

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

In the Matter of the Kansas Nonresident)
Insurance Agent’s License of)
MATTHEW G. WINGERD,) Docket No. **4768--SO**
NPN 6123855.)

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 Matthew G. Wingerd (“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 May 8, 1997, and is currently licensed as a Kansas nonresident insurance agent.
4. Respondent’s legal address is in Bettendorf, Iowa, and his mailing address of record is PO Box 1680, Bettendorf, IA 52722-0028.
5. Consumers T.J. and E.J. filed a complaint with KID alleging that Respondent misrepresented relevant facts when he recommended a cash surrender of six annuities for the ultimate purpose of replacing them.
6. According to the complaint, Respondent had sold annuities to Mr. and Mrs. J. prior to September 2011, while he was an agent for Bankers Life and Casualty (“Bankers Life”), and he contacted them again on February 16, 2015.
7. In the interim, Mr. and Mrs. J. had replaced the Bankers Life annuities and had purchased ten fixed annuities from Athene Annuity and Life Assurance Company (“Athene”) through another agent.

8. Respondent recommended that Mr. and Mrs. J. surrender six of those annuities, which were tax qualified and still subject to a surrender charge, deposit the checks in their bank accounts, and later write checks for new annuities.
9. According to the complaint, Respondent told Mr. and Mrs. J. they would get the surrender charge back.
10. By letter dated April 10, 2015, and mailed to Respondent at his address of record, counsel for KID summarized the foregoing facts and invited Respondent to reply if he disputed the statements of fact
11. Respondent replied and explained to KID that he based his statement on the amount of bonus to be paid on the purchase of the intended replacement annuities and potential for greater market gain over time.
12. Even accepting Respondent's explanation of his reasoning as true and accurate, Respondent's statements to the consumers misrepresented the relative benefits and costs of the existing and replacement annuities.
13. Respondent explained to KID that he recommended the cash surrender "to expedite the transaction more quickly."
14. The Commissioner notes that the only practical purpose of a cash surrender, as opposed to a custodial transfer of funds, would be to state falsely on the applications for new policies that they would not replace existing policies and prevent Athene from contacting the consumer to disclose the adverse consequences of surrendering the annuities.
15. Before instructing Mr. and Mrs. J. to request cash surrender of their existing annuities, Respondent provided no information on the proposed new annuities.
16. In addition to the consumer complaint, KID received notice from Athene Annuity & Life Company that the company had terminated Respondent's contract for cause after the company's investigation led to the conclusion that Respondent had impersonated Mr. J. in a call from his phone inquiring about the annuities, misrepresented the cost of early surrender to T.J. and E.J., and failed to disclose on annuity applications with another company that the proposed annuities would be replacing the Athene annuities.
17. The Commissioner further notes that KID has received multiple prior complaints alleging Respondent misrepresented the benefits and costs of replacing annuities.

Applicable Law

18. 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; . . .
 - (5) Intentionally misrepresented the provisions, terms and conditions of an actual or proposed insurance contract or application for insurance. . . .
 - (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.” K.S.A. 2014 Supp. 40-4909(a).

19. The following is defined as an insurance unfair trade practice:

“(1) Misrepresentations and false advertising of insurance policies. Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission or comparison which:

 - (a) Misrepresents the benefits, advantages, conditions or terms of any insurance policy; . . .
 - (f) is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion or surrender of any insurance policy; . . .” K.S.A. 2014 Supp. 40-2404.

20. K.A.R. §40-2-12 outlines a procedure requiring disclosures to the consumer and identification of any existing annuities to be replaced on any application for an annuity. K.A.R. §40-2-12(d).
21. Any violation of K.A.R. §40-2-12 is “presumed to constitute a misleading representation for the purpose of inducing or tending to induce an insured to lapse, forfeit or surrender the insured’s existing insurance.” K.A.R. §40-2-12(k).
22. 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).
23. 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).

24. “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).

25. “Whenever the commissioner imposes any administrative penalty or denies, suspends, revokes or refuses renewal of any license pursuant to subsection (a), any costs incurred as a result of conducting an administrative hearing authorized under the provisions of this section shall be assessed against the person who is the subject of the hearing. . . .” K.S.A. 2014 Supp. 40-4909(f).

Conclusions of Law

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

27. The Commissioner finds from the allegations of the consumer’s complaint, and considering Respondent’s response, that Respondent’s license may be revoked pursuant to K.S.A. 40-4909(a)(2)(A) because Respondent violated K.A.R. §40-2-12 and pursuant to K.S.A. 40-4909(a)(7) because an unfair trade practice defined in K.S.A. 40-2404(1) is thus presumed.

28. The Commissioner further finds, based on the pattern of inappropriate replacements and complaints that Respondent made misleading statements to consumers, that Respondent’s license may be revoked pursuant to K.S.A. 40-4909(a)(5) because Respondent intentionally misrepresented the provisions, terms and conditions of a proposed insurance contract.

29. The Commissioner finds that Respondent’s license may be revoked pursuant to K.S.A. 40-4909(a)(8) because Respondent used a coercive or dishonest practice in the solicitation of Mr. and Mrs. J.’s insurance business and in disguising replacements by recommending a cash surrender of existing annuities.

30. 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.

31. 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 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 **MATTHEW G. WINGERD** is hereby **REVOKED**, and **MATTHEW G. WINGERD** 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 __10th__ DAY OF JULY 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. 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

Diane Minear, Interim 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 10th day of July 2015 by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

MATTHEW G. WINGERD
PO Box 1680
Bettendorf, IA 52722-0028

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