

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

In the Matter of the Kansas Resident)
Insurance Agent’s License of)
TERRY J. GESCHWENTNER) Docket No. 3353-CO

CONSENT ORDER

(Pursuant to K.S.A. 2004 Supp. 40-4909)

Whereas the Kansas Insurance Department (“KID”) and Respondent Kansas resident insurance agent wish to resolve all allegations of agent misconduct by entering into this consent order, pursuant to authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 2002 Supp. 40-4909, the Commissioner hereby imposes sanctions against the resident agent’s license of Terry J. Geschwentner by way of agreed order.

Findings of Fact

Having been advised of the right to a hearing prior to the issuance of an order, Respondent elects not to dispute the following facts:

1. Respondent is licensed to transact the business of insurance in the State of Kansas as a Kansas resident agent and has been licensed since February 10, 1999.
2. KID records reflect a legal and mailing address for Respondent of 415 South Cleveland, Colby, KS 67701.
3. Respondent was appointed as an agent for Guaranty National Insurance Company (“Guaranty National”) on January 27, 2003.
4. Guaranty National underwrites insurance on Kansas risks for Equipment Insurance International (“EII”).

5. Respondent began selling insurance on irrigation equipment through EII in January 2003.

6. In January 2004, EII notified KID that it had discovered altered declaration pages, showing premium in excess of the premium charged, on policies written by Respondent.

7. EII conducted an audit but received limited consumer response.

8. EII provided KID with a list of six declaration pages that showed inflated premium amounts.

9. In response to KID's inquiry, Respondent acknowledged that he had been adding a fee of twenty five percent of the premium cost.

10. Fee agreements between Respondent and consumers showed a dollar figure as fees.

11. Most consumers who responded to a KID survey indicated that they knew a fee was added but did not know or care how much because they were satisfied with the total price.

12. KID calculated fees ranging 25 to 70 percent.

13. The Commissioner finds, based on the information provided by EII and Respondent's own records, that respondent inflated premium amounts on at least six declaration pages and retained the excess as an additional fee for his services.

14. The Commissioner finds that Respondent charged fees in excess of what was reasonable in light of the time, effort, and expertise required to place the business and the amount other consumers were charged for the same service.

15. The Commissioner also finds that Respondent charged fees in excess of the amount agreed to by the consumer as a result of errors in calculation.

16. The Commissioner finds that Respondent cooperated fully with KID's investigation.

Applicable Law

17. K.S.A. 2003 Supp. 40-4911 provides, in relevant part:

“Insurance agents shall have the right to compensation other than commissions from any insured or prospective insured on account of negotiation or procurement of . . . contracts of insurance policies . . . if such compensation is based upon a written agreement between the insurance agent and insured specifying the amount of such compensation.” K.S.A. 2003 Supp. 40-4911.

18. 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).

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 . . . (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).

Conclusions of Law

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

21. By entering into this agreed order, Respondent stipulates to the foregoing findings of fact and waives his statutory right to an evidentiary hearing to determine facts, consents to the Commissioner's conclusions of law and order, and waives any statutory right to judicial review.

22. Based on Respondent's statements about his practice of charging fees, the Commissioner concludes that Respondent used a fraudulent, coercive, or dishonest practice, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in that the fees charged bore no reasonable relationship to the service rendered.

23. Based on information obtained from EII, the Commissioner concludes that Respondent used a fraudulent, coercive, or dishonest practice, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business by altering declaration pages to show the fee charged as additional premium.

24. While Respondent's conduct constitutes sufficient cause for revocation or suspension of his license pursuant to K.S.A. 2003 Supp. 40-4909(a), the Commissioner notes that Respondent has not been the subject of prior complaints and cooperated fully with KID's investigation.

25. In light of Respondent's cooperation and willingness to take responsibility for his conduct, the Commissioner finds that the interests of the insurer and the insurable interests of the public are properly served by a monetary penalty.

Based on the facts and circumstances set forth herein, **the COMMISSIONER HEREBY ORDERS** that Respondent Terry J. Geschwentner shall pay a **monetary penalty of \$500.00** to the Kansas Insurance Department for each of five altered declaration pages, or \$2500, and shall pay **restitution** to each consumer who was charged a fee greater than 25 percent. A list of consumers and total amounts paid to Respondent is incorporated by reference and not made public. Respondent will provide proof of payment of restitution to each consumer or proof that the excess fee results from additional policies. The penalty shall be paid and restitution resolved

by the effective date of this order. This order shall become effective when signed by the last party to sign and filed with the Commissioner.

IT IS SO ORDERED THIS 30th DAY OF June 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

SUBMITTED AND APPROVED BY:

/s/ Shelley J. Diehl
Shelley J. Diehl
Staff Attorney

I, Terry J. Geschwentner hereby stipulate and agree to the Commissioner's findings of fact, conclusions of law, and order. Further, I hereby waive judicial review of the order.

/s/ Terry J. Geschwentner 6-14-05
Terry J. Geschwentner Date