

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

In the Matter of the Kansas **Resident**)
Insurance Agent's License of) Docket No. 3977--SO
MICHAEL E. DAVIN)
NPN/License No. 4916356)

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

Pursuant to authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 40-4909, the Commissioner hereby proposes to find facts and impose sanctions against the resident agent's license of MICHAEL E. DAVIN 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 from KID files and Respondent's statements to staff:

1. Records maintained by the KID indicate that the Respondent is licensed as a resident agent to transact the business of insurance in Kansas and has been so licensed since August 26, 1983.
2. KID records further indicate a legal address of 15525 S. Widmer, Olathe, Kansas 66062.

3. In 1998 or 1999, L. P. (Complainant) was the respiratory therapist for Michael Davin's (Respondent) mother. Complainant asked for assistance getting a car loan and Davin was suggested by the mother to assist her.

4. On March 16, 1998, Complainant purchased a home and borrowed Sixty Five Thousand Dollars (\$65,000.00) toward purchase price of Ninety Nine Thousand Dollars (\$99,000.00).

5. On August 21, 2002, Respondent sold Complainant an American Investors Life Annuity for Eighteen Thousand One Hundred Twenty Five Dollars and Three Cents (\$18,125.03). The funding was traced to Complainant's Waddell and Reed accounts that had been rolled over from her former accounts.

6. On September 9, 2002, Davin sold two (2) life policies to Complainant along with another American Investors Life annuity in the amount of Five Thousand Dollars (\$5,000.00).

7. On December 2, 2002, Complainant contends that Respondent informed her that she should refinance her home and use to money to pay off existing debts and invest in annuities. Complainant refinanced the house for Eighty Three Thousand Fifteen Dollars (\$83,015.00) and received Ten Thousand Dollars (\$10,000.00) cash.

8. January 10, 2003, Complainant paid Respondent, who was doing business as Planning Services, Six Thousand Dollars (\$6,000.00) to invest.

9. On January 13, 2003, Respondent loaned Six Thousand Dollars (\$6,000.00) to the sister of another insurance agent at Twenty Six and Sixty Four Hundredths per cent (26.64%) interest. The borrower defaulted and never repaid the loan.

10. On February 11, 2003, the life insurance policy on Complainant's ex-husband D. P. was cancelled for failure to pay premium. Complainant says she requested Respondent to have the policy continue but Respondent said Complainant dropped the policy due to finances.

11. On April 18, 2003, Respondent introduced Complainant to a car salesman from whom Complainant purchased a 2002 Suzuki vehicle. The amount financed was Eighteen Thousand Four Hundred Sixty Dollars and Forty Five Cents (\$18,460.45). Respondent was supposed to make the car payments from Complainant's "fund" which Complainant thought to be the Six Thousand Dollars (\$6000.00) given to Respondent on January 10, 2003. That money was supposed to be invested to gain a higher return which would help pay off the car loan. As noted in paragraph 9 above, those funds were loaned to a private person and that person defaulted.

12. Respondent admits he made payments on the car to make up for the Six Thousand Dollars (\$6,000.00) and no interest was applied to that principal.

13. On June 6, 2003, Complainant refinanced her home for the second time for One Hundred Two Thousand, One Hundred Fifty Six Dollars and Twenty Cents (\$102,156.20) and received Fifteen Thousand Five Hundred Seventy One Dollars (\$15,571.00) cash as part of the refinance. She contends that Respondent told her the interest rates were lower and she would save money. Complainant believes this money was used to pay off some of her other debts.

14. On December 8, 2006, at the advice of Respondent, Complainant surrendered the annuity purchased on September 9, 2002 for Five Thousand Dollars (\$5,000.00). After a surrender charge of Six Hundred Seventy Two Dollars and Sixteen Cents (\$672.16) was assessed, Complainant received a check for Five Thousand Six Hundred Ninety Six Dollars and Seventy Six Cents (\$5,696.76). This check was endorsed by both Complainant and Respondent, d.b.a. Planning Services. Complainant and Respondent agreed that the money was to be invested at a higher rate of return. Davin later admitted no interest was paid on this principal and the money was used to make more payments on the car loan.

15. On April 4, 2008, Complainant refinanced her home for the third time. This refinance was for One Hundred Sixty One Thousand Three Hundred Thirty Four Dollars and Six Cents (\$161,334.06). Complainant received Twenty Three Thousand Four Hundred Forty Dollars and Fifty One Cents (\$23,440.51) cash from this transaction.

16. On April 16, 2008, Complainant surrendered the annuity purchased August 21, 2002 that was, in April, 2008, valued at Twenty One Thousand Nine Hundred Sixty Nine Dollars and Fifty Four Cents. (\$21,969.54). A surrender charge of One Thousand Nine Hundred Ninety Three Dollars and Fifty Five Cents (\$1,993.55) was charged to Complainant. These funds were deposited into Respondent's personal account at Metcalf Bank. Complainant said she believed those funds were being placed into a different annuity but she was never presented with an application or prospectus

17. On May 19, 2008, Complainant drafted a personal check for Twenty Two Thousand Four Hundred Forty Dollars and Fifty One Cents (\$22,440.51) to Respondent

for an investment in a land/oil speculation operated by Respondent's family trust. Davin admits the deal fell through, there were no contracts, and he has half the money left.

These funds were from the April 4, 2008 real estate refinance of Complainant's house.

18. On August 30, 2008, the house that was purchased and refinanced was damaged by fire.

19. On September 4, 2008, Complainant sent an e-mail and letter requesting Respondent to return her money. Respondent has admitted to receiving the funds. To date, none of the above funds have been returned to Complainant.

Applicable Law

20. K.S.A. 40-4909(a)(4) applies to the withholding, misappropriating or converting all monies received in the course of doing insurance business.

21. K.S.A. 40-4909(a)(8) forbids using any fraudulent, coercive or dishonest practice or demonstrated any incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

Conclusions of Law

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

The Commissioner finds, based on the facts contained in paragraphs 3 through 19, that Respondent has demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business.

23. Based on the Respondent's conduct as stated above, the Commissioner concludes that sufficient grounds exist for the revocation of Respondent's insurance

agent's license pursuant to K.S.A. 2004 Supp. 40-4909(b) because such license is not properly serving the interests of the insurer and the insurable interests of the public.

24. 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 the KID to give notice and opportunity to participate to persons other than Michael E. Davin.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the Kansas resident insurance agent's license of Michael E. Davin is hereby **REVOKED**. **It is further ordered**, that Michael E. Davin shall **CEASE and DESIST** from the sale, solicitation, or negotiation of insurance and/or receiving compensation deriving from the sale, solicitation, or negotiation of insurance conducted after the effective date of this order.

NOTICE OF RIGHTS

(Pursuant to K.S.A. 77-542)

Michael E. Davin is entitled to a hearing pursuant to K.S.A. 77-537 and K.S.A. 77-542, the Kansas Administrative Procedure Act. If **he** desires a hearing, **he** 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 **Michael E. Davin** requests a hearing, the Kansas Insurance Department will notify **him** of the time and place of the hearing and information on procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of the same.

If a hearing is not requested in the time and manner stated above, this Summary 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 **Michael E. Davin** 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 __22nd__ DAY OF MARCH, 2009, 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 serviced a true and correct copy of the above and foregoing **Notice** and **Summary Order** on this ___26th___ day of March, 2009, by placing the same in the United States Mail, first class postage prepaid, addressed to the following:

Michael E. Davin
15525 S. Widmer
Olathe, KS 66062

_s/ John R. Dowell _____
John R. Dowell
Staff Attorney