

5. The Presiding Officer is the Assistant Commissioner of Insurance acting on behalf of the Commissioner of Insurance as the agency head as permitted in K.S.A. 77-547.
6. [REDACTED]
[REDACTED]: March 18, 1991, U.S. District Court (KS), Case No. 91-20001-01, Defrauding a Financial Institution (felony).
7. Applicant testified that the crime occurred 27 years ago, that he accepted full responsibility and plead guilty, that he served 16 months in federal prison, that he repaid the money he took, and that he recognizes the seriousness of his crime and remains remorseful.
8. Applicant stated that he had been gainfully employed after his release from prison and that he has not violated the law on any other occasion.
9. Applicant testified that he is employed at Kansas Secured Title as a title examiner. He stated that he is not a closing officer and has no contact with financial transactions.
10. Applicant presented an affidavit from David Scott and called him to testify as a character witness. Mr. Scott testified that Applicant's work is stellar and that he is trustworthy.
11. Applicant presented a letter from Michelle Coffey, Director of Residential Title Production at Kansas Secured Title. She wrote that Applicant is a valuable employee and is an active contributor to community groups.
12. Nancy Strasburg, Assistant Director of the Producer Licensing Division at KID, testified that Applicant's 1033 application was denied because the crime was one of dishonesty.
13. Counsel for KID pointed out stated that although Applicant does not have access to money in his current position, he may in the future.

Applicable Law

14. Before granting an application for a Kansas resident insurance agent's license, the Commissioner has the statutory obligation to "determine that the applicant . . . has not committed any act that is grounds for denial pursuant to this section or suspension or revocation pursuant to K.S.A. 40-4909 and amendments thereto." K.S.A. 40-4905(b)(2).

15. The Commissioner may revoke, suspend, or deny the license of a person who has:

[p]rovided incorrect, misleading, incomplete or untrue information in the license application . . . [b]een convicted of a misdemeanor or felony . . . and/or [u]sed 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. 40-4909(a)(6) and (8).

16. 18 U.S.C. §1033(e)(1)(A) provides, in relevant part:

Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both. 18 U.S.C. §1033(e)(1)(A).

17. U.S.C. §1033(e)(2) provides, in relevant part:

A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection. U.S.C. §1033(e)(2).

18. In exercising his discretion, the Commissioner should take guidance from the nonexclusive list of factors set out in K.S.A. 72-1397(b) to be considered by the Kansas State Board of Education. Those factors are:

- The nature and seriousness of the offense or act;
- The conduct of the person subsequent to commission of the offense or act;

- The time elapsed since the commission of the offense or act;
- The age of the person at the time of the offense or act;
- Whether the offense or act was an isolated or recurring incident; and
- Discharge from probation, pardon or expungement.” K.S.A. 72-1397(c)(1)-(6).

The statutory factors are similar to the factors considered by other licensing authorities such as for medicine and law. The Kansas Supreme Court held that the same factors applied in considering reinstatement to practice law were equally relevant to the practice of medicine. *Vakas v. Kansas Bd. of Healing Arts*, 248 Kan. 589, 600, 808 P.2d 1355, 1364 (1991). In *Vakas*, the Court stated:

The factors include: (1) the present moral fitness of the petitioner, (2) the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought to the profession, (3) the extent of petitioner’s rehabilitation, (4) the seriousness of the original misconduct, (5) conduct subsequent to discipline, (6) the time which has elapsed since the original discipline, (7) the petitioner’s character, maturity, and experience at the time of the disbarment, and (8) the petitioner’s present competence in legal skills. *Vakas*, 248 Kan. at 600, quoting *State v. Russo*, 230 Kan. 5, 12, 630 P.2d 711 (1981).

These same factors are relevant to guide the Commissioner in determining whether an applicant should be granted or denied a license after conviction of a crime.

19. Pursuant to K.S.A. 77-526(a), the Assistant Commissioner of Insurance acting on behalf of the Commissioner of Insurance as the agency head, as provided in K.S.A. 77-547, is empowered to render a Final Order.

Policy Reasons

20. Before issuing a Kansas resident 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)(2). 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.

Conclusions of Law

21. The Commissioner has jurisdiction over Applicant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
22. The Assistant Commissioner of Insurance is acting on behalf of the Commissioner of Insurance as the agency head and is empowered to render a Final Order.
23. Applicant could be denied a license pursuant to K.S.A. 40-4909(a)(6) because he has been convicted of a felony.
24. Applicant's conviction of defrauding a financial institution in 1991 is a felony involving dishonesty or a breach of trust within the meaning of 18 U.S.C. §1033(e)(1)(A).
25. Accordingly, Applicant cannot engage in the business of insurance without the written consent of the Commissioner pursuant to 18 U.S.C. §1033(e)(2).
26. The Commissioner has discretion to find that the circumstances do not require denial of the license and to grant the written consent required by 18 U.S.C. §1033(e)(2).
27. The Commissioner has considered the *Vakas* factors most favorable to Applicant, specifically that Applicant admitted the crime and pleaded guilty, he paid his debt by serving a prison sentence, he committed the crime 27 years ago when he was a young man, he has had no other violations of the law, he has a good work record, he has served the community, and he recognizes the wrongfulness of his actions and is remorseful.

28. The Commissioner has also considered the *Vakas* factors that weigh most heavily against Applicant, chiefly the nature of the offense.

29. The Commissioner has concluded that conditions can be imposed such that Applicant does not pose a danger to the public, if he is granted a Kansas resident insurance agent's license.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

30. Pursuant to 18 U.S.C. §1033(e)(2), Richard T. Schaeffer may engage in the business of insurance as a title examiner, and only in such capacity, subject to the terms and conditions of this Order, which terms and conditions are necessary and sufficient to ensure that Applicant engages in the business of insurance in a manner that is not reasonably likely to cause harm to the public, policyholders, or the industry.

31. This written consent is conditioned upon Richard T. Schaffer remaining in the same or similar job as a title examiner with the same duties and shall not be involved in closings or manage escrow accounts. A change in job duties will necessitate the filing of a new request for written consent.

32. In the event that Richard T. Schaffer has assumed significantly different job duties and has not so informed KID or violates any conditions of the Order, this consent shall immediately terminate.

33. Richard T. Schaffer shall pay investigative and hearing costs in the amount of \$500.00.

34. Applicant shall maintain supervision by a licensed Kansas resident agent in good standing.

35. Applicant shall not act as a title examiner or work in the business of insurance until such time as he has paid the investigative and hearing costs and the supervisor has filed written notice that he or she will supervise Applicant and will report any misconduct of applicant. This notice and any reports should be addressed to Steven M. Lehwald, KID Staff Attorney.
36. Any report of misconduct or violation of this order by any person or entity will result in immediate suspension of Applicant's license pending a hearing on the merits of the report, which shall be scheduled within 30 days of the effective date of any suspension order.
37. Effective on the date of this Order, Applicant shall report within seven (7) calendar days any event required by K.A.R. 40-7-9 to be reported to KID.
38. Licensee shall disclose the existence of this order to any company or licensing authority as a disciplinary action involving the license.
39. The KID shall issue a Kansas resident insurance agent license to Richard T. Schaffer upon receipt of costs and written notice of supervisor.

IT IS SO ORDERED THIS 22nd DAY OF DECEMBER 2017, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



Ken Selzer, CPA
Commissioner of Insurance

BY:



Clark Shultz
Assistant Commissioner
Hearing Officer

NOTICE

Pursuant to K.S.A. 77-601 *et seq.*, Applicant 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 Applicant 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 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 Applicant by causing a copy of the same to be deposited in the United States mail, first class postage prepaid, on the 22nd day of December 2017, addressed to the following:

Richard T. Schaeffer
2877 SW College Ct.
Topeka, KS 66611-1659
Applicant

and hand-delivered to the following:

Steven M. Lehwald
Staff Attorney
Kansas Insurance Department
420 S.W. 9th Street
Topeka, KS 66612-1678
Counsel for the Kansas Insurance Department


Licia Haverkamp
Administrative Assistant