

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

In the Matter of the Kansas)
Resident Insurance Agent's) **Docket No. 2334-CO**
License of JOHNNY D. PICKENS)

CONSENT ORDER

Johnny D. Pickens ("J.D. Pickens") wishes to resolve this matter without formal adjudicative proceedings by entering into this consent order. The Commissioner of Insurance ("Commissioner") hereby makes the following findings of fact, conclusions of law, and order, to-wit:

Findings of Fact

1. Records maintained by the Kansas Insurance Department ("Department") indicate that J.D. Pickens is a resident of the State of Kansas, and has a current mailing address of 2127 Riverside Blvd., Wichita, Kansas 66203, and that J.D. Pickens is licensed to transact the business of insurance as a resident insurance agent in the State of Kansas.

2. In August 1988, Louis Don Pickens ("L.D. Pickens") purchased the Cline Funeral Home located at 610 Elm, Russell, Kansas. L.D. Pickens offered his brother, J.D. Pickens, the position of funeral home director. J.D. Pickens was licensed as a funeral director with the Kansas Board of Mortuary Arts. The funeral home was renamed Pickens Funeral Home.

3. In 1990, L.D. Pickens purchased the Mosher Funeral Home, Plainville, Kansas. J.D. Pickens assumed the duties of funeral director, with Carol Bradford ("Bradford"),

a distant cousin of the Pickens, as assistant funeral director. Bradford is not a licensed funeral director.

4. In the fall of 1993, J.D. Pickens agreed to let Alan Saathoff (“Saathoff”), an insurance agent, sell pre-arranged funeral agreements for the Pickens Funeral Home.

5. J.D. Pickens and Saathoff had a falling out during the later part of 1994. J.D. Pickens no longer wished for Saathoff to represent the Pickens Funeral Home.

6. In January 1995, at the Pickens Funeral Home, L.D. Pickens ordered J.D. Pickens to let Saathoff resume selling pre-arranged funeral agreements on behalf of the funeral home.

7. In November 1995, L.D. Pickens called J.D. Pickens and told him he sold the Pickens Funeral Home and J.D. Pickens was fired.

8. On or about December 30, 1995, Saathoff and Don Ballard (“Ballard”) formed a for-profit Kansas corporation entitled the Ballhoff Corporation (“Ballhoff”). The Kansas Articles of Incorporation list both Saathoff and Ballard as directors of the corporation and Saathoff as the resident agent.

9. Ballhoff was formed in conjunction with a contract for deed purchase of the Pickens Funeral Home, Russell, Kansas and the Mosher-Pickens Funeral Home, Plainville, Kansas from the owner, L.D. Pickens.

10. Ballard was to provide the initial down payment of \$30,000.00 and Saathoff was to contribute to the business by investing the commission proceeds from the sale of pre-need funeral policies which he marketed in the area. Ballard and Saathoff were assuming a debt load of approximately \$330,000.00. The contract was signed on December 20, 1995.

11. J.D. Pickens spoke with L.D. Pickens concerning the sale of the two funeral homes, informing him “that there were some problems with the sale of them because there were some pre-needs that were not covered.”

12. L.D. Pickens then spoke with Bradford, who made an accounting of the missing funds and reported to L.D. Pickens approximately \$20,000.00 was unaccounted for.

13. L.D. Pickens contacted Ballard and indicated he could not go through with the contract for sale due to the accounting problems at the funeral home in Russell.

14. A gentleman’s agreement was reached concerning the sale of the funeral homes. It was decided between Ballard and L.D. Pickens, the accounts receivable for the funeral home in Russell received after December 1, 1995 would be put towards the pre-need money that had been misappropriated by J.D. Pickens.

15. Due to the fact a funeral home in the State of Kansas cannot operate without a licensed funeral director, Ballhoff hired Kent Lanterman (“Lanterman”) as their licensed funeral director.

16. According to a sworn statement given by Saathoff on September 24, 1996, “L.D. Pickens, Kent Lanterman, Carol Bradford, Don Ballard and myself all discussed this either together or through long distance phone calls and agreed that if this all came out the funeral homes might as well shut down because of what J.D. had done by stealing funds.”

17. In the above-mentioned sworn statement, Saathoff stated that between Lanterman, Bradford, Ballard, himself and L.D. Pickens, there was an agreement to rectify the problem of the monies misappropriated by J.D. Pickens. To take care of this problem, the monies received would be put into a product sold by Saathoff.

18. In a statement given to the Department, Bradford stated, “When Mr. Saathoff made the arrangements, or whatever, for the policies, he was instructed-- in fact, we both were instructed-- by Mr. Ballard and L.D. (Pickens) that, the consensus that this would be the best because Alan (Saathoff) would receive the commission which would, hopefully, revert back to Ballhoff.”

19. In the above-mentioned statement, Bradford also reported that Saathoff stated, “you know that I’m going to have to forge these signatures.”

20. On or about January 23, 1996, Lanterman notified the Board of Mortuary Arts of possible “violations of the laws of the State of Kansas.”

21. At or about the time Lanterman notified the Board of Mortuary Arts, Lanterman effectively locked Saathoff out of the funeral home. Saathoff could not operate his pre-need sales business out of the funeral home.

22. On or about March 1, 1996, Mack Smith, Executive Secretary of the State Board of Mortuary Arts contacted the Department concerning their investigation.

23. On or about March 13, 1996, the Department began an investigation into the pre-need sales business of the two funeral homes.

24. On or about April 4, 1996, Ballhoff, Inc. filed a lawsuit against L.D. Pickens, Lanterman, Bradford, Sunflower Bank and Plainville State Bank. The lawsuit was filed in the District Court of Rooks County, case no. 96-C-16.

25. During the month of August 1996, depositions were taken in case no. 96-C-16 of the various parties.

26. During the investigation by the Department, counsel for Saathoff contacted the Department indicating Saathoff wished to give a statement to the Department. On September 24, 1996, Saathoff gave a sworn statement to representatives of the Department.

27. The following information is a result of investigations by the Department and the Kansas Bureau of Investigation (“KBI”) as well as the above-mentioned sworn statement of Saathoff.

28. John Strobel is severely mentally and physically disabled. He is incapable of signing, reading or understanding any documents. John Strobel is in a full-time care facility in Hays, Kansas.

29. On December 16, 1990, John Strobel’s brother, Joe Strobel, was appointed as John Strobel’s guardian in Russell County District Court, Probate Division case number 90-GC-13.

30. On or about February 24, 1994, Joe Strobel purchased a pre-arranged funeral agreement for John Strobel with Pickens Funeral Home.

31. Joe Strobel paid J.D. Pickens approximately \$3,300.00 for the pre-arranged funeral agreement. J.D. Pickens attempted to purchase an insurance policy from United Heritage Mutual Life Insurance Company for \$6,000.00.

32. United Heritage Mutual Life Insurance Company (“United Heritage”) would not accept the application because it was signed “John Strobel by Joe Strobel.”

33. Due to the fact United Heritage would not write the policy, J.D. Pickens deposited the money into the Pickens Funeral Home bank account.

34. On December 12, 1995, J.D. Pickens applied for a policy with a face value of \$2,900.00 with a monthly premium payment of \$200.97 with Homesteaders Life Insurance Company ("Homesteaders"). J.D. Pickens admitted to KBI agent, Alex Bachelor, he forged John Strobel's signature on the Homesteaders application as well as the pre-arranged funeral agreement and assignment form.

35. Stacy Pickens, J.D. Pickens' wife, wrote the first premium of \$200.97 from her personal bank account dated December 14, 1995.

36. J.D. Pickens informed L.D. Pickens and Bradford about the monthly premium policy taken out on John Strobel. L.D. Pickens and Bradford told J.D. Pickens that everything would be taken care of. Bradford told J.D. Pickens that she would pay the monthly premium on the John Strobel policy.

37. On or about November 26, 1993, Marvin and Belle Radke gave J.D. Pickens a check for \$11,000.00 for a pre-arranged funeral agreement. The Radkes told J.D. Pickens to invest the money as he saw fit. J.D. Pickens issued a receipt. The funds were placed in the Pickens Funeral Home operating account, no. 0300423572, at the Sunflower Bank in Russell, Kansas

38. J.D. Pickens purchased an insurance policy for Mr. Radke from United Heritage for \$5,500.00. J.D. Pickens stated he probably signed Mr. Radke's name on the policy application. The policy was issued February 15, 1994.

39. The \$5,500.00 for Mrs. Radke was used to pay for the day-to-day operating expenses of the Pickens Funeral Home. J.D. Pickens stated he did this at the direction of L.D. Pickens.

40. On September 22, 1994, J.D. Pickens prepared, signed and filed with the Board of Mortuary Arts a listing of all prefinanced funeral agreements entered into by the funeral home. The document purports to have two policies with account nos. 0139703 and 0139702 through United Heritage, each for the sum of \$5,500.00 obtained on February 15, 1994.

41. United Heritage records reflect policy no. 0139702 is for \$5,499.94 issued to Marvin Radke, listing Pickens Funeral Home as the beneficiary. Policy no. 0139703 is for a \$15,000.00 issued to Brian Haines of St. Louis, Missouri. This policy was not sold to or by anyone connected with the Pickens Funeral Home. It was obtained on or about March 1994 and was terminated for non-payment of premium on or about July 1994.

42. J.D. Pickens admitted to KBI Agent Bachelor he knew that his handling of the pre-arranged funeral agreement money was "not ethical." J.D. Pickens also stated the way he handled the money was wrong and that he "should have put the money here and there, but didn't." He also admitted, "I don't have a leg to stand on in court-- no contest."

43. When L.D. Pickens fired J.D. Pickens in November 1995, Mr. Radke's insurance policy was still in place and Mrs. Radke's money was used for the day-to-day operations of the Pickens Funeral Home.

44. J.D. Pickens, prior to leaving the funeral home, purchased an insurance policy for Mrs. Radke from Homesteaders for \$5,500.00. Mrs. Radke did not sign the application or assignment forms. J.D. Pickens told KBI Agent Bachelor he is unsure whether he or Bob McCurdy ("McCurdy") signed Mrs. Radke's name.

45. On August 20, 1997, J.D. Pickens received a resident insurance agent's license. At the time of the above-mentioned acts, J.D. Pickens was not a licensed insurance agent.

Conclusions of Law

1. K.S.A. 1996 Supp. 40-242 provides in relevant part:

(a) The commissioner of insurance may impose a penalty prescribed by subsection (e) or revoke or suspend the license of any broker or agent in the event that investigation by the commissioner discloses that:...

(7) the interests of the insurer or the insurable interests of the public are not properly served under such license....

2. Based upon the information contained in paragraphs 1 through 45 above, it appears that Johnny D. Pickens has engaged in acts and practices in the business of insurance that are contrary to the interests of the insurer or the insurable interests of the public, and that such interests are not properly being served under the continued licensure of Johnny D. Pickens, in violation of K.S.A. 1996 Supp. 40-242(7).

3. Based upon the information contained in paragraphs 1 through 45 above, it appears that sufficient evidence exists for the revocation or suspension of Johnny D. Pickens' insurance agent license pursuant to K.S.A. 1996 Supp. 40-242, in accordance with the procedures set forth in the Kansas Administrative Procedure Act, K.S.A. 77-501, et seq., as amended.

4. Johnny D. Pickens admits to the allegations set forth herein this order as described above.

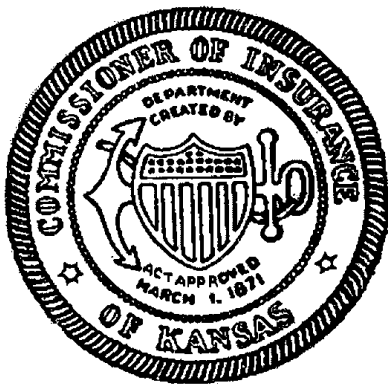
5. For the purposes of this Consent Order, Johnny D. Pickens waives his right to a formal adjudicative proceeding and notice thereof and voluntarily consent to the following order of the Commissioner of Insurance.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

1. The Kansas resident insurance agent's license of Johnny D. Pickens is hereby revoked and shall be surrendered to the Department forthwith, the receipt of which is hereby acknowledged.

2. Johnny D. Pickens agrees to any order of restitution by a court of law. Restitution shall include, but is not limited to, the refund of any converted premium monies; the payment of any premium refunds or other credits wrongfully withheld; and reimbursement for any unpaid claims for damages of any consumers that would otherwise have been paid but for the failure of the Johnny D. Pickens to secure insurance coverage therefore.

IT IS SO ORDERED THIS __16th__ DAY OF DECEMBER, 1999 IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



_____/s/ Kathleen Sebelius_____
Kathleen Sebelius
Commissioner of Insurance

_____/s/ Johnny D. Pickens_____
Johnny D. Pickens

SUBMITTED AND APPROVED BY:

_____/s/ JaLynn Copp_____
JaLynn Copp
Attorney for Petitioner
Kansas Insurance Department

APPROVED BY:

_____/s/ James Sweet_____
James Sweet
Attorney for Respondent