

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

In the Matter of the Application for a)	
Kansas Resident Insurance Agent's)	
License of THOMAS L. MCKINNEY,)	Docket No.: 5024-SO
NPN 8165308)	

FINAL ORDER

(Pursuant to K.S.A. 40-4909 and K.S.A. 77-501 *et seq.*)

This matter came on for formal disposition on August 31, 2017. Thomas L. McKinney ("Respondent") appeared in person and by Phil Stein. The Kansas Insurance Department ("KID") appeared by and through its staff attorney, Steven M. Lehwald.

Having considered the evidence and arguments of the parties, the Commissioner finds the evidence supports KID'S revocation of the agent license of Respondent, Thomas L. McKinney.

Findings of Fact

1. Respondent was licensed as a Kansas resident insurance agent on November 1, 2004, and remains licensed to date.
2. Respondent's legal (residential) and mailing address of record is 20095 W. 108th St., Olathe, KS 66061.
3. In March 2017, investigators with the Olathe Police Department notified the KID Anti-Fraud division that they received information about possible identity theft involving Respondent.

4. Upon investigation, it was determined that Respondent made twelve unauthorized payments of his own bills and mortgage from September 2016 through February 2017 from a client's bank account.
5. A criminal case is pending in Johnson County, Kansas based on these payments.
6. Respondent testified that when paying his personal bills, he accidentally picked up the client's check instead of his own check and recorded the client's account number. Respondent admitted that his action was careless.
7. Further, Respondent admitted that he realized in February 2017 that the account he had used to pay his bills did not belong to him, but he used the account again to make a mortgage payment. Respondent testified that he recognized his action was wrong and that he is extremely remorseful.
8. In support of his request for leniency, Respondent testified that he had been a successful, award winning insurance agent for twelve years; that he had no prior criminal record; that at the time of the malfeasance, he was under a great deal of stress because of the needs of his severely autistic son; that he had taken action to make sure the problem did not occur in the future; that he had made restitution; that he had undergone individual and marital counseling; and that a psychological evaluation concluded he had no personality disorder.
9. Counsel for KID noted that the crime involved theft from a client and was a felony.

Applicable Law

10. Pursuant to 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 Respondent or license holder has:

- a. (2) Violated:
 - (A) Any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation promulgated thereunder;
- b. (8) Use of any fraudulent, coercive, or dishonest practice, or demonstrating any incompetence, untrustworthiness or financial irresponsibility in the conduct of business.” K.S.A. 40-4909(a)

11. 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:

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

The statutory factors are similar to the factors considered by 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).

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 a Respondent should be granted or denied a license after conviction of a crime.

12. 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.

Conclusions of Law

13. The Commissioner has jurisdiction over Respondent as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
14. 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.
15. The Assistant Commissioner has considered the *Vakas* factors most favorable to Respondent, specifically that Respondent has made restitution, has undergone counseling, and is remorseful. The Assistant Commissioner is especially sympathetic regarding the challenges Respondent faces in caring for his son.
16. The Assistant Commissioner has also considered the *Vakas* factors that weigh most heavily against Respondent, chiefly that the behavior of Respondent stretched over a six-month period, it occurred recently, it involved taking a client's money, Respondent was a mature adult with experience in the insurance industry, and a criminal case is pending. The early withdrawals were negligent, at the least, and the February withdrawal was deliberate. The Commissioner has concluded that it is necessary to revoke Respondent's license in order to protect the public and the insurance industry.

Policy Reasons

17. It is in the public interest that the license of an agent who has demonstrated he or she has used any fraudulent or dishonest practice or demonstrated any incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere be revoked.

Conclusions of Law

18. The Commissioner has jurisdiction over **THOMAS L. MCKINNEY** as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

19. The Commissioner finds that Respondent's Kansas license may be revoked because **THOMAS L. MCKINNEY** has used a fraudulent and dishonest act or has demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state.

20. The Commissioner finds, pursuant to K.S.A. 40-4909(b), that the interests of the public are not properly served under Respondent's license.

21. Accordingly, the Commissioner concludes that sufficient grounds exist for the revocation of the insurance agent's license of **THOMAS L. MCKINNEY**, pursuant to K.S.A. 40-4909(a) and (b).

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

22. The Kansas resident insurance agent's license of **THOMAS L. MCKINNEY** is hereby **REVOKED** the effective date of this Order.

23. **IT IS FURTHER ORDERED** that **THOMAS L. MCKINNEY** shall **CEASE** and **DESIST** from the sale, solicitation or negotiation of insurance and/or receiving

compensation deriving from the sale, solicitation or negotiation of insurance conducted after the effective date of this Order.

IT IS SO ORDERED THIS 2nd DAY OF October, 2017, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



Ken Selzer, CPA
Commissioner of Insurance

BY:


Clark Shultz
Assistant Commissioner

NOTICE

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 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 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 ~~September~~ October 2017, addressed to the following:

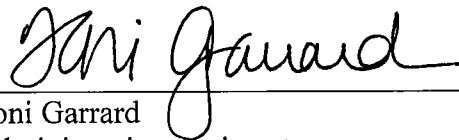
Thomas L. McKinney
20095 W 108th St.
Olathe, KS 66061-3125

and

Phil Stein
Rokusek Stein Law, LLC
11658 W. 75th St.
Shawnee, KS 66214
Attorney for Respondent

and hand-delivered to the following:

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

A handwritten signature in cursive script that reads "Toni Garrard". The signature is written in black ink and is positioned above a horizontal line.

Toni Garrard
Administrative Assistant