

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

In the Matter of the Kansas Nonresident)
Insurance Agent's License of)
ADAM UTZ)
NPN #8394062) Docket No. **4176--SO**
And)
Adam Utz Insurance Agency, Inc.)
#364659290-000)

PROPOSED DEFAULT ORDER
(Pursuant to K.S.A. 40-4909 and K.S.A. 77-520)

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 ADAM UTZ ("Respondent") and the agency license of Adam Utz Insurance Agency, Inc. ("Respondent Agency") by Default Order as provided by K.S.A. 77-520.

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 March 5, 2005, and the sole agent affiliated with Respondent Agency since the Agency was licensed on August 27, 2009.
2. KID records further indicate that Respondent's legal and mailing address is 16150 South Bradley Drive, Olathe, KS 66062-3926, and Respondent Agency's mailing address is PO Box 4143, Olathe, KS 66063.
3. Following investigation, KID served a Summary Order pursuant to K.S.A. 77-537 to Respondents at their addresses of record, Respondent received the Summary Order, and timely requested a hearing as provided by K.S.A. 77-537 and the Summary Order.
4. Respondent was served with a Notice of Hearing setting a prehearing conference for Friday, September 3, 2010, at 10:30 a.m. The notice further provided that Respondent could make prior arrangements to appear by telephone.

5. On or about August 31, the presiding officer received Respondent's request for a continuance on the ground that Respondent would be out of town for several weeks because of a family emergency. The request further specified that Respondent could be contacted by electronic mail ("email").
6. The Presiding Officer conveyed the request to counsel for KID, who opposed the continuance because travel alone does not warrant delay of a nonevidentiary hearing where the parties have the option of appearing by telephone.
7. Counsel for KID served notice of KID's opposition by email, as requested by Respondent.
8. The Presiding Officer denied Respondent's request.
9. Respondent does not appear, either in person or by telephone, for the prehearing conference.
10. The Presiding Officer is the Assistant Commissioner of Insurance acting on behalf of the Commissioner of Insurance as the agency head as provided in K.S.A. 77-547.

Applicable Law

11. If a party fails to participate in a prehearing conference, the presiding officer may serve upon all parties written notice of a proposed default order. K.S.A. 77-520(a). "Within seven (7) days after service of a proposed default order, the party against whom it was issued may file a written motion requesting that the proposed default order be vacated and stating the grounds relied upon." K.S.A. 77-520(b). When the proposed default order is served by mail, three days are added to the time. K.S.A. 77-531. Unless a written motion is filed within the time allowed, the proposed default order will become effective at the expiration of the time allowed. K.S.A. 77-520(c). The proposed default order is effective upon service if not vacated. K.S.A. 77-520(d).
12. Pursuant to K.S.A. 77-526(a), the Presiding Officer, the Assistant Commissioner of Insurance acting on behalf of the Commissioner of Insurance as the agency head as provided in K.S.A. 77-547, is empowered to render a Final Order.

Conclusions of Law

13. Respondents have been properly served notice of the allegations and proposed action and notice of the Prehearing Conference.

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

15. The Commissioner finds that Respondents have failed to appear for the prehearing conference and a proposed default order may and should be served.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the findings of fact and conclusions of law of the Summary Order served upon Respondents on the 15th day of July 2010 are adopted as follows:

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 March 8, 2005, and the sole agent affiliated with the Respondent Agency since the Agency was licensed on August 27, 2009.

2) KID records further indicate a legal and mailing address of 16150 S. Bradley Drive, Olathe, KS 66062-3926 for Utz, the agent, and a mailing address of PO Box 4143, Olathe, KS 66063, for the agency.

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 respondents.

4) Following investigation, the Commissioner finds evidence sufficient to support the following findings of fact:

5) On or about September 12, 2008, and October 25, 2008, Respondent received premium payments, checks in the amount of \$425 each made out to “American Family Ins,” for workers compensation insurance for [REDACTED]. Respondent deposited the checks in an agency account but did not forward premium to the company and no policy was issued.

6) By letter of October 6, 2009, American Family notified Respondent that he should pay the company the amount of \$850 as soon as possible so that a policy could be issued.

7) In June 2009, Respondent collected a check in the amount of \$971 made out to “American Family Insurance” from consumer CH for an annual homeowner policy

premium. Respondent deposited the check in an agency account but failed to forward premium to the company and no policy was issued.

8) By letter of October 15, 2009, American Family notified Respondent that the company was issuing the policy and charging Respondent's account. The letter demanded payment by October 30, 2009.

9) On or about July 15, 2009, Respondent received a check for \$673 from a title company on behalf of consumers CC and JK as premium for a homeowners policy. The policy was issued but the funds were not applied to the premium.

10) On October 1, 2009, American Family charged Respondent's account and applied the funds to the consumers' account.

11) On or about February 18, 2008, and March 8, 2008, Respondent and Respondent Agency collected cash payments of \$400 each from MA as premium for workers compensation insurance. Respondent did not forward the premium to a company, and no policy was issued. In February 2010, the company wrote the policy and charged \$800 to Respondent's account.

12) Respondent Agency issued a certificate of insurance, dated June 26, 2008, and purporting to certify workers compensation coverage for MA under an American Family Insurance Company policy. The policy number was not an active number, and no policy had been issued at that time.

13) On February 18, 2009, MA made another cash payment of \$400, and that payment was not forwarded to the company or applied to a policy. On or about February 3, 2010, the company refunded the payment to MA and charged Respondent's account.

14) By cashier's check dated June 17, 2009, to the order of "American Family Insurance," consumer TP paid Respondent \$2501 for coverage from July 1, 2009, until July 1, 2010, under a business policy. Respondent did not make payment to the company, and in February 2010, the company charged Respondent's account and reinstated the policy.

15) On or about March 2, 2009, Respondent collected a check from a title company, on behalf of consumer PT, in the amount of \$4512, made payable to "American Family Insurance Adam Utz," "Re: BINDER," for a business policy. Respondent deposited the

check but did not forward the premium to the company, and the policy was not issued. In February 2010, the company charged Respondent's account and issued the policy effective February 1, 2010.

16) By personal check dated January 5, 2009, consumer DV paid \$800 to "American Family Insurance" for a workers compensation policy. Respondent deposited the check but did not forward premium to the company, and a policy was not issued. Approximately a year later, the consumer paid premium to a successor agent. The company issued the policy, returned \$800 in premium to the consumer, and charged Respondent's account.

17) In a letter mailed to Respondent's address of record on April 8, 2010, counsel for KID informed Respondent of the allegations contained in paragraphs 5 through 8 above and invited Respondent to reply within 15 business days if he disputed them.

18) By email dated April 19, 2010, Respondent denied knowledge that the policies had not been issued, attributed any errors to miscommunication with his staff, and said he would send full refunds "ASAP."

19) In reply, counsel for KID attached the October 2009 letters from the company. Respondent denied he received them and said he "would have taken care of it right away."

20) After receiving additional reports, counsel for KID wrote to Respondent again on June 7, 2010, and summarized the allegations contained in paragraphs 9 through 16.

21) On June 21, 2010, counsel for KID received the following email message: "John, I have been in contact with American Family to get these discrepancies resolved on this matter. A. Utz."

22) In addition, Respondent receipted \$850 from consumer CE on March 2, 2009, and from consumer SM on July 15, 2009, for workers compensation coverage but did not forward premium or applications to the company.

23) As of July 8, 2010, Respondent had repaid a total of \$1000 since termination of his employment with American Family in July 2009, leaving over \$12,000 in premium unpaid.

Applicable Law

24) 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).

25) For any business entity to be licensed as an insurance agent, KID must determine that a licensed individual agent is responsible for the entity’s compliance with the insurance laws and regulations of this state. K.S.A. 40-4905(c).

26) 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

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

28) The Commissioner finds, based on the facts contained in paragraphs 5 through 16 and 22, that Respondent has improperly withheld, misappropriated, or converted money or property received in the course of doing insurance business.

29) The Commissioner also finds that Respondent has used dishonest practices and demonstrated untrustworthiness or financial irresponsibility in the conduct of business.

30) 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).

31) The Commissioner finds that Respondent Agent is the sole agent affiliated with Respondent Agency. Therefore, the Commissioner concludes that Respondent Agent’s conduct is indistinguishable from conduct of the agency.

32) The Commissioner further concludes Respondents' licenses may be revoked pursuant to K.S.A. 40-4909(b) because such licenses are not properly serving the interests of the insurer and the insurable interests of the public.

33) 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 FURTHER ORDERED that the Kansas resident insurance agent's license of Adam J. Utz and the Kansas resident insurance agency license of Adam Utz Insurance Agency, Inc., are hereby **REVOKED**. **Unless vacated by further order, this Proposed Default Order shall become effective as a Final Order at the expiration of the time for filing a motion to vacate the order.**

IT IS SO ORDERED THIS __7th__ DAY OF SEPTEMBER 2010, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

_____/s/ Robert Tomlinson_____
Robert Tomlinson
Assistant Commissioner of Insurance



NOTICE

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 he/she served a true and correct copy of the above and foregoing **Proposed Default Order** on this ___7th___ day of September 2010, by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Adam J. Utz
16150 S. Bradley Dr.
Olathe, KS 66062-3926

And

Adam Utz Insurance Agency, Inc.
PO Box 4143
Olathe, KS 66063

_/s/ Jana L. Beethe _____
Jana L. Beethe

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the above and foregoing **Final Default Order** was served by placing the same in the United States Mail, first class, postage prepaid, on this 20th day of September, 2010, addressed to the following:

Adam J. Utz
16150 S. Bradley Drive
Olathe, Kansas 66062-3926

Adam Utz Insurance Agency
P.O. Box 4143
Olathe, Kansas 66063

And by hand delivery to:

Brenda J. Clary
Staff Attorney
Kansas Insurance Department
420 SW 9th Street
Topeka, Kansas 66612

_s/ Jana L. Beethe _____
Jana L. Beethe
Legal Assistant