

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

In the Matter of the Kansas)	
Nonresident Insurance Agent’s License of)	Docket No. 3812-SO
JAMES F. MCMENAMIN)	
NPN# 5707938)	
)	
In the Matter of the Kansas)	
Nonresident Insurance Agency License of)	Docket No. 3811-SO
FRENKEL & CO INC.)	

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. 2007 Supp. 40-4909, the Commissioner hereby imposes sanctions against the nonresident agent’s license of Respondents James F. McMenamain and the nonresident agency license of Respondent Frenkel & Co. Inc. 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 James F. McMenamain is licensed as a nonresident agent to transact the business of insurance in the State of Kansas, and has been so licensed since October 3, 2005.
2. KID records further indicate a legal and mailing address for James F. McMenamain of c/o Frenkel & Co., 350 Hudson St., Floor 4, New York, NY 10014-4511.
3. The National Association of Insurance Commissioners (“NAIC”) Regulatory Information Retrieval System (“RIRS”) database reflects the following actions:

James F. McMenamain was assessed a monetary penalty in the State of Virginia, effective October 18, 2007, for selling for unlicensed insurer.

4. Records maintained by the Kansas Insurance Department (“KID”) indicate that Frenkel & Co Inc. is licensed as a nonresident agency to transact the business of insurance in the State of Kansas, and has been so licensed since June 22, 1989.
5. KID records further indicate legal and mailing address of 350 Hudson St., Floor 4, New York, NY 10014.
6. The National Association of Insurance Commissioners (“NAIC”) Regulatory Information Retrieval System (“RIRS”) database reflects the following actions: Frenkel & Co was assessed a monetary penalty by the State of Virginia, effective October 18, 2007, for selling for unlicensed insurer.

Applicable Law

7. K.S.A. 2007 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 and regulation promulgated thereunder;
 - (C) any insurance law or regulation of another state;
 - (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:

(2) issue an order imposing an administrative penalty up to a maximum of \$500 for each violation . . . unless such person knew or should have known that the violative act could give rise to disciplinary action under subsection (a). If such person knew or reasonably should have known the violative act could give rise to any disciplinary proceeding . . . the commissioner may impose a penalty up to a maximum of \$1000 for each violation

8. KA.R. 40-7-9 states, in pertinent part: Each person licensed in this state as an insurance agent shall report the following to the commissioner of insurance within 30 days of occurrence:
 - (a) Each disciplinary action on the agent's license or licenses by the insurance regulatory agency of any other state or territory of the United States.

Conclusions of Law

9. The Commissioner has jurisdiction over Respondents as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
10. The Commissioner finds that Respondents' Kansas licenses may be revoked because Respondents' violated an insurance law or regulation in another state pursuant to K.S.A. 2007 Supp. 40-4909(a)(2)(C).
11. The Commissioner finds that Respondents' violated K.S.A. 2007 Supp. 40-4909(a)(2)(A) and K.A.R. 40-7-9 by failing to notify the Kansas Insurance Department of the disciplinary action taken by the State of Virginia Department of Insurance on October 18, 2007 within thirty (30) days.
12. The Commissioner, therefore, concludes that good cause exists pursuant to K.S.A. 2007 Supp. 40-4909(a) and (h) to revoke or suspend Respondents' Kansas nonresident license or impose administrative penalties in lieu of revocation.
13. The Commissioner concludes that Respondents' license may be revoked for the protection of the insurable interests of the public pursuant to K.S.A. 2007 Supp. 40-4909(b).

14. 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 James F. McMenammin and Frenkel & Co. Inc.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

Respondents James F. McMenammin and Frenkel & Co. Inc. shall pay an administrative penalty of \$250.00 for failure to notify KID of another state agency's action and the Kansas nonresident insurance license of James F. McMenammin and Frenkel & Co. Inc. is hereby **SUSPENDED on the effective date of this order until such time as the penalty is paid in full.**

NOTICE AND OPPORTUNITY FOR HEARING

James F. McMenammin and Frenkel & Co. Inc., 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 17th DAY OF APRIL, 2008, 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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the above and foregoing Summary Order on this 17th day of April, 2008, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

James F. McMenamin
c/o Frenkel & Co. Inc.
350 Hudson St., Floor 4
New York, NY 10014-4511

John Kelly
Frenkel & Co. Inc.
350 Hudson St., Floor 4
New York, NY 10014-4511

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