

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

In the Matter of the Kansas Nonresident )  
Insurance Agent's License of ) Docket No. **4220--SO**  
LUTHER J. EMBRY )  
NPN #4905452 )

**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 revoke the Kansas resident insurance agent's licenses of LUTHER J. EMBRY ("Respondent") by way of Summary Order as provided by K.S.A. 77-537.

**Findings of Fact**

1. Records maintained by the Kansas Insurance Department ("KID") reflect that Respondent is licensed as a resident agent to transact the business of insurance in Kansas and has been so licensed since September 15, 1980.
2. KID records further indicate that Respondent's legal address is 1412 S. Clark Street, Fort Scott, Kansas, and his mailing address is PO Drawer 70, Fort Scott, KS 66701-3527.
3. Following investigation, the Commissioner has no reason to believe that protection of the public interest requires the Commissioner to give notice and opportunity to participate to anyone other than the respondent.
4. Following investigation, the Commissioner finds evidence sufficient to support the following findings of fact:

5. While affiliated with H and H Agency, Fort Scott, Kansas, Respondent sold Bremen Farmer's Mutual homeowner's policy number [REDACTED], inception date August 1, 2007, to consumer K.J.Y.
6. An annual premium of \$351.00 was paid to the agency and forwarded to Bremen Farmer's Mutual by agency check.
7. When the policy was issued, additional premium of \$74.00 was due, and that was paid by the agency.
8. The policy was set up as "agency bill" because Respondent did not submit a "direct bill supplemental app form" despite repeated requests from the company.
9. The consumer requested but did not receive a copy of the policy.
10. On August 1, 2008, the policy was cancelled for nonpayment of premium, and the agency received notice dated September 10, 2008.
11. An agency check dated August 29, 2008, for the premium due was returned to the agency on or about September 2, 2008, with a memo stating that coverage would be resumed if the check was submitted with a statement of no loss by September 9, 2008.
12. Respondent did not obtain the statement and resubmit the check.
13. Respondent failed to take any other action to get the policy reinstated.
14. Subsequently, in 2009 and 2010, Respondent and an employee of the agency receipted premium payments from the consumer despite the fact that no policy was in force.

15. KID received a complaint from the consumer, and by letter of June 15, 2010, a KID consumer assistance representative forwarded a copy of the complaint to Respondent and requested a written response.

16. The KID representative followed up with telephone calls on July 6, 7, and 9, and also faxed an additional copy of the complaint on July 7, 2010.

17. Although Respondent orally promised an immediate response, he did not respond to the substance of the complaint and did not provide a written response to the consumer assistance representative.

18. By letter of August 27, 2010, counsel for KID stated the foregoing facts and asked Respondent to reply if he disputed the facts.

19. By letter of September 10, 2010, Respondent replied that he did not personally keep the consumer's premium payments, that the consumer's payments of \$84.00, \$84.50, and \$84.50 remained in the company safe, and that he admitted he failed to "get the policy re-written in a timely basis."

### **Applicable Law**

20. 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. . .(2) Violated: (A) Any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation promulgated thereunder; . . . (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).

21. "If any person . . . fails to respond to any proper inquiry of the commissioner, the commissioner, after notice and opportunity for hearing, may impose a civil penalty of up to \$1,000, for each violation or act, along with an additional penalty

of up to \$500 for each week thereafter that such report or other information is not provided to the commissioner.” K.S.A. 40-2,125.

22. In addition, the Commissioner may revoke any license issued under the Insurance Agents Licensing 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).

### **Conclusions of Law**

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

24. The Commissioner finds, based on the facts contained in paragraph 11, that Respondent has improperly withheld, misappropriated or converted moneys received in the course of doing insurance business.

25. The Commissioner finds, based on the facts contained in paragraphs 5 through 14 above, that Respondent has used fraudulent, coercive, or dishonest practices and/or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business.

26. Further, Respondent failed to respond to a proper inquiry from the Commissioner’s representative despite repeated contacts from the representative, in violation of K.S.A. 40-2,125.

27. Based on the foregoing findings, the Commissioner concludes that sufficient grounds exist for the revocation of Respondent’s insurance agent’s license pursuant to K.S.A. 40-4909(a).

28. The Commissioner further concludes Respondent's license may be revoked pursuant to K.S.A. 40-4909(b) because the license is not properly serving the interests of the insurer and the insurable interests of the public.

29. 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, the protection of the public interest does not require the KID to give notice and opportunity to participate to persons other than Respondents, and after investigation, KID believes in good faith that the allegations will be supported to the applicable standard of proof.

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT** the Kansas resident insurance agent's license of **LUTHER J. EMBRY** is hereby **REVOKED. It is further ordered,** that **LUTHER J. EMBRY** 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 on and after the effective date of this order.

IT IS SO ORDERED THIS 4th DAY OF OCTOBER, 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 OF RIGHTS TO HEARING AND REVIEW**

**Within fifteen (15) days of the date of service of this Summary Order, Respondent** may submit a written request for a hearing pursuant to K.S.A. 77-537 and K.S.A. 77-542. Any request for a hearing should be addressed to the following:

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

If a hearing is requested, the Kansas Insurance Department will serve notice 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.

**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.** In the event Respondent 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. 9<sup>th</sup> Street  
Topeka, Kansas 66612

**Certificate of Service**

The undersigned hereby certifies that she serviced a true and correct copy of the above and foregoing **Summary Order** and accompanying **Notice of Rights** on this \_\_\_4th\_\_\_ day of \_\_\_Oct.\_\_\_ 2010, by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Luther J. Embry  
PO Drawer 70  
Fort Scott, KS 66701-3527

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