

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

In the Matter of the Kansas Resident)
Insurance Agent's License of)
SCOTT M. SCHMIDTLEIN,) Docket No. **4432--SO**
NPN 14447715.)

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 resident insurance agent's license of Scott M. Schmidtlein ("Respondent") by way of Summary Order as provided by K.S.A. 77-537.

Findings of Fact

1. Records maintained by the Kansas Insurance Department ("KID") reflect that Respondent is licensed as a resident insurance agent in the state of Kansas and has been so licensed since August 20, 2009.
2. Respondent's legal/residential address of record is 4922 NW Kendall Drive, Topeka, KS 66618-1327.
3. Respondent's most recent designated mailing address is a Farm Bureau Insurance agency, and as Respondent is no longer an agent for Farm Bureau, KID believes the address is not current.
4. Respondent replied to a letter of March 6, 2012, addressed to his residence, and KID believes effective service can be had by mail addressed to Respondent's residence.
5. 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.
6. Following investigation, the Commissioner finds evidence sufficient to support the following facts:

7. While appointed as an agent of Farm Bureau, Respondent submitted a theft claim to Farm Bureau on his homeowners insurance policy, falsely stating that personal property valued at approximately \$17,000 had been stolen in a burglary of his garage.

8. In fact, Respondent retained possession of all but a bucket of tools, worth less than \$100, that had been left sitting outside the garage.

9. In addition, Respondent submitted five applications for new business on behalf of real persons who did not apply for insurance, and he did this in order to qualify for a bonus.

Applicable Law

10. 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;

(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).

11. “Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, broker or individual” is an unfair trade practice, as defined by K.S.A. 2010 Supp. 40-2404(11), and violates K.S.A. 40-2403.

12. 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

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

14. The Commissioner finds that Respondent’s license may be revoked pursuant to K.S.A. 40-4909(a)(8) because Respondent has used a fraudulent and dishonest practice in submitting a claim based on false statements regarding the loss.

15. The Commissioner also finds that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(2)(A) because Respondent has committed an unfair trade practice as defined by K.S.A. 40-2404(11), by submitting bogus business in order to qualify for a bonus, in violation of K.S.A. 40-2403.

16. 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).

17. 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.

18. 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 Respondents, and after investigation, KID believes in good faith that the allegations will be supported to the applicable standard of proof.

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 of **SCOTT M. SCHMIDTLEIN** is hereby **REVOKED**, and **SCOTT M. SCHMIDTLEIN** 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 further ordered, pursuant to KSA 77-415(b)(2)(A), that this order is designated by KID as precedent.

IT IS SO ORDERED THIS __9th__ DAY OF APRIL 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 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 9th day of April 2012 by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Scott M. Schmidlein
4922 NW Kendall Dr.
Topeka, KS 66618-1327

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