

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

|                                     |   |                           |
|-------------------------------------|---|---------------------------|
| <b>In the Matter of</b>             | ) |                           |
| <b>The Kansas Resident</b>          | ) |                           |
| <b>Insurance Agent's License of</b> | ) | <b>Docket No. 4227-CO</b> |
| <b>MONICA G. SMART</b>              | ) |                           |
| <b>NPN#2925277</b>                  | ) |                           |

**CONSENT AGREEMENT AND FINAL ORDER**

Pursuant to the authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 40-103 and in accordance with K.S.A. 40-4901 *et seq.*, the Commissioner hereby accepts the stipulations of the parties and indefinitely suspends the Kansas resident insurance agent's license of Monica G. Smart. This Consent Agreement shall become effective as a Final Order, without further notice when signed by the Commissioner or her designee and filed of record with the Kansas Insurance Department ("KID").

**Findings of Fact**

1. Records maintained by the Kansas Insurance Department ("KID") reflect that Respondent Monica G. Smart is licensed as a Kansas resident insurance agent and has been so licensed since February 19, 1997.
2. KID records further reflect that Respondent's legal address and mailing address is 2605 21<sup>st</sup> Street, Frankfort, KS 66427.
3. On or about August 4, 2010, United Insurance, Inc., Marysville, Kansas terminated Respondent's affiliation with the agency.
4. Allied Insurance then notified KID that Respondent's appointment had been terminated as a result of suspected misappropriation of premium funds.
5. Respondent stipulates that she is currently the subject of an ongoing law enforcement investigation into her conduct in the business of insurance.

6. Respondent stipulates that the suspected misconduct, if proven, would constitute a danger to the physical and financial well-being of the insurance buying public and would jeopardize the financial soundness of affected insurers.

7. Respondent stipulates that she has had the advice of counsel and understands her right to have a hearing on the facts and disposition and to seek review of any adverse order in this matter.

8. Respondent further acknowledges that she wishes to preserve her right to testify in her own defense as to the allegations without compromising her right not to incriminate herself. Accordingly, Respondent agrees to suspension of her license with the understanding that she may request reinstatement upon a change of circumstances.

9. Respondent expressly waives hearing and, without admitting or denying misconduct, stipulates that KID has sufficient evidence of the foregoing facts to support suspension of her license.

10. Respondent further waives administrative and judicial review.

#### **Applicable Law**

11. K.S.A. 40-4909(a) provides, in relevant part:

“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 . . .

(4) Improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business. . . .

(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.” K.S.A. 40-4909(a).

13. “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.” K.S.A. 40-4909(b).

14. A person whose license has been suspended or revoked may not be employed, directly or indirectly, by an insurance company or “perform any act toward the solicitation of or transaction of any business of insurance during the period of such suspension or revocation.” K.S.A. 40-4909(g).

### **Conclusions of Law**

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

16. The Commissioner finds that proof of the allegations referenced in paragraphs 3 through 5 would provide sufficient grounds for revocation or suspension of Respondent’s license pursuant to K.S.A. 40-4909(a)(4) because the facts would establish that Respondent improperly withheld, misappropriated, or converted money received in the course of doing insurance business.

17. The Commissioner finds that proof of the same facts would provide sufficient grounds for revocation or suspension of Respondent’s license pursuant to K.S.A. 40-4909(a)(8) because it appears Respondent has used a fraudulent and dishonest practice and demonstrated untrustworthiness in the conduct of business.

18. Based on the foregoing findings, the Commissioner concludes that Respondent’s license should be suspended pursuant to K.S.A. 40-4909(b) pending further investigation in order to protect the interests of the insurer and the insurable interests of the public.

**Stipulation**

The undersigned stipulates and agrees to the above findings fact and conclusions of law and waives her rights to administrative hearing and judicial review of the Commissioner’s Order.

\_\_\_\_\_/s/ Monica G. Smart \_\_\_\_\_ \_11/15/10\_  
Monica G. Smart Date  
Respondent

Prepared by:

\_\_\_\_\_/s/ Brenda J. Clary \_\_\_\_\_  
Brenda J. Clary  
KID Staff Attorney

Approved by:

\_\_\_\_\_/s/ David P. Troup \_\_\_\_\_  
David P. Troup  
Weary Davis, L.C.  
Attorney for Respondent

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE that the Kansas resident insurance agent’s license of Monica G. Smart is SUSPENDED, and Monica G. Smart shall not be employed by any insurance company, shall not sell, solicit, or negotiate contracts of insurance, and shall not perform any act toward the solicitation of or transaction of any business of insurance within the state of Kansas from and after the effective date of this order unless and until reinstated.**

**IT IS SO ORDERED THIS \_\_18th\_\_ DAY OF NOVEMBER 2010, 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

**NOTICE:** In the event Respondent files a petition for judicial review, it must be filed within 30 days of service of this order, and 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

### Certificate of Service

The undersigned hereby certifies that a fully executed and filed copy of the above and foregoing Consent Agreement and Final Order was placed in the United States mail, first-class postage prepaid, on this 18th day of November 2010, addressed to the following:

David P. Troup  
Weary Davis, L.C.  
PO Box 187  
Junction City, KS 66441  
*Attorney for Respondent*

\_\_\_\_\_  
/s/ Brenda J. Clary  
Brenda J. Clary  
Staff Attorney