

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

| | | |
|-----------------------------------------------|---|-------------------------|
| In the Matter of the Application for a |) | |
| Kansas Resident Insurance Agent’s |) | Docket No. 79101 |
| License of RYAN G. ADAIR |) | |
| NPN #19178688 |) | |

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

The Presiding Officer called this matter for a prehearing conference on August 28, 2019. Ryan G. Adair (“Applicant”) appeared *pro se* and the Kansas Insurance Department (the “Department”) appeared by and through its staff attorney, Steven M. Lehwald. Applicant did not dispute the facts alleged by the Department or the applicable law but wanted to present mitigating evidence for consideration by the Presiding Officer. The Applicant and the Department consented to converting the prehearing conference to an evidentiary hearing. The witnesses were placed under oath and an evidentiary hearing was conducted.

Having reviewed Applicant’s application and having considered the arguments of the parties, the Commissioner finds the evidence supports the Department’s denial of Applicant’s application and affirms the staff decision.

Findings of Fact

1. Applicant, a resident of Johnson County, Kansas, submitted an application for a Kansas resident individual insurance agent license on June 7, 2019.
2. Applicant submitted his application online.
3. As part of the online application, a pop-up notification appears before the applicant proceeds to background questions. It states, in part:

“Please review the background question tab carefully and thoroughly. An incorrect or inaccurate response to a background question may result

in delay in your application and/or ultimately a denial of license. Please note that the FBI/KBI background check used by the Kansas Insurance Department may reveal misdemeanor and felony convictions that may not appear on other background checks. This includes those which may have been expunged or for which a diversion was received.” [Emphasis added.]

4. The pop-up notification requires the Applicant to affirmatively acknowledge reading the notification, which states:

“Click here to acknowledge that you read, understand and agree to the information on this page. Then click “continue.”

5. The Applicant is not able to proceed to the background questions until clicking on the acknowledgement box.

6. Background question 1a under item 38 of the application asks:

Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?

7. Applicant answered “no.”

8. At the end of the application, the Applicant signed the Applicant’s Certification and Attestation portion of the application which states, in part:

The Applicant must read the following very carefully:

I hereby certify that, ***under penalty of perjury***, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license [Emphasis added.]

9. As part of the application process, an applicant must be fingerprinted for purposes of a background check and sign a fingerprint waiver agreement. On the waiver signed by the Applicant on June 11, 2019 (four days after submitting his online application to the Department), the Applicant disclosed a 2017 disorderly conduct conviction.

10. The application requires that a written statement explaining the circumstances of any misdemeanor or felony conviction, along with the charging document and an official document showing the resolution of the charges, be included with the application.
11. The Department notified Applicant by letter dated June 28, 2019, that the application was missing documents and not complete.
12. Applicant provided the necessary documents on July 10, 2019, which showed the following conviction:

April 13, 2017, Johnson County District Court, Case No. 16DV00993, Disorderly Conduct (Misdemeanor).
13. By letter dated July 15, 2019, Department licensing staff notified Applicant that his application was denied pursuant to K.S.A. 40-4909(a)(1), based on Applicant's failure to provide complete and accurate information required by the Application, and K.S.A. 40-4909(a)(6) based on Applicant's conviction.
14. Applicant filed a timely request for a hearing.
15. At the evidentiary hearing, the Applicant reported that he believed the question regarding misdemeanors or felonies required disclosure of only convictions related to the insurance industry. Applicant stated that he had worked previously in the financial industry and on background questions was only required to disclose convictions specific to the financial industry.
16. When asked whether he remembered the pop-up notification regarding background questions, Applicant stated that he did not.
17. The Applicant indicated he completed his application the day he passed his insurance agent exam and was very excited. He indicated he probably should have spent more time completing the application.

18. With regard to the conviction, the Applicant indicated he was living with his girlfriend and she had been hurt “by accident.” Applicant stated that an intoxicated friend thought that something had occurred and called the police. Applicant was originally charged with domestic battery; however, the charge was subsequently amended to disorderly conduct to which the Applicant pleaded guilty.
19. The Applicant was vague when asked the details underlying the “accident” which caused his girlfriend to be hurt. He stated only that he was “in the wrong place at the wrong time.” He blamed his intoxicated friend for reporting the situation to police, and indicated the friend has sought counseling for his drinking. He stated he has forgiven his friend for calling the police and causing his subsequent arrest.
20. Applicant had a witness, his current boss, testify on his behalf. The witness testified he had known the Applicant for 90 days and knew about the conviction. He testified the Applicant had a great attitude, good work ethic, and had a promising future in the insurance industry. He believed the Applicant did not intentionally fail to disclose the misdemeanor conviction on the application. He assisted the Applicant with the online application but testified he did not remember the pop-up box. The Witness acknowledged that he understood the requirement to disclose misdemeanor and felony convictions to mean *any* convictions and not just those relating to the business of selling insurance.
21. On cross-examination, counsel for the Department asked the Applicant why he pleaded guilty to a disorderly conduct charge if he had not done anything wrong when he was charged with domestic battery. The Applicant stated that his lawyer had told him that the prosecuting county took a strong stance on such charges and would not drop the case. He

indicated his then-girlfriend (the victim) stood by him during the ordeal. He opted to plead guilty to disorderly conduct on the advice of his counsel.

22. Counsel for the Department asked the Presiding Officer to take into account that agents must be precise and complete in filling out applications for insurance coverage. The failure of Applicant to disclose the misdemeanor charge indicates either that he was trying to not disclose it, that he did not pay attention to or follow instruction correctly, or that he was not accurate when working quickly or under pressure.
23. Counsel for the Department also asked the Presiding Officer to consider the circumstances surrounding the conviction itself by applying the factors set forth by Kansas Supreme Court in its decision in *In re Gates*, 273 Kan. 1025 (2002).

Applicable Law

24. 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.
25. Before approving 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.
26. Pursuant to K.S.A. 40-4909(a)(6), the Commissioner may deny, suspend, revoke or refuse renewal of the license of a person who has "been convicted of a misdemeanor or felony.
27. Pursuant to K.S.A. 40-4909(a)(1), the Commissioner may deny, suspend, revoke or refuse renewal of the license of a person who has provided incorrect, misleading, incomplete or untrue information in the license application.

28. The Kansas Supreme Court has not had occasion to discuss the factors the Commissioner should consider when exercising his or her discretion under K.S.A. 40-4909(a)(6). However, the Court has reviewed the denial of an application for a real estate license by the Kansas Real Estate Commission. See *In re Gates*, 273 Kan. 1025 (2002). The court noted that the rules adopted by the Kansas Supreme Court for the admission of attorneys are akin to the determination of whether a real estate license application should be granted or denied. The factors to be considered are:

1. the applicant's age at the time of the conduct;
2. the recency of the conduct;
3. the reliability of the information concerning the conduct;
4. the seriousness of the conduct;
5. the factors underlying the conduct;
6. the cumulative effect of the conduct of information;
7. evidence of rehabilitation;
8. the applicant's social contributions since the conduct;
9. candor in the admissions process; and
10. materiality of any omissions or misrepresentations.

28. The Commissioner considers the direction given on the exercise of discretion in determining whether a real estate license should be granted or denied to be applicable in the consideration of granting insurance agent licenses.

Findings of Fact and Conclusions of Law

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

30. 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.

31. The Commissioner has considered the factors most favorable to Applicant, specifically that he testified he believed the question pertaining to convictions meant only convictions relating to the insurance industry, that he did disclose the conviction on the fingerprint

waiver and then, upon the Department's request, when he submitted the missing documents on July 10, 2019, that subsequent to his conviction he completed a college degree in business administration, that he has a good work ethic, and that he passed his insurance licensing exam on his first attempt.

32. The Commissioner has considered the factors that weigh most heavily against Applicant. These include, that the disorderly conduct conviction should have been disclosed on the application, that the Applicant had specific notice from the online pop-up that care should be taken in completion of the background questions, that the conviction occurred only two years prior to his application, that the Applicant was vague about the circumstances surrounding the conduct leading to the conviction, and that the Applicant did not express remorse or take accountability for his conduct but instead blamed the situation on the misunderstanding of an intoxicated friend. Furthermore, The Presiding Officer found that the Applicant lacked candor in his testimony in the hearing by providing vague answers to questions regarding his actions giving rise to the domestic battery charge and why he ultimately pleaded guilty to disorderly conduct. Further, absent the Applicant taking accountability for his conduct there cannot be a determination of rehabilitation.

Finding and Order

Pursuant to K.S.A. 40-4909(a)(6), the Commissioner finds that the factors favorable to the Applicant are outweighed by the factors unfavorable to the Applicant. Moreover, the evidence indicates the Applicant either intended to conceal the conviction, did not exercise care in completing the application, or did not understand the seriousness of certifying under penalty of perjury to the truth of statements, which were not true. Therefore, the Commissioner has concluded that it is not in the interest of the public to issue an agent license to Applicant at this time.

THE COMMISSIONER OF INSURANCE THEREFORE ORDERS IT THAT:

1. Denial of Applicant's application for a Kansas resident insurance agent's is AFFIRMED.
2. Pursuant to K.S.A. 77-415(b)(2)(A), this order is designated by the Department as precedent.

IT IS SO ORDERED THIS 12th DAY OF SEPTEMBER 2019, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



VICKI SCHMIDT
COMMISSIONER OF INSURANCE

BY: Barbara W. Rankin
Barbara W. Rankin
Assistant Commissioner
Presiding 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:

Justin L. McFarland, 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 12th day of September 2019, addressed to the following:

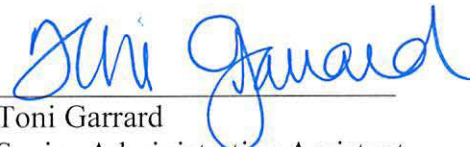
Ryan G. Adair

[REDACTED]
Overland Park, KS [REDACTED]

Applicant

and hand-delivered to the following:

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



Toni Garrard

Senior Administrative Assistant