

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

In the Matter of the Kansas Nonresident)
Insurance Agency License of) Docket No. **4221--SO**
H and H Agency, Inc.)
Kansas Lic. #480848158-000)

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 Kansas resident insurance agency license of H and H Agency, Inc. ("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 agency to transact the business of insurance in Kansas and has been so licensed since May 1, 1989.
2. KID records further indicate that Respondent's legal address is 617 S. National, Fort Scott, Kansas, and its mailing address is PO Drawer 70, Fort Scott, KS 66701.
3. Betty Hixon is the licensed agent designated to be the agency's contact and to be responsible for the agency's compliance.
4. 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.
5. Following investigation, the Commissioner finds evidence sufficient to support the following findings of fact:

6. While affiliated with H and H Agency, Fort Scott, Kansas, Kansas resident insurance agent Luther J. Embry sold Bremen Farmer's Mutual homeowner's policy number HO069597, inception date August 1, 2007, to consumer K.J.Y.
7. An annual premium of \$351.00 was paid to the agency and forwarded to Bremen Farmer's Mutual by agency check.
8. When the policy was issued, additional premium of \$74.00 was due, and that was paid by Respondent agency.
9. The policy was set up as "agency bill" because Embry did not submit a "direct bill supplemental app form" despite repeated requests from the company.
10. The consumer requested but did not receive a copy of the policy.
11. On August 1, 2008, the policy was cancelled for nonpayment of premium, and the agency received notice dated September 10, 2008.
12. An agency check dated August 29, 2008, for the premium due was returned to Respondent 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.
13. Neither Respondent nor Embry acted to obtain the statement and resubmit the check.
14. Neither Respondent nor Embry took any other action to get the policy reinstated.
15. Subsequently, in 2009 and 2010, Embry and another person within the agency receipted premium payments from the consumer despite the fact that no policy was in force.

16. 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 Embry and requested a written response.

17. The KID representative followed up with telephone calls to the agency on July 6, 7, and 9, speaking with both Embry and Hixon, and also faxed an additional copy of the complaint on July 7, 2010.

18. When Embry had not responded in writing by July 15, 2010, the KID representative faxed Respondent a copy of the complaint and requested a written response.

19. Respondent did not provide a written response to the consumer assistance representative.

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

21. By undated letter received by KID on September 14, 2010, Hixon replied on behalf of Respondent that she “urged [Embry] to send [the KID representative] the information she needed” and that she wanted to take the necessary steps to make things right for the consumer.

22. To date, KID has received no substantive information from the agency or any indication that the consumer has been made whole.

Applicable Law

23. 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).

24. “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.

25. 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).

26. “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.” K.S.A. 40-4909(d).

Conclusions of Law

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

28. The Commissioner finds based that Respondent, directly and through the actions of Embry, has improperly withheld, misappropriated or converted moneys received in the course of doing insurance business.

29. The Commissioner finds that Respondent, directly and through the actions of Embry, has demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business.

30. 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.

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

32. The Commissioner further concludes Respondent's license may be revoked, suspended or refused renewal 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.

33. The Commissioner concludes the agency license may be revoked, suspended or refused renewal because Respondent had actual knowledge of Embry's violations and failed to take corrective action.

34. 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 H & H AGENCY, Inc., shall pay a civil penalty of \$500 plus \$50 per week from July 16, 2010, until September 14, 2010, for failure to respond to a proper inquiry. It is further ordered, that the total penalty of \$900.00 shall be due on the effective date of this order, and the Kansas resident insurance agency license of H & H AGENCY, Inc., shall be **SUSPENDED pending payment of penalty.**

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. 9th 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. 9th 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:

Betty Hixon
H and H Agency, Inc.
PO Drawer 70
Fort Scott, KS 66701-3527

_____/s/ Brenda J. Clary_____
Brenda J. Clary
Staff Attorney