

**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. 81590
License of MARISSA M. MARTINEZ,)	
NPN# 19354684)	

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

The Presiding Officer called this matter for hearing on March 19, 2020. Marissa M. Martinez (“Applicant”) appeared *pro se* via conference call, and the Kansas Insurance Department (the “Department”) appeared by and through its General Counsel, Justin L. McFarland. 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.

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 Salina, Kansas, submitted an application for a Kansas resident insurance agent license on November 25, 2019. Applicant’s fingerprint card and waiver were received on November 12, 2019.
2. Applicant submitted her 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.]

The pop up notification also specifically advises:

Also note that *convictions or pending charges of driving without required vehicle liability insurance are not “traffic offenses” which may be excluded from disclosure. Any convictions or pending charges of driving without required vehicle liability insurance are required to be disclosed.*” (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?”

Applicant answered “no.”

7. 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.]

8. As part of the application process an applicant must be fingerprinted for purposes of a background check and sign a fingerprint waiver agreement.

9. 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.

10. The Department notified Applicant by letter dated December 12, 2019, that the application was missing documents and not complete.

11. Applicant provided the necessary documents on December 17, 2019, which showed the following convictions:

May 12, 2009, Salina Municipal Court, Case No. 09TRI1822, Driving without Liability Insurance (Misdemeanor).

May 28, 2009, Salina Municipal Court, Case No. 09TRI2303, Driving without Liability Insurance (Misdemeanor).

September 1, 2009, Salina Municipal Court, Case No. 09TRI4982, Driving without Liability Insurance (Misdemeanor).

September 13, 2010, Saline County District Court, Case No. 10CR1046, Violation protective order from stalking (Misdemeanor).

November 27, 2012, Salina Municipal Court, Case No. 12TRI7860, Driving without Liability Insurance (Misdemeanor).

12. By letter dated December 27, 2019, Department licensing staff notified Applicant that her 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 convictions.

13. Applicant filed a timely request for a hearing.

14. At the evidentiary hearing, Applicant testified that she did not believe her convictions for driving without liability insurance were considered criminal misdemeanors and she did not remember the conviction for violating the protection order, or did not believe it was a criminal offense. She does not remember the pop-up box specifying the information required on the

application and did not intentionally omit the information. She has consistently maintained liability insurance since, and understands the seriousness of omitting the information.

15. Applicant testified that she was going through a hard time both personally and financially at the time of the convictions. She was a single mother and had prioritized working and getting her children to daycare over the risk of driving without liability insurance. She testified that the protection from stalking order and subsequent violation of that order was based on a bad relationship and immaturity. She testified that she separated herself from the people involved in the stalking order and has since been a responsible and productive member of her community.

16. Applicant testified that she is a mother of four, including one child with special needs, she is a full time student at Kansas Wesleyan University, going into her third year, and maintains a full time job. She is a productive member of her community and works hard to be a good person.

17. At the evidentiary hearing, Applicant's employer, licensed insurance agent James Judson testified on her behalf. Mr. Judson believes Ms. Martinez is hardworking, detail-oriented, trustworthy, diligent, kind, and an asset to his agency. He believes she contributes to his agency's success and is well-respected in the community. Mr. Judson believes that Ms. Martinez's omissions on her application were a simple oversight as a result of her putting her past behind her. Mr. Judson indicated that Applicant had passed the background check required by Farmers Insurance, and that she now carries more insurance than the state minimum for automobile liability. He wished to add that he "really believes in her."

18. Counsel for the Department asked the Presiding Officer to take into account that the Department requires candor and truthfulness when applicants complete licensing applications. In addition, the Department expects applicants to demonstrate that they have the ability to be precise and accurate in filling out applications for insurance coverage on behalf of consumers. The failure

to accurately and truthfully complete a licensing application creates a concern that the Applicant may not be accurate, precise and truthful in completing insurance applications for clients. Counsel stated that K.S.A. 40-4909 gives the Commissioner the discretion to deny applications based on the various reasons set forth in statute. Applicant marked “no” on her application despite her multiple misdemeanor convictions. Applicant had notice that she needed to read and review the background questions carefully.

19. Applicant acknowledged that she violated the statute when she answered “no” to question 1a. She stated that she made an honest mistake and did not intentionally mislead the Department. She wishes for the Presiding Officer to take into account how she has lived her life for the past 8-10 years and how she is providing for her family.

Applicable Law

20. 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.

21. 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.

22. 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.

23. 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”.

24. 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.

25. 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

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

27. The Assistant Commissioner of Insurance, as the Presiding Officer, is acting on behalf of the Commissioner of Insurance as the agency head and is empowered to render a Final Order.

28. The Commissioner has considered the factors most favorable to Applicant. Specifically that Applicant testified that she did not realize that her multiple misdemeanor convictions were considered to be criminal convictions. The convictions are from 2009-2012 and this process revealed no recent legal actions. Applicant was only 23 years old at the time of the most recent

conviction and there is no evidence that she has had any interaction with law enforcement since that time. Applicant promptly provided the requested documentation regarding the misdemeanors after being notified by the Department. Applicant is a full time student as well as full time employee, and is also a mother to four children, including one with special needs. Additionally, Applicant's employer testified on her behalf that she is well-regarded in her workplace and community.

29. There are separate and distinct actions by the Applicant which must be reviewed by the Commissioner in considering the factors that weigh most heavily against the Applicant. One type of action is the multiple misdemeanor convictions themselves, and the other is the Applicant's failure to honestly and accurately complete the background section of the application.

30. With regard to the misdemeanor charges, the factors that weigh against the Applicant include that there were four separate instances of driving without liability insurance as well as the serious nature of the violation of protection from stalking order. As a potential insurance producer, it is imperative that the Applicant can demonstrate financial responsibility and also understand the obligation to carry liability insurance in order to protect other drivers and the public. In regard to violating the protection from stalking order, the nature of the misdemeanor creates concern that the Applicant may have a problem with anger or personal boundaries.

31. The misconduct which is of most concern to the Commissioner is the Applicant's failure to disclose the misdemeanor convictions on her application. Such nondisclosure is taken very seriously by the Commissioner. The Applicant had specific notice from the online pop-up that care should be taken in completion of the background questions, and that disclosure of a misdemeanor conviction is required.

32. Applicant's testimony that she did not understand the misdemeanors constituted criminal convictions is not credible. Some of the charges were adjudicated before a judge and she was given a suspended jail sentence and fine. It cannot be equated with something less than a misdemeanor, such as a parking ticket or traffic citation.

33. Applicants are specifically directed in the pop-up to contact the Producer Licensing Division if they have questions about answering background questions. Nothing in the record indicates she pursued this option. Finally, the Applicant certified under penalty of perjury that all of the information submitted in her application was true and complete.

34. Because the Department has been faced with increasing incidences of license applicants failing to disclose prior misdemeanor and felony convictions, it implemented changes to the online application process specifically designed to alert applicants of the need to exercise care in completing the background questions. Failure to give proper attention to the guidance and warnings in the pop-up has a direct bearing, in the opinion of the Commissioner, on whether an applicant can or will exercise the necessary care in completing applications for insurance clients, which could result in harm to such clients.

Finding and Order

Pursuant to K.S.A. 40-4909(a), the Commissioner finds that the factors favorable to the Applicant are outweighed by the factors unfavorable to the Applicant. Most importantly, the evidence indicates the Applicant did not exercise care in completing the application, did not disclose a recent misdemeanor conviction which was required, and did not understand the seriousness of certifying under penalty of perjury to the truth of statements that 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 22nd DAY OF APRIL 2020, 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
1300 SW Arrowhead Rd.
Topeka, KS 66604

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 2nd day of April 2020, addressed to the following:


Marissa M. Martinez

[REDACTED]
[REDACTED]

Applicant

and emailed to the following:

Justin L. McFarland
General Counsel
Kansas Insurance Department
1300 SW Arrowhead Rd.
Topeka, KS 66604
Justin.L.McFarland@ks.gov
Counsel for Department



Toni Garrard
Senior Administrative Assistant