

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

In the Matter of the Kansas Nonresident)
Insurance Agent's License of) Docket No. **4279--SO**
MICHAEL R. FITKIN)
NPN #8769548)

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 Michael R. Fitkin ("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 May 19, 2006.
2. KID records further indicate Respondent's legal and mailing address is 8722 N. Robinhood Ave., Kansas City, MO 64154.
3. KID believes, based on Respondent's representations in correspondence, that Respondent currently resides and may be served at 1805 SW 8th Street, #B, Blue Springs, MO 64015.
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. By letter dated January 7, 2011, Country Insurance & Financial Services (“Country Financial”), Bloomington, Illinois, notified KID and the Missouri Department of Insurance that the agency had terminated Respondent’s employment agreement with the agency for cause, effective December 16, 2010.
6. Country Financial submitted a suspected insurance fraud report summarizing the findings of an internal audit as follows.
7. Respondent entered a premium payment on October 28, 2010, by consumer A.J. on policy [REDACTED].
8. On November 12, 2010, Country Financial contacted Respondent about the payment, and Respondent replied on November 23, 2010, that he was sending payment that day.
9. Respondent did not transmit the payment to Country Financial until December 6, 2010.
10. A.J. paid cash and Respondent made the payment with his own personal check.
11. A Country Financial audit revealed 14 other policies for which the premium was paid from Respondent’s personal account, including premiums paid to Respondent by check.
12. The electronic signatures for “[REDACTED]” on the consumer’s application and illustration do not appear to match each other or the client’s signature on a personal check for premium.
13. By letter of January 20, 2011, counsel for KID informed Respondent of the foregoing allegations and invited Respondent to reply if he disputed them.

14. By electronic mail message dated January 26, 2011, Respondent replied as follows:

a. He did send a personal check when a client paid cash but did not realize he was not supposed to; and

b. The signatures did not match because the check was signed with the consumer's maiden name while the life insurance application was signed with her married name.

15. The email response also notified counsel of a change of residential address. It did not indicate whether Respondent's mailing address should be changed.

16. In reply on the same date, counsel for KID instructed Respondent to contact the licensing division about how to update his address, or addresses.

17. To date, Respondent has not updated his addresses.

18. Respondent delayed payment of A.J.'s premium for some 39 days and did not make the payment until after two demands from Country Financial.

19. When Respondent finally made the payment, he paid with a personal check.

20. Respondent fails to recognize the significance of the check payment, regardless of whether it complies with his agent agreement with Country Financial.

21. The Commissioner finds that failure to make premium payments promptly upon the agency's demand, especially coupled with payment by personal check, is extremely strong and persuasive evidence of misappropriation.

22. The Commissioner also finds, contrary to Respondent's representations, that the questioned signatures are so different that expert analysis is not necessary to conclude

that, more likely than not, the signatures were not made by the same person, and a name change does not account for those differences.

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. . . .

(10) Forged another person’s name to an application for insurance or to any document related to an insurance transaction. . . .” K.S.A. 40-4909(a).

24. K.A.R. §40-7-9(f) requires a licensed agent to report to the Commissioner within 30 days any change in residence address.

25. 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

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

27. The Commissioner finds, based on the foregoing facts, that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(4) because Respondent has improperly withheld or misappropriated premium payments received in the course of doing insurance business.

28. Even assuming Respondent failed to forward premium funds inadvertently, Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(8) because Respondent has demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business.

29. Further, the Commissioner finds the conduct was not an isolated incident or a brief delay in making payment.

30. The Commissioner finds, based on the facts, that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(10) because Respondent has signed, or caused someone else to sign, another person's name to an application for insurance and/or another document related to an insurance transaction.

31. In addition, the Commissioner finds, based on the facts contained in paragraphs 15-17, 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(f) by failing to report a change of residence to the Commissioner within 30 days.

32. 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).

33. 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.

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 Respondent, 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 nonresident insurance agent's license of **MICHAEL R. FITKIN** is hereby **REVOKED**. **It is further ordered,** that **MICHAEL R. FITKIN** 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 MARCH 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. 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

Zachary J.C. Anshutz, 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 March 2011, by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Michael R. Fitkin
8722 N. Robinhood Ave.
Kansas City, MO 64154

And to
Michael R. Fitkin
1805 SW 8th Street, #B
Blue Springs, MO 64015

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