

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

In the Matter of the Kansas Resident)
Insurance Agent's License of)
CORTLAND E. BERRY)

Docket No. 3084-L

FINAL ORDER

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

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 2001 Supp. 40-4909(a) and (b) and K.S.A. 77-501 *et. seq.*, this matter comes on for agency head review.

The Commissioner notes that Petitioner was required to file his brief on or before January 25, 2003, and that, to date, Petitioner has neither filed a brief nor requested an extension of time in which to do so. Nevertheless, the Commissioner has reviewed the record, and having discovered no error, now affirms the Initial Order. The Commissioner hereby adopts the following findings of fact and conclusions of law, as required by K.S.A. 77-526(c).

Findings of Fact

1. Cortland E. Berry formerly had a license to practice law in the State of Kansas. The Supreme Court of the State of Kansas on July 12, 2002, suspended Berry’s license from the practice of law for a period of eighteen months.

2. The Supreme Court noted in its suspension of Berry that he had been disciplined on four separate occasions prior to the eighteen-month suspension. The Supreme Court further found that Berry had been deceptive in the disciplinary hearing.

3. Following the suspension of Berry from the practice of law in the State of Kansas, the United States Court of Appeals for the Tenth Circuit entered an order disbaring Berry from

the practice of law before that court. The basis for the disbarment was Berry's failure to respond to either of the court's two disciplinary show cause orders. Berry also failed to pay a \$500.00 sanction.

4. A Kansas resident insurance license application was submitted to the Commissioner by Mr. Berry. This application is dated July 26, 2002, and discloses that Berry was suspended from the practice of law by the Kansas Supreme Court.

5. On August 7, 2002, the Commissioner denied Berry's resident insurance agent application based upon L. 2002, Ch. 158, § 21(a)(8).

Conclusions of Law

6. K.S.A. 2001 Supp. 40-4909, as amended by L. 2002, Ch. 158, § 21(a), provides in relevant part as follows:

“The commissioner may deny, suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the applicant or license holder has . . . (8) Used any fraudulent, coercive, or dishonest practice, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state.”

7. Mr. Berry's application was denied because the Commissioner found Berry used fraudulent, coercive, or dishonest practice or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state.

8. The action of the Commissioner in denying the application is supported by competent evidence. Suspension of Berry's license to practice law was based in part upon the Supreme Court's finding that Berry engaged in deceptive practices during the disciplinary proceeding. The Supreme Court found that Berry's practice of law demonstrated incompetence

in representation of a client. Berry has shown financial irresponsibility in not satisfying the order of the United States Court of Appeals.

9. The Commissioner may deny a license application when the Commissioner determines that the individual has shown dishonesty, incompetence, or financial irresponsibility in the conduct of business in this state or elsewhere. Based upon the evidence, it has been established that Berry was dishonest or deceptive, financially irresponsible, and incompetent in the conduct of his law practice in the State of Kansas.

10. It is the Commissioner's duty to protect the interests of the public as insurance consumers. The record in this matter supports the administrative hearing officer's Initial Order affirming denial of Berry's application for a license.

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE
THAT:**

1. The Initial Order in this matter issued on November 21, 2002, is affirmed; and
2. The action of the Kansas Insurance Department in denying the Kansas resident insurance license of Cortland Berry is affirmed.

Notice of Final Agency Action and Judicial Review

The issuance of this Final Order constitutes final agency action in this matter. The Petitioner may, within thirty (30) days of service of this Final Order, file a petition for judicial review in the appropriate court, as provided for 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. 9th Street, Topeka, Kansas 66612-1678.

**IT IS SO ORDERED THIS 14th DAY OF FEBRUARY, 2003, IN THE CITY
OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



 /s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance

 /s/ John W. Campbell
By: John W. Campbell
General Counsel

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing Final Order was served this 14th day of February, 2003, by U.S. Mail, postage prepaid, to:

Cortland E. Berry
5214 South Seneca
Wichita, KS 67217

An additional copy was hand-delivered to:

Brenda J. Clary
Staff Attorney
Kansas Insurance Department
420 S.W. Ninth Street
Topeka, Kansas 66612

 /s/ John W. Campbell
John W. Campbell