

OCT 05 2016

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

In the Matter of the Kansas Resident )  
Insurance Agent's License of )  
**BRETT J. THUMANN,** ) Docket No. 4918--SO  
NPN 17499221. )

**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 Brett J. Thumann ("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 24, 2015, and has been continuously so licensed to date.
4. Respondent's legal address and mailing address of record is 1514 L Street, Belleville, KS 66935-3031.
5. Respondent was employed as an agent for the Scott Ausherman Agency until his employment was terminated on or about August 1, 2016.
6. Through the agency affiliation, Respondent was appointed as an agent of American Family property and casualty insurance companies and Western Surety Company.
7. The agency reported to KID that Respondent received a total of over \$3000 in premium from consumers and converted it to his personal use rather than depositing it for payment to the insurance company
8. By letter of September 13, 2016, counsel for KID invited Respondent to reply in writing by the close of business on September 26, 2016, if he disputed the statements of fact as set out above.
9. To date, Respondent has not replied; thus, the facts are deemed undisputed.

### Applicable Law

10. 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. . . . [and/or]

(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. 2015 Supp. 40-4909(a).

11. 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. 2015 Supp. 40-4909(b).

12. 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. 2015 Supp. 40-4909(g).

13. "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. 2015 Supp. 40-4909(c).

14. "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. 2015 Supp. 40-4909(f).

### Conclusions of Law

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

16. The Commissioner finds that action may be taken against Respondent's license pursuant to K.S.A. 40-4909(a)(4) because Respondent received premium funds from consumers and failed to deposit them to be forwarded to the company.

17. The Commissioner finds that action may be taken against Respondent's license pursuant to K.S.A. 40-4909(a)(8) because Respondent has used a dishonest practice and/or demonstrated incompetence and a lack of trustworthiness by the same conduct.

18. 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.

19. 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 **BRETT J. THUMANN** is hereby **REVOKED**, and **BRETT J. THUMANN** 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 5<sup>th</sup> DAY OF OCTOBER 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.

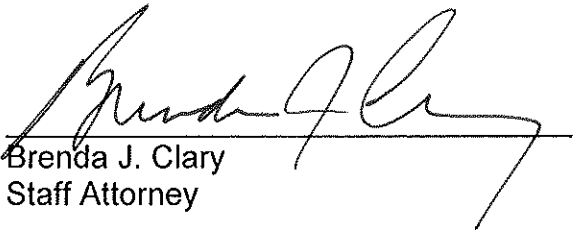
In the event Respondent files a Petition for Judicial Review, pursuant to K.S.A. 77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is

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 6<sup>th</sup> day of October 2016 by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Brett J. Thumann  
1514 L. Street  
Belleville, KS 66935-3031

  
Brenda J. Clary  
Staff Attorney