

FINAL ORDER

Effective: 11-22-06

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

In the Matter of Kansas Resident)
Insurance Agent’s License of) Docket No. 3586-SO
Jane L. Shumard)

SUMMARY ORDER

(Pursuant to K.S.A. 2005 Supp. 40-4909, K.S.A. 40-247(a) and K.S.A. 77-501 et seq.)

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 40-4909, the Commissioner hereby revokes the resident agent’s license of Respondent Jane L. Shumard (“Respondent”) and orders Respondent to pay restitution by way of Summary Order, as provided by K.S.A. 77-537.

Findings of Fact:

The Commissioner finds the following facts from KID files:

LEE’S AUTO SALES

1. Records maintained by the Kansas Insurance Department (“KID”) indicate Jane L. Shumard is licensed as a resident agent to transact the business of insurance in Kansas, and has been so licensed since 9/30/03.
2. KID records further indicate a legal address of 11049 102 Road, Dodge City, Kansas 67801. Respondent indicated by telephone her new address is 10570 Marshall Road, Dodge City, Kansas 67801.
3. On 12/9/04, [REDACTED] (“[REDACTED]”), of [REDACTED], Fowler, Kansas, applied with Respondent for an insurance policy for [REDACTED]. The effective date for the policy was listed as 12/13/04. The policy number was [REDACTED].

4. On 12/15/04, Respondent accepted a check from [REDACTED] (Check No. [REDACTED] for \$2,763.00 as the down payment for the initial premium on the car lot policy. The check payee was Med James and the check notation states “ins. policy – car lot.” Respondent had a producer agreement (#04401) with Med James to write excess lines.
5. On 12/15/04, Respondent deposited Check No. [REDACTED] into her credit union account and endorsed the check as “*Med James, SHUMARD Insurance Agency, Jane Shumard, owner.*”
6. On 5/13/05, the Consumer Assistance Division (“CAD”) of KID received a complaint from [REDACTED] on behalf of [REDACTED]. [REDACTED] alleged Respondent cashed a check given to her for premium on insurance policy [REDACTED] and did not forward the premium to the company. As a result of Respondent’s actions, the insurance policy was cancelled.
7. On 10/19/05, Patrick Kaiser (“Kaiser”) of Med James advised KID the company had sent numerous notices to Respondent regarding the premium. Kaiser advised that Respondent failed to respond and did not remit the balance due of \$1125.00 to Med James.
8. On 10/19/05, Cindy Cannon (“Cannon”) and Ms. Davis (“Davis”) in the Med James accounting department advised the premium due from Respondent was \$2449.00. Respondent would keep \$925.60 as commission and the remaining \$1523.40 was due Med James by the Respondent. After Respondent failed to submit the initial premium after several notices, Med James cancelled the policy. The cancellation created a credit of \$397.60 that was applied toward the amount

owed by the Respondent and left a balance of \$1125.80 due from Respondent to Med James.

9. On 10/20/05, KID Chief Fraud Investigator Randy Adair (“Adair”) questioned Respondent about the missing premium check. Respondent claimed she had sent a premium check to Med James for approximately \$1500.00. Respondent requested time to look at her file and respond back to KID on 10/24/05. Respondent did not return the call.
10. On 11/15/05, Adair met with Respondent at her office in Cimarron, Kansas. Adair requested Respondent go to her bank and obtain copies of the check Respondent claims she sent to Med James. Respondent called Adair and advised him the bank did not have copies of the check because she purchased money orders and the bank did not keep the records for money orders.
11. Adair contacted the Credit Union of Dodge City (Respondent’s bank) and spoke with Charlene Figgers (“Figgers”). On 11/18/05, Figgers stated the Credit Union could not locate any money orders in the amounts Respondent claims she purchased. Respondent was advised the Credit Union had no record of a sale of money orders matching the amounts she reported.
12. To date, no records have been provided by Respondent showing she paid \$1523.40 to Med James when the policy was bound. As of 12/1/05, Cannon verified Med James had not received premium from Respondent regarding the Lee’s Auto Sales policy.
13. On 12/2/05, Respondent stated she had not been able to locate any copies of money orders to prove she made payments to Med James.

14. Dan Lowther (“Lowther”), Attorney for Lowther Law Firm, advised his firm had taken over the debt collection for Respondent. On 9/18/06 Lowther confirmed by telephone receiving two payments from Respondent which satisfied the claim for \$1125.80 owed to Med James.
15. On 9/19/06 Krissteen Davis (“Davis”), Account Supervisor for Med James, advised the Respondent owed a refund of \$975.17 to [REDACTED]. Additionally, Respondent has not refunded an overpayment by [REDACTED] in the amount of \$314.00.
16. Respondent owes [REDACTED] a total refund in the amount of \$1289.17.

VIKING BAIL BONDS/ABLE BAIL BONDS

17. Respondent received an appointment with Viking Bail Bonds on 2/21/05. The appointment was terminated on 3/15/06.
18. On 10/2/06, Charlene Thormodsgard advised Adair that Viking Bail Bonds had received a default judgment in Shawnee County District Court on 9/13/06 against Respondent to recover premiums for unaccounted powers of attorney which were never submitted to Viking Bail Bonds by Respondent. The action also included the premium for four powers of attorney used for bail bonds.
19. Respondent was sued for the premium amount that would have been applied to these powers. The premiums due totaled \$685.00. The Respondent was required to submit 50% to the agency for an amount due of \$342.50.
20. Additionally, Respondent also received an appointment with Able Bail Bonds on 2/24/06. The appointment was terminated on 6/27/06.

21. Able Bail Bonds submitted to KID an appointment cancellation from Able Bail Bonds for Respondent for failure to submit premiums, failure to complete paperwork as per company rules, and issued bonds in excess of her approved allocations.
22. On 9/29/06 Adair spoke Robin Bailey (“Bailey”) President of Able Bail Bonds. Bailey indicated Able Bail Bonds’ attorney, Randy Baird (“Baird”) sent a 7/6/06 letter to Respondent requesting Respondent meet with Bailey and Margaret Manning (“Manning”) on 7/11/06 in Dodge City so Respondent could turn over all reports and records regarding any bonds Respondent wrote for Able Bail Bonds.
23. On 10/2/06 Adair spoke with Manning and learned that Respondent issued a bond on 6/26/06 in Ford County, Kansas. The power of attorney #AA81607 (bond amount) was \$3500.00. The premium due for issuing that bond was \$350.00. Respondent failed to submit the power of attorney and 50% of the premium plus 10% BUFF for a total of \$210.00 owed to Able Bonds.

Applicable Law:

K.S.A. 40-247(a) states:

- (a) An insurance agent or broker who acts in negotiating or renewing or continuing a contract of insurance including any type of annuity by an insurance company lawfully doing business in this state, and who receives any money or substitute for money as a premium for such a contract from the insured, whether such agent or broker shall be entitled to interest in same or otherwise, shall be deemed to hold such premium in trust for the company making the contract. If such agent or broker fails to pay the same over to the company after written demand made upon such agent or broker, less such agent’s or broker’s commission and any deductions, to which by the written consent of the company such agent or broker may be entitled, such failure shall be prima facie evidence that such agent or

broker has used or applied the premium for a purpose other than paying the same over to the company.

K.S.A. 40-4909 states, in pertinent part:

- (a) 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:
 - (4) Improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business.
 - (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.
- (b) In addition, the commissioner may suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the interest of the insurer or the insurable interests of the public are not properly served under such license.

Conclusions of Law:

- 24. The Commissioner has jurisdiction over Respondent as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
- 25. The Commissioner finds, based on the facts contained in paragraph #1 through #23 and the applicable law, that Respondent has demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in violation of K.S.A. 40-4909(a)(8).
- 26. The Commissioner finds that Respondent improperly withheld moneys received in the course of doing insurance business in violation of K.S.A. 40-4909(a)(4).
- 27. The Commissioner finds that Respondent violated K.S.A. 40-247(a) by failing to pay premiums over to the companies for contracts from the insured.

28. Based on the Respondent's conduct, the Commissioner concludes that sufficient grounds exist for the revocation of Respondent's insurance agent pursuant to K.S.A. 40-4909(b) because such license is not properly serving the interests of the insurer and the insurable interests of the public.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

Pursuant to K.S.A. 40-4909(a), the resident agent's license of Jane L. Shumard is hereby revoked. Additionally, Respondent shall pay restitution to [REDACTED] in the amount of \$1289.17 and \$350.00 to Able Bail Bonds within six months from the date of this Order.

Notice and Opportunity for Hearing

Jane L. Shumard, within 15 days of service of this Summary Order, may file with the KID written request for a hearing on this Summary Order, as provided by K.S.A. 77-542. In the event a hearing is requested, such request 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 shall be assessed against the agent who is the subject of the hearing as provided by K.S.A. (2005 Supp.) 40-4909(f). Costs shall include witness fees, mileage allowances, any costs associated with the reproduction of documents which become part of the hearing record, and the expense of making a record of the hearing. 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 (15) day period for requesting a hearing. In the event that Respondent files a petition for judicial review, pursuant to

K.S.A. 77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department
is:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

**IT IS SO ORDERED THIS 3rd DAY OF NOVEMBER, 2006, IN 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

Certificate of Service

The undersigned hereby certifies that he served a true and correct copy of the above and foregoing Summary Order on this 3rd day of November, 2006, by placing the same in the United States Mail, first class postage prepaid, addressed to the following:

Jane L. Shumard
10570 Marshall Road
Dodge City, Kansas 67801

Jane L. Shumard
11049 102 Road
Dodge City, Kansas 67801

/s/ Zachary J.C. Anshutz
Zachary J.C. Anshutz
Staff Attorney

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