

No. 2021-6901

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

Date: 07/06/2021

Subject Considered:

Jody Ray Hensley
[REDACTED]
Alvin, Texas 77511-8659

Consent Order
TDI Enforcement File No. 17138

General remarks and official action taken:

This is a consent order with Jody Ray Hensley (Hensley). The Texas Department of Insurance (department) alleges that Hensley engaged in fraudulent and dishonest conduct during his representation of clients in the aftermath of Hurricane Harvey. Hensley has agreed to pay a \$6,300 administrative penalty and restitution.

Waiver

Hensley acknowledges the Texas Insurance Code and other applicable law provide certain rights. Hensley waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order. Pursuant to TEX. INS. CODE § 82.055, Hensley agrees to the terms of this consent order with the express reservation that he does not admit to any violation of the Texas Insurance Code, rules, or regulations and that the existence of any violations is in dispute.

Findings of Fact

Licensure and Background

1. Hensley, individual identification no. 846578, holds a public insurance adjuster (PIA) license originally issued by the department on March 4, 2010.
2. Hensley owns Home Restorers LLC (Home Restorers) which specializes in roofing repairs and full home restoration.

Previous Notification by the Department

3. In 2016, the department received a complaint that Home Restorers was acting as a PIA without proper licensure and that Hensley was serving as a contractor and PIA on the same claim. During the course of the department's investigation, Hensley removed PIA advertising language from his Home Restorers website to come into compliance.
4. On January 6, 2017, the department sent a warning letter advising Hensley of the prohibition against advertising or performing the acts of a PIA without proper licensure and acting as a contractor and PIA on the same claim.

Acceptance of Prohibited Referral Payments

5. J.J. was a client of Hensley's whose home suffered storm damage during Hurricane Harvey. J.J. initially hired Hensley as a contractor through Home Restorers.
6. On October 2, 2017, Hensley and J.J. severed their contractor-client relationship through Home Restorers, cancelled their contract, and Hensley refunded the advance payment totaling \$2,500 made by J.J. to Home Restorers. J.J. then signed a contract on the same day to have Hensley represent J.J. as a PIA.
7. Paez Roofing & Remodeling was subsequently hired as a contractor.
8. On October 7, 2017, Paez Roofing & Remodeling paid Hensley \$2,250 with the memo on the check noting J.J.'s name. The department maintains this was a prohibited referral payment and a conflict of interest by Hensley. Hensley maintains that this was a refund in accordance with the cancellation of the Home

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Restorer's contract as he had made an advance payment to Paez as a subcontractor.

Collecting Sales Tax After Change of Law

9. Public insurance adjuster services performed after October 1, 2015, are not taxable according to 34 TEX. ADMIN. CODE § 3.355(c)(4). The department's investigation revealed Hensley continued to bill his clients a sales tax of 8.25% nearly two years after the law changed.
10. Hensley did not remit his taxes on the 8.25% billed sales tax to the Texas Office of the Comptroller.
11. During the course of the department's investigation, Hensley voluntarily refunded the 8.25% sales tax to all impacted customers and has ceased charging sales tax.

Charging Fees in Excess of 10%

12. The department received a complaint from J.D., a PIA client of Hensley's whose home suffered storm damage during Hurricane Harvey. The complaint alleged Hensley charged J.D. fees in excess of 10%.
13. During the course of Hensley's representation of J.D., he charged a total of \$28,344.50 for his PIA services. This included a sales tax of \$1,973.93 and a \$10,780.69 fee for the contents claim. The sales tax was credited back to J.D. in April of 2019.
14. USAA, J.D.'s insurer, ultimately paid \$96,851.63 on the contents claim.
15. A PIA can only charge up to 10% of the insurance settlement. The department maintains Hensley overcharged J.D. \$1,095.53 on the contents claim. Hensley maintains that he charged less than 10% of the insurance settlement of the claim as a whole, including all portions of the claim submitted.
16. As part of this Order, Hensley agrees to refund J.D. \$1,095.53, as well as simple interest at 5% per annum, totaling \$1,150.

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Conflicts of Interest Prohibited

17. The department received complaints alleging Hensley was not maintaining a clear distinction between his Home Restorers business and his PIA business. Hensley provided his Home Restorers business card to two complainants with his PIA license number handwritten on the card. Hensley also used his Home Restorers email on several occasions when conducting PIA business.

Use of Unapproved Contract

18. A PIA is required to use a department approved contract for services. Contracts must be submitted with either an original application or an application for renewal, and once approved, that contract is valid for two years. When each contract is signed, it must be signed in duplicate by both the PIA and the client, and the date and time of signing must be documented. Additionally, should the two parties agree to change the terms of the contract, a copy of the altered contract must be submitted to and approved by the department.
19. The department approved Hensley's PIA contracts for 2014 and 2016. During the department's investigation, it was revealed Hensley used the 2014 contract after it was no longer valid for at least 16 clients.
20. In at least one instance, Hensley and a client made agreed alterations to his fee in the contract. Hensley did not provide a copy of this altered contract to or obtain approval for its use by the department. Hensley maintains he has never made alterations to a contract increasing his fee beyond the statutorily capped amount.
21. In multiple instances, Hensley failed to complete contracts in duplicate at the time of signing, and some contracts lacked required signatures, the time of signature, or had incorrect dates of signature.

Mitigating Factors

22. Hensley has been licensed for approximately 11 years, has cooperated with the department's investigation, represents he has come into compliance and paid back all incorrectly charged sales tax, agrees to pay full restitution plus simple interest to the consumer, and agrees to comply with all insurance laws in the future.

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051-82.055, 84.021-84.044, 4005.101, 4005.102, 4102.051, and 4102.204; and TEX. GOV'T CODE §§ 2001.051-2001.178.
2. The commissioner has the authority to informally dispose of this matter as set forth in TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47.
3. Hensley has knowingly and voluntarily waived all procedural rights to which he may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. Hensley engaged in acts or practices including, but not limited to, charging clients a state sales tax of 8.25% for services performed on behalf of an insured by a public insurance adjuster after October 1, 2015, which is prohibited by 34 TEX. ADMIN. CODE § 3.355(c)(4), in violation of TEX. INS. CODE § 4005.101(b)(5).
5. Hensley entered into written contracts not approved by the commissioner, failed to execute contracts in duplicate, and failed to submit to the office of Agent and Adjuster Licensing contracts containing modifications or amendments of terms or conditions, in violation of TEX. INS. CODE § 4102.103(a) and 28 TEX. ADMIN. CODE § 19.708.
6. Hensley received commissions for services exceeding 10 percent of the amount of the insurance settlement on the claim, in violation of TEX. INS. CODE § 4102.104.
7. Hensley engaged in activities that may reasonably be construed as presenting a conflict of interest, or accepting a referral payment, in violation of TEX. INS. CODE §§ 4102.158(a)(2) and 4102.164.
8. Hensley violated the public insurance adjuster code of ethics by failing to conduct business fairly with his clients, making misrepresentations, charging non-compliant commissions, failing to avoid conflicts of interest, and failing to use contracts approved by the commissioner, in violation of 28 TEX. ADMIN. CODE § 19.713, as contemplated by TEX. INS. CODE § 4102.005.

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Stephanie Daniels, Staff Attorney
Enforcement Division

Approved as to form and content:



Cassandra Pruski
Counsel for Respondent

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Affidavit

STATE OF TEXAS §
COUNTY OF BRAZORIA §

Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

"My name is Jody Ray Hensley. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

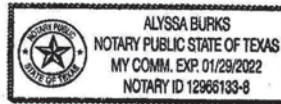
I waive the rights provided by the Texas Insurance Code and other applicable law and acknowledge the jurisdiction of the commissioner.

I have knowingly and voluntarily entered into this consent order and agree with and consent to the issuance and service of the same by the commissioner of insurance of the State of Texas."

Affiant *Jody Ray Hensley*

SWORN TO AND SUBSCRIBED before me on JUNE 30, 2021.

(NOTARY SEAL)



Alyssa Burks

Signature of Notary Public

ALYSSA BURKS

Printed Name of Notary Public