

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

In the Matter of the Kansas Nonresident )  
Insurance Agent's License of ) Docket No. **4303--SO**  
**BRIAN M. FAILLA** )  
NPN 7647548 )

**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 nonresident insurance agent's license of Brian M. Failla ("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 nonresident agent to transact the business of insurance in Kansas and has been so licensed since October 19, 2009.
2. KID records further indicate Respondent's legal address is in Fort Lauderdale, Florida, and his mailing address is Insurance Care Direct, 1239 E. Newport Center Dr., Ste 101, Deerfield Beach, FL 33442-7711.
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. By Final Order dated March 8, 2011, Respondent's Florida insurance producer license was revoked.
6. Respondent did not report the action to the Commissioner within 30 days as required by K.A.R. §40-7-9(a) and has not reported it to date.
7. By letter of April 20, 2011, counsel for KID wrote to Respondent at his mailing address of record and invited Respondent to reply within 15 business days if he disputed the above.
8. Respondent replied only by transmitting a copy of an order staying the Florida Department of Financial Services order revoking Respondent's license.
9. By order dated May 18, 2011, in the District Court of Appeal, First District, case number 1D11-2356, revocation was stayed pending final disposition or further order of the court.
10. The Florida order revoking Respondent's license was in effect for 71 days before it was stayed.
11. According to the Florida hearing officer's findings of fact, Respondent was convicted of possession of methamphetamines and driving while license revoked, both felonies, and misdemeanor possession of cannabis, in 2005.
12. Respondent did not disclose these convictions to KID in connection with his 2009 application for a Kansas license and was issued a license in reliance upon the application.

### **Applicable Law**

13. K.S.A. 2010 Supp. 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; . . . .

(3) Obtained or attempted to obtain a license under this act through misrepresentation or fraud. . . .

(6) Been convicted of a misdemeanor or felony. . . .

(9) Had an insurance agent license, or its equivalent, denied, suspended or revoked in any other state, district or territory.” K.S.A. 2010 Supp. 40-4909(a).

14. K.A.R. §40-7-9 requires a licensed agent to report to the Commissioner within 30 days any disciplinary action against the agent’s license by the insurance regulatory agency of another jurisdiction.

15. 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).

16. A nonresident person is entitled to a Kansas nonresident license based on reciprocity unless denied licensure pursuant to K.S.A. 40-4909 if the person is licensed and in good standing in the person’s home state. K.S.A. 40-4906(a).

### **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 paragraphs 5 through 10, that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(2)(A) because Respondent has violated K.A.R. §40-7-9(a) by failing to report a disciplinary action against his insurance agent license by another state.

19. The Commissioner finds, based on the Florida hearing officer's findings, that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(6) because Respondent has been convicted of misdemeanor and felony criminal offenses.

20. Further, the Commissioner finds that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(1) and (a)(3) because Respondent falsely denied having been convicted of a misdemeanor or felony on his Kansas application, thereby obtaining a license through misrepresentation.

21. 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).

22. In addition, the Commissioner finds that Respondent's license should be revoked or cancelled pursuant to K.S.A. 40-4906(a) because Respondent is no longer qualified for a license based on reciprocity because he is not in good standing in his home state.

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 Respondent, and after investigation, KID believes in good faith that the allegations will be supported to the applicable standard of proof.

**Policy to be Served**

25. Before issuing an insurance agent license, the Commissioner must determine that the applicant is qualified and has not committed any act that would be grounds for denial, suspension, or revocation. K.S.A. 40-4905(b). Further, 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 the license. The following action is appropriate to promote the security and integrity of the insurance business and protect insurance consumers by licensing, or continuing to license, persons or entities to sell, solicit, or negotiate insurance in the State of Kansas only if their conduct indicates they are both qualified and trustworthy.

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT** the Kansas nonresident insurance agent's license of **BRIAN M. FAILLA** is hereby **REVOKED**. **It is further ordered**, that **BRIAN M. FAILLA** shall **CEASE and DESIST** from the sale, solicitation, or negotiation of insurance, doing any act toward 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 31st DAY OF MAY 2011, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



\_\_\_\_\_/s/ Sandy Praeger\_\_\_\_\_  
Sandy Praeger  
Commissioner of Insurance

BY:

\_\_\_\_\_/s/ Zachary J.C. Anshutz\_\_\_\_\_  
Zachary J.C. Anshutz  
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:

Zachary J.C. Anshutz, 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

Zachary J.C. Anshutz, 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 served a true and correct copy of the above and foregoing **Summary Order** and accompanying **Notice of Rights** on this   31st   day of May 2011, by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Brian M. Failla  
Insurance Care Direct  
1239 E. Newport Center Dr., Ste 101  
Deerfield Beach, FL 33442-7711

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