

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

In the Matter of

NATIONAL REPLY CENTER, and
Any Unknown Affiliated Companies and Persons
Respondent

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)Docket No. 4502-SO
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SUMMARY ORDER

Pursuant to the authority conferred upon the Commissioner of Insurance in K.S.A. 40-103, K.S.A. 40-2407 and K.S.A. 77-501 *et seq.*, the Commissioner hereby proposed to find facts to assess a **MONETARY PENALTY** to National Reply Center (“Respondent”) and further **CEASE & DESIST** from insurance marketing activities. This Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period if no request for a hearing is made, pursuant to K.S.A. 77-542.

Findings of Fact

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-103.
2. National Reply Center uses the mailing addresses of PO Box 3012, Indianapolis, IN 46209-9301 and PO Box 1071, Indianapolis, IN 46209-8526.
3. On or about February 23, 2012, Kansas Insurance Department received a complaint from the Kansas Board of Mortuary Arts requesting the legality of the solicitation sent by you to S.B., a Kansas resident. The solicitation states “Death Benefit Enclosed” and “2011 DEATH BENEFIT INFORMATION ENCLOSED” and “To see if you qualify, mail this postage paid card.”

4. The solicitation does not include the name of a Kansas licensed insurance company associated with the sale of this insurance product. Further, the solicitation does indicate that a licensed insurance agent will contact the person if this card is returned.
5. On or about July 11, 2012, KID received a complaint from L.B., a Kansas resident with a copy of a solicitation from you which states “2012 Death Benefit”, “Indicate the desired amount of coverage” and “To see if you qualify, mail this postage paid card.”
6. The solicitation does not include the name of a Kansas licensed insurance company associated with the sale of this insurance product. Further, the solicitation does indicate that a licensed insurance agent will contact the person if this card is returned.
7. KID mailed copies of these complaints along with a letter requesting response on March 9, 2012 and July 11, 2012. National Reply Center failed to respond.

Applicable Law

K.S.A. 40-2402(a) provides, in pertinent part:

“Person” means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd’s insurer, fraternal benefit society and any other legal entity engaged in the business of insurance.

K.S.A. 40-2403 provides:

No person shall engage in this state in any trade practice which is defined in this state as, or determined pursuant to K.S.A. 40-2406 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

K.S.A. 40-2404 provides:

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(2) Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, misrepresentation or statement with respect to the business of insurance or with respect to any person in the conduct of such person's insurance business, which is untrue, deceptive or misleading.

K.A.R. 40-9-118 provides:

Section 5. Disclosure Requirements

4. An advertisement shall not use as the name or title of a life insurance policy any phrase that does not include the words "life insurance" unless accompanied by other language clearly indicating it is life insurance...

Section 6. Identity of Insurer

1. The name of the insurer shall be clearly identified in all advertisements, and if any specific individual policy is advertised it shall be identified either by form number or other appropriate description. If an application is a part of the advertisement, the name of the insurer shall be shown on the application. An advertisement shall not use a trade name, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol or other devise or reference without disclosing the name of the insurer, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identify of the insurer or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a policy.

K.S.A. 40-2406 provides:

(a) Whenever the commissioner has reason to believe that any such person has been engaged or is engaging in this state in an unfair method of competition or any unfair or deceptive act or practice, whether or not defined in K.S.A. 40-2404 and amendments thereto, and that a proceeding by the commissioner in respect thereto would be in the interest of the public, the commissioner shall issue and serve upon such person a statement of the charges in that

respect and conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act.

(b) If, after such hearing, the commissioner determines that the person charged has engaged in any unfair method of competition or any unfair or deceptive act or practice, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section shall be assessed against such person or the company or companies represented by such person as an agent, broker or adjuster who is a participating party to the matters giving rise to the hearing. As used in this subsection, "costs" shall include witness fees, mileage allowances, any costs associated with reproduction of documents which become part of the hearing record and the expense of making a record of the hearing.

K.S.A. 40-2407 provides, in pertinent part:

(a) If, after such hearing, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall render an order requiring such person to cease and desist from engaging in such method of competition, act or practice and if the act or practice is a violation of K.S.A. 40-2404 and amendments thereto, the commissioner may in the exercise of discretion order any one or more of the following:

- (1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, but not to exceed an aggregate penalty of \$10,000, unless the person knew or reasonably should have known such person was in violation of this act, in which case the penalty shall be not more than \$5,000 for each and every act or violation, but not to exceed an aggregate of \$50,000 in any six-month period.

Conclusions of Law

Based upon the Findings of Fact enumerated in Paragraphs #1 through #7 and the Applicable Law cited above,

IT IS, THEREFORE, ORDERED BY THE COMMISSIONER OF INSURANCE:

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to

K.S.A. 40-103.

2. Respondent has engaged in the business of insurance in the State of Kansas by soliciting insurance business for Kansas insurance agents via deceptive and misleading postcards.
3. Respondent has engaged in deceptive and misleading advertising in violation of K.S.A. 40-2404(2) by mailing postcards to Kansas residents which have misled Kansans.
4. The Commissioner finds that the language contained in Respondent's postcards are misleading in violation of K.A.R. 40-9-118 because the postcards imply the recipient is entitled to a death benefit, fails to identify an insurance company and fails to identify the product as an insurance policy.
5. Pursuant to K.S.A. 40-2407, Respondent shall pay a monetary penalty of Six Thousand Dollars and No Cents (\$6,000.00) for the above-stated violations of Kansas Unfair Trade Practices Act.
6. The Commissioner finds that permitting Respondent to continue mailing deceptive and misleading postcards into the State of Kansas would pose an immediate danger to the well-being of Kansas residents.
7. Pursuant to KSA 77-415(b)(2)(A), this order is designated by KID as precedent.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE that Respondent shall immediately **CEASE AND DESIST** its practice of mailing insurance solicitations to Kansas residents. Further Respondent is ordered to pay a monetary fine of **SIX THOUSAND DOLLARS AND NO CENTS (\$6,000)** for violations of Kansas law.

IT IS SO ORDERED THIS 27th DAY OF SEPTEMBER 2012, 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

Respondent. is entitled to a hearing pursuant to K.S.A. 77-537, the Kansas Administrative Procedure Act. If Respondent desires a hearing, the company must file a written request for a hearing with:

Zachary J.C. Anshutz, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

This request must be filed within fifteen (15) days from the date of service of this Order. If Repondent requests a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing before the commencement of the same.

If a hearing is not requested in the time and manner stated above, this Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. 77-613. In the event that 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 he served the above and foregoing Order and Notice of Rights on this 27th day of September 2012, by causing the same to be deposited in the United States Mail, registered mail with return-receipt requested postage prepaid, addressed to the following:

National Reply Center
PO Box 1071
Indianapolis, IN 46209-8526

National Reply Center
PO Box 3012
Indianapolis, IN 46209-9301

_ /s/ Jennifer R. Sourk _____
Jennifer R. Sourk
Staff Attorney