

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

In the Matter of the Application)	
For the Nonresident Insurance)	Docket No. 3788-SO
Agent's License of)	
JAMES C. SMITH)	

FINAL ORDER

(Pursuant to K.S.A. 2007 Supp. 40-4909 and K.S.A. 77-526)

Pursuant to authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 2007 Supp. 40-4909 and K.S.A. 77-501 *et seq*, this matter comes on for evidentiary or adjudicative hearing held on June 12, 2008. After reviewing the testimony of the Respondent;, witnesses; the Petitioner's admitted exhibits; and, having been well-advised in the premises, the Commissioner makes the following findings of fact, conclusions of law and policy considerations as required by K.S.A. 77-526(c):

Findings of Fact:

1. Records maintained by the Kansas Insurance Department ("KID") indicate James Curtis Smith ("Respondent") applied for licensure as a Kansas Nonresident Insurance Agent on or about January 28, 2008.
2. KID records further indicate Respondent's mailing address as 16548 NE Glisan St., Portland, OR 97230.
3. Respondent's Uniform Application for Individual Insurance Producer License submitted to KID indicated Respondent had been convicted of a

crime, had a judgment withheld or deferred or was currently charged with committing a crime.

4. Respondent submitted to KID a copy of a judgment of conviction and sentence from Circuit Court of the State of Oregon for the County of Multnomah case number 95-10-37671. This document showed that the Respondent was convicted of the following offenses:
 - a. That the Respondent plead no contest to one count of Attempted Murder with a Firearm on February 9, 1996.
 - b. That the Respondent plead guilty to Unlawful Use of a Weapon, Possession of a Firearm in a Public Building and Attempted Assault in the First Degree with a Firearm on February 9, 1996.
 - c. Respondent was sentenced to ninety (90) months of imprisonment for Attempted Murder, 16 months imprisonment for Unlawful Use of a Weapon, 16 months imprisonment for Possession of a Firearm in a Public Building and 33 months imprisonment for Attempted Assault.
5. Hearing Officer finds that Respondent has by all accounts been a model citizen since his release from incarceration. That he has a family and is trying to do what is best for them.
6. Hearing Officer finds “that in denying Respondent a nonresident insurance agent’s license, the Kansas Insurance Department (“Department”) has done nothing to indicate anything unusual in their deliberations, nothing to indicate that they failed to make an effort to

determine what your specific case was and your circumstances, nor did they deny you at any point in time due process for your appeal.”

7. That the Hearing Officer finds “no proof of anything significant in terms of mitigation to the Department’s original decision that you should not be given a license.”

Applicable Law

8. 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:
 - (6) been convicted of a misdemeanor or felony.
 - (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.

Conclusions of Law

9. The Commissioner has jurisdiction over Respondent as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
10. The Commissioner finds that the grant of an insurance agent’s license carries with it a fiduciary duty to the public.
11. The Commissioner finds that sufficient grounds exist for the denial of Respondent’s Uniform Application for Individual Insurance Producer License based upon Respondent’s felony convictions noted above pursuant to K.S.A. 2007 Supp. 40-4909(a)(6).

12. The Commissioner finds, pursuant to K.S.A. 40-4909(b), that the insurable interests of the public are not properly served under Mr. Smith's proposed license.
13. The Commissioner finds that the Respondent has not shown any meaningful mitigation in regard to these matters.
14. The Commissioner concludes that good cause exists to deny the Respondent's insurance agent's license pursuant to K.S.A. 2007 Supp. 40-4909(a)(6) and (b).

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the Kansas nonresident insurance agent's license of James C. Smith is hereby DENIED. Further, the Respondent is assessed costs in this matter of \$325.80, pursuant to K.S.A. 40-4909(f), including witness fees, mileage allowances, any costs associated with the reproduction of documents that become part of the hearing record, and the expense of making a record of the hearing.

Notice of Final Agency Action and Judicial Review

The issuance of this Final Order constitutes final agency action in this matter. Accordingly, all administrative remedies available to the Petitioner are hereby deemed exhausted, and the filing of a petition for reconsideration is not a prerequisite for judicial review.

The Petitioner may, within thirty (30) days of service of this Final Order, file a petition for judicial review in the appropriate court, as provided for by K.S.A. 77-613. In the event the Petitioner files a petition for judicial review, 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, KS 66612-1678.

IT IS SO ORDERED THIS __2nd__ DAY OF JULY, 2008, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



_____/s/ Sandy Praeger_____
Sandy Praeger
Commissioner of Insurance

BY:

_____/s/ Robert M. Tomlinson_____
Robert M. Tomlinson
Assistant Commissioner of Insurance
Presiding Officer

Certificate of Service

The undersigned hereby certifies that she serviced a true and correct copy of the above and foregoing **Final Order** on this __2nd__ day of July, 2008, by placing the same in the United States Mail, first class postage prepaid, addressed to the following:

James C. Smith
16548 NE Glisan St.
Portland, OR 97230

Stacy R. Bond
Staff Attorney
Kansas Insurance Department
420 S.W. 9th Street
Topeka, KS 66612

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