

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

In the Matter of the Kansas Resident)
Insurance Agent’s License of) Docket No. **4377-SO**
JOHN M. GROVER, III)
NPN #2938112)

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 John M. Grover, III (“Respondent”), by way of Summary Order as provided by K.S.A. 77-537. This Summary Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period for requesting a hearing if no hearing is requested.

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 April 4, 1988.
2. KID records further indicate Respondent’s legal and mailing address is 7208 Foster Street, Wichita, KS 67206-3846.
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. In December 2004, Respondent borrowed \$20,000 from a client, W.Y., now 77 years of age, and agreed to repay the loan by December 2005 or January 2006.
6. As of August 2011, Respondent had made only two payments, payments of \$200 and \$1000, both in 2010.

7. Respondent was appointed as an agent for New York Life from April 4, 1988, until July 6, 2001.
8. In December 1998 and March 1999, Respondent sold three New York Life annuities to W.Y.
9. Respondent was appointed as an agent of New England Life from July 9, 2001, until October 1, 2008.
10. In August and September 2001, Respondent replaced the three New York Life contracts with two New England Life annuities, resulting in \$27,632 in surrender penalties.
11. Respondent was appointed as an agent of Sun Life from May 28, 2004, until January 4, 2006, and from April 26, 2007, until November 27, 2009.
12. In August 2004, Respondent sold W.Y. a Sun Life Annuity, for which she paid a single premium of \$65,000 with a personal check.
13. In March 2008, W.Y. surrendered the larger of the two New England Life annuities and incurred a surrender penalty of \$8,150.
14. Also in March 2008, W.Y. purchased a Sun Life annuity with proceeds from the New England Life annuity, and Respondent falsely stated on the application that the purchase was not a replacement.
15. In August 2009, W.Y. surrendered the second New England Life annuity.
16. Respondent was appointed as an agent of Allianz from May 29, 2003, to December 10, 2006, and again from May 22, 2009, to July 22, 2010.
17. In November 2009, W.Y. surrendered the Sun Life annuity she purchased in March 2008, receiving \$16,500 less than the premium as a result of the surrender penalty.
18. In December 2009, W.Y. purchased an Allianz annuity with proceeds from Sun Life, and Respondent falsely stated on the application that the purchase was not a replacement.
19. In December 1997 and January 1998, Respondent sold consumer H.F. two New York Life annuities.
20. In March 2002, Respondent replaced the two New York Life annuities with two New England Life annuities.

21. In July 2003, Respondent sold H.F. an Allianz Annuity with an initial premium of \$130,000, and H.F. made a subsequent contribution of \$25,000 in November.
22. In June 2008, H.F. surrendered the Alliance annuity, and purchased a Sun Life annuity with \$111,314.12 of the proceeds, and Respondent failed to follow the replacement protocol.
23. H. F. loaned Respondent the balance of the proceeds, \$67,326.68, and Respondent had made a single \$1000 payment by June 2010.
24. Respondent led H.F. to believe he was investing directly in securities, not in annuities.
25. By letter of September 26, 2011, counsel for KID summarized the foregoing facts and invited Respondent to reply within 15 business days if he disputed the facts.
26. Respondent contacted counsel for KID by telephone on or about October 11, 2011, and stated that he thought the consumer complaints had been resolved and apologized for his delayed response.
27. Without substantive discussion, counsel for KID asked Respondent to reply in writing and agreed to extend the time by a week or two.
28. To date, Respondent has not replied. Thus the facts are deemed undisputed.
29. In addition, Respondent's Letter of Acceptance, Waiver and Consent, dated September 12, 2011, was accepted by the Financial Industry Regulatory Authority ("FINRA") on October 12, 2011.
30. The action resulted from the loan described in paragraph 23.
31. Respondent did not report that action to the Commissioner within 30 days and has not reported it to date.
32. Respondent is licensed to sell variable insurance contracts.
33. Respondent's license to sell variable contracts requires a license or registration to sell, or give advice regarding, securities.
34. Respondent does not currently have an active securities registration and is ineligible to hold one pursuant to the action by FINRA.

Applicable Law

35. 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. . . .
 - (5) Intentionally misrepresented the provisions, terms and conditions of an actual or proposed insurance contract or application for insurance . . .
 - (7) Admitted to or been found to have committed any insurance unfair trade practice or fraud in violation of K.S.A. 40-2404 and amendments thereto. . . .
 - (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. 2010 Supp. 40-4909(a).
36. Making any statement or sales presentation that “is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion or surrender of any insurance policy” or that “misrepresents any insurance policy as being shares of stock” is an unfair trade practice in violation of K.S.A.. 40-2404. K.S.A. 2010 Supp. 40-2404(1)(f) and 2404(1)h).
37. “Replacement’ means each transaction in which new life insurance may be purchased from an agent who knows, or reasonably should know that, as a part of the transaction or in consequence of it, a previously existing life insurance has been or is likely to be:
- (A) Lapsed or surrendered;
 - (B) converted into paid-up insurance, continued as extended term insurance or another form of non-forfeiture benefit;
 - (C) converted to effect a reduction either in the amount of the existing life insurance, or in the period of time the existing life insurance will continue in force;
 - (D) reissued with a reduction in amount so that substantial cash values are released; or
 - (E) assigned as collateral for a loan or subjected to substantial borrowing of loan values in single or multiple transactions.” K.A.R. 40-2-12(a)(7).
38. “Each life insurance agent shall:
- (1) Obtain a statement signed by the applicant as a part of each life insurance application as to whether the new insurance will replace existing life insurance; and

(2) submit to the insurer in connection with each life insurance application a statement as to whether, to the best of the agent's knowledge, a life insurance replacement is involved in the transaction." K.A.R. 40-2-12(c).

39. "When a replacement is involved, each life insurance agent shall:
- (1) Include as part of each application a list of all existing life insurance policies to be replaced and the name of each insurer which issued the insurance being replaced;
 - (2) present to the applicant, when the application is submitted, a copy of each sales proposal used, and a 'notice to applicants regarding replacement of life insurance' described in section (h) in a form acceptable to the commissioner. The agent shall leave the forms with the applicant after explaining their content;
 - (3) submit with the application a copy of each sales proposal used; and
 - (4) have the applicant acknowledge receipt of the 'notice to applicant regarding replacement of life insurance.'" K.A.R. 40-2-12(d).

40. K.A.R. 40-7-9(f) requires that an agent report each disciplinary action against an occupational license within 30 days of the action.

41. 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. 2010 Supp. 40-4909(b).

Conclusions of Law

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

43. The Commissioner finds that Respondent's agent 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 notify the Commissioner within 30 days of a disciplinary action against his securities registration and K.A.R. 40-2-12 by failing to follow the procedure for outlined for sales of replacement life insurance.

44. The Commissioner finds that Respondent's agent license may be revoked pursuant to K.S.A. 40-4909(a)(7) because Respondent has violated 40-2404(1)(f) and 2404(1)(h) in making misrepresentations for the purpose of inducing the exchange or surrender of insurance policies and misrepresenting annuities as investments in stock.

45. The Commissioner finds that Respondent's agent license may be revoked pursuant to K.S.A. 40-4909(a)(4) because Respondent received a loan of \$67,326.68,

which was a portion of the proceeds from surrender of H.F.'s insurance contract, and he converted the funds to his own use by failing to repay the loan.

46. The Commissioner finds that Respondent's agent license may be revoked pursuant to K.S.A. 40-4909(a)(8) because Respondent has used a fraudulent, coercive, or dishonest practice in the conduct of business.

47. 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).

48. The Commissioner further concludes Respondent's license should 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.

49. 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.

50. 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. K.S.A. 40-4909(b). Thus, the Commissioner is charged with safeguarding the security and integrity of the insurance business and protecting 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. The following action is both necessary and sufficient to serve that purpose.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the Kansas resident insurance agent's license of **JOHN M. GROVER, III**, is hereby **REVOKED**.

It is further ordered, that **JOHN M. GROVER, III**, shall **CEASE and DESIST** from the sale, solicitation, or negotiation of insurance, directly or indirectly 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 revocation.

IT IS SO ORDERED THIS __15th__ DAY OF NOVEMBER 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 served a true and correct copy of the above and foregoing **Summary Order** and accompanying **Notice of Rights** on this 15th day of November 2011, by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

John M. Grover, III
7208 Foster Street
Wichita, KS 67206-3846

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