

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

In the Matter of

UNLIMITED FULFILLMENT SERVICES, LLC
D/B/A UFS MARKETING SERVICES
Respondent

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)Docket No. 4406-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 Unlimited Fulfillment Services, LLC (“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. Unlimited Fulfillment Services, LLC is an Ohio Domestic Limited Liability Company located at 620 E. Smith, Suite W20, Medina, OH 44256.
3. On September 30, 2011, the Kansas Insurance Department (KID) received a complaint from K.R. who was a recipient of a solicitation from “Scheduling Services Department” with no return address. The solicitation further states that “Important Information: This notice is being sent to you as a possible holder of an in-force annuity contract.” Further, it states “This communication is to inform you that you

- may have an annuity that has reached the end of its surrender period.” The solicitation does not include the name of a Kansas licensed insurance agent or the name of a Kansas licensed insurance company associated with the sale of this product.
4. K.R. indicated that she called the phone number on the solicitation and was given information that an insurance agent named Terry Claudell would contact her.
 5. KID sent a letter to Terry Claudell on October 3, 2011 asking for him to respond to the complaint filed by K.R.
 6. Terry Claudell responded to the complaint on or about October 17, 2011 indicating that he had employed Respondent as a lead generation service and Respondent was the party responsible for creating the solicitation and answering calls to the phone number on the solicitation.
 7. KID sent a letter to Respondent on October 19, 2011 asking for Respondent to respond to the complaint filed by K.R.
 8. On October 25, 2011, Respondent wrote to KID indicating that Respondent does not have any personal information of the individual that receives the solicitation described in paragraph #3 despite the solicitation indicating that the addressee has an annuity product that has reached the end of a surrender period.
 9. On December 21, 2010, KID received a complaint from C.K. who was a recipient of the same solicitation mentioned in paragraph #3 and questioned the solicitation’s legitimacy.
 10. On October 5, 2011, consumer A.C. received the same solicitation mentioned in paragraph #3 and complained to KID.

11. On November 14, 2011, KID received an inquiry from an anonymous consumer asking if the enclosed advertisement which is the same as described in paragraph #3 was legal.

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.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 #11 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.
2. Unlimited Fulfillment Services, LLC d/b/a/ UFS Marketing Services 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. No Kansas resident holds an annuity contract with Unlimited Fulfillment Services, LLC.
4. Unlimited Fulfillment Services, LLC has engaged in a deceptive act or practice in violation of K.S.A. 40-2403 and K.S.A. 40-2406 by mailing deceptive postcards to Kansas residents which mislead recipients into believing their financial well-being may be in jeopardy.
5. Unlimited Fulfillment Services, LLC 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 to believe they have an annuity which may be adversely affected if they do not contact Unlimited Fulfillment Services, LLC.
6. The Commissioner finds that the language of Unlimited Fulfillment Services, LLC's postcards are misleading in violation of K.S.A. 40-2404(2) because the postcards state the recipient "may have an annuity that has reached the end of its surrender period," leading the recipient to believe they need to act to preserve their annuity when the recipient does not hold an annuity with Unlimited Fulfillment Services, LLC.

7. The Commissioner finds that the language on the back of the Unlimited Fulfillment Services, LLC postcards in fine print limiting the applicability of the postcards does not remedy the misleading notice printed on the front of the postcard.
8. Pursuant to K.S.A. 40-2407, Unlimited Fulfillment Services, LLC shall pay a monetary penalty of Four Thousand Dollars and No Cents (\$4,000.00) for the above-stated violations of Kansas Unfair Trade Practices Act.
9. The Commissioner finds that permitting Unlimited Fulfillment Services, LLC to continue mailing deceptive and misleading postcards into the State of Kansas would pose an immediate danger to the well-being of Kansas residents.
10. 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 Unlimited Fulfillment Services, LLC shall immediately **CEASE AND DESIST** its practice of mailing insurance solicitations to Kansas residents. Further Unlimited Fulfillment Services, LLC is ordered to pay a monetary fine of **FOUR THOUSAND DOLLARS AND NO CENTS (\$4,000)** for violations of Kansas law.

IT IS SO ORDERED THIS 27th DAY OF FEBRUARY 2012, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



_/s/ Sandy Praeger _____
Sandy Praeger
Commissioner of Insurance

BY:

_/s/ Zachary Anshutz _____
Zachary Anshutz
General Counsel

NOTICE OF RIGHTS

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

Zachary 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 Unlimited Fulfillment Services, Inc. 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 Unlimited Fulfillment Services, Inc. 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 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 February 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:

Matthew Dilday
Unlimited Fulfillment Services, Inc.
d/b/a UFS Marketing Services
620 E. Smith Rd.
Suite W-20
Medina, OH 44256

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