

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

In the Matter of the Kansas Resident)
Insurance Agent's License of)
RICK L. HOFFMAN) **Docket No. 3651-SO**
NPN # 30153)

FINAL ORDER

On October 30, 2008, the Hearing Officer, Robert M. Tomlinson, in the above-captioned matter hereby made the following findings and enters the Order as follows:

Procedural Issues

This matter comes before the Hearing Officer as a result of the Kansas Insurance Department's issuance of a Summary Order on May 27, 2008 against Rick L. Hoffman for violation of K.S.A. 40-4909. Rick L. Hoffman timely appealed the Summary Order and requested a hearing. A hearing was held as stated above and on November 25, 2008 the Hearing Officer announced, orally, his decision which is as follows:

Issues

Many issues were announced and discussed in the file, which is the record herein. They are incorporated herein by reference. However, the Hearing Officer made his determination on the following issues:

1. Whether the Respondent violated K.S.A. 40-4909(a)(8) by demonstrating incompetence, untrustworthiness and financial irresponsibility in providing inaccurate advise concerning the tax consequences Ms. [REDACTED] would face in withdrawing funds from her annuities?
2. Whether Respondent violated K.S.A. 40-4909(a)(8) by fraudulently conducting business in this state by impersonating Mrs. [REDACTED] and attempting to obtain forms from

which to withdraw her money from her accounts without her permission or knowledge; asking Mrs. [REDACTED] to call the insurance company to tell it that Respondent was really her son [REDACTED] and Respondent then telling the company that he, in fact, was [REDACTED]

Decision

1. The Respondent violated K.S.A. 40-4909(a)(8) by demonstrating incompetence, untrustworthiness and financial irresponsibility in providing inaccurate advise concerning the tax consequences Ms. [REDACTED] would face in withdrawing funds from her annuities.

Respondent and Mrs. [REDACTED] and her husband had a long relationship. After Mrs. [REDACTED] husband died, Respondent continued to counsel Mrs. [REDACTED] and suggest purchases for her. However, Mrs. [REDACTED] did not understand the tax consequences of Respondent's activities, as seen by the following:

If Mrs. [REDACTED] had fully understood the tax implications of her investment it could be argued that she should not have checked the box that did not require withholdings, which she did in Respondent's presence. Mrs. [REDACTED] certainly would have understood why she received an extra amount of money, Five Thousand Dollars (\$5,000). She would not have desired to return the money. She would not have spent it. And, when Mrs. [REDACTED] was counseled by persons at H&R Block, she would have understood that she had a tax liability. Because Mrs. [REDACTED] did not understand the tax consequences of her and Respondent's actions,

Respondent violated his fiduciary duty to Mrs. [REDACTED]

2. Respondent violated K.S.A. 40-4909(a)(8) by fraudulently conducting business in this state by impersonating Mrs. [REDACTED] and attempting to obtain forms from which to withdraw her money from her accounts without her permission or knowledge; asking Mrs. [REDACTED] to call the insurance company to tell it that Respondent was really her son [REDACTED] and Respondent then telling the company that he, in fact, was [REDACTED]

Respondent made a telephone call to on September 26, 2006, to Midland National Life Insurance Company. He identified himself as [REDACTED] and asked for forms necessary to retrieve funds from multiple Midland accounts. Next, the evidence was that he called Mrs. [REDACTED] telling her that he had called Midland and identified himself as her son [REDACTED]. Respondent asked and convinced Mrs. [REDACTED] to call Midland and tell them that her son [REDACTED] had called them and that she wanted forms to withdraw monies from her accounts. Finally, Respondent, when called by Midland, did identify himself as [REDACTED] for the purpose of attempting to receive the funds.

The fiduciary responsibility between an insurance producer and his client is violated if the client does not understand the product well enough. In this case, when Mrs. [REDACTED] lied to Midland, she lied to assist the Respondent to assist her in changing her product line. In so doing, Mrs. [REDACTED] was indicating to Respondent that she was relying, not on her knowledge of what was transpiring, but showing her trust in Respondent. In asking Mrs. [REDACTED] to lie, Respondent breached his fiduciary responsibility.

Holding

In addition to the above evidence, the Hearing Officer further finds that Mr. Hoffman entered into a consent decree in 1992 wherein the Respondent agreed to cease and desist from violations of the insurance code and to pay a penalty. Therefore, this is the second time that Respondent's license is in jeopardy. Because Respondent violated his fiduciary duty to Mrs. [REDACTED] involving both of the above issues, Mr. Hoffman's license to sell insurance in the State of Kansas is **REVOKED**. All other issues, holdings, findings and statements in the record are incorporated herein by reference.

IT IS SO ORDERED THIS 12th DAY OF DECEMBER, 2008, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Robert M. Tomlinson
Robert M. Tomlinson
Hearing Officer

NOTICE OF RIGHTS

Pursuant to K.S.A. 77-601 *et seq.*, Rick L. Hoffman is entitled to judicial review of this Final Order. The petition for judicial review must be filed within thirty (30) days of service of this Final Order (plus three [3] days for service by mail pursuant to K.S.A. 77-531). In the event Rick L. Hoffman 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 SW 9th Street
Topeka, KS 66612

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Final Order on this 12th day of Dec. , 2008, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Mike J. Wyatt
Klenda, Mitchell,
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/s/ John R. Dowell
John R. Dowell