

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

In the Matter of the Kansas Nonresident)
Insurance Agent’s License of)
MELISSA LEANNE PELL)
NPN #3990559)

Docket No. 3765–SO

FINAL ORDER

(Pursuant to K.S.A. 2007 Supp. 40-4909 and K.S.A. 77-520)

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 2007 Supp. 40-4909, and K.S.A. 77-520, the Presiding Officer hereby gives Notice of the Final Order suspending the Kansas Nonresident Insurance Agent’s License of Melissa Leanne Pell (“Respondent”).

STATEMENT OF GROUNDS

Findings of Fact

The Commissioner has been shown the following facts:

1. Records maintained by the Kansas Insurance Department (“KID”) indicate Respondent is licensed as a nonresident agent to transact the business of insurance in Kansas, and has been so licensed since February 13, 2001.
2. KID records indicate a legal and mailing address of 101 Martin Dr., Mount Hope, West Virginia, 25880.
3. The National Association of Insurance Commissioners (“NAIC”) Regulatory Information Retrieval System (“RIRS”) database reflects the following actions: State of California Department of Insurance revoked the license of the Respondent for other states action, effective September 24, 2007.

4. Ms. Pell timely requested a hearing in the above-captioned matter. As a result a Notice of Hearing was sent to Ms. Pell on March 18, 2008 informing her of the date and time of the pre-hearing conference of May 1, 2008 at 10:00 a.m.
5. Petitioner mailed a copy of a blank pre-hearing questionnaire and a letter listing the date and time of the hearing of May 1, 2008 at 10:00 a.m., to the Respondent on March 18, 2008.
6. On March 31, 2008, Ms. Shawna Lily contacted the attorney for KID concerning the hearing date.
7. There is no record of Ms. Pell either by writing or by oral request, requesting that he hearing be conducted by telephone.
8. Ms. Pell had not submitted her pre-hearing questionnaire as required.
9. On May 1, 2008 at 10:00 a.m., Ms. Pell failed to appear either in person or by telephone at the Hearing in the above-captioned matter.
10. KID moved for the issuance of a proposed default order pursuant to K.S.A. 77-520 granting the Summary Order.
11. KID's request was granted.
12. The Summary Order is hereby granted and incorporated into this order as if set forth therein. Respondent violated K.S.A. 2007 Supp. 40-4909(a)(9) and K.A.R. 40-7-9 as alleged in the Summary Order.
13. Respondent's Kansas nonresident insurance agent's license is hereby suspended until payment of the fine as stated in the Summary Order.

14. A Notice of Proposed Default Order was mailed to Melissa Pell at her last registered address on May 5, 2008, no Motion to Vacate has been filed with the Kansas Insurance Department.

Applicable Law

15. K.S.A. 77-520 provides, in pertinent part:
- (a) If a party fails to attend or participate in a prehearing conference, hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties written notice of a proposed default order, including a statement of the grounds.
 - (b) Within seven days after service of the proposed default order, the party against whom it was filed may file a written motion requesting that the proposed default order be vacated and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interests of justice and the orderly and proper conduct of the proceedings.
 - (c) The proposed default order shall become effective after expiration of the time within which the party may file a written motion under subsection (b) unless a written motion to vacate the order is filed with the agency within such time. Upon receipt of a motion to vacate a proposed default order, the presiding officer shall either vacate the proposed order or issue the default order as proposed. If the presiding officer issues a default order as proposed the order shall become effective upon service.
 - (d) After a default order becomes effective, the presiding officer shall conduct any further proceedings necessary to complete the adjudication without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party.
16. 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:
 - (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;
- (9) Had an insurance agent license, or its equivalent, denied, suspended or revoked in any other state, district or territory.
- (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
17. 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

The Commissioner has jurisdiction over Respondent as well as the subject matter of this proceeding and such proceeding is held in the public interest.

18. The Commissioner finds, pursuant to K.S.A. 77-520, that Respondent is in default for failure to appear at the May 1, 2008 hearing in the above-captioned matter.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the Kansas Nonresident Insurance Agent's License of MELISSA LEANNE PELL is hereby

SUSPENDED on the effective date of this order until such time as the penalty is paid in full.

NOTICE OF RIGHTS

Pursuant to K.S.A. §77-601 et seq. Melissa Pell 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, Melissa Pell 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 JUNE, 2008, IN THE CITY OF TOPEKA,
COUNTY OF SHAWNEE, STATE OF KANSAS.**



/s/ Robert M. Tomlinson
Robert M. Tomlinson
Assistant Commissioner of
Insurance/Hearing Officer

Prepared By:

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

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the above and foregoing Final Order was served by placing the same in the United States Mail, first class, postage prepaid, on this 3rd day of June, 2008, addressed to the following:

Melissa Leanne Pell
101 Martin Drive
Mount Hope, WV 25880
Respondent

And

Stacy R. Bond
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612
*Counsel for the Kansas Insurance
Department*

/s/ Jana L. Beethe
Jana L. Beethe
Legal Assistant