

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

In the Matter of the Kansas Resident)
Insurance Agent's License of)
JANET E. HARMS,) Docket No. **4328--SO**
NPN 4901698.)

CONSENT AGREEMENT AND ORDER
(Pursuant to K.S.A. 40-4909 and K.S.A. 77-501 et seq.)

Pursuant to the authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 40-103 and in accordance with K.S.A. 40-4901 *et seq.*, and 77-501 *et seq.*, the Commissioner hereby accepts the stipulations of the parties and revokes the Kansas resident insurance agent's license of Respondent Janet E. Harms. This Consent Agreement shall become effective as a Final Order, without further notice when signed by the Commissioner or her designee and filed of record with the Kansas Insurance Department ("KID").

Findings of Fact

1. Records maintained by the Kansas Insurance Department ("KID") reflect that Respondent was originally licensed as a resident agent to transact the business of insurance in Kansas in April 1993 and has been continuously licensed since October 10, 2000.
2. In addition, Respondent has held a motor club license since January 6, 2011.
3. Respondent's legal and mailing address of record is 21610 Columbia Road, Spring Hill, KS 66083-4049.
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 Respondent.
5. Following investigation, the Commissioner finds evidence sufficient to support the following facts:
6. On March 10, 2009, Farmers Insurance Group terminated Respondent's contract for "embezzlement of funds."

7. Following further investigation, KID licensing staff determined that Respondent was in arrears in forwarding premium to Farmers in the amount of \$1,772.90, received from three consumers.
8. On March 16, 2009, KID received a complaint from a wholesale insurance agency that Respondent had failed to make payment on an insufficient funds check issued to the agency for insurance premium.
9. KID licensing staff counseled Respondent for poor business practices in a letter dated August 9, 2009, but recommended no formal disciplinary action.
10. On or about December 8, 2010, AIM Group, licensed as a Kansas resident agency, terminated Respondent's producing contract for falsely telling clients they had insurance coverage.
11. Subsequently, the agency provided copies of three ACORD "Evidence of Personal Property Insurance" certificates signed by Respondent. The forms showed dwelling, premises liability, and medical payments coverage bound with "Berkshire Hathaway" on multiple properties owned by a single consumer beginning October 30, 2010.
12. Berkshire Hathaway is a holding company and not an insurance company.
13. Respondent appeared in person on April 28, 2011, at KID's request to answer questions regarding AIM's allegations.
14. Respondent stated she believed she had binding authority with "Berkshire Hathaway."
15. KID's contacts with Berkshire Hathaway Homestate Companies deny that agents have authority to bind coverage without approval of a company and deny that Respondent requested a quote for the named insured on the binders.
16. Neither KID nor AIM Group has been able to confirm that the risks were placed with any company.
17. Premium paid by check by the mortgagee on one property belonging to the same consumer was not received by the company although the check for \$687.00 cleared the mortgagee's bank on September 3, 2010.
18. At KID's request, Respondent agreed to produce bank records from her personal accounts for the last six months of 2010.

19. Respondent provided printouts of transaction summaries from online access, without copies of checks and deposits, for two checking and one savings account.
20. The purported transaction summary of Respondent's personal checking account shows a deposit of \$1287.00 on September 2, 2010, followed by a withdrawal of \$700.00.
21. The entries appear to have been modified to obscure a deposit and increase in the balance of \$687.00.
22. Records obtained directly from the bank confirm that the deposit was \$687.00 and the withdrawal was \$100.
23. In addition, Respondent modified other deposit entries to conceal the amounts of deposits.
24. Respondent was served with a summary order proposing to revoke Respondent's Kansas resident insurance agent license based on substantially the foregoing allegations of fact, and Respondent timely requested a hearing.
25. Respondent understands her right to have a hearing on the facts and disposition and to seek review of an adverse order in this matter.
26. Respondent now states that she does not plan to engage in the business of insurance in the future and offers to resolve the pending action by consent agreement.
27. Respondent expressly waives hearing and stipulates to the foregoing facts.
28. Respondent stipulates that sufficient admissible evidence exists to prove those facts by at least a preponderance of the evidence and that proof of those facts is sufficient to support revocation of her license.
29. Respondent further waives administrative and judicial review.

Applicable Law

30. 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. . . (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. 2010 Supp. 40-4909(a).

31. 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).

32. “No person whose license as an agent or broker had been suspended or revoked shall be employed by any insurance company doing business in this state either directly, indirectly, as an independent contractor or otherwise to negotiate or effect contracts of insurance, suretyship or indemnity or perform any act toward the solicitation of or transaction of any business of insurance during the period of such suspension or revocation.” K.S.A. 2010 Supp. 40-4909(g).

Conclusions of Law

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

34. The Commissioner finds that Respondent has improperly withheld, misappropriated, or converted money or property received in the course of doing insurance business.

35. The Commissioner also finds from the same facts that Respondent has used fraudulent or dishonest practices and demonstrated untrustworthiness or financial irresponsibility in the conduct of business.

36. Based on the foregoing findings, the Commissioner concludes that sufficient grounds exist for the revocation of Respondent’s insurance agent license pursuant to K.S.A. 2010 Supp. 40-4909(a).

37. Further, the Commissioner finds that Respondent’s license should be revoked pursuant to K.S.A. 40-4909(b) because it is not serving the interests of the insurer or the insurable interests of the public.

Stipulation

The undersigned stipulates and agrees to the foregoing findings of fact and conclusions of law and waives her rights to administrative hearing and judicial review of the Commissioner's Order.

_ /s/ Janet E. Harms _____

Janet E. Harms
Respondent

Date

Prepared by:

_ /s/ Brenda J. Clary _____

Brenda J. Clary
Staff Attorney

Policy to be Served

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.

THE COMMISSIONER OF INSURANCE THEREFORE ORDERS that the Kansas resident insurance agent's license and motor club license of **JANET E. HARMS** are hereby **REVOKED**, and **JANET E. HARMS** shall **CEASE and DESIST** from the sale, solicitation, or negotiation of insurance, receiving compensation deriving from the sale, solicitation, or negotiation of insurance conducted on and after the effective date of this order, or performing any act toward the solicitation of or transaction of any business of insurance from and after the effective date of this order.

IT IS SO ORDERED THIS 27th DAY OF SEPTEMBER 2011, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



_____/s/ Robert Tomlinson_____
Robert M. Tomlinson
Assistant Commissioner of Insurance
Presiding Officer

NOTICE OF RIGHTS TO HEARING AND REVIEW

Notwithstanding Respondent's waiver of rights to hearing and judicial review, Respondent is hereby notified that 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 __27th__ day of September 2011 by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Janet E. Harms
21610 Columbia Road
Spring Hill, KS 66083-4049

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