

FINAL ORDER

Effective: 12-05-08

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

In the Matter of the Kansas)
Resident Insurance Agent’s License of) Docket No. 3947-SO
MARK L. SALDIVAR)
NPN# 6113929)

SUMMARY ORDER

(Pursuant to K.S.A. 2006 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, Mark L. Saldivar, 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 March 17, 1999.
2. KID records further indicate a legal and mailing address of 515 Moy Lane, Mulvane, Kansas.
3. In June, 2008, Mr. Saldivar communicated with David Lefler, Inc., a Wichita, Kansas plumbing corporation which had approximately 14 persons covered by Blue Cross/Blue Shield of Kansas, hereinafter “BCBSKS” health insurance.

4. Although the deadline to have paperwork submitted for renewal of the David Lefler health insurance policies was June 10, 2008, said paperwork was not submitted until June 13, 2008. Mr. Saldivar communicated to Lefler that the late filing would not affect their insurance.
5. Respondent appealed the denial of BCBSKS permitting a procedural exception to the June 10 deadline. The appeal was denied by BCBSKS.
6. BCBSKS management was unaware that Mr. Saldivar told David Lefler, Inc. that it could renew its coverage after the deadline.
7. The premium for the Lefler company health insurance increased twenty percent (20%). Respondent paid the increased portion of the group's premium.
8. Further, Respondent paid four claims under the health insurance totaling Nineteen Hundred Thirty-Eight Dollars and Eighty Two Cents. (\$ 1,938.82).
9. BCBSKS has informed KID that BCBSKS has asked David Lefler, Inc. to reimburse Mr. Saldivar for the funds that he has paid on its behalf, as well as the payments made for the medical claims.

Applicable Law

10. 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:
 - (5) Intentionally misrepresented the provisions, terms and conditions of an actual or proposed insurance contract or application for insurance.
 - (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.

- (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; or
 - (2) issue an order imposing an administrative penalty

Conclusions of Law

- 11. The Commissioner has jurisdiction over Mr. Saldivar as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
- 12. The Commissioner finds that Mr. Saldivar's Kansas license may be revoked because Mr. Saldivar violated any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation promulgated thereunder, in violation of K.S.A. 2006 Supp. 40-4909(a)(2)(A).
- 13. The Commissioner finds that Mr. Saldivar violated K.S.A. 40-4909.
- 14. The Commissioner, therefore, concludes that good cause exists pursuant to K.S.A. 2006 Supp. 40-4909(a) and (b) to revoke or suspend Respondent's Kansas resident insurance agent's license or impose administrative penalties in lieu of revocation.
- 15. 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).

16. 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 Mark L. Saldivar.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

Respondent Mark L. Saldivar shall pay an administrative penalty of \$500.00 for misrepresenting the provisions, terms and conditions of an actual or proposed insurance contract; for demonstrating financial irresponsibility in the conduct of business in this state; and engaging in inappropriate acts in regards to the interests of your customers.

IT IS FURTHER ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

Respondent Mark L. Saldivar shall be repaid all monies that he paid out for insurance premiums or health claims. Finally, Respondent shall write letters of apology to the four individuals that he paid health claims for, as well as to David Lefler, Inc. for his acts. Respondent shall provide proof to the Commissioner of the Kansas Insurance Department of his receipt of the repayment and shall copy the Commissioner on all letters of apology.

NOTICE AND OPPORTUNITY FOR HEARING

Mark L. Saldivar, 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 Respondent 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 13th DAY OF NOVEMBER, 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 he served the above and foregoing Summary Order on this 13th day of Nov., 2008, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Mark L. Saldivar
515 Moy Lane
Mulvane, Kansas 67110

/s/ John R. Dowell
John R. Dowell
Staff Attorney