

FINAL ORDER

Effective: 03-28-08

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

In the Matter of the Kansas)
Resident Insurance Agent’s License of) Docket No. 3773-SO
THOMAS S. BACONRIND)

SUMMARY ORDER

(Pursuant to K.S.A. 2007 Supp. 40-4909 and K.S.A. 77-537)

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 2006 Supp. 40-4909, the Commissioner hereby imposes sanctions against the resident agent’s license of Respondent, Thomas S. Baconrind by way of Summary Order as provided by K.S.A. 77-537. This Summary Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period if no request for hearing is made, pursuant to K.S.A. 77-542.

Findings of Fact

The Commissioner finds the following facts:

1. Records maintained by the Kansas Insurance Department (“KID”) indicate Respondent is licensed as a resident agent to transact the business of insurance in the State of Kansas, and has been so licensed since October 9, 1987.
2. KID records further indicate a legal and mailing address of 1212 Davis Ct., El Dorado, KS 67042-4100.
3. In September of 2006 Respondent along with Edwin D. Jones (“Mr. Jones”) began placing clients in a charitable gift annuity that was offered by National Foundation of America (“NFOA”).
4. National Foundation of America was chartered as a non-profit corporation in the State of Tennessee.

5. Richard K. Olive was the President of NFOA and Susan L. Olive, its Vice-President.
6. Respondent and Mr. Jones advised Randy Adair, Chief-Fraud Investigator for the Kansas Insurance Department (“Mr. Adair”) that they received a post card in the mail from NFOA and saw advertisements in *Brokers World* about NFOA offering 9% commissions.
7. Respondent and Mr. Jones stated that they contacted Richard Olive and agreed to represent NFOA in Kansas. And that they were to market the installment plans to clients who were unhappy with their current annuity and those people who needed an immediate income, a tax deduction on capital gains on real estate and tax favored deferred income depending on their needs and desires for beneficiaries.
8. Respondent and Mr. Jones stated that there was no contract between themselves and NFOA as Richard Olive was a man of faith and would keep his word. Mr. Oliver further explained that there was no contract between NFOA and agents because the product was an installment contract and not insurance, and therefore not subject to Tennessee Insurance requirements or license and contract restrictions.
9. Respondent and Mr. Jones stated that Richard Olive told them that NFOA was registered and approved with the Internal Revenue Service (“IRS”) as a 501(c)(3) company.
10. Respondent and Mr. Jones then began offering the charitable gift annuity’s from NOA without any further investigation into the accuracy of Richard Olive’s statements or the legitimacy of NFOA.

11. From September of 2006 until May of 2007, Respondent induced seven (7) Kansas consumers to sign installment plans with NFOA, they are as follows:

<u>Name</u>	<u>Amount Invested</u>	<u>Commission</u>	<u>Cash Received by NFOA</u>
[REDACTED]	\$66,163.17	\$4,997.86	\$55,911.02
[REDACTED]	\$59,838.69	\$4,631.61	\$51,181.69
[REDACTED]	\$215,345.34	\$19,495.40	\$216,734.76
[REDACTED]	\$50,000.00	\$4,500.00	\$50,000.00
[REDACTED]	\$17,192.65	\$1,188.82	\$13,218.98
[REDACTED]	\$133,344.08*	\$4,000.32	\$133,344.10
[REDACTED]	\$39,704.28	\$3,090.98	\$34,344.90

12. The total amount of money invested by Respondent's clients in these installment plans was \$581,588.21 respondent received a total of \$41,904.99 in commissions for these installment plans.
13. In May of 2007, Respondent and Mr. Jones specifically asked of Richard Olive if there were any issues with government agencies. At that time Mr. Olive informed Respondent and Mr. Jones of cease and desist orders in other states, he also admitted that NFOA was not approved as a 501(c)(3) corporation but that the status was under review and would be retroactive to the date of application.
14. After being advised of the cease and desist orders and the fact that NFOA was not a 501(c)(3) corporation, Respondent and Mr. Jones ceased offering NFOA's installment plans to Kansas consumers after May 3, 2007.
15. On June 21, 2007, the Commissioner of Commerce and Insurance for the State of Tennessee filed a Consent Order Appointing Commissioner as Receiver for Purposes of Rehabilitation and Injunction in the Davidson County Chancery Court of Tennessee. The Consent Order alleged that NFOA had been doing insurance business within the meaning of Tenn. Code Ann. §56-9-103 without a certificate of authority as required by Tenn. Code Ann. § 56-2-105.

16. The Commissioner for the State of Tennessee further determined that NFOA was in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors, or the public.
17. Respondent contends he checked with the Tennessee Secretary of State and found that NFOA was listed with the Secretary of State as a nonprofit entity with a date of formation of January 27, 2006, with duration of perpetual. However, respondent failed to determine if NFOA was properly licensed with the State of Tennessee Insurance Department.
18. Respondent failed to independently verify that NFOA was approved by the IRS as a 501(c)(3) corporation prior to offering products from NFOA. Respondents contend that they contacted the IRS in July of 2006 and were informed that NFOA had properly filed for 501(c)(3) status, but that a Letter of Determination had not yet been issued, but that charities could conduct business and accept contributions as allowed for with 501(c)(3) corporations.
19. Respondent while acting as a financial advisor or insurance agent as a fiduciary duty to his clients to make sure that any and all investments that he presents are financially stable and legally operating. Respondent contends that clients' funds were reinsured with SEI and that all assets were safe and sound.

Applicable Law

20. K.S.A. 2006 Supp. 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:
 - (8) Used any fraudulent, coercive, or dishonest practice, or demonstrated any incompetence, untrustworthiness or financial

irresponsibility in the conduct of business in this state of 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 interests of the insurer or the insurable interests of the public are not properly served under such license.
- (h) in lieu of taking any action under subsection (a), the commissioner may:
 - (1) Censure the person.

Conclusions of Law

- 21. The Commissioner has jurisdiction over Respondent as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
- 22. The Commissioner finds that Mr. Baconrind demonstrated incompetence and financial irresponsibility in the conduct of business in this state pursuant to K.S.A. 2007 Supp. 40-4909(a)(8).
- 23. The Commissioner, therefore, concludes that good cause exists pursuant to K.S.A. 2006 Supp. 40-4909(a) and (h) to revoke or suspend Respondent's Kansas nonresident insurance agent's license or impose administrative penalties in lieu of revocation.
- 24. The Commissioner concludes that Respondent's insurance agent's license may be revoked for the protection of the insurable interests of the public pursuant to K.S.A. 2006 Supp. 40-4909(b).
- 25. While Respondent's conduct constitutes sufficient cause for revocation or suspension of his license pursuant to K.S.A. 2007 Supp. 40-4909(a), the Commissioner notes that Respondent has been licensed since 1987 and has not been the subject of prior complaints.

26. The Commissioner finds that the interests of the insurer and the insurable interests of the public are properly served by a lesser sanction.
27. 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 KID to give notice and opportunity to participate to persons other than Thomas S. Baconrind.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

Based on the facts and circumstances set forth herein, the **COMMISSIONER HEREBY CENSURES Thomas S. Baconrind for irresponsibility and incompetence in the conduct of business in this state.**

NOTICE AND OPPORTUNITY FOR HEARING

Thomas S. Baconrind, within fifteen (15) days of service of this Summary Order, may file with the Kansas Insurance Department a written request for 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, Kansas 66612

Any costs incurred as a result of conducting any administrative hearing shall be assessed against the agent/agency who is the subject of the hearing as provided by K.S.A. 40-4909(f).

Costs shall include witness fees, mileage allowances, any costs associated with 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. The Final Order will constitute final agency action in the matter.

In the event the Petitioner files a petition for judicial review, 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 Kansas Insurance Department is:

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

IT IS SO ORDERED THIS 4th DAY OF MARCH, 2008, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance

BY:

/s/ John Campbell
John Campbell
General Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the above and foregoing Summary Order on this 4th day of March, 2008, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

In the Matter of the Kansas
Resident Insurance Agent's License of
THOMAS S. BACONRIND

Thomas S. Baconrind
1212 Davis Ct.
El Dorado, KS 67042-4100

/s/ Stacy R. Bond
Stacy R. Bond
Staff Attorney