

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

In the Matter of the Kansas Nonresident)
Insurance Agency's License of) **Docket No. 3872-SO**
THE SETTLEMENT GROUP, INC.)

**SUMMARY ORDER
(Pursuant to K.S.A. 2007 Supp. 40-4909 and K.S.A. 77-537)**

Pursuant to authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 2007 Supp. 40-4909, the Commissioner hereby revokes the nonresident agency license of Respondent by way of Summary Order as provided by K.S.A. 77-537.

This 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.

Pursuant to the authority granted to the Commissioner pursuant to K.S.A. 40-2,125 and in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501, et seq., the Commissioner hereby asserts the following declarations of public interest and policy, findings of fact, conclusions of law, and orders:

DECLARATIONS OF PUBLIC INTEREST AND POLICY

1. The Commissioner finds and declares that it promotes the public interest and the interest of policyholders to have general supervision and control of those authorized to transact the business of insurance in this state.

2. The Commissioner further finds and declares that the policies and purposes in K.S.A. 40-2,125 promote the public interest by facilitating the

achievement of the objectives enumerated in K.S.A. 40-952, 40-1137, and K.S.A. 2007 Supp. 40-2404.

Findings of Fact

The Commissioner has been shown the following facts:

1. Records maintained by the Kansas Insurance Department (“KID”) indicate that The Settlement Group, Inc. (“Respondent”) is licensed as a nonresident title agency to transact the business of title insurance in the State of Kansas, and has been so licensed since March 4, 2005. KID records further indicate a legal address of 6240 Old Dobbin Lane, Suite 150, Columbia, Maryland 21045 and a mailing address of 2200 Edenbrooke Court, Eldersburg, Maryland 21784.

2. The Commissioner of Insurance (“the Commissioner”) has jurisdiction over the subject matter of this proceeding, and this proceeding is held in the public interest.

3. On or about March 7, 2005, KID sent Respondent a copy of Kansas Statutes Annotated (“K.S.A.”) 40-1137 and other filing requirements.

4. No response was received by Respondent.

5. On or about November 5, 2007, Fidelity National Title Insurance Company advised KID that the Settlement Group, Inc. had written fourteen (14) policies as of October 21, 2007.

6. No report was filed by Respondent for 2005 through 2007.

Applicable Law

7. Kansas Statutes Annotated (“K.S.A.”) 40-952(c) states, in relevant part:

...Every insurance agent, agency or company authorized to transact title insurance in this state shall file with the commissioner every manual of classification, rules and rates, every rating plan, every rate card and every modification of the foregoing which may be used in connection with providing title insurance or other services in connection with real estate transactions on property located in counties having a population of 10,000 or more. No charge may be made by any title insurance agent, agency or company that has not been filed with the commissioner as required by this section. Any service customarily provided by a title insurance agent or affiliated entity that is not included in the rates shall be disclosed when the rates are filed with the commissioner.

8. K.S.A. 40-1137(d) states, in relevant part:

Each title insurance agent shall have an audit made of its escrow, settlement and closing deposit accounts, conducted by a certified public accountant or by a title insurer for which the title insurance agent has a licensing agreement, according to the following schedule. Audits shall be considered current if dated within the 12 months prior to submission of the audit as required herein. The title insurance agent shall provide a copy of the audit report to the commissioner and to each title insurance company which it represents within 160 days after the close of the calendar year for which an audit is required. Title insurance agents who are attorneys and who issue title insurance policies as part of their legal representation of clients are exempt from the requirements of this subsection. However, the title insurer, at its expense, may conduct or cause to be conducted an annual audit of the escrow, settlement and closing accounts of the attorney. Attorneys who are exclusively in the business of title insurance are not exempt from the requirements of this subsection. Audits shall be required as follows:

- (1) Annual audit required in counties having a population of 40,001 and over;
- (2) biennial audit required in counties having a population of 20,001 - 40,000; and

- (3) triennial audit required in counties having a population of 20,000 or under.

9. K.S.A. 40-2,125(a) states, in relevant part:

If the commissioner determines after notice and opportunity for a hearing that any person has engaged or is engaging in any act or practice constituting a violation of any provision of Kansas insurance statutes or any rule and regulation or order thereunder, the commissioner may in the exercise of discretion, order any one or more of the following:

- (2) suspension or revocation of the person's license or certificate if such person knew or reasonably should have known that such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder;...

10. K.S.A. 2007 Supp. 40-2404(14) states, in relevant part:

(e) As used in paragraphs (e) through (i)(7) of this subpart, unless the context otherwise requires:

- (i) "Associate" means any firm, association, organization, partnership, business trust, corporation or other legal entity organized for profit in which a producer of title business is a director, officer or partner thereof, or owner of a financial interest; the spouse or any relative within the second degree by blood or marriage of a producer of title business who is a natural person; any director, officer or employee of a producer of title business or associate; any legal entity that controls, is controlled by, or is under common control with a producer of title business or associate; and any natural person or legal entity with whom a producer of title business or associate has any agreement, arrangement or understanding or pursues any course of conduct, the purpose or effect of which is to evade the provisions of this section.

- (ii) "Financial interest" means any direct or indirect interest, legal or beneficial, where the holder thereof is or will be entitled to 1% or more of the net profits or net worth of the entity in which such interest is held. Notwithstanding the foregoing, an interest of less than 1% or any other type of interest shall constitute a "financial interest" if

the primary purpose of the acquisition or retention of that interest is the financial benefit to be obtained as a consequence of that interest from the referral of title business.

- (iii) "Person" means any natural person, partnership, association, cooperative, corporation, trust or other legal entity.
- (iv) "Producer of title business" or "producer" means any person, including any officer, director or owner of 5% or more of the equity or capital or both of any person, engaged in this state in the trade, business, occupation or profession of:
 - (A) Buying or selling interests in real property;
 - (B) making loans secured by interests in real property; or
 - (C) acting as broker, agent, representative or attorney for a person who buys or sells any interest in real property or who lends or borrows money with such interest as security.

(f) No title insurer or title agent may accept any order for, issue a title insurance policy to, or provide services to, an applicant if it knows or has reason to believe that the applicant was referred to it by any producer of title business or by any associate of such producer, where the producer, the associate, or both, have a financial interest in the title insurer or title agent to which business is referred unless the producer has disclosed to the buyer, seller and lender the financial interest of the producer of title business or associate referring the title insurance business.

(g) No title insurer or title agent may accept an order for title insurance business, issue a title insurance policy, or receive or retain any premium, or charge in connection with any transaction if:

- (i) The title insurer or title agent knows or has reason to believe that the transaction will constitute controlled business for that title insurer or title agent, and
- (ii) 70% or more of the closed title orders of that title insurer or title agent during the 12 full calendar months immediately preceding the month in which the transaction takes place is derived from controlled business. The prohibitions contained in this subparagraph shall not apply to transactions

involving real estate located in a county that has a population, as shown by the last preceding decennial census, of 10,000 or less.

11. K.S.A. 2007 Supp. 40-4909 states, in relevant 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:

Any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation promulgated thereunder.
 - (d) The license of any business entity may be suspended, revoked or refused renewal if the insurance commissioner finds that any violation committed by an individual licensee employed by or acting on behalf of such business entity was known by or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and:
 - (1) Such violation was not reported to the insurance commissioner by such business entity; or
 - (2) such business entity failed to take any corrective action.
 - (e) None of the following actions shall deprive the commissioner of any jurisdiction or right to institute or proceed with any disciplinary proceeding against such license, to render a decision suspending, revoking or refusing to renew such license, or to establish and make a record of the facts of any violation of law for any lawful purpose:
 - (1) The imposition of an administrative penalty under this section;
 - (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 up to a maximum of \$500 for each violation but not to

exceed \$2,500 for the same violation occurring within any six consecutive calendar months from the date of the original 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 authorized by subsection (a), the commissioner may impose a penalty up to a maximum of \$1,000 for each violation but not to exceed \$5,000 for the same violation occurring within any six consecutive calendar months from the date of the imposition of the original administrative penalty.

Conclusions of Law

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

13. Based on the facts and circumstances set forth herein, it appears that The Settlement Group, Inc. engaged in a controlled business arrangement; that The Settlement Group, Inc. failed to file in a timely manner a Controlled Business Report for the years 2005, 2006, and 2007; and that The Settlement Group, Inc. failed to submit an audit for the years 2005, 2006, and 2007.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

1. The Settlement Group, Inc. shall remit to the Kansas Insurance Department an administrative penalty in the sum of one thousand dollars (\$1,000) for violating K.S.A. 40-952(c), 40-1137(d), and 40-2404(14)(g).

2. The Commissioner of Insurance retains jurisdiction over this matter to issue any and all further Orders deemed appropriate or to take such further action as necessary to dispose of this matter.

Notice of Right to Hearing or Appeal

You are entitled to a hearing pursuant to K.S.A. 77-537, the Kansas Administrative Procedure Act. If you desire a hearing, you must file a written request for a hearing with:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612.

This request must be filed within fifteen (15) days from the date of service of this Order. If you request a hearing, the Kansas Insurance Department will notify you of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of same.

If a hearing is not requested in the time and manner stated above, this Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. 77-613. In the event that you file 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 5th DAY OF JUNE, 2008, IN THE CITY OF
TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance

/s/ John W. Campbell
John W. Campbell
General Counsel

Approved and Submitted by:

/s/ Deletria L. Nash
Deletria L. Nash
Assistant General Counsel

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the above and foregoing Summary Order was served by placing the same in the United States Mail, first class postage prepared, on this 5th day of June, 2008, addressed to the following:

Jeffrey Sussman
The Settlement Group, Inc.
7820 Innovation Blvd, Suite 300
Indianapolis, IN 46278

Jeffrey Sussman
The Settlement Group, Inc.
2200 Edenbrooke Court
Eldersburg, MD 21784

/s/ Deletria L. Nash
Deletria L. Nash
Assistant General Counsel