

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

In the Matter of the Application	)	
For an Insurance Agent's License and	)	
The Application for a Letter of Consent	)	Docket Nos. 3096-L
Pursuant to 18 U.S.C. § 1033 of	)	and 3097-W
ROSIE L. MILLER	)	

**FINAL ORDER**

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 2002 Supp. 40-4909 and K.S.A. 77-501 *et seq.*, this matter comes on for agency head review. After reviewing the record and the briefs submitted by the parties, and having been well advised in the premises, the Commissioner hereby affirms the Initial Order issued December 2, 2002, in the above-captioned cause. The Commissioner hereby adopts the following findings of fact and conclusions of law with policy reasons in support as required by K.S.A. 77-526(c).

**Findings of Facts**

1. The Uniform Application for Individual License asks, “Have you ever been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld?” On the application the KID received on June 12, 2002, Miller answered “No” to the question.

2. In addition, Miller signed the statement, “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 the application is grounds for license revocation

or denial of the license and may subject me to civil or criminal penalties,” on the application.

3. An investigation by the Kansas Insurance Department (“KID”) indicated, however, that on May 8, 1997, Miller was convicted of attempted theft, a severity level-10, non-person felony, after originally being charged with both theft and attempted theft as a result of fraudulently collecting approximately \$1300.00 in unemployment benefits.

4. On or about July 25, 2002, Miller filed an application for letter of consent, pursuant to 18 U.S.C. 1033.

5. Miller’s applications for an insurance agent’s license and letter of consent were denied by letters dated September 18, 2002.

6. Miller requested a hearing, and a hearing was held November 20, 2002, before Presiding Officer Edward J. Gaschler.

7. Gaschler found that the information Miller provided on the application was inaccurate and untrue. In addition, Gaschler found that the crime of conviction involved dishonesty. Gaschler concluded that the Commissioner’s actions in denying Miller’s applications for a license and letter of consent was supported by the evidence and affirmed the actions. The initial order, served December 2, 2002, was corrected by an Order Nunc Pro Tunc served January 23, 2003.

7. Miller requested “another hearing” and expressed an expectation of “another chance to clear [her] name” and get a license.

8. The Commissioner issued a Scheduling Order agreeing to review the order on the briefs and without oral argument.

### **Applicable Law**

“In reviewing an initial order, the agency head or designee shall exercise all the decision-making power that the agency head or designee would have had to render a final order had the agency head or designee presided over the hearing, except to the extent that the issues subject to review are limited . . .” K.S.A. 77-527(d).

“Because an administrative decision must be based on evidence and not conjecture, on those occasions when the deciding authority chooses not to adopt the findings and recommendations of its hearing officer, it must examine the record independently.” *In re University of Kansas Faculty*, 2 Kan. App. 2d 416, 422, 581 P.2d 817 (1978).

The Commissioner may deny an application for insurance agent’s license if the applicant provides “incorrect, misleading, incomplete or untrue information in the license application,” K.S.A. 2002 Supp. 40-4909(a)(1), or if the applicant has been convicted of a felony or misdemeanor, K.S.A. 2002 Supp. 40-4909(a)(6).

A person who has been convicted of a felony involving dishonesty or breach of trust is prohibited from engaging in the business of insurance without the written consent of the official authorized to regulate the insurer. 18 U.S.C. 1033(e).

### **Conclusions of Law**

Miller does not dispute the facts found by the presiding officer in the initial order. Neither does she dispute that those facts fit solidly within the statutory grounds for denying an application for an insurance agent’s license. The Commissioner finds that the KID has the express statutory authority to deny Miller’s applications under the facts, which are, in this case, undisputed.

The sole question presented for review is whether the Commissioner agrees that the KID's denials of Miller's applications for a license and a letter of consent pursuant to 18 U.S.C. 1033 represent sound policy decisions.

The Commissioner finds that Miller's conduct during the application process indicates a lack of judgment and/or a questionable regard for the truth. It is not necessary to determine which of these traits was operative as either characteristic in an insurance agent would pose a threat to the financial wellbeing of her clients.

Miller does not identify a basis in law or fact for a different result but argues that her past mistakes should not be held against her, that she has learned from them, and that she should be given a chance to work in the insurance industry. Contrary to Miller's contention that she has learned from her mistake, she repeated her mistake. Miller's attempted theft conviction arose out of fraudulent conduct in obtaining unemployment benefits. Miller engaged in the same type of conduct underlying the conviction when she denied having been convicted and then swore that the application was complete and accurate.

This is particularly relevant to the business of insurance, where an agent is entrusted with advising clients on appropriate coverage, making application, and accepting premium payments with little, if any, oversight. Whether motivated by dishonesty or caused by poor judgment, Miller's conduct in these instances strongly indicates that Miller should not be entrusted with a license to handle other people's financial affairs.

The Commissioner finds that the KID's initial decision denying Miller's application for a license, like the presiding officer's Initial Order, should be, and is hereby, affirmed.

The Commissioner is also asked to reconsider the previous administration's denial of Miller's application for consent pursuant to 18 U.S.C. 1033 to engage in the business of insurance. In light of the denial of Miller's insurance agent's license, this issue is moot. While a non-agent employee of an insurer would also be required to obtain consent, Miller's application is tailored to the duties of an agent, which she will not be performing. Should Miller seek to engage in the business of insurance in another capacity, she would be required to submit a new application including a full description of her proposed duties.

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:** the initial order in this matter, issued December 2, 2002, is hereby affirmed.

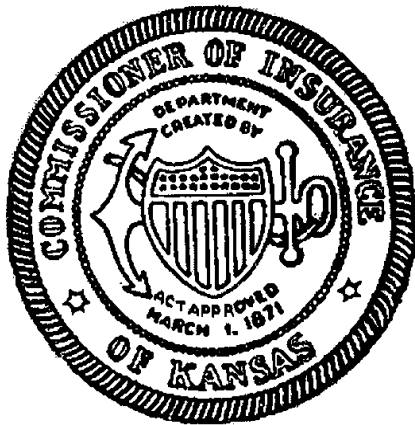
**Notice of Final Agency Action and Judicial Review**

The issuance of this Final Order constitutes final agency action in this matter. The filing of a petition for reconsideration is not a prerequisite for judicial review, and all administrative remedies available to the Petitioner are hereby deemed exhausted.

The Petitioner may, within thirty (30) days of service of this Final Order, file a petition for judicial review of agency action in the appropriate court, as provided by K.S.A. 77-613. In the event the Petitioner files a petition for judicial review, the agency officer to be served on behalf of the Kansas Insurance Department is: John W. Campbell,

General Counsel, Kansas Insurance Department, 420 S.W. 9<sup>th</sup> Street, Topeka, KS 66612-1678.

**IT IS SO ORDERED THIS 14<sup>th</sup> DAY OF APRIL, 2003, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



\_\_\_\_\_/s/ Sandy Praeger\_\_\_\_\_  
Sandy Praeger  
Commissioner of Insurance

**Certificate of Service**

The undersigned certifies that a true and correct copy of the above and foregoing **Final Order** was served on this 14<sup>th</sup> day of April, 2003, by U.S. mail, first class postage prepaid, to the following:

Rosie L. Miller  
1307 N. 55<sup>th</sup> Court  
Kansas City, KS 66104

An additional copy was hand-delivered to:

Brenda J. Clary  
Staff Attorney  
Kansas Insurance Department  
420 S.W. 9<sup>th</sup> Street  
Topeka, KS 66612-1678

\_\_\_\_\_  
[ ]