

No. **2021-6894**

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

Date: 07/02/2021

Subject Considered:

Texas Department of Insurance

v.

Matthew Thomas Dearmond, III

SOAH Docket No. 454-20-3796.C

General remarks and official action taken:

The subjects of this order are Matthew Thomas Dearmond, III's general lines agent license and adjuster license. Mr. Dearmond's licenses are revoked.

Background

After proper notice was given, the above styled case was heard by an administrative law judge for the State Office of Administrative Hearings. The administrative law judge made and filed a proposal for decision containing a recommendation that the Texas Department of Insurance (TDI) revoke Mr. Dearmond's general lines agent license and issue a two-year probated suspension of his adjuster license. A copy of the proposal for decision is attached as Exhibit A.

Changes to Conclusions of Law Nos. 10 and 11

The legal authority for the changes to the proposal for decision made in this order is Tex. Gov't Code § 2001.058(e).

Conclusion of Law No. 10

As included in the proposal for decision, Conclusion of Law No. 10 states:

The Department should revoke Ms. Dearmond's general sales agent license.

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This conclusion contains two typographical errors that should be corrected. First, the respondent should be addressed as "Mr. Dearmond." Second, the license Mr. Dearmond holds is a general lines agent license, not a general sales agent license.

As adopted by this order, Conclusion of Law No. 10 is changed to state:

The Department should revoke Mr. Dearmond's general lines agent license.

Conclusion of Law No. 11

The proposal for decision establishes that Mr. Dearmond violated Tex. Ins. Code § 4005.101(b)(1), (4), and (5), and in Conclusion of Law No. 11 the administrative law judge states that TDI "should issue a two-year probated suspension of Mr. Dearmond's adjuster license."

In his analysis, the administrative law judge describes the egregious nature of Mr. Dearmond's acts. For example, he states that "[t]he customers trusted and expected Mr. Dearmond to timely secure coverage...[but] he never secured a TWIA policy for them over three years, despite collecting the significant premiums each time."¹ Further, the administrative law judge notes the extent of Mr. Dearmond's dishonesty, stating, "Mr. Dearmond informed [Ms. Sorrell] to not make a claim with TWIA because the deductible would be higher than the loss. But Mr. Dearmond could not have known the deductible amount... because no policy existed. The preponderant evidence suggests that Mr. Dearmond was dishonest in attempting to cover-up his mistake."²

Yet despite Mr. Dearmond's egregious conduct, the administrative law judge only recommends issuing a probated suspension of his adjuster license because "there was no evidence to suggest that Mr. Dearmond would have access to [a] customer's money if he is allowed to continue practice as an adjuster." TDI finds that the recommended sanction is too lenient and a result of the administrative law judge's misapplication of law, agency rules, written policies, or prior administrative decisions. Tex. Gov't Code § 2001.058(e)(1).

TDI is charged with protecting and ensuring the fair treatment of consumers. Tex. Ins. Code § 31.002(4). As such, TDI considers it very important that its licensees, including

¹ Proposal for Decision, at page 13.

² *Id.* at page 15.

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adjusters, be honest, trustworthy, and reliable. *See* 28 Tex. Admin. Code § 1.502(c). Licensed adjusters must also conduct business fairly with clients and the public. *See id.* § 19.713 (Public Insurance Adjuster Code of Ethics). Mr. Dearmond's conduct, as described in the proposal for decision, demonstrates that he is dishonest and has treated some consumers unfairly.

It makes little difference that the conduct in question occurred in Mr. Dearmond's capacity as a licensed agent and not as an adjuster. TDI is not required to compartmentalize its analysis in such a fashion – Mr. Dearmond's dishonest acts impact his ability to hold *any* TDI license. Furthermore, the fact that adjusters do not have access to a customer's money does not on its own warrant a lesser sanction. The record clearly demonstrates that Mr. Dearmond is dishonest with (at least some) consumers, and a dishonest adjuster could just as easily harm consumers as a dishonest agent.

The recommended sanction is also insufficient to protect the public interest. Permitting an individual who has engaged in egregious conduct like Mr. Dearmond to remain a licensed adjuster would clearly undercut the public's faith in the adjuster profession and in TDI's oversight of the insurance industry. The recommendation also sends the wrong message to current and prospective licensees that TDI does not consider such conduct to be serious.

Therefore, to protect the public interest and ensure the fair treatment of consumers consistent with TDI's statutory responsibilities and its regulations, both Mr. Dearmond's licenses should be revoked.³ This change is warranted because the administrative law judge overemphasized adjusters' lack of access to consumers' money and failed to sufficiently weigh TDI's responsibility to protect consumers in formulating his recommendation.

As adopted by this order, Conclusion of Law No. 11 is changed to state:

The Department should revoke Mr. Dearmond's adjuster license.

³ TDI acknowledges the significant impact revocation of a license has on an individual. However, under the Insurance Code, revocation is not necessarily permanent. An individual may apply for reinstatement after five years from the date of this order, as long as the individual can show good cause as to why the revocation should no longer be a bar to the issuance of a new license. TEX. INS. CODE § 4005.105.

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Findings of Fact

The findings of fact contained in Exhibit A are adopted by TDI and incorporated by reference into this order.

Conclusions of Law

1. Conclusions of Law Nos. 1-9 as contained in Exhibit A are adopted by TDI and incorporated by reference into this order.
2. In place of Conclusion of Law No. 10 as contained in Exhibit A, the following conclusion of law is adopted:

The Department should revoke Mr. Dearmond's general lines agent license.

3. In place of Conclusion of Law No. 11 as contained in Exhibit A, the following conclusion of law is adopted:

The Department should revoke Mr. Dearmond's adjuster license.

Order

It is ordered that Matthew Thomas Dearmond, III's general lines agent license and adjuster license are revoked.

Commissioner of Insurance

DocuSigned by:

By: C77A87C8C21B435...
Doug Slape
Chief Deputy Commissioner
Tex. Gov't Code § 601.002
Commissioner's Order No. 2018-5528

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Recommended and reviewed by:

DocuSigned by:
James Person
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James Person, General Counsel

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Justin Beam
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Justin Beam, Assistant General Counsel



SOAH DOCKET NO. 454-20-3796.C

TEXAS DEPARTMENT OF
INSURANCE,
Petitioner,

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BEFORE THE STATE OFFICE

OF

v.

MATTHEW THOMAS DEARMOND, III
Respondent

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to revoke Matthew Thomas Dearmond, III’s adjuster license and general lines agent license based on the allegations that he misappropriated or converted insurance premiums, engaged in fraudulent and dishonest conduct, and willfully violated Texas insurance law. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) finds that Staff proved some but not all allegations by a preponderance of the evidence and recommends the Department revoke Mr. Dearmond’s general lines agent license and issue a two-year probated suspension of his adjuster license.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

A hearing on the merits in this case was held by telephone on November 19, 2020, before ALJ Srinivas Behara with the State Office of Administrative Hearings (SOAH) in Austin, Texas. Attorney Casey Seeboth appeared for Staff. Attorney Sue Berkel appeared for Mr. Dearmond. The hearing concluded that day. The parties agreed to a post-hearing briefing schedule, and the record closed on January 22, 2021, after receiving Staff’s reply brief.

There are no disputed issues of jurisdiction or notice in this proceeding. These matters are included in the proposed findings of fact and conclusions of law without further discussion here.

II. DISCUSSION

A. Allegations and Applicable Law

A person may not directly or indirectly do an act that constitutes the business of insurance except as authorized by statute.¹ Engaging in the business of insurance includes, among other acts, receiving or collecting any consideration for insurance, including a premium or soliciting, negotiating, procuring, or effectuating insurance or a renewal of insurance.² Unless a person holds a license or certificate of authority issued by the Department, the person may not: solicit or receive an application for insurance in this state; or aid in the transaction of the business of an insurer.³

Staff alleges that Mr. Dearmond conducted insurance business under the corporate entity, Texans First, which did not have a license from the Department, in violation of Texas Insurance Code § 4001.101(a). Staff further alleges this was a willful violation under Texas Insurance Code § 4005.101(b)(1) because Mr. Dearmond knew that Texas law requires a corporation to obtain an insurance license issued by the Department before conducting insurance business in Texas. The Department's rules also provide that an agent must register any assumed name or additional office by filing with the Agents License Division of the State Board of Insurance a completed form together with the required fee.⁴

The Department may also discipline a license holder if the Department determines that the license holder has willfully violated an insurance law of this state; has misappropriated, converted to his own use, or illegally withheld money belonging to an insured, insurer, or beneficiary; or has engaged in fraudulent or dishonest acts or practices.⁵ For violations of insurance laws or of the Department's rules, the Department may suspend, revoke, or deny renewal of a license; place on

¹ Tex. Ins. Code § 101.102.

² Tex. Ins. Code § 101.051(b)(4)(A), (6)(A).

³ Tex. Ins. Code § 4001.101(a).

⁴ 28 Tex. Admin. Code § 19.902(a), (c).

⁵ Tex. Ins. Code § 4005.101(b)(1), (4)-(5).

probation a person whose license has been suspended; assess an administrative penalty; reprimand a license holder; or require the license holder to qualify or re-qualify for a certificate to sell a product or product line.⁶ Staff alleges that Mr. Dearmond misappropriated or converted for his own use insurance premiums of two customers and engaged in fraudulent and dishonest acts or practices.

Staff has the burden of showing by a preponderance of the evidence that Mr. Dearmond committed the conduct alleged and that the licenses should be revoked based on his conduct.⁷

B. Summary of Evidence and Undisputed Facts

At the hearing, Staff offered 17 exhibits, which were admitted, and presented testimony of the following witnesses: Laura McHale, a manager at the Texas Windstorm Insurance Association (TWIA); Mable Dyer, a licensed sales professional and former employee of Mr. Dearmond; Megan Sorrell, a former customer of Mr. Dearmond and complainant; and Charlie Holley, another former customer of Mr. Dearmond and complainant. Mr. Dearmond testified on his own behalf and offered six exhibits, two of which were admitted. The facts in this case are largely undisputed and are summarized below.

1. Licensing Background

The Department issued Mr. Dearmond an adjuster license in 2004, and a general lines agent license in 2006.⁸ Around 2006, TWIA approved Mr. Dearmond to submit new and renewal applications for windstorm insurance. Mr. Dearmond formed Texans First Insurance Agency, Inc. (Texans First) in February 2015.⁹ Soon after, on behalf of Texans First, Mr. Dearmond applied with the Department for a corporate insurance license. The Department denied the application

⁶ Tex. Ins. Code § 4005.102; *see also id.* §§ 82.051-.055 (additional sanctions available to the Department).

⁷ 1 Tex. Admin. Code § 155.427.

⁸ Staff Ex. 1.

⁹ Staff Ex. 2.

because Mr. Dearmond did not provide proof of financial responsibility for the entity.¹⁰ Mr. Dearmond continued use of Texans First for his agency business and also conducted business under an assumed name of Dearmond Insurance.

2. The Sorrells' Policies

The Sorrells, homeowners and personal friends of Mr. Dearmond for almost 25 years, planned to purchase a house through a mortgage in March 2016. Texans First obtained quotes of \$2,142 for windstorm insurance and \$841 for homeowner insurance for the Sorrells and delivered it to Alamo Title Company, the settlement/closing agency responsible for coordinating the real estate transaction. The quote was conveyed on a document titled "Evidence of Property Insurance," which included instructions about payment of the quoted premium. Specifically, the document directed Alamo Title Company to issue checks for the windstorm premium payable to TWIA but to be delivered to Texans First. It also directed Alamo Title Company to make the homeowner premium check payable to "Wellington," otherwise known as Wellington Risk Insurance Agency, but to be delivered to Texans First. The title agency complied and sent two checks to Texans First totaling \$2,983. Mr. Dearmond personally deposited the two checks on April 8, 2016, into a business bank account that he solely controlled with exclusive withdrawal and deposit rights.¹¹

The bank account began the month of April 2016 with a negative balance of \$668.94.¹² The bank account had a balance of \$0.06 prior to the Sorrells' \$2,983 deposit. The same day of the deposit, Mr. Dearmond wrote checks of \$3,000 and \$1,182 and made other transactions including a \$295.71 payment to his AT&T account, which brought the bank account to a negative balance of \$134.71. For a brief period on April 19, the account had a positive balance of \$3,000, but by the end of the day it had a negative balance of \$607.47. Mr. Dearmond had 13 separate non-sufficient fund charges ranging from \$30 to \$60 in April, and the bank account ended the month

¹⁰ Staff Ex. 3.

¹¹ Mr. Dearmond used two separate business bank accounts with First State Bank for Texans First's business. He had complete and exclusive control over the bank accounts.

¹² Staff Ex. 8 at 2658-59.

with a negative balance of \$838.84. TWIA did not receive the premium for the Sorrells' windstorm insurance, and consequently TWIA did not issue a policy to the Sorrells. There was no receipt of Wellington receiving the premium and no record of whether Wellington ever issued a homeowner policy to the Sorrells.

The Sorrells sought to refinance their mortgage from their original bank to BBVA Compass later that year. At the bank's request, Texans First issued an "Evidence of Property Insurance" document stating that the TWIA windstorm insurance and Wellington homeowner insurance was "paid in full" through March 31, 2017.¹³ The Sorrells refinanced, and the mortgage servicer established the Sorrells' escrow deposit amount for the coming year, which included the premium amounts for the windstorm and homeowner insurance premiums. The Sorrells timely made all monthly payments, including the escrowed insurance, to BBVA Compass.

Texans First initiated a new-issue policy application with TWIA for the Sorrells in February 2017, quoting a new premium amount of \$2,203 for windstorm coverage.¹⁴ Texans First directed BBVA Compass to make a check payable to TWIA and deliver it to Texans First. Mr. Dearmond deposited the check into his bank account. Again, TWIA did not receive any payment for the Sorrells' windstorm insurance, and consequently the policy was never issued.

In March 2018, Texans First initiated another new-issue policy application in TWIA's system for the Sorrells with a premium of \$2,240.¹⁵ Like the previous premiums, Texans First directed BBVA Compass to make a check payable to TWIA and deliver it to Texans First. BBVA Compass complied and sent the check. On April 26, Mr. Dearmond deposited the \$2,240 check into his business bank account.¹⁶ The account balance immediately prior to the deposit was \$1,059.62, and after several transactions it ended that day with a balance of \$2,055.72. Mr. Dearmond's account ended the month of April 2018 with a balance of \$1,331.80. TWIA did

¹³ Staff Ex. 12.

¹⁴ Staff Ex. 5.

¹⁵ Staff Ex. 10.

¹⁶ Staff Ex. 13 at 2244.

not receive any payment for the Sorrells' windstorm insurance, and again, the policy was never issued.

A few months later, a tree fell on the Sorrells' house and they tried to make a claim against the TWIA policy they believed they had. TWIA denied the claim because no policy existed insuring the Sorrells' home. The Sorrells contacted Mr. Dearmond about the issue, and he mailed a check to TWIA for the premium amount, which was initially printed as payable to "United States Treasury" but over-written by hand as payable to "TWIA" and dated April 3, 2018.¹⁷ However, by this time, the Sorrells obtained windstorm coverage through another agent. Mr. Dearmond requested that TWIA return the check he sent and it was returned to him.

3. The Holleys' Policy

In April 2018, Texans First sent a renewal notice for TWIA coverage to its customers, Charlie and Rebecca Holley. The renewal notice requested \$1,545 for delivery to Texans First. Mr. Dearmond received the check and deposited it in his business bank account on April 11. Prior to the deposit, the account had a balance of \$39.38.¹⁸ The same day, Mr. Dearmond made a \$1,808 payment to an employee, and with other transactions, the account ended the day with a negative balance of \$77.67 without issuing the check to TWIA. Mr. Dearmond made payments for utilities and other bills, and he received a \$120 non-sufficient fund charge on April 12. The bank account ended the month with a balance of \$650.55 before a significant charge back fee, resulting in a negative balance of \$22,034.45.

TWIA did not receive the premium from Texans First on behalf of Mr. Holley. The next month, Mr. Holley was notified by TWIA that the TWIA policy had lapsed. About the same time, Mr. Holley's mortgage servicer notified him it did not have evidence that he had renewed his windstorm insurance and planned to force-place coverage. Mr. Holley contacted Mr. Dearmond about the situation. Mr. Dearmond submitted a check to TWIA for the Holley's renewal at the end

¹⁷ Staff Ex. 5 at 1000.

¹⁸ Staff Ex. 8 at 2571.

of May 2018, but by then Mr. Holley secured a TWIA policy through another insurance agent. After TWIA reconciled the two payments, Mr. Holley received \$1,445 in return of unearned premium for the policy that Mr. Dearmond had procured late, amounting to \$100 for just two days of coverage on that policy. Additionally, Mr. Holley paid a \$120 fee to his mortgage company because he did not have the required windstorm coverage for one month.

C. Evidence

1. Testimony of Laura McHale

Ms. McHale has worked with TWIA for about 14 years. She described that in 2015, TWIA implemented a processing system allowing agents to submit and process applications and renewals through a TWIA electronic portal. The portal also allowed the agent several options for payments. The agent could choose payment by check or money order, resulting in a payment coupon to print off and attach to the check for mail. TWIA also had an electronic payment system allowing for electronic check with an insured's authorization. Ms. McHale was unaware of any TWIA requirement to submit a premium check from the insurance agent's account rather than directly from an insured. Ms. McHale noted that until 2011, insurance agents would typically withhold commissions from premiums. After 2011, TWIA took over the commission process and electronically sends the agent a monthly commission.

2. Testimony of Mable Dyer

Ms. Dyer was a licensed insurance agent working with Texans First from June 2015 to June 2018. She received salary and commission payments and also had other managerial roles. She testified that she was never told by Mr. Dearmond that premium checks for TWIA had to be drawn from an insurance agency account, regardless of whether the checks came from client, mortgage services, or title agent. Instead, Ms. Dyer described the following acts she would take when receiving TWIA payments: make a copy of the customer's check; prepare and print out the coupon to accompany the customer's check; place the check and coupon in an envelope addressed

to TWIA; place the envelope in outgoing mail on her desk; and then either she or another employee would take the mail to the post office. According to Ms. Dyer, she followed this process for the Sorrells' and Holleys' TWIA payments in 2018. Ms. Dyer identified a copy she made of a check in the amount of \$1545 dated April 11, 2018, received from Mr. Holley. Ms. Dyer did not have any personal knowledge about why the check was not delivered, or who may have taken the envelopes containing the checks from outgoing mail on her desk.

3. Testimony of Matthew Dearmond

Mr. Dearmond began his career as an insurance agent by participating in an eight-week Allstate school. He testified that Allstate required him to create a business name for his insurance business with the word "agency" in the name before he could sell Allstate products. He registered Texans First with the Secretary of State's Office from February 10, 2015. He applied to the Department for an insurance license for Texans First in May 2016, but the Department required that the entity carry an Errors and Omissions (E&O) policy in the entity's name to satisfy financial assurance requirements. He had an E&O policy in his individual capacity through Allstate, but when he requested that Allstate issue an E&O policy for Texans First, Allstate allegedly told him it first needed proof that the Department issued the entity a license. Mr. Dearmond claimed he was caught in a "chicken and egg" situation with his ability to get Texans First licensed. He eventually sold the Allstate book of business held by Texans First in 2018 to an employee of Texans First. He currently writes property and casualty through a brokerage.

Texans First had five to six employees from 2016 to 2018, and they were all licensed insurance agents. Mr. Dearmond testified that the employees performed the business of insurance (i.e., answering calls, communicating with customers, quoting policies, helping with renewals, accepting bills, and processing mail), while he, as the owner of the business, handled the payroll and business development. He stated that he only dealt with actual insurance policies if there was a problem with a customer. According to Mr. Dearmond, Ms. Dyer worked more as an office manager than an insurance agent. He stated that his employees would have assisted the Sorrells and Mr. Holley with their coverages, although there is no way to know exactly who did what on

the TWIA portal because all of his employees used his email address to log in, until Ms. Dyer at some point set up her own sub-account. Also, customers were not assigned to specific employees and there was typically no way to trace which employee handled which customer.

According to Mr. Dearmond, his office used the following procedures dictated by TWIA for the placement of windstorm insurance, which were in place when he first started working as an agent in 2006:

- If a customer wanted a windstorm policy with TWIA, Mr. Dearmond's employees would log in to the TWIA portal or policy center system using his log in credentials and create a submission or application.
- After the customer was approved, the employee would bill the customer or the customer's mortgage company, and either the mortgage company or the customer would mail the insurance premium to the Texans First office. TWIA required the full insurance premium in one payment.
- When one of Mr. Dearmond's employees received a TWIA premium from a customer, the employee would print a payment coupon, and the customer's premium payment would go into a bank deposit bag and he would deposit it into his business bank account.
- Mr. Dearmond would then issue a corresponding Dearmond business check written to the insurer for the premium.
- An employee would then place the Dearmond business check and accompanying payment coupon in an envelope to be mailed to the insurer.

According to Mr. Dearmond, he followed this process since 2006 because TWIA advised him to do so, and it was not his experience that customers send checks directly to TWIA. His office followed the same process for non-standard insurance carriers, such as Wellington. Mr. Dearmond testified that he was unaware of any law that prohibits an insurance agent from paying windstorm insurance premiums to TWIA from an agent's checking account. He admitted that an insurance agent, as a fiduciary, holds a position of trust for customers.

Mr. Dearmond gave the following account about the Holleys' policy. In April 2018, Mr. Holley called him because TWIA sent him a notice that it had not received the \$1,545 payment for windstorm coverage. He had never spoken with Mr. Hollery prior to that. Mr. Dearmond found the business check and the payment coupon in the stamped envelope to TWIA in Mr. Holley's paper file at the office. Mr. Dearmond then dropped the envelope in the mail on May 29, 2018. During the phone conversation, Mr. Holley requested that Mr. Dearmond start coverage with TWIA on May 29, 2018, the same date that Mr. Dearmond sent the check to TWIA. When Mr. Holley later cancelled the policy and placed insurance coverage through a different agent, TWIA refunded Mr. Holley the unearned premiums. A complaint was filed with the Department.

Regarding the Sorrells, Mr. Dearmond claimed that he learned of the failure to remit the premium check to TWIA in September 2018, around when the tree fell on their house. He stated that he immediately put a policy in effect so that any future liabilities would be covered, and he refunded to the Sorrells their premiums paid for policy periods 2016-2017, 2017-2018, and 2018-2019. Mr. Dearmond further testified that he went back to determine why the agency checks had not been mailed to TWIA for the Sorrells' windstorm coverage and he found ready-to-mail letters in a desk drawer, which had been used by 2-3 different employees. According to Mr. Dearmond, the Sorrells' policies had not been handled correctly by his staff by failing to take the agency checks to the post office to be mailed to TWIA.

In September of 2018, the Department called Mr. Dearmond about the Holley complaint, and that same month the Department emailed Mr. Dearmond that it had closed its file on the Holley complaint. The Department also opened an investigation into Mr. Dearmond's handling of the Sorrells' windstorm premium and policy, and the Department notified Mr. Dearmond that it closed its case relating to the Sorrells in January 2019.¹⁹ Mr. Dearmond testified that although he had kept the agency checks which he found in the desk drawer for some time, he destroyed them after the Department notified him it closed the case. By this time, Mr. Dearmond had refunded the Sorrells their premiums.

¹⁹ Resp. Ex. 9.

4. Testimony of Megan Sorrell

Ms. Sorrell's husband was a long-time friend of Mr. Dearmond, and she had known Mr. Dearmond for about eight years. She never called Mr. Dearmond's office to verify she had insurance because she assumed the office took care of it. After her neighbor's tree fell on her house in September 2018, she sent a text to Mr. Dearmond and he responded that the deductible would be higher than what it would cost to get the tree removed and the roof repaired. She was unsatisfied with his response so she called TWIA directly, only to learn there had been no policy in effect for the prior three years. Ms. Sorrell paid about \$5,000 out of pocket for the repairs, and she was unsure if she was ever insured. She testified that her husband has a pending lawsuit against Mr. Dearmond relating to the failure to procure windstorm coverage.

5. Testimony of Charlie Holley

Mr. Holley testified about his conversation with Mr. Dearmond after learning that Mr. Dearmond's office did not procure a renewal of his TWIA policy. He informed Mr. Dearmond that he attempted to cancel a check after he learned TWIA did not issue a windstorm policy, but the check had already been cashed. Mr. Holley no longer wanted to do business with Mr. Dearmond, so he secured a new agent to procure the TWIA policy and canceled the policy that Mr. Dearmond procured on May 29, 2018, which was about seven weeks after Mr. Holley had initially sent his check to Mr. Dearmond's office.

D. Analysis

Staff proved by a preponderance of the evidence that Mr. Dearmond engaged in dishonest practices with the two customers by converting their insurance premiums and failing to remit the premiums to their insurance carriers. Accordingly, Mr. Dearmond violated Texas Insurance Code § 4005.101(b)(4) and (5). Staff also met its burden to prove that Mr. Dearmond willfully violated Texas Insurance Code § 4001.101(a) when he conducted business under the "Texans First Agency" and "Dearmond Insurance Agency" without a license for either of those names in Texas.

As a result of the violations, specifically for the dishonest practices, the ALJ recommends the Department revoke Mr. Dearmond's general lines agent license and issue a probated suspension of his adjuster license.

1. Fraudulent or Dishonest Conduct; Misappropriating, Converting, or Illegally Withholding Funds in Violation of Texas Insurance Code § 4005.101(b)(4) and (5)

The main facts in this case were undisputed. Mr. Dearmond collected and then deposited TWIA premium payments from the Sorrells and the Holleys into business bank accounts he solely controlled. Mr. Dearmond claims that his typical practice was, contemporaneous with depositing premium checks into his own bank accounts, to issue a separate check in the same amount from his own bank accounts payable to TWIA. According to Mr. Dearmond, his business handled client premium payments in this way for TWIA and non-Allstate carriers because that was how TWIA policies were handled in 2006 when Mr. Dearmond first started working as an agent. Mr. Dearmond argues that Staff did not identify any Department rule or statute requiring that an insured's premium monies be traceable or that they be submitted the same day to the insurer, or even within a week or within any specific time. Mr. Dearmond notes that Staff did not identify any statute or rule prohibiting an insurance agent from paying insurance premiums to carriers from the agent's checking account. Mr. Dearmond further contends that he did not handle the transactions and agents in his office would have, and there was no evidence that Mr. Dearmond knew that the premiums were not mailed by his office until the customers complained.

Assuming that one or some of Mr. Dearmond's employees intentionally, negligently, or accidentally failed to mail the premium checks, as Mr. Dearmond suggests, the documentary evidence established that he could not have paid the Sorrells' premiums from separate business checks in April 2016. The bank statements show that as soon as Mr. Dearmond received the Sorrells' premium checks for homeowners and windstorm insurance, he immediately converted the checks for his own use, which included making payments to employees and paying his own personal and/or business bills. As a result, his business bank account never had a sufficient, positive balance to cover the Sorrells' premiums, even if he had contemporaneously issued check

as he suggests. Mr. Dearmond argues that he was not required to send premium checks as soon as he received them, but he acknowledged that TWIA would not extend coverage until it received the full premiums.

The documentary evidence showed that the same financial constraints existed in April 2018. A plain review of the bank statements demonstrates that Mr. Dearmond did not have enough money in his bank accounts to cover the TWIA premiums for the Sorrells and the Holleys, whether or not he or his office mailed the business check to TWIA. As soon as he deposited the premiums into his accounts, he used the funds for other purposes. The customers trusted and expected Mr. Dearmond to timely secure coverage to avoid any lapse in coverage. Moreover, the Sorrells' situation was not an issue of untimeliness—he never secured a TWIA policy for them over three years, despite collecting the significant premiums each time.

Mr. Dearmond admitted that as an insurance agent, he holds a position of trust. Mr. Dearmond did not safeguard those payments and deliver them to the carriers. Mr. Dearmond would have been aware of his negative bank balance(s) in March 2016, because the bank assessed 13 separate non-sufficient fund charges, ranging from \$30 to \$60 each time. His bank accounts in April 2018 demonstrate numerous insufficient and/or negative balances. His conduct resulted in more than a substantial risk, but an almost certainty, that he would not have enough money in his bank accounts to cover the premiums he deposited for his own benefit. Yet, he continued to direct the customers and a third-party payor to send premium checks to him directly. Although the evidence does not prove Mr. Dearmond exhibited an intent to defraud his customers, the conduct was dishonest and not an isolated mistake. For example, Ms. Sorrell credibly testified that Mr. Dearmond informed her not to make a claim with TWIA because the deductible would be higher than the loss. But, Mr. Dearmond could not have known the deductible amount on the policy because no policy existed. The preponderant evidence suggests that Mr. Dearmond was dishonest in attempting to cover-up his mistake.

In sum, Mr. Dearmond represented to customers that they should send premium checks directly to his office and the checks would be processed with the insurance carriers, but the

evidence demonstrated the customers were unaware he would deposit the checks into bank accounts to which he alone had signatory access. The customers also did not know he would convert those funds for his own personal or business-related expenses. Based on the dishonest conduct and conversion, the Department is authorized to discipline Mr. Dearmond pursuant to Texas Insurance Code § 4005.101(b)(4) and (5).

2. Willful Violation of Texas Insurance Code § 4001.101(a)

Mr. Dearmond had two businesses he used to sell insurance products: Texans First (a corporation) and Dearmond Insurance (an assumed name). Staff proved that Mr. Dearmond's operation of Dearmond Insurance as an assumed name violated 28 Texas Administrative Code § 19.902(a) because he did not provide a copy of a valid assumed name certificate to the Department. Staff further alleges that Mr. Dearmond knowingly operated Texans First without a license, particularly since he knew the license was denied. It was undisputed that Mr. Dearmond did not have a license for Texans First and did not submit the assumed name certificate to the Department, which are violations of the Department's statute and rule above. Even if Mr. Dearmond's assertion is taken as true that Allstate either required or requested such a corporate or assumed name to sell Allstate products, he was aware that the Department did not issue the corporate entity a license. Yet, he continued to operate under the assumed name Dearmond Insurance. The evidence did not demonstrate that Mr. Dearmond willfully violated the Department's rule requiring him to file an assumed name certificate, but the evidence showed he was aware that he did not have a license for Texans First but he continued to operate his agency through the corporation. Because the preponderant evidence showed that Mr. Dearmond willfully violated the corporate licensure requirement, Staff proved a necessary element for disciplinary action pursuant to Texas Insurance Code § 4005.101(b)(1).

3. Sanction

Staff proved violations of Texas Insurance Code § 4001.101(a) through Mr. Dearmond's operation of an unlicensed entity and unregistered assumed name, but the violations do not warrant

a sanction as they did not result in any harm to any customers and did not affect his interaction with the customers in this case. Regarding the violations for dishonest conduct and conversion, Mr. Dearmond argues that revocation is unwarranted because there was no harm to any of the customers—he either offered to or promptly refunded their premiums that he previously deposited. Mr. Dearmond’s argument, however, does not take into account the serious nature of his conduct and the harm to his customers. Mr. Dearmond converted his customers’ premium checks for his own use, and in one case it resulted in significant harm with an uninsured loss for the customer. In the other case, the customers’ mortgage company had to force coverage, resulting in a fee against the customer. Given the careless risks Mr. Dearmond took with his customers’ funds, the ALJ recommends revocation of Mr. Dearmond’s general lines agent license.

There was no evidence to suggest that Mr. Dearmond would have access to customer’s money if he is allowed to continue practice as an adjuster. Given that Mr. Dearmond does not have any prior disciplinary history with the Department, the ALJ recommends that Mr. Dearmond’s adjuster license be suspended but probated for two years so that he is given the opportunity to continue in that line of work under any supervision terms the Department deems appropriate. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

IV. FINDINGS OF FACT

1. Matthew Thomas Dearmond, III holds a general lines agent license and an adjuster license issued by the Texas Department of Insurance (Department).
2. Mr. Dearmond conducts his general lines agent business under a corporate entity, Texans First Insurance Agency, Inc., (Texans First) and an assumed name of Dearmond Insurance Agency. No person is authorized to conduct insurance business under either of these names in Texas.
3. Mr. Dearmond was appointed by the Texas Windstorm Insurance Association (TWIA) to submit new and renewal applications for windstorm insurance.
4. In March 2016, Mr. Dearmond quoted the Sorrells \$2,142 for windstorm insurance and \$841 for homeowner insurance for a house the Sorrells were buying. The Sorrells’ premium was handled by the settlement agent, Alamo Title Company (Alamo Title).

5. Mr. Dearmond gave Alamo Title a certificate of insurance, which stated the \$2,142 premium for windstorm insurance, and directed a check payable in that amount to TWIA to be delivered to Texans First.
6. On April 8, 2016, Mr. Dearmond deposited the Alamo Title check in the amount of \$2,142 into a bank account Mr. Dearmond exclusively controlled.
7. After making the deposit, Mr. Dearmond used the Sorrells' funds for his own personal and/or business purposes. Mr. Dearmond caused the bank account to carry an insufficient or negative balance, which made it unable to cover the insurance premiums for the Sorrells.
8. TWIA did not receive any money for the Sorrells' windstorm insurance, and consequently the 2016 policy was never issued.
9. Mr. Dearmond gave Alamo Title a certificate of insurance, which stated the \$841 premium for homeowner insurance, and directed a check payable in that amount to Wellington Risk Insurance Agency, Inc. (Wellington), to be delivered to Texans First.
10. On April 8, 2016, Mr. Dearmond deposited an Alamo Title check in the amount of \$841 into a bank account Mr. Dearmond exclusively controls. Wellington did not receive any money for the Sorrells' homeowner insurance, and there was no record of any insurance company it represents having issued any homeowner insurance policy to the Sorrells.
11. In December 2016, the Sorrells refinanced their mortgage. Mr. Dearmond issued an insurance certificate to the Sorrells' new mortgage servicer representing that the TWIA windstorm insurance and Wellington homeowner insurance were "paid in full" through March 31, 2017.
12. On February 2, 2017, Mr. Dearmond initiated an application with TWIA for a new policy for the Sorrells. Mr. Dearmond directed the Sorrells' mortgage servicer to make a check payable to TWIA in the amount of \$2,203 and deliver it to Texans First to a bank account that Mr. Dearmond exclusively controlled. TWIA did not receive any payment for the Sorrells' windstorm insurance, and consequently the 2017 policy was never issued.
13. On March 6, 2018, Mr. Dearmond initiated an application with TWIA for a new policy for the Sorrells. Mr. Dearmond directed the Sorrells' mortgage servicer to make a check payable to TWIA in the amount of \$2,249 and deliver it to Texans First.
14. On April 26, 2018, Mr. Dearmond deposited a check from the Sorrells' mortgage servicer in the amount of \$2,240 made payable to TWIA into an account Mr. Dearmond exclusively controlled.
15. After making the deposit, Mr. Dearmond used the Sorrells' funds for his own personal and/or business purposes. Mr. Dearmond caused the bank account to carry an insufficient or negative balance, which made it unable to cover the TWIA premium for the Sorrells.

16. TWIA did not receive any payment for the Sorrells' windstorm insurance, and consequently the 2018 policy was never issued.
17. In September 2018, a tree fell on the Sorrells' house and they tried to make a claim on the TWIA policy they believed they had. TWIA declined the claim because there was no policy insuring the Sorrells.
18. Another customer of Mr. Dearmond, Charlie Holley, received a renewal notice for windstorm insurance from Mr. Dearmond dated April 3, 2018. This notice directed Mr. Holley to make a check payable to TWIA in the amount of \$1,545 and deliver it to Texans First.
19. On April 11, 2018, Mr. Dearmond deposited Mr. Holley's check in the amount of \$1,545 into a bank account Dearmond exclusively controlled.
20. After making the deposit, Mr. Dearmond used the Holleys' funds for his own personal and/or business purposes, which resulted in the bank account not having a sufficient balance to cover the insurance premiums for the Holleys.
21. Around May 21, 2018, Mr. Holley was notified by TWIA that his policy had lapsed. About the same time, Holley's mortgage servicer notified him it did not have evidence that he had renewed his windstorm insurance and planned to force-place coverage with another carrier.
22. TWIA did not receive any money for Mr. Holley's windstorm insurance until after Mr. Holley complained to Mr. Dearmond, by which time Mr. Holley had already procured windstorm insurance through a different agent. Mr. Holley paid a \$120 fee to his mortgage company because he did not have the required windstorm coverage for one month.
23. Insufficient evidence was presented to establish Dr. Dearmond had an intent to defraud.
24. On May 26, 2020, the Department referred this matter to the State Office of Administrative Hearings (SOAH) for assignment of an Administrative Law Judge (ALJ) to conduct a contested case hearing.
25. May 27, 2020, staff of the Department (Staff) sent Mr. Dearmond a Notice of Hearing. Together, the Notice of Hearing and Order No. 2 contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
26. A hearing on the merits in this case was held by telephone on November 19, 2020, before ALJ Srinivas Behara of SOAH in Austin, Texas. Attorney Casey Seeboth appeared for Staff. Attorney Sue Berkel appeared for Mr. Dearmond. The hearing concluded that day.

The parties agreed to a post-hearing briefing schedule, and the record closed on January 22, 2021, after receiving Staff's reply brief.

IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.101; 4005.101; 4051.051; 4054.051.
2. SOAH has authority to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Mr. Dearmond received timely and sufficient notice of hearing. Tex. Gov't Code §§ 2001.051-.052.; Tex. Ins. Code § 4005.104(b).
4. Staff had the burden of proof to establish grounds for revocation of Mr. Dearmond's licenses or other discipline. 1 Tex. Admin Code § 155.427.
5. The Department may revoke a license if the Department determines that the applicant: has willfully violated an insurance law of this state; has misappropriated, converted to his own use, or illegally withheld money belonging to an insured, insurer, or beneficiary; or has engaged in fraudulent or dishonest acts or practices engaged in fraudulent or dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(1), (4)-(5).
6. By operating Texans First without a license and failing to register Dearmond Insurance Agency as an assumed name, Mr. Dearmond willfully violated an insurance law of this state. Tex. Ins. Code § 4005.101(b)(1); 28 Tex. Admin. Code § 19.902(a), (c).
7. By depositing customers' premiums into his bank account, using the premiums for his own personal and/or business purposes, and failing to remit the premiums to the insurer, Mr. Dearmond converted for his own use money belonging to an insured, insurer, or beneficiary. Tex. Ins. Code § 4005.101(b)(4).
8. Mr. Dearmond engaged in dishonest practices by directing customers to send their premiums to his business and then converting the premiums rather than remitting them to the insurance carriers. Tex. Ins. Code § 4005.101(b)(5).
9. Mr. Dearmond's licenses are subject to sanction. Tex. Ins. Code §§ 4005.101-.102.
10. The Department should revoke Ms. Dearmond's general sales agent license.

11. The Department should issue a two-year probated suspension of Mr. Dearmond's adjuster license.

SIGNED March 11, 2021.

/s/ Srinivas Behara
Administrative Law Judge
State Office of Administrative Hearings