

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

In the Matter of the Kansas Nonresident)
Insurance Agent’s License of)
MARK SEBASTIAN MITCHELL,) Docket No. **4717--SO**
NPN 496238.)

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 Kansas nonresident insurance agent’s license of MARK SEBASTIAN MITCHELL (“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 nonresident insurance agent on September 20, 2013, and has remained so licensed to date.
4. Respondent’s legal address of record is 2571A Coral Way E., Daytona Beach, FL 32118-5517.
5. On his Kansas application, Respondent identified his mailing address as 1370 S. Babcock St., Melbourne, FL 32901-3009.
6. After Respondent’s license was mailed to that address and returned, KID successfully mailed the license to Respondent’s residence, and KID records were changed to reflect 2571A Coral Way E, Daytona Beach, FL 32118-5517.
7. Respondent did not report an address change within 30 days as required by K.A.R. §40-7-9 and has not reported one to date.

8. Based on certain regulatory information databases, KID has cause to believe the following actions have been taken against Respondent's insurance producer licenses in other states:

- a. In December 2012, South Dakota, denied Respondent's application for a license.
- b. On or about November 11, 2013, Wisconsin denied Respondent's application for a license for failure to disclose on the application.
- c. On or about April 21, 2014, Louisiana imposed a fine against Respondent for failure to report other states' actions.
- d. On or about September 17, 2014, Iowa imposed a fine against Respondent and revoked his license for failure to report an address change and failure to report other states' actions.

9. Respondent did not disclose the South Dakota action on his Kansas application.

10. Respondent did not report the subsequent actions to KID within 30 days as required by K.A.R. §40-7-9(a) and has not reported them to date.

11. By letter dated November 12, 2014, counsel for KID summarized the foregoing facts and invited Respondent to reply by the close of business on November 24, 2014, if he disputed the statements of fact.

12. To date, Respondent has not replied and the letter has not been returned; thus the facts are deemed undisputed.

Applicable Law

13. 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

- (1) Provided incorrect, misleading, incomplete or untrue information in the license application.
- (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;
 - (C) any insurance law or regulation of another state; or
 - (D) any subpoena or order issued by the regulatory official for insurance in another state. . . .
- (9) Had an insurance agent license, or its equivalent, denied, suspended or revoked in any other state, district or territory." K.S.A. 2013 Supp. 40-4909(a).

14. 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. 2013 Supp. 40-4909(b).

15. A person whose license has been revoked or suspended may not be employed directly or indirectly by an insurance company and “may not perform any act toward the solicitation of or transaction of” insurance business in Kansas. K.S.A. 2013 Supp. 40-4909(g).

16. “Any action taken under this section which affects any license or imposes any administrative penalty shall be taken only after notice and an opportunity for hearing conducted in accordance with the provisions of the Kansas administrative procedures act.” K.S.A. 2013 Supp. 40-4909(c).

17. “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; . . .” K.A.R. §40-7-9(a).

Conclusions of Law

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

19. The Commissioner finds that Respondent’s license may be, and should be, revoked pursuant to K.S.A. 40-4909(a)(1) because Respondent provided false or incomplete information in the Kansas license application, and the information omitted was material to the Commissioner’s consideration of the application because denial of a license by another state is a statutory basis for denial.

20. The Commissioner finds that Respondent’s license may be, and should be, revoked pursuant to K.S.A. 40-4909(a)(2)(A) because Respondent repeatedly violated K.A.R. §40-7-9(a) by failing to report actions taken against his insurance producer licenses by the insurance regulatory authorities of other states.

21. In addition, the Commissioner finds that Respondent’s license may be revoked pursuant to K.S.A. 40-4909(a)(2)(C) because the actions establish Respondent’s violations of the insurance law and/or regulations of other states.

22. Further, the Commissioner concludes that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(9) because each denial, suspension, and revocation of a licensee's license in another state constitutes an independent ground for revocation in Kansas.

23. Finally, the Commissioner concludes that Respondent's license may be revoked pursuant to K.S.A. 40-4909(b) because it is not serving the interests of insurers or the insurable interests of the public.

24. 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 nonresident insurance agent's license of **MARK SEBASTIAN MITCHELL** is hereby **REVOKED**, and **MARK SEBASTIAN MITCHELL** 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 further ordered, pursuant to KSA 77-415(b)(2)(A), that this order is designated by KID as precedent.

IT IS SO ORDERED THIS __25th__ DAY OF NOVEMBER 2014, 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 25th day of November 2014 by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Mark Sabastian Mitchell
2571A Coral Way E.
Daytona Beach, FL 32118-5517

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