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

**COMMISSIONER OF INSURANCE
STATE OF KANSAS**

In the Matter of the Kansas Resident)
Insurance Agent's License of)
SALOMINO E. BYWATERS,) Docket No. 4803--SO
NPN 16866660)

FINAL ORDER

On May 9, 2016, a formal hearing was held in the above-captioned matter. Saolomino E. Bywaters ("Respondent") appeared in person and through his attorney, Tiffannie Kennedy. 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 108 N. Normandy Street, Olathe, KS 66061. Respondent was first licensed as a resident agent in Kansas on February 4, 2013, and has been continuously so licensed.
2. On January 24, 2016, 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. KID alleges the following:
 - a. Respondent improperly withheld funds paid to Respondent as insurance premiums and belonging to an insurance company and consumer;
 - b. Respondent has misappropriated funds and engaged in dishonest conduct or demonstrated incompetence and a lack of trustworthiness by allowing a consumer's insurance policy to lapse for nonpayment of premium despite the fact that the consumer had paid a full year's premium to Respondent;
 - c. Respondent's license is not serving the interests of insurers or the insurable interests of the public.

4. The basis for the KID Summary Order were as follows:
 - a. Respondent was appointed as an agent of Chesapeake Life Insurance Company (“Chesapeake Life”) from on or about March 14, 2014, until his appointment was terminated for cause on or about September 3, 2015.
 - b. Chesapeake Life reported that, between March 21, 2014, and May 3, 2015, Respondent sold 145 Chesapeake Life Accident Companion policies in Kansas and Missouri, and that, of those 145 policies, 198 claims were submitted, with the average number of days from the effective date of the policy to the date of the first claim being 30 days.
 - c. Chesapeake Life reported that a majority of the claimants share the same address or have premiums drawn from the same bank account, have multiple claims, and have similar accident details.
 - d. Chesapeake Life reported that Respondent assisted in completing claims and faxed them to the company from his office.
 - e. Chesapeake Life reported that Respondent paid the initial premium for at least four policy holders.
 - f. Respondent was appointed as an agent of various Farmers Insurance Group companies from February and April 2013 until his appointments were terminated for “embezzlement” effective October 2, 2015.
 - g. Per a July 2015 Farmers review, Respondent credited 38 cash premium payments totaling \$2,560 but failed to deposit the payments in the Farmers account, and was unable to account for an additional \$170 in premium receipts during a cash count at his office on August 20, 2015.
5. KID sent Respondent a letter on December 18, 2015, inviting Respondent to reply in writing if he disputed any of the alleged facts.
6. Respondent replied by electronic mail asserting that he was an honest person and that Chesapeake Life had been "doing a RED line" on his clients and denying legitimate claims.

7. Respondent further disputed details such as the precise effective date of his termination by Chesapeake Life and the precise number of policies and related claims, and he attributed the company's allegations regarding payment on behalf of customers and submitting claims from his office as good customer service.
8. Additionally, Respondent acknowledged that he had difficulty depositing premium payments to Farmers in a timely fashion but that he had eventually paid through folio deductions.
9. Respondent testified that many of the Chesapeake Life claimants shared similar characteristics because it was common practice for Respondent to insure all members of the same household.
10. Ryan Summy, Farmers Investigation Specialist, testified that Respondent had received 32 notices of failure to deposit premiums, and as a result of the notices, Farmers opened an investigation regarding Respondent's accounting practices.
11. Further, Respondent specified that he was terminated by Farmers for, what Respondent called, "not promptly depositing claims."
12. Respondent employed two female employees, Ranika Hall and Raeisha Morgan.
13. Respondent stated that Ranika Hill did not work with Respondent until Respondent's Chesapeake appointment, on or about July 2014.
14. Respondent testified that Raeisha Morgan's job was to answer phones, and that Ranika Hall handled money and collected premium payments for Respondent on several occasions.
15. Respondent specified that both Raeisha Morgan and Ranika Hall told Respondent that they did not have a criminal history
16. During Ranika Hall's employment with Respondent, Ms. Hall was caught using a fake ID to cash a Chesapeake Life check made out to another individual.
17. Respondent testified that while he did not write excess lines policies, he had "handled a bunch of excess lines" in the past.
18. Respondent then stated that he often financed the excess lines coverage himself by paying the money to the company and then reminding the insured to make the necessary payments.

19. Respondent referred El Potrero Bar & Grill Inc. to Nautilus Insurance Company and was able to secure a Commercial General Liability policy for El Potrero via Chris Leaf General Agency.
20. Respondent testified, and records verify, that he received two checks from El Potrero totaling \$5,189.76.
21. Each check from El Potrero was made out to Respondent, and each check was endorsed by Respondent.
22. The \$5,189.76 received by Respondent represented El Potrero's entire years' worth of premium payments for the GCL policy.
23. During cross-examination by Respondent's attorney, Respondent testified that it is customary, with excess lines, to give the check for the premiums directly to the general agent of the insuring company.
24. Respondent then deposited the checks given to him by El Potrero into an agency account owned and operated by Respondent.
25. Respondent then stated that the agency account is only for those premiums that Respondent has collected, but later admitted that it would be possible for Respondent to use the account for other purposes.
26. At no point did Respondent give El Potrero's checks for the premiums to the general agent or the insurance company.
27. After receiving the years' premiums, Respondent then suggested the owners of El Potrero sign a financing agreement.
28. During cross-examination, Respondent stated the reason for getting a financing statement, in addition to the years' premiums up front, was to protect Respondent in case the insureds "bailed".
29. Chris Peterson, on behalf of Chris Leaf General Agency, testified that, in his opinion, it would be unnecessary for an agent to obtain a financing agreement from the consumer if the consumer had already paid the premium to the agent.
30. On January 22, 2016, El Potrero's coverage was cancelled.

31. On April 22, 2016, El Potrero was issued a new policy.
32. Respondent admitted under cross-examination that El Potrero was not covered for a period of 2 months even though El Potrero had paid in full and the entire years' premium was in Respondent's agency account.

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:
 - (4) Improperly withheld, misappropriated or converted any moneys or properties received in the course of doing business. . . .
 - (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.”
2. K.S.A. 40-4909(b) – “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.”

Policy Reasons

Before issuing an insurance agents 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 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 finds that the allegations set forth in the Summary Order are substantially accurate. This conclusion is based on the recorded and testimonial evidence, including that of Mr. Bywaters.

Conclusions of Law

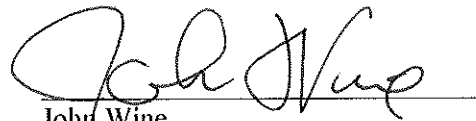
1. Pursuant to K.S.A. 40-4909(a)(4), the Commissioner finds that action may be taken against Respondent's license to because Respondent improperly withheld funds paid to Respondent as insurance premiums and belonging to a consumer and insurance company.

2. Pursuant to K.S.A. 40-4909(a)(8) , the Commissioner finds that action may be taken against Respondent's license because Respondent has either engaged in dishonest conduct or demonstrated incompetence or untrustworthiness by allowing a consumer's insurance policy to lapse for nonpayment even though the consumer had paid premiums for a full year.
3. Pursuant to K.S.A. 40-4909(b), the insurable interests of the public are not properly served under Respondent's license.

For the above-stated reasons, the Respondent's Kansas Resident Insurance Agent's License is hereby **REVOKED**, and Respondent shall **CEASE AND DESIST** from the sale, solicitation, or negotiation of insurance, and/or compensation deriving from the sale, solicitation, or negotiation of insurance in the state of Kansas or on Kansas risks through business conducted on or after the effective date of this order. The Commissioner shall retain jurisdiction over this matter to issue any Order(s) deemed necessary.

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

IT IS SO ORDERED THIS 2nd DAY OF June, 2016, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



John Wine
Assistant Commissioner
Hearing Officer



Insurance Department is:

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

Diane Minear, General Counsel
Kansas Insurance Department
420 SW 9th Street
Topeka, KS 66612

Certificate of Service

I hereby certify that I served a true and correct copy of the above-and foregoing Final Order upon Respondent by causing a copy of the same to be deposited in the United States mail, first class postage prepaid, on the 2nd day of June 2016, addressed to the following:

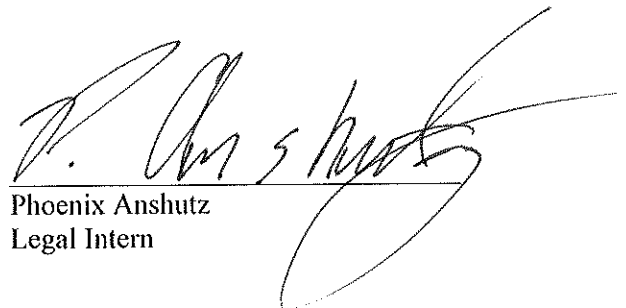
Tiffannie M. Kennedy
KENNEDY LAW FIRM, LLC
One Town Square
Kansas City, MO 64116
Attorney for Respondent

And pursuant to K.S.A. 77-531, with an additional copy to the following:

Salomino E. Bywaters
108 N. Normandy St.
Olathe, KS 66061-3855

And hand-delivered to the following:

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


Phoenix Anshutz
Legal Intern