

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

FINAL ORDER
EFFECTIVE 2-19-08

In the Matter of the Kansas)
Resident Insurance Agent's License of) Docket No. 3778-SO
Nicholas A. Baumgartner)

SUMMARY ORDER

(Pursuant to K.S.A. 2006 Supp. 40-4909 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, Nicholas A. Baumgartner ("Mr. Baumgartner"). 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 Nicholas A. Baumgartner is licensed as a resident agent to transact the business of insurance in Kansas, and has been so licensed since February 17, 2005.
2. KID records indicate a mailing address of 13200 Metcalf Ave., Ste. 190, Overland Park, Kansas 66213-2819.

Complaint

3. On November 26, 2007, KID received a complaint from Ms. [REDACTED] ("Ms. [REDACTED] concerning Mr. Baumgartner apparently writing several insurance policies on her and her son's vehicles without their permission. Ms. [REDACTED] stated that Mr. Baumgartner had written a life insurance policy on her without her knowledge or permission and that he had also written several auto policies on vehicles that

neither she nor her son [REDACTED] had ever owned. There were also auto policies on vehicles that were no longer in their possession or the VIN numbers had been altered.

4. Ms. [REDACTED] stated that this all came to light on or about October 24, 2007 when Ms. [REDACTED] received a letter in the mail from Farmers Insurance (“Farmers”) informing her that they were reviewing her life insurance application.
5. During the week of October 29, 2007, Ms. [REDACTED] contacted Mr. Baumgartner’s office for a copy of evidence of insurance on her son [REDACTED] vehicle. She was sent copies of three policies for vehicle’s that were not [REDACTED] a 2004 Saab, a 2001 Yamaha and a 2007 Chevrolet. Ms. [REDACTED] stated that [REDACTED] never owned a 2004 Saab or a 2001 Yamaha and that the VIN for the 2007 Chevrolet was incorrect.
6. When Ms. [REDACTED] contacted Mr. Baumgartner and inquired as to the irregularities she was told that it was a computer glitch and that they must have gotten mixed up with another client with the same last name.
7. Ms. [REDACTED] contacted Mr. Baumgartner on November 1, 2007 concerning this letter has she had not applied for any life insurance. Mr. Baumgartner explained to her that it was all a mistake and that she was only supposed to be on a list to offer life insurance. Ms. [REDACTED] stated that Mr. Baumgartner kept telling her that everything was fine and that she “didn’t need to contact corporate.” This made her think that maybe she should contact Farmers directly.

8. On November 1, 2007, Ms. [REDACTED] contacted Farmers and spoke with Debbie Jude. Ms. Jude asked her to submit a letter to Farmers stating that she had not requested the life insurance policy.
9. On November 3, 2007, Ms. [REDACTED] received from Farmers a copy of the life insurance packet. Ms. [REDACTED] was instructed to send a notarized statement back to Farmers if the signature was not hers, Ms. [REDACTED] did this.
10. On November 12, 2007, Mr. Baumgartner contacted Ms. [REDACTED]. In this conversation he asked her what she said to Farmers. Ms. [REDACTED] told him that she had returned the notarized statement stating that the signature was not hers.
11. On November 13, 2007, Mr. Baumgartner went to Ms. [REDACTED]'s place of business and spoke with her. At that time he told her that "he had signed a three year contract with Farmers and in that time he had to write so many policies or he would lose his insurance license. And that he had written a life insurance policy on her without her permission." At that time Ms. [REDACTED] informed Mr. Baumgartner that she had reported this incident to the Overland Park Police Department.
12. On November 16, 2007, Ms. [REDACTED] again called Farmers insurance, this time to inquire as to the auto policies. After speaking with "Constance" at Farmers, Ms. [REDACTED] was advised of at least six policies that were fraudulent.
13. On November 18, 2007, Ms. [REDACTED] went through all the policies that had been sent to her in the mail and found twelve (12) false policies. The policies that Ms. [REDACTED] found that were false are as follows:

<u>Policy #</u>	<u>Desc. of Vehicle</u>	<u>Date Issued</u>	<u>Date to End</u>	<u>Reason</u>
[REDACTED]	'01 Yamaha	10/19/07	11/27/07	Didn't Own

[REDACTED]	'02 Yamaha	10/18/07	10/23/07	Didn't Own
	'93 Chevy Truck	9/21/06	3/21/07	Junked in 8/06
	'93 Chevy Truck	2/16/07	8/16/07	Junked in 8/06
	'93 Chevy Truck	5/21/07	11/21/07	Wrong VIN
	'93 Chevy Truck	10/18/07	10/23/07	Wrong VIN
	'04 Saab	10/22/07	10/23/07	Didn't Own
	'04 Saab	10/22/07	10/23/07	Didn't Own
	'07 Chevy Truck	10/22/07	10/23/07	Wrong VIN
	'07 Chevy Truck	5/21/07	11/21/07	Wrong VIN
	Renters for [REDACTED]	6/9/06	6/9/07	1966 not 1986
?????	Renters for [REDACTED]		1966 not 1986	

14. On or about December 5, 2007, Randy Adair, Chief Fraud Investigator for KID spoke with Senior Auditor (SA) Matt Carr of Farmers. At that time SA Carr informed Mr. Adair that they were aware of at least seven other life policies written on the same day as Ms. [REDACTED] and they believed they were falsified as well. SA Carr stated that Mr. Baumgartner had to produce a certain number of policies to be retained by Farmers.
15. On December 5, 2007, Mr. Adair made contact with Mr. Baumgartner. Mr. Baumgartner admitted to Mr. Adair that he had fabricated the life policy on Ms. [REDACTED] in order to meet his requirements with Farmers. During the course of this conversation Mr. Baumgartner also admitted to falsifying five other applications with Farmers in order to meet his obligation. Mr. Baumgartner insisted that no one was out any premium money as all the policies would cancel in 30 days for non-payment of premium. Mr. Baumgartner admitted that all the applications were in the names of actual insured's and that he forged their names to the applications.

16. On December 5, 2007, Mr. Baumgartner informed Mr. Adair that it was his intent to surrender his Kansas Resident Insurance Agent's License. To date this has not happened.

Applicable Law

17. 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:
 - (2) Violated
 - (A) any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or any rule or regulation promulgated thereunder;
 - (7) Admitted to or been found to have committed any insurance unfair trade practice or fraud in violation of K.S.A. 40-2404 and amendments thereto.
 - (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.
 - (10) Forged another person's name to an application for insurance or to any document related to an insurance transaction.
 - (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.
18. K.S.A. 2006 Supp. 40-2404 states, in pertinent part: The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:
- (11) Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, broker or individual.

19. K.S.A. 2006 Supp. 40-2,118 states, in pertinent part:
- (a) For purposes of this act a “fraudulent insurance act” means 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, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false, information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

Conclusions of Law

20. The Commissioner has jurisdiction over Mr. Baumgartner as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
21. The Commissioner finds that Mr. Baumgartner committed fraud in submitting an application for life insurance in the name of [REDACTED] without Ms. [REDACTED] permission; obtaining several fraudulent auto policies and renters policies for the purpose of obtaining a fee, commission or money or other benefit from any insurer is a violation of K.S.A. 40-2404(11).
22. The Commissioner finds that Mr. Baumgartner forged another person’s ([REDACTED] [REDACTED] name to an insurance application without her knowledge or permission by using an electronic signature in violation of K.S.A. 2006 Supp. 40-4909(10).
23. The Commissioner finds that Mr. Baumgartner’s act of submitting an application or life insurance on behalf of Ms. [REDACTED] without her permission and obtaining several auto and renters policies without the knowledge or permission of Ms. [REDACTED] or her son [REDACTED] constitutes a dishonest practice in violation of K.S.A. 40-4909(a)(8).

24. The Commissioner finds that Mr. Baumgartner has demonstrated incompetence, untrustworthiness and financial irresponsibility in submitting several unauthorized policies in the name of [REDACTED] and/or [REDACTED] a violation of K.S.A. 40-4909(a)(8).
25. The Commissioner finds that Mr. Hoffman committed a fraudulent insurance act by submitting several unauthorized and fraudulent insurance applications in violation of K.S.A. 40-2,118.
26. The Commissioner finds, pursuant to K.S.A. 40-4909(b), that the insurable interests of the public are not properly served under Mr. Baumgartner's license.
27. Accordingly, the Commissioner concludes sufficient grounds exist for the revocation of the insurance agent's license of Nicholas A. Baumgartner pursuant to K.S.A. 40-4909(a) and (b).

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

1. The Kansas Resident Insurance Agent's License of NICHOLAS A. BAUMGARTNER is hereby **REVOKED** effective the effective date of this Order.
2. **IT IS FURTHER ORDERED** that NICHOLAS A. BAUMGARTNER 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.

NOTICE AND OPPORTUNITY FOR HEARING

Nicholas A. Baumgartner, 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

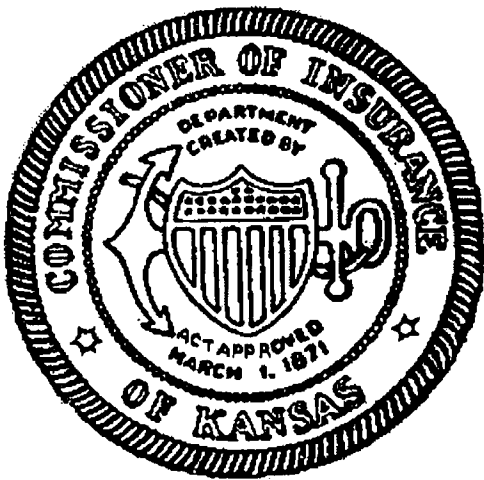
Any costs incurred as a result of conducting any administrative hearing shall be assessed against the agent/agency who is the subject of the hearing as provided by K.S.A. 40-4909(f). Costs shall include witness fees, mileage allowances, any costs associated with reproduction of documents which become 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 24th DAY OF January, 2008, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



Sandy Praeger
Commissioner of Insurance

By:

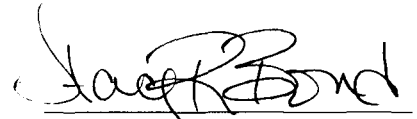
John W. Campbell
General Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the above and foregoing Summary Order on this 24th day of Jan., 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
Nicholas A. Baumgartner

Nicholas A. Baumgartner
13200 Metcalf Ave., Ste. 190
Overland Park, Kansas 66213-2819



Stacy R. Bond
Staff Attorney