

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

In the Matter of the Kansas Nonresident )  
Insurance Agent's License of ) Docket No. **4380--SO**  
**CHARLES J. McKELVEY** )  
NPN 10498417. )

**ORDER**

**NOW ON THIS \_5th\_ day of June 2012**, Respondent's Motion to Vacate and Set Aside the Final Order dated December 5, 2011, comes on for hearing.

Respondent's motion sets out good cause for Respondent's failure to request a hearing on the Summary Order served November 15, 2011, and the Kansas Insurance Department ("KID") has indicated that KID does not dispute the facts or oppose the motion. There are no appearances.

**Findings of Fact**

1. Prior to the effective date of the order, Respondent was licensed as a nonresident agent to transact the business of insurance in Kansas.
2. Respondent was employed by Guardian Life Insurance Company of America ("Guardian") and appointed as an agent for Guardian Life Insurance Company, Berkshire Life Insurance Company, and Guardian Insurance and Annuity Company until his employment and those appointments were terminated effective August 11, 2011.
3. Respondent admitted to KID that he used Guardian's UPS account on a regular basis to ship parcels for his wife's home business.
4. Respondent stated that he believed the company was billed a flat rate for shipping and that his use of the service did not increase the cost, but Respondent acknowledged that even if a limited amount of personal use were acceptable, his regular business use of the company's shipping service was misappropriation of company property.
5. Respondent agreed to surrender his Kansas nonresident agent license but failed to make the request in writing or otherwise communicate with KID and failed to request a hearing on the Summary Order.

6. Respondent now informs KID that his year-old son was injured and required emergency and subsequent care during the time allowed for his response.

### **Applicable Law**

7. The Kansas Administrative Procedure Act “creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes. K.S.A. 77-503(b).

8. The Kansas Code of Civil Procedure provides, “On motion and upon such terms are just, the court may relieve a party . . . from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect.” K.S.A. 60-260(b).

9. The Assistant Commissioner of Insurance is empowered to render a final order when acting on behalf of the Commissioner. K.S.A. 77-547.

### **Conclusions of Law**

10. The Commissioner has jurisdiction over KID, Respondent, and the subject matter of this motion, and has authority to grant relief.

11. The Commissioner finds that the Commissioner finds that the circumstances of Respondent’s son’s injury excuse Respondent’s failure to surrender his license, exercise his right to a hearing, or otherwise carry out his responsibilities under the original understanding with KID staff.

12. The Commissioner further finds that the action of revocation was disproportionate to the misconduct when all circumstances are considered, and vacating the December 5, 2011, order would be just.

### **Policy to be Served**

13. 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. 49-4909(b). The following

action is necessary and 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 Summary Order served November 15, 2011, and filed as a final order on December 5, 2011, is hereby **VACATED**. **It is further ordered,** that Kansas nonresident insurance agent's license of **CHARLES J. McKELVEY is terminated by voluntary surrender.**

**IT IS SO ORDERED THIS \_\_5th\_\_ DAY OF JUNE 2012, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



\_\_\_\_\_/s/ Robert M. Tomlinson\_\_\_\_\_  
Robert M. Tomlinson  
Assistant Commissioner of Insurance  
Presiding Officer

**NOTICE:** In the event Respondent files a petition for judicial review, it must be filed within 30 days of service of this order, and 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 **Order** and accompanying **Notice of Rights** on this \_\_5th\_\_ day of June 2012, by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Charles J. McKelvey  
5025 Derby Lane  
Bethlehem, PA 18020-9408

\_ /s/ Jana L. Beethe \_\_\_\_\_  
Jana L. Beethe  
Legal Assistant