

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

**In the Matter of the Application for a  
Kansas Resident Individual Adjuster  
License of DENNIS J. SANDERS II  
NPN #18336332**

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**Docket No. 78155**

**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 December 16, 2019. Dennis J. Sanders II (“Applicant”) appeared by and through counsel, Donald N. Peterson II and N. Russell Hazlewood, 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 Sedgwick County, Kansas, submitted an application for a Kansas resident individual adjuster license on April 22, 2019.
2. Background question 2 on page 3 of the application asks:

Have you ever been named or involved as a party in an administrative proceeding, including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration?

“Involved” means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation, sanctioned or surrendering a license to resolve an administrative action. “Involved” also means being

named a party to an administrative or arbitration proceeding, which is related to a professional or occupational license, or registration. ***“Involved” also means having a license or registration application denied*** or the act of withdrawing an application to avoid a denial. INCLUDE any business so named because of your actions, in your capacity as an owner, partner, officer, director, or member or manager of a Limited Liability Company. [Emphasis added.]

You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

If you answer yes, you must attach to this application:

- a) A written statement identifying the type of license and explaining the circumstances of each incident,
- b) A copy of the Notice of Hearing or other document that states the charges and allegations, and
- c) A copy of the official document, which demonstrates the resolution of the charges or any final judgment.

Applicant answered “No” to Question 2.

3. At the top of page 3, at the beginning of the Section on “Background Questions,” the application states, in part:

***The Applicant must read the following very carefully*** and answer every question.

[Emphasis added.]

4. The Applicant signed the Applicant’s Certification and Attestation at the end 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.]<sup>1</sup>

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<sup>1</sup> This complies the requirement in K.S.A. 40-5504(b) under the Public Adjusters Licensing Act that an applicant for a public adjuster license “shall declare under penalty of perjury and under penalty of refusal, suspension or revocation of the license, that the statements made in the application are true, correct and complete to the best of the applicant’s knowledge and belief.”

5. Applicant previously submitted an application for a Kansas individual adjuster license on February 27, 2017. The Department notified Applicant by letter dated April 5, 2017, that the application was denied pursuant to K.S.A. 40-5510(a) due to several misdemeanor convictions. The Department staff cited the nature of the previous convictions and Applicant's age at the time of the most recent conviction in support of its denial.
6. At the hearing, the Applicant reported that he hired an attorney after receiving the first denial letter in April 2017 in order to expunge his misdemeanor convictions and that those convictions were expunged prior to submission of the April 22, 2019, application.
7. The application submitted on April 22, 2019, for an individual adjuster license was denied by the Department. The Applicant was notified by letter dated April 26, 2019, which indicated that the application was denied pursuant to K.S.A. 40-5510(a) due to Applicant answering "No" on question 2 of the application. The letter stated specifically that the denial was based on the Department's concern about the Applicant's "failure to acknowledge the relatively recent license action with the application denial from two years ago."<sup>2</sup>
8. Applicant filed a timely request for a hearing.
9. At the hearing, the Department's Director of Producer Licensing ("Director") testified the Department follows K.S.A. 40-5510 in determining whether to grant an application for a Public Adjuster license. K.S.A. 40-5510(a)(1) authorizes the Commissioner to refuse to issue a license for "[p]roviding incorrect, misleading, incomplete or materially untrue information in the license applications." The Director indicated applicants should read the entirety of a question before answering, including any definitions or qualifying

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<sup>2</sup> The misdemeanor convictions which were expunged were not a factor or a consideration in the 2019 application denial.

information, as that information provides guidance for answering the question. Several questions in the background section are similar to Question 2 in providing additional information for guidance on answering the question(s) appropriately.

10. The Director further testified the statute does not require that the Department determine if the applicant inadvertently or unintentionally answered a question incorrectly before denying an application based on incorrect or untrue information. The Department does not have the ability to determine whether an applicant intended to deceive the Department when a question is answered incorrectly. In a case such as this, the Department is concerned about the applicant's ability to completely and accurately read all instructions. Paying attention to such detail is critical in the type of work for which the Applicant is wanting to be licensed.
11. The Applicant testified that he misunderstood question 2 on the application. He read only the first sentence of Question 2 and based his "no" answer on what he thought it meant. Applicant stated that he did not realize the paragraph following the first sentence in Question 2 defining "Involved" pertained to Question 2. He stated he skipped the paragraph defining "Involved" and moved to Question 3. Applicant stated that he would have answered the question differently had he read the definition section.
12. Applicant testified he felt the question was confusing and misleading because the area to mark "Yes" or "No" was next to the question and not next to the definition paragraph. He felt if the "Yes" or "No" was next to the definition of "Involved" he would have known the definition mattered and would have read it instead of moving to the next question.
13. The Applicant testified that his failure to correctly answer Question 2 was inadvertent and not meant to mislead the Department.

14. Applicant further stated that he was not trying to hide the 2017 denial because (a) he knew the Department knew he had been denied previously, and (b) he understood Department staff was aware he had expunged the convictions that were the basis for that denial.
15. Applicant submitted an affidavit signed by his prior attorney stating the attorney's involvement in communicating Applicant's progress towards expungement of the misdemeanor convictions to the Department.<sup>3</sup>
16. Counsel for the Applicant introduced into evidence and asked the Presiding Officer to take into consideration the "Guiding Principles for Michigan Insurance Producer Licensure,"<sup>4</sup> a document produced by the Michigan Department for Insurance and Financial Services ("MDIFS"), for the express purpose "to advise applicants of the specific provisions of Michigan law that govern licensure and *how they are interpreted and enforced by [MDIFS]*."<sup>5</sup> [Emphasis added.] Specifically, the Presiding Officer was directed to the section regarding MDIFS's distinction between inadvertent errors and errors meant to mislead the agency. That section states:

"Although the [Michigan] statute [MCL 500.1239(1)(a)] mentions "incorrect" and "incomplete" information [as a basis for denial of an application], Section 1239(1)(a) is not concerned with inadvertent errors, typographical mistakes and inconsequential inaccuracies. In assessing the appropriateness of licensure, the staff will focus on whether the error, inaccuracy or mistake appears to have been inadvertent or if it was included as a means to enhance the applicant's chance of licensure and mislead the agency. Applicants, who by their false statements, attempt to mislead the agency, can be expected to similarly mislead the public when self-interest is at stake. Inadvertent errors, by comparison, do not suggest a similar risk."<sup>6</sup>

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<sup>3</sup> It is unclear from the affidavit what staff member(s) had been involved in these communications. However, the Applicant testified he believed his attorney had discussed the expungements with a Department staff attorney.

<sup>4</sup> See, [https://www.michigan.gov/documents/dleg/Guiding\\_Principles\\_-\\_Amendment\\_062110\\_2\\_325406\\_7.pdf](https://www.michigan.gov/documents/dleg/Guiding_Principles_-_Amendment_062110_2_325406_7.pdf).

<sup>5</sup> Id., at page 2.

<sup>6</sup> Id., at page 3.

17. Counsel for Applicant argued the Applicant's answer of "no" to Question 2 was merely an inadvertent error, and reminded the Presiding Officer that the Commissioner has discretion under K.S.A. 40-5510(a) which allows her to not deny applications on the basis of inadvertent errors.
18. Counsel for the Department asked the Presiding Officer to take into account the Department's interest in ensuring insurance adjusters are precise and complete in filling out claim paperwork. Applicant's failure to correctly disclose his prior application denial indicates that he did not pay attention to or follow instructions correctly. Counsel also stated that the Guiding Principles for Michigan Insurance Producer Licensure are not controlling in Kansas and should be given little weight in determining whether a Kansas application should be denied. Counsel for the Department also noted that K.S.A. 40-5510(a)(1) does not require that the Department find that the Applicant acted intentionally when denying an application due to incorrect, misleading, incomplete or materially untrue information in the license application.

#### **Applicable Law**

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.
20. Before issuing a public adjuster license to an Applicant, the Commissioner has the statutory obligation to determine that the Applicant "has not committed any act that is ground for denial, suspension or revocation of a license as set forth in K.S.A. 40-5510, and amendments thereto." K.S.A. 40-5505(a).

21. Pursuant to K.S.A. 40-5510(a)(1), the Commissioner may deny, suspend, revoke or refuse to issue or renew a public adjuster's license if the applicant provided "incorrect, misleading, incomplete or materially untrue information in the license application".

**Findings of Fact and Conclusions of Law**

22. The Commissioner has jurisdiction over Applicant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
23. The Assistant Commissioner of Insurance is acting as the Presiding Officer on behalf of the Commissioner of Insurance as the agency head and is empowered to render a Final Order.
24. The Commissioner has considered the factors most favorable to Applicant, specifically that he took steps to get his convictions expunged in order to reapply for his insurance adjuster license in 2019, he stated that he would have answered question 2 differently had he understood that the definition of "Involved" pertained to question 2, and that he testified that his failure to correctly answer question 2 was inadvertent and not meant to mislead the Department.
25. The Commissioner has considered the factors that weigh most heavily against Applicant. These include, that the Applicant should have disclosed that he was previously denied an application for a public adjuster license, that the Applicant had specific notice that care should be taken in completing the background questions, that the definition of "Involved" appears in the same section as question 2, that other inquiries in the Background Question section of the application also contained similar qualifying or explanatory information to provide guidance in answering, that Applicant signed the certification and attestation page verifying that he understood under penalty of perjury that the information submitted in the

application was true and complete, that the Commissioner has an interest in ensuring agents are precise and complete in filling out applications for insurance coverage, and that K.S.A. 40-5510 does not require that the Department make a determination that the Applicant acted intentionally.

26. The Presiding Officer is not persuaded by the argument made by counsel for the Applicant that the Commissioner should following guidance contained in the MDIFS document. First, as noted by counsel for the Department, this guidance is not binding on the Department. Each state has its own laws and principles for licensing producers and claims adjusters in its state. A cursory review of the guidance document shows differences between Michigan and Kansas on key points. For example, a person convicted of a felony can never be licensed as a producer in Michigan; whereas, in Kansas many factors are considered in determining whether a prior felony conviction should result in a denial of an application. It is doubtful that the Department would be persuaded, based on the laws in Michigan, to deny an application submitted to Kansas for the sole reason that the applicant had been convicted of a felony. The point being that states have the sovereign authority to adopt different statutes, regulations, and practices with regard to evaluating licensing applications.
27. With regard to the situation involving the Applicant in this matter, the Presiding Officer is not persuaded that the Applicant simply made an inadvertent error, which should be overlooked by the Department. Whether the Applicant intended to deceive the Department or felt he didn't need to mark "yes" to Question 2 is not the crux of the issue. Rather, it is that the Applicant readily admits to not having read the entirety of the question, including the critical definition of "Involved," before answering the question in



the negative, and his admission that he would have answered the question differently if he had read the entirety of information provided in connection to the question before answering. This admission is problematic and supports the Department's concern that the Applicant has not demonstrated an ability to follow instructions and the degree of attention to detail that is required of a licensed public adjuster in this state.

28. The Presiding Officer is also not persuaded by the suggestion that because (a) the Department had knowledge of the 2017 denial, and/or (b) prior counsel for the Applicant had communicated with Department staff about the Applicant's misdemeanor expungement efforts, this somehow relieved the Applicant from the obligation to answer Question 2 accurately. The Department's overarching concern is the protection of the public. A key factor considered by the Department in this regard is whether the Applicant has exhibited the ability to read and follow instructions carefully and to complete paperwork accurately.

### **Finding and Order**

Pursuant to K.S.A. 40-5510, 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 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 a resident individual adjuster license to Applicant at this time.

**THE COMMISSIONER OF INSURANCE THEREFORE ORDERS IT THAT:**

1. Denial of Applicant's application for a Kansas Resident Individual Adjuster License 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 2nd DAY OF JANUARY 2020, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



VICKI SCHMIDT  
COMMISSIONER OF INSURANCE

BY:

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 66614

**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 and day of January 2020, addressed to the following:

Dennis J. Sanders II

[REDACTED]

[REDACTED]

*Applicant*

And

N. Russell Hazlewood  
Donald N. Peterson II  
Graybill & Hazlewood, L.L.C.  
Old Town  
218 North Mosley  
Wichita, KS 67202

and hand-delivered to the following:

Justin L. McFarland  
General Counsel  
Kansas Insurance Department  
1300 SW Arrowhead Rd.  
Topeka, KS 66614

  
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Toni Garrard  
Senior Administrative Assistant