

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

In the Matter of the Kansas Resident )  
Insurance Agent's License of ) Docket No. **4346-SO**  
**DARLENE MERRILL** )  
NPN #6122409 )

**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 Darlene Merrill ("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 August 25, 1993.
2. Respondent was licensed to sell excess lines from January 17, 2002, until the license lapsed on April 30, 2010.
3. KID records further indicate Respondent's legal address is in Elkhart, Kansas, and her mailing address 5 North Street, HC 1 Box 143, Elkhart, KS, 67950-9108.

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. Following investigation, the Commissioner finds evidence sufficient to support the following findings of fact:
6. On July 11, 2011, KID staff served Respondent with a Summary Order assessing a monetary penalty of one hundred dollars (\$100) for Respondent's failure to file an annual statement pertaining to sales of excess lines insurance as required by K.S.A. 40-246c.
7. The Summary Order gave notice of Respondent's right to request a hearing, the time allowed for doing so, and the person to be served with the request.
8. The Summary Order also gave notice that if Respondent did not request a hearing within the time allowed, the order would become a final order.
9. Respondent did not request a hearing, and the Summary Order was filed as a final order on July 29, 2011.
10. When Respondent had not paid the penalty, KID staff wrote to respondent on August 25, 2011, at her address of record, reminding her of the obligation and giving notice that action could be taken against her agent's license if the penalty remained unpaid.
11. The letter was not returned, and to date, Respondent has not paid the penalty.
12. To date, Respondent has not filed excess lines statement for 2010.

### **Applicable Law**

13. “Each licensed [excess lines] agent shall file with the commissioner on or before March 1 of each year a statement on a form prescribed by the commissioner, accounting for the gross premiums upon all policies written on risks situated in this state up to January 1 in each year for the year next preceding and the licensee shall transmit to the commissioner, with such affidavit or statement, a sum equal to 6% of the gross premiums upon all policies procured by such agent on risks situated in this state written under the provisions of this act.” K.S.A. 40-246c.
14. 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; [or] (B) any subpoena or order of the commissioner; . . . .” K.S.A. 2010 Supp. 40-4909(a).
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. 2010 Supp. 40-4909(b).

### **Conclusions of Law**

16. The Commissioner has jurisdiction over Respondent as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
17. The Commissioner finds that Respondent’s agent license may be revoked pursuant to K.S.A. 40-4909(a)(2)(B) because Respondent has violated an order of the Commissioner.
18. 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.S.A. 40-246c

by failing to file the required statement for 2010 by the deadline, and those violations have continued to date.

19. Further, the Commissioner concludes, because of Respondent's failure to pay the penalty or file the reports after the August 25, 2011, letter, that the violations were knowing and intentional.

20. 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).

21. 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.

22. 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 non-resident insurance agent's license of **DARLENE MERRILL** is hereby **REVOKED**. **It is further ordered**, that **DARLENE MERRILL** 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 23rd DAY OF SEPTEMBER 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 \_\_\_23rd\_\_\_ day of September 2011, by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Darlene Merrill  
HC 1 Box 143  
Elkhart, KS 67950-9108

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