

No. 2021-6849

**Official Order
of the
Texas Commissioner of Insurance**

Date: 05/28/2021

Subject Considered:

Texas Department of Insurance

v.

Salvador Villarreal, Jr.

SOAH Docket No. 454-21-1526.C

**Order on
Motion to Set Aside the Default Judgment and Reopen the Record
and Motion for Rehearing**

General remarks and official action taken:

The subject of this order is the request by Salvador Villarreal, Jr. that the Texas Department of Insurance (TDI) set aside the default judgment previously issued in this matter and that the record be reopened and a new hearing set.

Background

On April 7, 2021, Commissioner's Order No. 2021-6776 (Order) was issued, revoking any licenses held by Mr. Villarreal. The Order was issued on a default basis because Mr. Villarreal failed to respond to a notice of hearing seeking to take disciplinary action against him.

On April 30, 2021, counsel for Mr. Villarreal filed a Motion to Set Aside the Default Judgment and Reopen the Record, and a Motion for Rehearing.

Discussion

Motions to set aside a default order and reopen the record are addressed in TDI's rules at 28 TAC § 1.89. Section 1.89(d) provides:

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Motion to set aside and reopen. After informal disposition of a contested case by default, a motion by the respondent to set aside the default order and reopen the record shall be granted if the respondent establishes that the failure to file a written response or to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to a mistake or accident.

In this case, the Respondent's Motion to Set Aside the Default Judgment and Reopen the Record asserts that Mr. Villarreal did not become aware of the notice of hearing in time to respond because he was preoccupied with the birth of his child. According to the motion, Mr. Villarreal's wife gave birth to their child on March 7, 2021, three days after the notice of hearing was delivered to the business office Mr. Villarreal shares with his wife. The motion further states:

Due to the excitement, anxiety, and joy of [the birth], neither the Respondent nor his wife were focused on the daily mail arriving at [the business office] throughout the entire month of March. Unfortunately, whomever may have received the Notice of Hearing at the [business office] either did not have the sense, or did not realize the time sensitive nature of [Respondent's] correspondence, and did not notify the Respondent or his wife of the receipt of [the Notice of Hearing] on March 4, 2021. . . . Respondent did not have actual, in-hand, receipt of the Notice of Hearing until after the entry of [the default order].

Included with the motion is an un-notarized declaration signed by Mr. Villarreal verifying that the facts stated in the motion are within his personal knowledge and are true and correct.

Based on the information presented in the Respondent's motion, TDI finds that his failure to file a timely written response was neither intentional nor the result of conscious indifference, but was due to a mistake or accident. Accordingly, his default order will be set aside and the record reopened. Because the Respondent's Motion to Set Aside the Default Judgment and Reopen the Record is granted, his Motion for Rehearing is rendered moot and therefore denied. See 28 TAC § 1.89(d)(2) (recognizing distinction between a motion to set aside the default order and reopen the record and a motion for rehearing).

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Order

The default judgment ordered by Commissioner's Order No. 2021-6776 is set aside, and the record for SOAH Docket No. 454-21-1526.C is to be reopened and a new hearing is to be set.

Commissioner of Insurance

DocuSigned by:
By: Doug Slape
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Doug Slape

Chief Deputy Commissioner

Tex. Gov't Code § 601.002

Commissioner's Order No. 2018-5528

Recommended and reviewed by:

DocuSigned by:
James Person
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James Person, General Counsel

DocuSigned by:
Justin Beam
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Justin Beam, Assistant General Counsel