

# FINAL ORDER

EFFECTIVE: 8-7-13

## BEFORE THE COMMISSIONER OF INSURANCE OF THE STATE OF KANSAS

In the Matter of the Kansas Resident )  
Insurance Agent's License of )  
**JAMES E. OTTO,** ) Docket No. 4577-SO  
NPN 4916724 )

### FINAL ORDER

On July 17, 2013, a formal hearing was held in the above-captioned matter. James E. Otto ("Respondent") appeared pro se. The Kansas Insurance Department appeared by and through Brenda J. Clary, Staff Attorney. Evidence and testimony presented at the formal hearing is hereby incorporated into the record in its entirety by reference.

### Findings of Fact

1. Respondent is a resident agent of the State of Kansas. Respondent's mailing address is listed as 13425 W. 128<sup>th</sup> Street, Overland Park, KS 66213-3841. Respondent was first licensed as a resident agent in Kansas in 1986 and has been continuously licensed since October 10, 2001.
2. On April 29, 2013, the Kansas Insurance Department ("KID") issued a Summary Order revoking the Kansas resident agent license of Respondent pursuant to the provisions of K.S.A. 40-4909.
3. The basis for the KID Summary Order were as follows:
  - a. A December 13, 2012, Missouri Department of Insurance, Financial Institutions & Professional Registration ("Missouri DOI") Order denying Respondent's application for renewal of his Missouri insurance producer's license.
  - b. A November 4, 2009, United States Securities and Exchange Commission ("SEC") Cease and Desist Order finding Respondent had willfully violated the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940. The SEC Order permanently barred Respondent from association with any broker, dealer, or investment advisor.
  - c. A July 14, 2010, Missouri Securities Division of the Office of Missouri Secretary of State ("Missouri Securities Division") Consent Agreement.

- d. An August 17, 2011, Kansas Securities Commissioner (“Kansas Securities”) Consent Agreement.
4. Respondent failed to report the SEC, Missouri Securities Division and Kansas Securities Division Orders to the Missouri DOI as required by Missouri law.
5. Respondent failed to report all of the above-cited actions to KID within 30 days of the Final Orders.
6. Respondent testified at the formal hearing that he did not report the actions to KID as required by Kansas law. Respondent also testified that he assumed the Orders had been reported by the respective agencies and, therefore, he did not self- report.
7. Respondent timely requested a hearing on the Summary Order.

#### **Applicable Law**

The law applicable to this matter states in pertinent part:

1. K.S.A. 40-4909(a) – “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...
    - (C) [a]ny insurance law or regulation of another state...
  - (8) Used fraudulent, coercive, or dishonest practice or demonstrated any incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere...
  - (9) Had an insurance agent license, or its equivalent, denied, suspended or revoked in any other state, district, or territory.”
2. K.A.R. 40-7-9 – “Each person licensed in this state as an insurance agent shall report the following to the commissioner of insurance within 30 days of occurrence:
  - (a) Each disciplinary action on the agent’s license or licenses by the insurance regulatory agency of any other state or territory of the United States;
  - (b) Each disciplinary action on an occupational license held by the licensee, other than an insurance agent’s license, by the appropriate regulatory authority of this or any other jurisdiction...”

### Policy Reasons

The Commissioner finds it is the public policy of the Kansas Insurance Department to protect the public health, safety and welfare of Kansas citizens in the business of insurance by ensuring compliance with all applicable insurance laws.

### Conclusions of Law

1. Denial of Respondent's insurance agent license by the Missouri DOI constitutes a violation of K.S.A. 40-4909(a)(9).
2. Revocation of Respondent's license by the Missouri Securities Division via Consent Order constitutes a violation of K.S.A. 40-4909(a)(8).
3. Revocation of Respondent's license by Kansas Securities via Consent Order constitutes a violation of K.S.A. 40-4909(a)(8).
4. Revocation of Respondent's license by the SEC via Consent Order constitutes a violation of K.S.A. 40-4909(a)(8).
5. Respondent's failure to report the action of the Missouri DOI to KID constitutes a violation of K.A.R. 40-7-9(a) and K.S.A. 40-4909(2)(A).
6. Respondent's failure to report the actions of the Missouri Securities Division, Kansas Securities, and the SEC constitute a violation of K.A.R. 40-7-9(b).

For the above-stated reasons, the Respondent's Kansas Resident Insurance Agent's License is hereby **REVOKED**.

**IT IS SO ORDERED THIS 7th DAY OF August, 2013, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



\_\_\_\_\_/s/ Zacharyl J.C. Anshutz\_\_\_\_\_  
Zacharyl J.C. Anshutz  
Assistant Commissioner  
Hearing Officer

Pursuant to K.S.A. 77-601 *et seq.*, Respondent is entitled to judicial review of this Final Order. The petition for judicial review must be filed within thirty (30) days of service of this Final Order (plus three [3] days for service by mail pursuant to K.S.A. 77-531). 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 R. Wine, General Counsel  
Kansas Insurance Department  
420 SW 9th Street  
Topeka, KS 66612

\_\_\_\_\_/s/ Jana L. Beethe\_\_\_\_\_  
Jana Beethe  
Legal Assistant

The undersigned hereby certifies she served a true and correct copy of the above and foregoing **FINAL ORDER** on this \_\_7th\_\_ day of \_\_\_\_August\_\_\_\_, 2013, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

James E. Otto  
13425 W. 128<sup>th</sup> Street  
Overland Park, KS 66213-3841

And hand-delivered to the following:

Brenda Clary  
Staff Attorney  
Kansas Insurance Department  
420 S.W. 9<sup>th</sup> Street  
Topeka, KS 66612-1678

\_\_\_\_\_/s/ Jana L. Beethe\_\_\_\_\_  
Jana Beethe  
Legal Assistant