacted through the general agent and submitted additional information, which also proved to be false.

8. In the case of all three applications, the automatic payment authorization was from a closed account.

9. In one case, the purported applicant could not be located, and the company states that the social security number shown on the application, according to the Social Security Death Index, belonged to a person who died in 1989.

10. Respondent did not reply to the company’s inquiry.

**Applicable Law**

11. 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; . . . (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).

12. A fraudulent insurance act is a crime under chapter 40 of the Kansas Statutes Annotated. See K.S.A. 40-2,118. A fraudulent insurance act is “an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, or in support of an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance . . . which such person knows to contain materially false information concerning any fact material thereto . . .” K.S.A. 40-2,118(a).

13. 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**

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

15. The Commissioner finds, based on the facts contained in paragraphs 5 through 9 above that Respondent has committed fraudulent insurance acts in violation of K.S.A. 40-2,118.

16. The Commissioner further finds, based on the same facts as well as the facts contained in paragraph 4 above, that Respondent has, at a minimum, used a fraudulent, coercive, or dishonest practice or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business.

17. The Commissioner concludes that sufficient grounds exist for the suspension or revocation of Respondent’s insurance agent’s license pursuant to K.S.A. 2003 Supp. 40-4909(a)(7) and (a)(8).

18. The Commissioner also concludes that Respondent's license may be suspended or revoked 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.

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 James F. Mack.

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the Kansas resident insurance agent's license of James F. Mack should be and is hereby REVOKED.** It is further ordered that James F. Mack shall **CEASE AND DESIST** from the sale, solicitation, or negotiation of insurance and/or receiving compensation deriving from the sale, solicitation, or negotiation of insurance conducted after the effective date of this order.

**IT IS SO ORDERED THIS 29th DAY OF DECEMBER 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 **Notice** and **Summary Order** on this   29th   day of December 2004, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

James F. Mack  
16333 S. Warwick  
Olathe, KS 66062

And

James F. Mack  
P.O. Box 3452  
Olathe, KS 66063

  /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 29th of December 2004.

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