

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

In the Matter of the Kansas Resident)
Insurance Agent's License of) **Docket No. 4193--SO**
MARY M. ROSENBERGER)
NPN #7967762)

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 license of Mary M. Rosenberger ("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, on January 29, 2004, Respondent was issued a license in the name of "Mary M. Baringer" as a resident agent to transact the business of insurance in Kansas and has been so licensed since that date.
2. KID records reflect that Respondent notified KID on or about September 27, 2006, of a name change to "Mary M. Rosenberger."
3. KID records further indicate Respondent's legal address is 901 Goodview, Medicine Lodge, Kansas, and her mailing address is PO Box 93, Medicine Lodge, KS 67104-0093.
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. By letter dated May 27, 2010, James Welch, Director, KID Consumer Assistance Division, asked if Respondent if she is the “Mary M. Rosenberger” (alias, “Mary M. Thomas”) shown on the Kansas Department of Corrections offender information enclosed with the letter and if the advertisement enclosed was hers. The letter stated her response was due within fifteen working days.

7. The Department of Corrections record enclosed reflected that Mary M. Rosenberger, also known as Mary M. Thomas, born September XX, 1963, had been incarcerated on felony drug convictions from June 1999 until paroled in March 2002, and the sentences expired October 13, 2003. The date of birth matched KID records for Respondent.

8. The Yellowpages.com listing enclosed contained a review posted by “Rosenberge” on April 14, 2010, that stated, “We want to take care of all your insurance needs . . . We specialize in Commercial insurance with our 2600 companies . . .”

9. Respondent did not respond within 15 days and has not responded to date.

10. On May 5, 2010, in Hutchison Municipal Court case number 10-798, Respondent was convicted of driving without liability insurance, a misdemeanor.

11. By letter of July 20, 2010, counsel for KID wrote to Respondent at her address of record and invited Respondent to reply within 15 business days if she disputed the above facts.

12. To date, Respondent has not replied, and the letter has not been returned.

13. Additionally, criminal history information for the name “Mary M. Rosenberger” and Respondent’s date of birth includes a 1998 misdemeanor conviction of giving a worthless check in Crawford County District Court. The existence of this history and the absence of the alias “Baringer” in the criminal history report support the inference that Respondent applied for a license under the alias “Mary M. Baringer” in order to hide material criminal history.

Applicable Law

14. 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

(1) Provided incorrect, misleading, incomplete or untrue information in the license application.

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

(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).

15. The Commissioner may impose a civil penalty of up to \$1000 for each failure to respond to a proper inquiry of the Commissioner. K.S.A. 40-2,125(b)

16. 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

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

18. The Commissioner finds, based on the facts contained in paragraph 1, 7, and 14, that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(1) because Respondent provided incorrect, misleading, incomplete, or untrue information in her license application. Further, the Commissioner finds that Respondent's criminal history was a material matter and the license would not have been issued had Respondent fully disclosed the convictions that were obscured by the use of an alias.

19. The Commissioner finds, based on the undisputed facts contained in paragraphs 8, 10, and 14, that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(8) because Respondent has used fraudulent or dishonest practices and demonstrated untrustworthiness or financial irresponsibility in the conduct of business.

20. The Commissioner finds, based on the facts contained in paragraphs 6 and 9, that Respondent's license may be revoked, pursuant to K.S.A. 40-4909(a)(2)(A), because Respondent has violated a provision of the chapter 40 of the Kansas Statutes Annotated, K.S.A. 40-2,125, by failing to respond to a proper inquiry from the Commissioner.

21. Further, Respondent failed to report a misdemeanor conviction within 30 days as required by K.A.R. 40-7-9(a), and that the nature of the conviction, driving without liability insurance, demonstrates financial irresponsibility.

22. 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).

23. The Commissioner further concludes Respondent's license may be revoked pursuant to K.S.A. 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, 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 **MARY M. ROSENBERGER** is hereby **REVOKED**. **It is further ordered,** that **MARY M. ROSENBERGER** 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 16th DAY OF AUGUST 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 ___16th___ day of August 2010, by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Mary M. Rosenberger
PO Box 93
Medicine Lodge, KS 67104-0093

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