

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

In the Matter of the Kansas Nonresident )  
Insurance Agent’s License of )  
**SIMON AROCHA,** ) Docket No. **4744--SO**  
NPN 16247629. )

**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 SIMON AROCHA (“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 July 30, 2014, and has been continuously so licensed to date.
4. Respondent’s legal address is in Weston, Florida, and his mailing address of record is 4062 Pinewood Lane, Weston, FL 33331.
5. Respondent was appointed as an agent of Mutual of Omaha Insurance Company from November 19, 2014, until January 8, 2015.
6. On December 22, 2014, KID received a consumer complaint from L.P. alleging that Respondent, without his authorization, used his personal information and bank account information to apply for and arrange automatic bank transfers of premium for an accidental death insurance policy.
7. Information provided by Mutual of Omaha reflects that on November 19, 2014, Respondent submitted an electronic application for a \$500,000 accidental death policy for consumer L.P. and set up an electronic bank transfer to pay the monthly premium of \$63.44.
8. On that same date, Respondent assisted L.P. by telephone to obtain health insurance coverage with another company through the federal marketplace.
9. L.P. denies he authorized the application and payment for any policy other than the health insurance policy.

10. L.P. states that, after he noticed the premium payment on his bank statement, he attempted several times to call Respondent, but Respondent did not return his calls, so he contacted Mutual of Omaha directly to cancel the policy.
11. Because L.P., who is 46 years old, pays only a \$17.06 monthly premium payment for health insurance, it appears his income is high enough to qualify for a subsidy but low enough for a substantial one.
12. L.P.'s grandmother is the sole beneficiary named on the policy.
13. In the absence of exceptional circumstances, a half million dollar accidental death policy appears highly unsuitable, even if authorized.
14. In his responses to KID inquiries, Respondent stated that, based on a lead, he spoke with L.P. and his grandmother by telephone on November 15, 2014.
15. Respondent stated they were in the market for health insurance because their premium costs would be rising in 2015.
16. Respondent refers to the insurance needs of L.P. and his grandmother as if both were in the same situation, yet a 46-year-old person's grandmother would be well above the age of Medicare eligibility.
17. It appears from the complaint itself and Respondent's response that L.P. required his grandmother's assistance to enroll in his health insurance plan.
18. Respondent stated he "set them up with a plan" that would cost L.P. approximately \$100 less, and offered him the accidental death policy to be purchased with the savings.
19. Respondent suggested he would not have known to name L.P.'s grandmother as beneficiary if L.P. had not known he was applying for life insurance and named a beneficiary.
20. Respondent's explanation is not credible because Respondent named I.P. as a beneficiary but did not include her date of birth in the blank on the application, and the circumstances suggest Respondent would have known I.P.'s name from the conversation about L.P.'s health insurance but would not have had her date of birth since she would not have been purchasing insurance.
21. By letter of March 9, 2015, addressed to Respondent at his address of record, counsel for KID invited Respondent to reply by March 20, 2015, if he disputed the above statements of fact.
22. Respondent has not replied, and the letter has not been returned; thus, the facts are deemed undisputed.

#### **Applicable Law**

23. 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: . . .

(4) Improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business. . . .

(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.

(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. . . .

(10) Forged another person's name to an application for insurance or to any document related to an insurance transaction.” K.S.A. 2014 Supp. 40-4909(a).

24. “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. K.S.A. 2014 Supp. 40-2404(11).

25. “The following shall be deemed prohibited, unfair or deceptive acts or practices in the selling of insurance:

(5) recommending to a prospective purchaser the purchase or replacement of any life insurance policy or annuity contract with reasonable grounds to believe that the recommendation is unsuitable for the applicant on the basis of information furnished by this person, or otherwise obtained. K.A.R. §40-2-14(c)

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 insurer or the insurable interests of the public are not properly served under such license. K.S.A. 2014 Supp. 40-4909(b).

27. 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. 2014 Supp. 40-4909(g).

28. “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. 2014 Supp. 40-4909(c).

### **Conclusions of Law**

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

30. The Commissioner finds that action may be taken against Respondent’s license pursuant to K.S.A. 40-4909(a)(4) because Respondent used L.P.’s bank account

information, obtained in the course of doing insurance business, to convert funds to pay unauthorized premium.

31. The Commissioner finds that action may be taken against Respondent's license pursuant to K.S.A. 40-4909(a)(7) because Respondent has made 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, which is an insurance unfair trade practice as defined by K.S.A. 40-2404(11).

32. Alternatively, even if L.P. authorized purchase of the policy, action could be taken against Respondent's license pursuant to K.S.A. 40-4909(a)(7) because Respondent committed an unfair trade practice as defined by K.A.R. §40-2-14 by recommending an unsuitable purchase.

33. The Commissioner finds that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(8) because Respondent used a fraudulent, coercive, and dishonest practice in applying for and transferring premium for an accidental death policy without L.P.'s authorization and was dishonest in his responses to KID.

34. 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.

35. 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) and K.S.A. 40-4906. 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. K.S.A. 40-4909(b). Thus, the Commissioner is charged with 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 following action is appropriate to promote the security and integrity of the insurance business and protect insurance consumers.

**THE COMMISSIONER OF INSURANCE THEREFORE ORDERS** that the Kansas nonresident insurance agent's license of **SIMON AROCHA** is hereby

**REVOKED**, and **SIMON AROCHA** 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   25th   DAY OF MARCH 2015, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



  /s/ Ken Selzer    
Ken Selzer, CPA  
Commissioner of Insurance

BY:

  /s/ Diane Minear    
Diane Minear  
Interim 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:

Diane Minear, Interim General Counsel  
Kansas Insurance Department  
420 S.W. 9<sup>th</sup> 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

Diane Minear, Interim General Counsel  
Kansas Insurance Department  
420 S.W. 9<sup>th</sup> 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 March 2015 by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Simon Arocha  
4062 Pinewood Lane  
Weston, FL 33331

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