

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

In the Matter of the Kansas Resident)
Insurance Agent’s License of)
MARK A. BOSWELL,) Docket No. **4541--SO**
NPN 9102367.)

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 Mark A. Boswell (“Respondent”) by way of Summary Order as provided by K.S.A. 77-537.

Findings of Fact

1. 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.
2. Following investigation, the Commissioner finds evidence sufficient to support the following facts:
3. Respondent was licensed as a Kansas resident insurance agent on March 1, 2007, and was continuously so licensed until he submitted a request to cancel the license on December 17, 2012.
4. Respondent’s legal address is in Wichita, Kansas, and his mailing address of record is 10314 Boxthorn Court, Wichita, KS 67226-3639.
5. According to insurance company reports to the Kansas Insurance Department (“KID”), Respondent, along with other agents, engaged in a pattern and practice of soliciting applications for substantial life insurance policies on the lives of individuals who would pay no premium for slightly more than the first year of the contract.
6. In those cases, the applications falsely represented that premium would be paid from personal assets and/or the assets of a trust, and none of the premium would be financed.

7. It appears that, in some cases, premium was paid by investors, and in other cases, premium was paid from sales commissions.

8. In response to KID's inquiry regarding the allegations, Respondent, through counsel, generally denied the factual allegations and denied having engaged in an unfair trade practice or fraud but requested cancellation of his insurance agent license.

9. The Commissioner considers Respondent's general denial but finds, in the absence of contrary evidence, that the company reports and documentation constitute sufficient evidence to support action against Respondent's license.

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 . . .

(7) Admitted to or been found to have committed any insurance unfair trade practice or fraud in violation of K.S.A. 40-2404 and amendments thereto. . . [or]

(15) Rebated the whole or any part of any insurance premium or offered in connection with the presentation of any contract of insurance any other inducement not contained in the contract of insurance.” K.S.A. 2011 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, agent, broker or individual” is an insurance unfair trade practice or fraud as defined by K.S.A. 2011 Supp. 40-2404(11).

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. 2011 Supp. 40-4909(b).

13. Voluntary surrender does not deprive the Commissioner of jurisdiction or right to initiate or proceed with any disciplinary proceeding against the license. K.S.A. 2011 Supp. 40-4909(e).

Conclusions of Law

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

15. The Commissioner finds, based on the company reports and documentation, that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(7) because Respondent certified false statements on applications for insurance policies for the purpose of obtaining a fee, commission, money or other benefit.

16. The Commissioner finds that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(15) because Respondent, directly or indirectly, rebated insurance premium as an inducement to enter into an insurance contract.

17. The Commissioner finds that sufficient grounds exist for the revocation of Respondent's insurance agent license pursuant to K.S.A. 2011 Supp. 40-4909(a), and the action is not foreclosed by Respondent's request to cancel his license.

18. In addition, the Commissioner concludes that Respondent's insurance agent's license may 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.

19. 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.

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 **MARK A. BOSWELL** is hereby **REVOKED**.

It is further ordered, that **MARK A. BOSWELL** shall **CEASE and DESIST** from the sale, solicitation, or negotiation of insurance, doing any act toward the sale, solicitation, or negotiation of insurance, and/or receiving compensation deriving from the sale, solicitation, or negotiation of insurance in Kansas or on Kansas risks through business conducted on and after the effective date of this order

IT IS SO ORDERED THIS __19th__ DAY OF DECEMBER 2012, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



_____/s/ Sandy Praeger_____
Sandy Praeger
Commissioner of Insurance

BY:

_____/s/ John Wine_____
John Wine
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:

John Wine, 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

John Wine, 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 19th day of December 2012 by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

N. Russell Hazlewood
Graybill & Hazlewood LLC
218 North Mosley
Wichita, KS 67202
Attorneys for Respondent

And, pursuant to K.S.A. 77-531, also to the following:

Mark A. Boswell
10314 Boxthorn Court
Wichita, KS 67226-3639

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