

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

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

**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 resident insurance agent's license of SALOMINO E. BYWATERS ("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 February 4, 2013, and has been continuously so licensed.
4. Respondent's legal address of record is in Olathe, Kansas, and his mailing address of record is 108 N. Normandy Street, Olathe, KS 66061-3855.
5. 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.
6. 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 effective date of the policy to the date of the first claim of 30 days.
7. Chesapeake Life reported that the majority of the claimants share the same address or have premium drawn from the same bank account, have multiple claims, and have similar accident details.
8. Chesapeake Life reported that Respondent assisted in completing the claims and faxed them to the company from his office.
9. Chesapeake Life reported that Respondent paid the initial premium for at least four policy holders.

10. 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.

11. According to a July 2015 Farmers review, Respondent credited 38 cash premium payments totaling \$2560 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

12. By letter of December 18, 2015, counsel for KID invited Respondent to reply in writing if he disputed the statements of fact set out above.

13. 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.

14. 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 consumers and submitting claims from his office to good customer service.

15. Respondent acknowledged that he had difficulty depositing premium payments to Farmers in a timely manner but had eventually paid through folio deductions.

16. The Commissioner finds that the documentary evidence provided by Chesapeake Life supports a finding that Respondent engaged in a pattern of selling Accident Companion policies to consumers who purchased them for the purpose of making fraudulent or abusive claims, and Respondent assisted in submission of the claims.

17. In the alternative, accepting Respondent's assertions as true, the Commissioner finds that the evidence supports a finding that Respondent demonstrated a lack of competence and trustworthiness in the conduct of Chesapeake Life business.

18. The Commissioner finds that the documentary evidence provided by Farmers, including Respondent's own statement, reflects that Respondent repeatedly failed to make timely payment of premium to Farmers.

**Applicable Law**

19. 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. . . .

(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).

20. 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).

21. 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).

22. "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).

23. "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 or any business entity represented by such person who is the party to the matters giving rise to the hearing. As used in this subsection, "costs" shall include witness fees, mileage allowances, any costs associated with the reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing." K.S.A. 2014 Supp. 40-4909(f).

### **Conclusions of Law**

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

25. The Commissioner finds that action may be taken against Respondent's license pursuant to K.S.A. 40-4909(a)(4) because Respondent improperly withheld funds paid to Respondent as insurance premium and belonging to an insurance company.

26. The Commissioner finds that action may be taken against Respondent's license pursuant to K.S.A. 40-4909(a)(8) because Respondent has either engaged in dishonest conduct or demonstrated incompetence and a lack of trustworthiness by selling a large number of insurance policies to a small circle of consumers who, with Respondent's assistance, repeatedly submitted fraudulent claims.

27. 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.

28. 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.

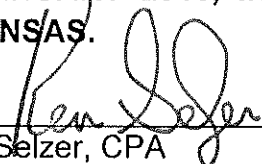
**Policy to be Served**

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 resident insurance agent's license of **SALOMINO E. BYWATERS** is hereby **REVOKED**, and **SALOMINO E. BYWATERS** 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 27th DAY OF JANUARY 2016, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



  
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Ken Selzer, CPA  
Commissioner of Insurance

BY:  
  
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John Wine  
Assistant Commissioner

**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, 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.

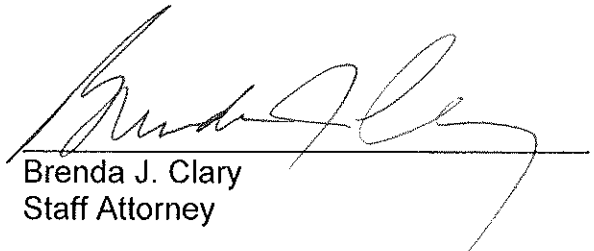
If a hearing is not requested in the time and manner stated above, this Summary Order shall become effective as a Final Order upon the expiration of time for requesting a hearing. In the event Respondent files a Petition for Judicial Review, pursuant to K.S.A. 77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is

Diane Minear, 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 21<sup>st</sup> day of January 2016 by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

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

  
Brenda J. Clary  
Staff Attorney