

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

In the Matter of the Kansas Nonresident)	
Insurance Agent’s License of)	
MARVIN E. McDOUGAL,)	Docket No. 4543--SO
NPN 576414, and)	
The Kansas Nonresident)	
Insurance Agency License of)	
AUTOMOTIVE RISK MANAGEMENT,)	Docket No. 4544--SO
Lic. # 680389320-000.)	

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 nonresident insurance agent’s license of Marvin E. McDougal (“Respondent”) and the insurance agency license of Automotive Risk Management & Insurance Services, Inc. (“Respondent Agency”) 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 originally licensed as a Kansas nonresident insurance agent in 1992 and has been continuously licensed as a Kansas insurance agent since December 1, 1997.
4. Respondent is licensed as a Kansas nonresident excess lines insurance agent and has been so licensed since June 16, 2004.
5. Respondent Agency was licensed on April 15, 2002.

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6. Respondent and Respondent Agency have a legal address in Stockton, California, and PO Box 7095, Stockton, CA 95267-0095, is the mailing address of record for both.
7. Respondent is the agent identified in Kansas Insurance Department ("KID") records as the agency contact and Kansas licensed agent responsible for compliance with the insurance laws and regulations of Kansas.
8. Respondent and Respondent Agency failed to file excess lines statements and pay the tax for the year 2010 by due date of March 1, 2011.
9. The state of Georgia revoked the agency's license in June 2011 for a surplus lines violation.
10. Effective August 27, 2012, the state of Florida placed Respondent's individual license on probation for a year and fined him \$4,500 for failure to pay tax.
11. In 2010 through 2012, at least five other state insurance regulators have assessed fines against Respondent and/or Respondent Agency for failure to pay tax.
12. By Summary Order dated June 29, 2012, the Commissioner imposed a monetary penalty of \$100.00 against Respondent for failure to file the annual statement for 2011 by March 1, 2012, and ordered him to file the statement and pay tax within 30 days.
13. On July 6, 2012, Respondents submitted a surplus lines tax filing for the year 2011.
14. The statement indicated Respondents owed tax of \$26,697.60 and that a check for that amount had been mailed.
15. KID staff notified Respondents by email (xxx@xxx.xxx) on September 27, 2012, that it appeared the check had not been received and requested either payment or proof the check had cleared.
16. When Respondent had not responded by October 18, 2012, KID staff emailed a known contact at the agency, Lori Jimenez, at xxx@xxx.xxx.
17. That message also noted a similar issue in the 2010 tax year and advised that response was required by November 1, 2012, or the matter would be referred to legal staff for action.
18. Ms. Jimenez replied on the same date, "I do apologize for the delayed response. I will look into this personally and respond tomorrow."

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19. As of November 20, 2012, she had not responded.
20. By letter of November 20, 2012, counsel for KID summarized the foregoing facts and invited Respondents to reply if they disputed the facts.
21. On December 7, 2012, KID received Respondents' tax payment.
22. To date, the fine remains unpaid, and Respondents have not paid the statutory penalty.
23. The Commissioner notes that purchasers of excess lines insurance policies are typically charged premium including the applicable excess lines premium tax and presumes that the tax has been paid to Respondents during the tax year and should be available to be remitted on the due date.

Applicable Law

24. 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; . . . (B) any subpoena or order of the Commissioner; . . . (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. 2011 Supp. 40-4909(a).
25. “Each licensed [excess lines] agent shall file with the commissioner on or before March 1 of each year a statement on a form prescribed by the commissioner, accounting for the gross premiums upon all policies written on risks situated in this state up to January 1 in each year for the year next preceding and the licensee shall transmit to the commissioner, with such affidavit or statement, a sum equal to 6% of the gross premiums upon all policies procured by such agent on risks situated in this state written under the provisions of this act. . . The commissioner shall collect double the amount of tax herein provided from any licensee or other responsible individual as herein described who shall fail, refuse or neglect to transmit the required affidavit or statement or shall fail to pay the tax imposed by this section, to the commissioner within the period specified.” K.S.A. 40-246c.
26. In addition, the Commissioner may revoke any license issued under the Insurance Agents Licensing Act if the Commissioner finds that the interests of the

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insurer or the insurable interests of the public are not properly served under such license. K.S.A. 2011 Supp. 40-4909(b).

Conclusions of Law

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

28. The Commissioner finds that Respondent is individually responsible, as a licensed excess lines agent, for any violations of Kansas law applicable specifically to the excess lines business in Kansas and individually responsible, as the designated agent for the agency, for the acts and omissions of Respondent Agency.

29. The Commissioner finds Respondents violated K.S.A. 40-246c by failing to file annual statements and pay excess lines premium tax due by the due dates for tax years 2010 and 2011.

30. The Commissioner finds Respondents violated an order of the commissioner by failing to pay the penalty imposed by order dated June 29, 2012, and by failing to pay the tax, including the statutory penalty, within 30 days of the letter.

31. The Commissioner, therefore, concludes that action may be taken against Respondents' agent, agency, and excess lines licenses pursuant to K.S.A. 40-4909(a)(2)(A) and (a)(2)(B).

32. The Commissioner further finds that Respondents have used a dishonest practice in collecting but failing to pay excess lines premium tax and demonstrated untrustworthiness and financial irresponsibility in their dealings with KID in the tax years 2010 and 2011.

33. The Commissioner concludes that action may be taken against the same licenses pursuant to K.S.A. 40-4909(a)(8).

34. The Commissioner concludes that sufficient grounds exist for the revocation of Respondent's insurance agent and excess lines licenses as well as the entity license of Respondent Agency pursuant to K.S.A. 40-4909(a).

35. In addition, the Commissioner concludes that Respondent's license and the agency license may be revoked pursuant to K.S.A. 40-4909(b) because they are not serving the interests of the insurer or the insurable interests of the public.

36. 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 the following:

1. **MARVIN E. McDOUGAL** and/or **AUTOMOTIVE RISK MANAGEMENT AND INSURANCE SERVICES, INC.**, shall immediately pay the statutory penalty of \$26,697.60 for untimely payment of 2011 excess lines premium tax;
2. **MARVIN E. McDOUGAL** and/or **AUTOMOTIVE RISK MANAGEMENT AND INSURANCE SERVICES, INC.**, shall immediately pay the \$100 administrative penalty imposed;
3. The Kansas nonresident insurance agent's license and the excess lines agent license of **MARVIN E. McDOUGAL** are hereby REVOKED;
4. The Kansas nonresident agency license of **AUTOMOTIVE RISK MANAGEMENT AND INSURANCE SERVICES, INC.**, is hereby REVOKED; and
5. **MARVIN E. McDOUGAL** and **AUTOMOTIVE RISK MANAGEMENT AND INSURANCE SERVICES, INC.**, 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

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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 further ordered, pursuant to KSA 77-415(b)(2)(A), that this order is designated by KID as precedent.

IT IS SO ORDERED THIS 20th 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

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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 20th day of December 2012 by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Marvin E. McDougal
Automotive Risk Management
PO Box 7095
Stockton, CA 95267-0095

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