

4. The consumer stated that Respondent had discounted the charge for title insurance and closing on one transaction by a total of \$100, crediting \$50 to the seller and \$50 to the buyer at the time of closing.

5. The consumer further requested a refund of the full amount of the charge for closing services on two different real estate transactions.

6. By letter of December 16, 2004, KID requested Respondent respond to questions about what appeared to be negotiation of rates by an unlicensed person and failure to file the charges as unique and unusual and requested Respondent provide documentation of all similar transactions.

7. Respondent replied that a license agent quoted the rates and the unlicensed employee relayed the information to the customer and admitted that the unique and unusual rate should have been filed but, through neglect or inadvertence, was not.

8. The Commissioner finds, based on the consumer's complaint letter, that more likely than not, Respondent offered and paid \$100, \$50 to the buyer and \$50 to the seller, to compromise a potential claim for damages and set that amount off against the usual and filed charge for title insurance and escrow, settlement, or closing services.

9. The Commissioner nevertheless finds, based on Respondent's own account, that Respondent made charges for title insurance and closing services without having first filed the rate and charge.

Applicable Law

10. 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).

11. “ . . . Every insurance agent, agency or company authorized to transact title insurance in this state shall file with the commissioner every manual of classification, rules and rates, every rating plan, every rate card and every modification of the foregoing which may be used in connection with providing title insurance or other services in connection with real estate transactions on property located in counties having a population of 10,000 or more. No charge may be made by any title insurance agent, agency or company that has not been filed with the commissioner as required by this section. . . .” K.S.A. 40-952(c).

12. 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

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

14. The Commissioner concludes, based Respondent’s statement, that Respondent has failed to comply with K.S.A. 40-952(c).

15. The Commissioner concludes that action may be taken against Respondent’s agency license pursuant to K.S.A. 2003 Supp. 40-4909(a)(2)(A) as a result of violations of provisions of chapter 40 of the Kansas Statutes Annotated.

16. The Commissioner concludes that the interests of insurers and protection of the insurable interests of the public are adequately served by a monetary penalty of \$100.

17. 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 Capital Title Insurance Company.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT Kansas nonresident insurance agency Capital Title Insurance Company is hereby ordered to pay an administrative penalty of **\$100 (one hundred dollars and no cents)** on or before the effective date of this order.

IF Respondent has neither paid the penalty nor requested a hearing by the effective date of this order, Respondent's Kansas nonresident insurance agency license shall be **SUSPENDED** for violation of the Commissioner's order until such time as the \$100 penalty and an additional penalty of \$500 is paid in full.

IT IS SO ORDERED THIS 18th DAY OF FEBRUARY 2005, 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


IMPORTANT NOTICE: Respondent herein may have a right to judicial review of this order as provided in the Kansas Act for Judicial Review and Civil Enforcement of

Agency Actions, K.S.A. 77-601 *et seq.* 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 s/he served a true and correct copy of the above and foregoing **Notice** and **Summary Order** on this 18th day of February 2005, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Jeffrey J. Amrein
Capital Title Insurance Company
2858 SW Villa West Drive
Topeka, Kansas 66614

 /s/ Brenda J. Clary _____

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

In the Matter of the Kansas Nonresident)	
Insurance Agency License of)	Docket No. 3371-SO
Capital Title Insurance Company)	

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. 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, on the first business day after the expiration of the fifteen-day period (eighteen if noticed is served by mail) for requesting a hearing. The Final Order will constitute final agency action in this matter.

Dated this 18th day of February 2005.

Brenda J. Clary
Staff Attorney
Kansas Insurance Department