

No. 2023-8114

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

Date: 8/3/2023

Subject Considered:

Texas Department of Insurance
v.
Nelci Chavez and L K Insurance Services, L.L.C.

SOAH Docket No. 454-21-1868.C

General Remarks and Official Action Taken:

The subject of this order is the general lines agent license held by Nelci Chavez and the general lines agency license held by L K Insurance Services, L.L.C. (L K Insurance). This order revokes both licenses and orders that Ms. Chavez and L K Insurance (respondents) pay restitution in the amount of \$1,883.61.

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 the respondents' licenses and order that the respondents pay restitution in the amount of \$1,883.61 to Rafael Santiago. A copy of the proposal for decision is attached as Exhibit A.

Enforcement staff for TDI filed an exception to the administrative law judge's proposal for decision. Respondents did not file a reply to the exception.

In response to the exceptions, the administrative law judge did not recommend revising the proposal for decision. A copy of the administrative law judge's response to the exception is attached as Exhibit B.

The commissioner of insurance adopts the administrative law judge's proposed Findings of Fact Nos. 1–39 and 41–44 and proposed Conclusions of Law Nos. 1–13 and

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15. The commissioner declines to adopt the administrative law judge's proposed Finding of Fact No. 40 and proposed Conclusion of Law No. 14 for the reasons stated in this order.

Legal Authority for Changes to Proposal for Decision

The legal authority for the changes to the proposal for decision made in this order is TEX. GOV'T CODE § 2001.058(e)(1), which provides that "[a] state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines . . . that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies [of the agency], or prior administrative decisions"

The commissioner is revoking the respondents' licenses and ordering the payment of restitution without imposing an administrative penalty. The commissioner's determination to decline an administrative penalty is based on the totality of the record and not the analysis of the administrative law judge contained in the proposal for decision regarding the applicability of TEX. INS. CODE § 84.041. The commissioner's determination to revoke the respondents' licenses in this instance is a sufficient deterrent for future violations.

The determination of punishment for a violation of the Insurance Code is a matter vested in TDI and the commissioner, and the commissioner is charged by law to fix a penalty when a determination has been made that a statute has been violated. See *Sears v. Texas State Bd. of Dental Examiners*, 759 SW. 2d 748, 751 (Tex. App.—Austin 1998, no writ).

A past administrative decision issued by TDI addresses applicability of TEX. INS. CODE § 84.041 when imposing an administrative penalty following a contested case hearing.¹ That decision cites *Sears v. Texas State Bd. of Dental Examiners* and it rejects a similar analysis from an administrative law judge regarding TEX. INS. CODE § 84.041. The administrative law judge for the current proceeding did not properly apply or follow that decision.

The commissioner, therefore, rejects the portion of the administrative law judge's proposal for decision that asserts that TDI is required under TEX. INS. CODE § 84.041 to issue a statement of the amount of penalties TDI proposes to impose before the

¹ See *Dan R. Everett*, Commissioner's Order No. 03-0581 (issued July 3, 2003).

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commissioner may assess an administrative penalty following a contested case hearing. Consistent with this, the commissioner does not adopt proposed Finding of Fact No. 40, which includes the irrelevant finding that "Respondents have not been provided with a statement of the amount of penalties the Department proposes to impose against them in this proceeding, or for which specific violations," and the commissioner does not adopt proposed Conclusion of Law No. 14, which includes the incorrect conclusion that "[t]he Commissioner is authorized to assess administrative penalties against persons who have violated insurance laws but must first give the affected person written notice with a brief summary of each alleged violation and a statement of the amount of the recommended penalty, and the notice must inform the person that they have a right to a hearing to contest the violation, penalty amount, or both."

Findings of Fact

1. Proposed Findings of Fact Nos. 1–39 and 41–44 as contained in Exhibit A are adopted by the commissioner and incorporated by reference into this order.
2. The commissioner does not adopt Proposed Finding of Fact No. 40.

Conclusions of Law

1. Proposed Conclusions of Law Nos. 1–13 and 15 as contained in Exhibit A are adopted by the commissioner and incorporated by reference into this order.
2. The commissioner does not adopt Proposed Conclusion of Law No. 14.

Order


It is ordered that the general lines agency license held by L K Insurance Services, L.L.C. is revoked.

It is further ordered that the general lines agent license held by Nelci Chavez is revoked.


Finally, it is ordered that L K Insurance Services, L.L.C. and Nelci Chavez pay restitution to Rafael Santiago in the amount of \$1,883.61.

L K Insurance Services, L.L.C. and Nelci Chavez must send proof of payment of the restitution to TDI within 30 days of the date of this order, by emailing EnforcementReports@tdi.texas.gov.

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Commissioner of Insurance

Recommended and reviewed by:

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Justin Beam, Assistant General Counsel

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS DEPARTMENT OF INSURANCE,
PETITIONER**

v.

**NELCI CHAVEZ AND L K INSURANCE SERVICES, L.L.C.,
RESPONDENT**

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**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
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**TEXAS DEPARTMENT OF INSURANCE,
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v.
NELCI CHAVEZ AND L K INSURANCE SERVICES, L.L.C.,
RESPONDENT**

PROPOSAL FOR DECISION

The Staff of the Texas Department of Insurance (Department) seeks to revoke the general lines agency license held by L K Insurance Services, L.L.C. (L K Insurance), and the general lines agent license held by its owner, Nelci Chavez, based on allegations by two complainants that Ms. Chavez and L K Insurance (collectively, Respondents) engaged in fraudulent or dishonest acts and misappropriated their funds. Staff also seeks an order requiring Respondents to pay restitution and administrative penalties. After considering the evidence and applicable law, the Administrative Law Judge (ALJ) finds that Staff proved the violations alleged and recommends that the Commissioner of Insurance

(Commissioner)¹ revoke both Respondents' licenses, and order them to pay \$1,883.61 in restitution to one of the complainants. The ALJ does not recommend imposition of any administrative penalties.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below.

The hearing in this case was held via Zoom videoconference on December 13-14, 2022, before ALJ Sarah Starnes with the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff attorney Kaycee Crisp represented Staff.² Ms. Chavez represented herself and L K Insurance. The hearing concluded on December 14, 2022, and the record closed on January 3, 2023, upon the filing of the transcript.

II. APPLICABLE LAW

The Commissioner may take disciplinary action against a license-holder who has misappropriated, converted to the license-holder's own use, or illegally withheld money belonging to an insurer or insured,³ or who has engaged in fraudulent or dishonest acts or practices.⁴

¹ The Commissioner is the chief executive and administrative officer of the Department. Tex. Ins. Code § 31.021.

² Subsequent to the hearing, Ms. Crisp changed employment and attorney Anna Kalapach was substituted as counsel for Staff.

³ Tex. Ins. Code § 4005.101(b)(4)(A), (C).

⁴ Tex. Ins. Code § 4005.101(b)(5).

Among other possible sanctions, the Commissioner may suspend or revoke the license of a person who has violated insurance laws, and may assess an administrative penalty.⁵ The Commissioner may also order a license-holder to make complete restitution to each Texas resident or Texas insured who is harmed by a violation of Texas insurance laws.⁶ Licensees of the Department must be honest, trustworthy, and reliable.⁷

Staff has the burden of proof in this proceeding.⁸ The standard of proof is by a preponderance of the evidence.⁹

III. EVIDENCE

This case arose from complaints made by two insureds—Rafael Santiago and Okell Ramos—both of whom retained Respondents to obtain insurance policies. At the hearing on the merits, Staff presented testimony from nine witnesses and had seventy exhibits admitted into evidence. Respondents presented testimony from three witnesses and had seven exhibits admitted into evidence.

⁵ Tex. Ins. Code §§ 82.051-.052(3), 84.021-.022, 4005.102(2), (4).

⁶ Tex. Ins. Code § 82.053.

⁷ 28 Tex. Admin. Code § 1.502(c).

⁸ 1 Tex. Admin. Code § 155.427.

⁹ See *Granek v. Texas St. Bd. of Med. Examin'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

A. STAFF’S EVIDENCE ON MR. SANTIAGO’S COMPLAINT

1. Testimony of Rafael Santiago¹⁰

Rafael Santiago is a former customer of Respondents. He met Ms. Chavez at church in or around 2015, and eventually began working with her as his insurance agent to purchase auto insurance.¹¹ As described in his testimony, Mr. Santiago filed a complaint against Respondents with the Department in April 2019,¹² after several policies they placed for him were cancelled for nonpayment and after Mr. Santiago learned he had not been insured for approximately ten months despite making regular premium payments.

a) Alinsco Policy

Ms. Chavez first obtained a policy for Mr. Santiago with Alinsco Insurance Company (Alinsco) to cover his three vehicles for the policy period from August 21, 2017, to August 21, 2018.¹³ According to Mr. Santiago, Ms. Chavez told him she would arrange for Alinsco to draft the policy premiums from his bank account.¹⁴ His checking account statement shows that a premium payment was made directly to the insurer on August 23, 2017, in the amount of \$366.80.¹⁵ However, the

¹⁰ Mr. Santiago testified through a Spanish-language interpreter.

¹¹ Transcript of the Hearing on the Merits (Tr.) Vol. 1 at 24.

¹² Tr. Vol. 1 at 26. The complaint was in Spanish and no translation was offered in evidence.

¹³ TDI Ex. 10 at 0600.

¹⁴ Tr. Vol. 1 at 27.

¹⁵ TDI Ex. 31 at 0528.

following month, Mr. Santiago received notice that Alinsco had not received the payment due for September (in the amount of \$683.98) and his policy would be cancelled if the payment was not received by October 1, 2017.¹⁶

Concerned, Mr. Santiago contacted Ms. Chavez, who told him not to worry and said would find another company to insure him.¹⁷ Her agency, L K Insurance, then drafted \$253.71 from Mr. Santiago's checking account on September 29, 2017.¹⁸ Mr. Santiago testified he understood this payment was for his auto insurance, though he was not clear on whether it was for the overdue Alinsco premium or the new policy that Ms. Chavez said she would be securing.¹⁹ The Alinsco policy was cancelled effective October 2, 2017, for nonpayment.²⁰

b) Infinity Policy

Next, Ms. Chavez acquired a policy for Mr. Santiago with Infinity Auto Insurance (Infinity), which was supposed to cover his three vehicles for a six-month policy period beginning October 5, 2017.²¹ However, he soon received a nonpayment notice, dated October 26, 2017, stating that his policy would be canceled if a minimum payment of \$439.49 was not received.²² Mr. Santiago again called

¹⁶ TDI Ex. 10 at 0603.

¹⁷ Tr. Vol. 1 at 29.

¹⁸ TDI Ex. 32 at 0540.

¹⁹ Tr. Vol. 1 at 30.

²⁰ TDI Ex. 10 at 0599.

²¹ Tr. Vol. 1 at 31; TDI Ex. 15 at 0957.

²² TDI Ex. 19 at 1086.

Ms. Chavez to ask about the nonpayment and she told him there had been a problem or error on Infinity's part and she would address it.²³ A payment to Infinity was then drafted from his checking account on October 27, 2017, in the amount of \$217.75.²⁴ Several days later, Infinity sent another nonpayment notice notifying him that he still owed \$221.74 for the premium and the Infinity policy would be canceled if that sum was not paid by November 19, 2017.²⁵ Again, when he called Ms. Chavez, she told him "not to worry about it, that everything was fine," Mr. Santiago testified.²⁶

On November 22, 2017 (three days after the deadline in Infinity's second nonpayment notice), a payment of \$221.74 to Infinity was drafted from Mr. Santiago's account.²⁷ After that payment, Mr. Santiago received a third nonpayment notice from Infinity dated December 5, 2017, saying his policy would be cancelled effective December 15, 2017, unless that month's payment of \$464.49 was received before that date.²⁸ This time, when Mr. Santiago called, Ms. Chavez told him she would address the payment problems by again changing insurers for his auto policy.²⁹

²³ Tr. Vol. 1 at 32.

²⁴ TDI Ex. 33 at 0549.

²⁵ TDI Ex. 19 at 1084.

²⁶ Tr. Vol. 1 at 33.

²⁷ TDI Ex. 33 at 0551.

²⁸ TDI Ex. 19 at 1081.

²⁹ Tr. Vol. 1 at 34.

On December 22, 2017, L K Insurance drafted \$231.71 from Mr. Santiago's checking account.³⁰ He thought that payment was for auto insurance, though he testified he was not clear on whether it was for the Infinity policy or a new policy to be obtained by Ms. Chavez.³¹ Mr. Santiago next received a collection notice from Infinity dated January 16, 2018, stating that his policy had been cancelled on December 15, 2017, his account was past due, and \$210.93 was still owed for the Infinity policy.³²

c) Hallmark Policies

After the Infinity policy was canceled, Ms. Chavez obtained a new policy for Mr. Santiago with Hallmark County Mutual Insurance Company (Hallmark) to insure his vehicles for a six-month period beginning December 29, 2017.³³ However, Mr. Santiago soon received a cancellation notice stating that policy was cancelled effective December 29, 2017, because the down payment had been dishonored.³⁴ He asked Ms. Chavez and, though he did not really understand her explanation for what had gone wrong, she told him, "as usual, not to worry about it, that she will correct – she will fix it."³⁵

³⁰ TDI Ex. 34 at 0560.

³¹ Tr. Vol. 1 at 35.

³² TDI Ex. 13 at 0583.

³³ Tr. Vol. 1 at 36; TDI Ex. 21 at 846.

³⁴ TDI Ex. 21 at 0851.

³⁵ Tr. Vol. 1 at 37-38.

Mr. Santiago then received a declarations page indicating that a Hallmark policy was in effect for the policy period January 24-July 24, 2018.³⁶ At the time, he was unaware that this was a new policy, not a reinstatement of the original Hallmark policy.³⁷ For the next four months, payments to Hallmark for policy premiums were drafted from Mr. Santiago's checking account.³⁸ Then, he received another notice of cancellation dated April 25, 2018, stating that his Hallmark policy would be cancelled for nonpayment effective May 6, 2018, unless the past-due amount of \$255.61 was received before that date.³⁹ Mr. Santiago asked Ms. Chavez why the policy was in arrears despite his monthly payments and she responded that she would again change his coverage to another insurance company.⁴⁰

d) Putative Mercury Policy

Next, Ms. Chavez provided Mr. Santiago insurance identification cards reflecting that his three vehicles were covered by Mercury Insurance Group (Mercury) for a policy period beginning May 12, 2018.⁴¹ Based on Ms. Chavez's representations and assurances, Mr. Santiago believed "this was a new insurance company, that this was going to be the good one. And in order to avoid any further

³⁶ TDI Ex. 21 at 0839.

³⁷ Tr. Vol. 1 at 38-39.

³⁸ Tr. Vol. 1 at 39-40.

³⁹ TDI Ex. 21 at 0854.

⁴⁰ Tr. Vol. 1 at 41.

⁴¹ TDI Ex. 22.

problems, I was going to pay [for] it to her directly, and she was going to pay [the insurer].”⁴²

Mr. Santiago’s first payment to L K Insurance for the Mercury policy was drafted from his checking account May 21, 2018, in the amount of \$286.65.⁴³ Additional payments were made to L K Insurance on June 21, 2018 (\$208.19),⁴⁴ July 23, 2018 (\$208.00),⁴⁵ August 21, 2018 (\$208.11),⁴⁶ September 21, 2018 (\$162.11),⁴⁷ October 22, 2018 (\$162.11),⁴⁸ November 21, 2018 (\$162.11),⁴⁹ December 21, 2018 (\$162.11),⁵⁰ January 22, 2019 (\$162.11),⁵¹ and February 21, 2019 (\$162.11).⁵² Mr. Santiago testified that he understood and believed each of those payments was made to Ms. Chavez’s insurance agency, L K Insurance, for payment on his Mercury auto insurance policy.⁵³

⁴² Tr. Vol. 1 at 41-42.

⁴³ TDI Ex. 38 at 0514.

⁴⁴ TDI Ex. 39 at 0519.

⁴⁵ TDI Ex. 40 at 0524.

⁴⁶ TDI Ex. 41 at 0533.

⁴⁷ TDI Ex. 42 at 0538.

⁴⁸ TDI Ex. 43 at 0547.

⁴⁹ TDI Ex. 44 at 0556.

⁵⁰ TDI Ex. 45 at 0565.

⁵¹ TDI Ex. 46 at 0488.

⁵² TDI Ex. 47 at 0496.

⁵³ Tr. Vol. 1 at 42-47.

Then, Mr. Santiago's March 2019 bank statement reflected a \$182.29 payment drafted on March 26, 2019, to Gainsco Automobile.⁵⁴ Mr. Santiago was confused by the payment because he was unaware of any Gainsco policy, and because Ms. Chavez had told him his premiums would be drafted by her agency and he would not be paying his auto insurer directly.⁵⁵ When he asked her, Ms. Chavez told Mr. Santiago that Gainsco would be "the new administrators for the account with Mercury."⁵⁶

By then, Mr. Santiago had grown mistrustful of Ms. Chavez. He disputed the payment to Gainsco with his bank, and he spoke with Allstate to get a quote on a new auto insurance policy through a new agent.⁵⁷ The Allstate agent informed him that he had not been covered by any auto insurance policy for the last ten months.⁵⁸ He contacted Ms. Chavez, who continued to assure him that he was covered by Mercury. However, when he contacted Mercury, the insurer told him he did not have a policy with them.⁵⁹

Because he had been uninsured, Mr. Santiago ultimately had to pay a much higher premium for a policy through Allstate than he would have paid if there had been no interruption in his auto coverage. In addition to these damages, Mr. Santiago

⁵⁴ TDI Ex. 48 at 0508; Tr. Vol. 1 at 47.

⁵⁵ Tr. Vol. 1 at 47.

⁵⁶ Tr. Vol. 1 at 48.

⁵⁷ Tr. Vol. 1 at 48. The Gainsco payment was refunded to his account on March 27, 2019. TDI Ex. 48 at 0508.

⁵⁸ Tr. Vol. 1 at 49.

⁵⁹ Tr. Vol. 1 at 49.

testified that Ms. Chavez never refunded the premium payments he made to LK Insurance between May 2018 and March 2019.⁶⁰

2. Testimony of Maria Cortez

Maria Cortez is the chief operations officer for Alinsco, and has familiarity with Mr. Santiago's policy and related correspondence. She confirmed that Alinsco issued an auto insurance policy to Mr. Santiago that was intended to cover him for a twelve-month period beginning August 21, 2017.⁶¹ Mr. Santiago's policy was purchased through L K Insurance, his insurance agency.⁶² Alinsco received only one payment for Mr. Santiago's policy, a down-payment in the amount of \$366.80.⁶³ No further payments were ever made on the policy.⁶⁴ After several late-payment notices were sent, Alinsco cancelled Mr. Santiago's policy effective October 2, 2017.⁶⁵

L K Insurance is still an active agency in the Alinsco system, according to Ms. Cortez. However, it is considered a "run-off book" and has only two policies in force at this time. Ms. Cortez indicated that no new policies are being issued and Alinsco will drop L K Insurance once the remaining policies end.⁶⁶

⁶⁰ Tr. Vol. 1 at 50.

⁶¹ Tr. Vol. 1 at 55-56.

⁶² Tr. Vol. 1 at 56.

⁶³ TDI Ex. 10 at 0601; Tr. Vol. 1 at 56-57.

⁶⁴ Tr. Vol. 1 at 56-57.

⁶⁵ Tr. Vol. 1 at 57-58.

⁶⁶ Tr. Vol. 1 at 59.

3. Testimony of Danny Skinner

Danny Skinner is a regional sales director for Kemper Auto Insurance, a carrier that acquired Infinity four or five years ago.⁶⁷ He has access to pre-merger Infinity policies and is familiar with the Infinity policy that was issued to Mr. Santiago.

Mr. Skinner confirmed that Infinity issued a policy to Mr. Santiago that was intended to provide him auto insurance from October 5, 2017, to April 5, 2018. The policy was bound by insurance agency L K Insurance.⁶⁸ The first premium payment, received on October 5, 2017 (\$442.58), was drafted from the insurance agency's sweep account. A second payment from the sweep account failed on October 18, 2017 (\$439.49) for insufficient funds.⁶⁹ Two subsequent payments were made by a credit card in Mr. Santiago's name on October 26, 2017 (\$217.75), and November 21, 2017 (\$217.74).⁷⁰ Then, another payment from L K Insurance's sweep account on November 25, 2017, in the amount of \$464.49, failed for insufficient funds.⁷¹

Infinity sent several nonpayment notices warning that Mr. Santiago's policy would be cancelled if payments owed were not received. Each notice was sent to both

⁶⁷ Tr. Vol. 1 at 62-63.

⁶⁸ Tr. Vol. 1 at 64-65.

⁶⁹ Tr. Vol. 1 at 66-67; TDI Ex. 15 at 0962-64.

⁷⁰ Tr. Vol. 1 at 67-68; TDI Ex. 15 at 0965-66.

⁷¹ Tr. Vol. 1 at 68-69; TDI Ex. 15 at 0967.

Mr. Santiago and his insurance agency, L K Insurance.⁷² Ultimately, Infinity cancelled Mr. Santiago's policy effective December 15, 2017, due to nonpayment.

Mr. Skinner testified that Infinity terminated its relationship with Respondents "years ago" due to "alleged claim fraud and agency abandonment." According to Mr. Skinner, Infinity's records show that the insurer was unable to contact Ms. Chavez.⁷³

4. Testimony of Virginia Ward

Ms. Ward is a personal lines underwriting manager for Hallmark Financial Services and is familiar with Hallmark insurance policies and payment histories on those policies.⁷⁴ She confirmed Mr. Santiago's testimony that a Hallmark auto policy was issued to him for an expected policy period from December 29, 2017, through June 29, 2018, and that the policy was "flat cancelled" when the premium down payment was not honored.⁷⁵ In this instance, she explained, the payment failed "due to an invalid account number" being provided to Hallmark.⁷⁶

A new Hallmark policy for Mr. Santiago was issued for the policy period January 24, to July 24, 2018.⁷⁷ Ms. Ward explained that the second policy was

⁷² Tr. Vol. 1 at 69-71.

⁷³ Tr. Vol. 1 at 72.

⁷⁴ Tr. Vol. 1 at 74.

⁷⁵ Tr. Vol. 1 at 75.

⁷⁶ Tr. Vol. 1 at 76.

⁷⁷ Tr. Vol. 1 at 76.

initially issued for only one vehicle, but a change was made to the policy effective February 3, 2018, to add two additional vehicles, and the premium increased by \$963.00. The insurance agent should have obtained a policy and made changes to the coverage only at the request of, and with the full knowledge of, the insured, according to Ms. Ward.⁷⁸

In April 2018, a premium payment for the second Hallmark policy was declined, and notice was sent to Mr. Santiago telling him that \$255.61 was due immediately.⁷⁹ Ms. Chavez and L K Insurance would have also been notified of the declined payment through the agency portal, according to Ms. Ward.⁸⁰ When the premium was not paid, a cancellation notice was sent warning that the policy would be cancelled effective May 6, 2018.⁸¹ No payment was received and Mr. Santiago's policy was ultimately cancelled, Ms. Ward testified.

Hallmark no longer has a relationship with Ms. Chavez, according to Ms. Ward. She said Hallmark terminated its agency contract with L K Insurance in 2018, due to "failure to provide valid trust account information for the agency and for, in several instances, e-check payments being uploaded by the agent that were returned unpaid for invalid account numbers."⁸²

⁷⁸ Tr. Vol. 1 at 77.

⁷⁹ TDI Ex. 21 at 0853.

⁸⁰ Tr. Vol. 1 at 78.

⁸¹ Tr. Vol. 1 at 78; TDI Ex. 21 at 0854.

⁸² Tr. Vol. 1 at 79-80.

5. Testimony of Gregg Lewis

Mr. Lewis is the divisional underwriting director for personal property with Mercury.⁸³ He is familiar with Mercury's process for issuing policies, including personal auto insurance, and any endorsements to those policies, and has access to policy records.⁸⁴

Mr. Lewis was shown several Mercury auto identification cards—the cards Mr. Santiago testified he received from Ms. Chavez, as described above—which indicate that Mr. Santiago was the named insured on an automobile liability policy effective December 12, 2018, with three vehicles covered.⁸⁵ According to Mr. Lewis, the cards were for an actual policy issued by Mercury, but Mr. Santiago was never the named insured.⁸⁶ Mercury has no record of ever issuing a policy to Mr. Santiago and never issued any insurance cards with Mr. Santiago's name on them.⁸⁷

Mercury has never conducted business with L K Insurance or Ms. Chavez, according to Mr. Lewis, and they are not authorized to receive premiums or place policies on behalf of Mercury.⁸⁸

⁸³ Tr. Vol. 1 at 82.

⁸⁴ Tr. Vol. 1 at 82.

⁸⁵ TDI Ex. 22.

⁸⁶ Tr. Vol. 1 at 83-85.

⁸⁷ Tr. Vol. 1 at 84-85.

⁸⁸ Tr. Vol. 1 at 88-86.

6. Testimony of Kevin Williams

Mr. Williams is the vice president of product and underwriting for MGA Insurance Company, which operates under the trade name Gainsco Auto Insurance.⁸⁹ He testified about the \$182.29 payment that Gainsco drafted from Mr. Santiago’s bank account on March 26, 2019.⁹⁰

According to Mr. Williams, this payment was posted to an insurance policy account held by an insured named Santiago Pineda.⁹¹ The payment was made through Gainsco’s agent portal, and the Visa card number was provided by the insurance agent on the policy.⁹² L K Insurance is the agent listed for Mr. Pineda’s policy.⁹³ Gainsco has never processed a quote for or issued a policy to Mr. Santiago.⁹⁴

B. STAFF’S EVIDENCE ON MR. RAMOS’S COMPLAINT

1. Testimony of Yamile Isaac⁹⁵

Ms. Isaac is the bookkeeper for TX Transport, a small trucking company owned by her husband, Okell Ramos. She testified that the business had a \$1 million

⁸⁹ Tr. Vol. 1 at 89-90.

⁹⁰ TDI Ex. 48 at 0508; Tr. Vol. 1 at 47.

⁹¹ Tr. Vol. 1 at 90; TDI Ex. 28 at 0823.

⁹² Tr. Vol. 1 at 91-92.

⁹³ Tr. Vol. 1 at 92; TDI Ex. 28 at 0826-27.

⁹⁴ Tr. Vol. 1 at 92-93.

⁹⁵ Ms. Isaac and Mr. Ramos both testified through a Spanish-language interpreter.

liability policy with Progressive Insurance, and she and her husband began looking for less expensive coverage shortly before that policy was set to expire in April or May 2019.⁹⁶ Mr. Ramos made contact with Ms. Chavez, who provided them with a quote for a new policy with Apollo Insurance.⁹⁷

According to Ms. Isaac, Ms. Chavez told them that the down-payment for the Apollo policy would be \$3,000, and that they should make the payments to L K Insurance, who would in turn pay Apollo.⁹⁸ Ms. Isaac divided the down-payment between a check and a credit card; TX Transport's business checking account statement shows that \$1,500 was paid by card to L K Insurance on April 15, 2019, and another \$1,500 was paid by check on April 30, 2019.⁹⁹ Another \$1,500 was paid by card to L K Insurance on May 21, 2019, and Ms. Isaac testified that she understood this payment was for the first month's premium payment for the Apollo policy.¹⁰⁰

Ms. Isaac testified that, when purchasing the policy, Ms. Chavez asked Ms. Isaac to provide her with access to TX Transport's online account with the FMCSA (Federal Motor Carrier Safety Administration)—a federal agency that registers commercial carriers and, among other things, maintains records proving

⁹⁶ Tr. Vol. 1 at 97.

⁹⁷ Tr. Vol. 1 at 97-98.

⁹⁸ Tr. Vol. 1 at 98-99.

⁹⁹ Tr. Vol. 1 at 98-100; TDI Exs. 49, 50.

¹⁰⁰ Tr. Vol. 1 at 100; TDI Ex. 49.

that they carry required insurance coverage. Ms. Isaac testified that she gave Ms. Chavez their FMCSA password.¹⁰¹

Ms. Isaac first grew suspicious when Ms. Chavez failed to provide her and her husband with any paperwork relating to the new Apollo policy. When she asked why they had not received any documentation, Ms. Chavez told Ms. Isaac to just wait for those documents to arrive by mail.¹⁰² Because customers typically require proof of insurance before they do business with a trucking company,¹⁰³ Ms. Isaac pressed Ms. Chavez for a certificate of insurance, and Ms. Chavez eventually provided one, dated April 15, 2019, indicating that Mr. Ramos and TX Transport had \$1 million in commercial general liability coverage from Apollo Insurance, with L K Insurance listed as the agent.¹⁰⁴ A second Certificate of Liability Coverage was provided dated May 29, 2019, indicating that automobile liability coverage was also included with the Apollo policy.¹⁰⁵ These certificates were the only documents Ms. Isaac and her husband ever received from Ms. Chavez regarding their insurance coverage, according to Ms. Isaac.¹⁰⁶

¹⁰¹ Tr. Vol. 1 at 98, 101, 103.

¹⁰² Tr. Vol. 1 at 100.

¹⁰³ Respondent's exhibits included an email from Mr. Ramos, dated May 28, 2019, telling Ms. Chavez he was still waiting on his insurance certificate. Resp. Ex. LL.

¹⁰⁴ Tr. Vol. 1 at 101-02; TDI Ex. 56.

¹⁰⁵ Tr. Vol. 1 at 102; TDI Ex. 57.

¹⁰⁶ Tr. Vol. 1 at 102.

Another insurance broker Ms. Isaac knew subsequently reached out to let her know there was something wrong and her Apollo insurance policy did not exist.¹⁰⁷ Ms. Isaac then went into the FMCSA account to change the password to block Ms. Chavez's access.¹⁰⁸ In the FMCSA system, Ms. Isaac saw that Progressive, not Apollo, was listed as TX Trucking's insurer, and that someone had reported paying over \$2,000 to renew the Progressive policy she thought had lapsed when they purchased the new Apollo policy. This would have satisfied the regulators that TX Trucking was covered, according to Ms. Isaac.¹⁰⁹ However, when the charge hit TX Trucking's bank account, it "bounced back" because the business did not have enough funds for the unexpected and unauthorized charge, Ms. Isaac testified.¹¹⁰ She said she never authorized the renewal of the Progressive policy and Ms. Chavez is the only other person who could have reported the renewal in the FMCSA system.¹¹¹

Ms. Isaac confronted Ms. Chavez and accused her of stealing the \$4,500 they had paid for the Apollo premiums. According to Ms. Isaac, they spent many hours arguing, and during their discussions Ms. Chavez claimed that she could not understand what happened and "that she was going to talk to her boss because she was not the owner of the business."¹¹² Ms. Isaac accused Ms. Chavez of fraud and demanded their money back, and eventually Ms. Chavez gave her a check from

¹⁰⁷ Tr. Vol. 1 at 103.

¹⁰⁸ Tr. Vol. 1 at 103.

¹⁰⁹ Tr. Vol. 1 at 103-04.

¹¹⁰ Tr. Vol. 1 at 104-05.

¹¹¹ Tr. Vol. 1 at 105.

¹¹² Tr. Vol. 1 at 105.

L K Insurance, dated June 24, 2019, and made out to TX Transport for \$4,500.¹¹³ However, when she tried to deposit the check, it was rejected for insufficient funds in the L K Insurance account.¹¹⁴ Ms. Isaac demanded another meeting in Ms. Chavez's office and this time Ms. Chavez paid her the money owed in cash.¹¹⁵

Although the premiums TX Transport paid for the nonexistent Apollo policy have been refunded to them, Ms. Isaac testified that she and her husband have still not been made whole because their insurance rates skyrocketed after companies realized they had been relying on fake certificates of insurance from Ms. Chavez. As far as Progressive and other insurance companies are concerned, Ms. Isaac explained, "we were the ones that committed the fraud," not the broker.¹¹⁶ The insurance costs were too high to continue the trucking business, so they closed the business and she and her husband both had to find different jobs.¹¹⁷

2. Testimony of Okell Ramos

Mr. Ramos explained that he and his wife had started TX Transport together. It had only one truck, which he drove while his wife handled all the bookkeeping. Their truck was old, and its age caused their insurance premiums to be very high, which is why he had sought out a broker to help find a policy with premiums lower

¹¹³ Tr. Vol. 1 at 106; TDI Ex. 52.

¹¹⁴ Tr. Vol. 1 at 106.

¹¹⁵ Tr. Vol. 1 at 106-07.

¹¹⁶ Tr. Vol. 1 at 107.

¹¹⁷ Tr. Vol. 1 at 107.

than what they had been paying Progressive.¹¹⁸ A friend recommended Ms. Chavez to him.¹¹⁹

At first, Mr. Ramos was pleased because the quote Ms. Chavez gave them for the new liability policy was reasonable, but after the problems with their payments and learning that the Apollo policy never existed, he filed a complaint against Ms. Chavez with the Department in June 2019.¹²⁰ His complaint stated the same general allegations that Ms. Isaac testified to: that Ms. Chavez had charged them \$3,000 as a down payment and \$1,500 for the first month's premium for a policy with Apollo Insurance, and provided them with a Certificate of Insurance for an Apollo Insurance policy; that they soon realized the FMCSA website showed that Progressive, not Apollo, was their carrier even though the Progressive policy should have lapsed; that they learned a payment to Progressive from their account, which they never authorized, had been rejected, leaving his business uninsured; and that, as of the date of the complaint, Ms. Chavez had still not refunded their \$4,500.¹²¹

At the hearing, Mr. Ramos testified that the biggest consequence from their dealings with Ms. Chavez and L K Insurance was that he had to close TX Transport because he was unable to get coverage with any insurance company after relying on

¹¹⁸ Tr. Vol. 1 at 110.

¹¹⁹ Tr. Vol. 1 at 109.

¹²⁰ Tr. Vol. 1 at 109; TDI Ex. 8.

¹²¹ TDI Ex. 7. Mr. Ramos's complaint was submitted in English.

the fraudulent Apollo certificate and becoming uninsured. He had to start over in a different job and has lost a lot of income.¹²²

3. Testimony of David Hale

Mr. Hale—a business systems consultant for Progressive Casualty Insurance Company—is familiar with policy records and policy changes for Progressive’s commercial auto policies.¹²³ He testified that Mr. Ramos and TX Transport were covered by Progressive under a commercial auto liability policy beginning October 5, 2017, and the policy was renewed several times over the next several years.¹²⁴ It is possible, Mr. Hale said, for an agent to log in and renew a policy in Progressive’s system without permission or confirmation from the customer.¹²⁵

Trucking companies are required to make certain filings with state and federal regulators to prove that they are properly insured, Mr. Hale testified, and these filings are confirmed by a document called a Form F that Progressive issues when a trucking policy has been renewed. These Form Fs, which constitute proof of filing with FMCSA, were issued for TX Transport’s policy while it was in effect.¹²⁶ Progressive also issues a Certificate of Insurance that the insured can use to show

¹²² Tr. Vol. 1 at 111.

¹²³ Tr. Vol. 1 at 115-16.

¹²⁴ Tr. Vol. 1 at 116-17; TDI Ex. 55, Part 2 at 1236.

¹²⁵ Tr. Vol. 1 at 131.

¹²⁶ Tr. Vol. 1 at 118-19; TDI Ex. 55, Part 6 at 1633.

customers what their liability limits are, that their insurance is current, and which vehicles and drivers are listed on the policy.¹²⁷

On March 21, 2019, Progressive sent Mr. Ramos an invoice letting him know that \$1,529.80 had to be paid by April 16, 2019, to renew his policy through October 16, 2019, along with a renewal declarations page that would go into effect when the invoice was paid.¹²⁸ Two more invoices were sent that month, both reflecting minor changes that had been made to the policy.¹²⁹

The liability policy for Mr. Ramos and TK Trucking was ultimately renewed for the policy period May 30, 2019, to November 30, 2019.¹³⁰ Mr. Hale was not sure why the effective date of the renewal was approximately six weeks after the expiration date referenced in the previous correspondence.¹³¹ Another Form F was filed with the FMCSA to show federal regulators that Progressive had renewed TK Trucking's policy effective May 29, 2019.¹³²

Shortly after the renewal, Progressive sent a cancellation notice to Mr. Ramos on June 4, 2019, informing him that the policy was \$2,453.00 past due and would be

¹²⁷ Tr. Vol. 1 at 119.

¹²⁸ Tr. Vol. 1 at 120-21; TDI Ex. 55, Part 7 at 1794-95.

¹²⁹ Tr. Vol. 1 at 122-23; TDI Ex. 55, Part 7 at 1807, 1811.

¹³⁰ Tr. Vol. 1 at 123-24; TDI Ex. 55, Part 7 at 1822.

¹³¹ Tr. Vol. 1 at 123-24.

¹³² Tr. Vol. 1 at 124-25; TDI Ex. 55, Part 7 at 1820-21. It is not clear from the record why the effective date stated in Progressive's correspondence is one day earlier than the coverage date in the declarations page.

cancelled on June 17, 2019, if payment was not received.¹³³ No payment was made and so the policy was cancelled on that date. Progressive then mailed a bill on June 18, 2019, informing Mr. Ramos that he still owed \$1,226.00 in premiums for coverage that had been provided through June 17, 2019.¹³⁴

In July 2019, after the policy had been cancelled, someone contacted Progressive to ask that the effective date of the cancellation be changed from June 17, 2019, to April 15, 2019.¹³⁵ It was unusual, according to Mr. Hale, for someone to request a cancellation date that was prior to the date the most recent renewal had come into effect (May 29, 2019). The request would have been made by either the insured or their agent; Progressive's records do not specify who made the cancellation request for Mr. Ramos's policy.¹³⁶

Progressive's payment history records for Mr. Ramos's policy show a \$2,441.00 payment was made on May 29, 2019, and that "Progressive returned that payment to its original source" on June 3, 2019.¹³⁷ The payment method used for the May 29, 2019 payment had not been used in any previous transactions for that policy.¹³⁸ Mr. Hale was not aware of whether the payment had failed for insufficient

¹³³ TDI Ex. 55, Part 8 at 1831.

¹³⁴ TDI Ex. 55, Part 8 at 1835.

¹³⁵ Tr. Vol. 1 at 127; TDI Ex. 55 at 1839.

¹³⁶ Tr. Vol. 1 at 127; TDI Ex. 55, Part 8 at 1839.

¹³⁷ Tr. Vol. 1 at 128; TDI Ex. 55, Part 8 at 1843A.

¹³⁸ Tr. Vol. 1 at 130.

funds (as Ms. Isaac recalled) or if there was some other reason for the returned payment.¹³⁹

As far as Mr. Hale knows, Ms. Chavez and L K Insurance still have active appointments with Progressive.¹⁴⁰

C. RESPONDENTS' EVIDENCE

1. Testimony of Respondent Nelci Chavez

Ms. Chavez testified on behalf of herself and L K Insurance. When asked what her position was with L K Insurance, Ms. Chavez testified that she was “the main writing manager for policies,” and had “some type of ownership,” but claimed that she had a boss that she had to answer to.¹⁴¹ When shown TDI’s licensing records for L K Insurance, Ms. Chavez acknowledged that she was listed as the agency’s 100% owner.¹⁴² She claimed her boss “manage[s], basically, the accounting and so forth [but] they’re not licensed,” and that is why she is the only owner listed in TDI’s records. In her view, this is acceptable because “[t]o obtain an LLC, you don’t have to have a license for anything,” though she acknowledged that you have to be licensed to practice the business of insurance in Texas.¹⁴³

¹³⁹ Tr. Vol. 1 at 128-29.

¹⁴⁰ Tr. Vol. 1 at 129.

¹⁴¹ Tr. Vol. 1 at 152.

¹⁴² TDI Ex. 68; Tr. Vol. 1 at 152.

¹⁴³ Tr. Vol. 1 at 152-53.

Regarding Mr. Santiago’s complaint, Ms. Chavez testified that Respondents provided insurance coverage to him “up until we didn’t have any more companies” that could work with him, after providing him coverage through Hallmark, Infinity, and Alinsco.¹⁴⁴ She denied ever placing a policy with Mercury for Mr. Santiago. Ms. Chavez testified that “we are not an appointed agency with Mercury” and Respondents would not have been able to provide him with any identification cards or other documents relating to a policy with that insurer.¹⁴⁵ She contends that he must have gone online and acquired the Mercury policy on his own.¹⁴⁶ That is why, when he called her after to speaking to the Allstate agent and learned he was not covered by Mercury, Ms. Chavez told Mr. Santiago that he needed to call Mercury himself to inquire about his policy.¹⁴⁷

On cross-examination, Ms. Chavez was asked why L K Insurance received payments from Mr. Santiago for a period of ten months if those payments were not for the Mercury policy. She responded that those payments “were not for Mercury, they were for an additional service” that Mr. Santiago had failed to disclose to the Department or in his testimony.¹⁴⁸ Specifically, Ms. Chavez claimed that Mr. Santiago had been trying to purchase a new house and was making those monthly payments to L K Insurance “so he can obtain credit.”¹⁴⁹ She claimed that

¹⁴⁴ Tr. Vol. 1 at 147.

¹⁴⁵ Tr. Vol. 1 at 147-48.

¹⁴⁶ Tr. Vol. 1 at 153.

¹⁴⁷ Tr. Vol. 1 at 147-48.

¹⁴⁸ Tr. Vol. 1 at 154, 156.

¹⁴⁹ Tr. Vol. 1 at 154.

Mr. Santiago made these payments because “someone” at L K Insurance had referred Mr. Santiago to someone else to build credit—testifying that “[w]e know individuals that help you to build credit.”¹⁵⁰ When pressed on how this arrangement worked, Ms. Chavez said “I don’t know how they do it since I don’t do the building credit myself,” but she said the customer “knows that there will be an additional fee that will be paid” for this service.¹⁵¹

Regarding Mr. Ramos’s complaint, Ms. Chavez denied renewing the Progressive policy, claiming that Respondents “are not eligible to see anybody’s insurance that is not within our agency platform.”¹⁵² She also denied having any access to TX Transport’s FMCSA account, testifying that she never asked customers for their login credentials.¹⁵³

When the Progressive policy was expiring, Ms. Chavez testified, she requested quotes from several insurers for Mr. Ramos’s coverage and initially obtained coverage from Pelican Insurance Company, not Apollo; however, a week after Mr. Ramos (or his wife) had paid \$4,500 for the policy, Pelican underwriting determined that the policy would not be issued after all.¹⁵⁴ Ms. Chavez testified that

¹⁵⁰ Tr. Vol. 1 at 154-55.

¹⁵¹ Tr. Vol. 1 at 155.

¹⁵² Tr. Vol. 1 at 150-51.

¹⁵³ Tr. Vol. 1 at 151.

¹⁵⁴ Tr. Vol. 1 at 149; *see also* Resp. Ex. Q (email from Respondent to Staff addressing Mr. Ramos’s complaint).

when she found out coverage had been denied, she issued a “complete refund” to Mr. Ramos and Ms. Isaac.¹⁵⁵

Ms. Chavez acknowledged an error on the certificates of insurance she provided to Mr. Ramos, which listed Apollo Insurance as his insurance carrier, testifying that “the incorrect underwriting insurance was placed on [the certificates of insurance], and that’s an error on our behalf.”¹⁵⁶ Ms. Chavez also acknowledged that this error on the certificates of insurance caused Mr. Ramos and TX Transport to provide false documentation to their customers about their insurance.¹⁵⁷ However, she also contended that “[t]he information that was given directly to [Mr. Ramos] was an accurate document, just the name of the company where it says ‘listed insurance’ was the incorrect insurance” and should have stated “Pelican Underwriting,” not Apollo, because at that time Pelican had indicated it would cover Mr. Ramos.¹⁵⁸

Ms. Chavez disputed that her error caused any damages to Mr. Ramos or his trucking company. She testified that “a document cannot keep a trucking company [from] obtaining business” and even if he had to close the business because he lacked insurance coverage, she did not think this was her fault.¹⁵⁹ She testified that the truck Mr. Ramos used for his business was over 20 years old, making it difficult to find

¹⁵⁵ Resp. Ex. Q.

¹⁵⁶ Tr. Vol. 1 at 149, 156.

¹⁵⁷ Tr. Vol. 1 at 157.

¹⁵⁸ Tr. Vol. 1 at 157-58.

¹⁵⁹ Tr. Vol. 1 at 156.

insurance, and Mr. Ramos simply did not want to pay the higher premiums that carriers charged to insure such an old vehicle.¹⁶⁰

2. Testimony of Evelyn Gardner

Ms. Gardner has been a customer of Respondents for approximately seven years.¹⁶¹ She has been satisfied with her coverage and feels she has always received the appropriate documentation for her policies by mail from Respondents. If she had questions about her policies, Ms. Gardner would call and Ms. Chavez would answer them.¹⁶² Payments for Ms. Gardner's insurance policies have been made automatically to the insurance agencies from her accounts, not to L K Insurance, and she has not had any problems.¹⁶³

3. Testimony of Armando Hernandez¹⁶⁴

Mr. Hernandez met Ms. Chavez through Mr. Santiago and began using her business for his insurance needs. He testified that he would go to her office and give her his credit card to use for insurance payments and never had any problems.¹⁶⁵ Mr. Hernandez was also happy with other services he received from Ms. Chavez, testifying that he “always went to her to resolve any issues, other situations,

¹⁶⁰ Tr. Vol. 1 at 150.

¹⁶¹ Tr. Vol. 1 at 139.

¹⁶² Tr. Vol. 1 at 141-42.

¹⁶³ Tr. Vol. 1 at 142.

¹⁶⁴ Mr. Hernandez testified through a Spanish language interpreter.

¹⁶⁵ Tr. Vol. 2 at 166-67, 69.

translations, applications. She did everything for me.”¹⁶⁶ He considers Ms. Chavez an “excellent person.”¹⁶⁷ He no longer uses Ms. Chavez’s services because he has relocated, and her office is no longer convenient.¹⁶⁸

IV. ANALYSIS

A. VIOLATIONS

Staff contends that Respondents engaged in fraudulent and dishonest conduct in their business dealings with both Mr. Santiago and Mr. Ramos, and that Respondents accepted payment intended for policy premiums without remitting those funds to the insurers, and/or made unauthorized withdrawals from the complainants’ accounts. As discussed below, the ALJ agrees and finds that Staff’s claims are well-supported by the evidence.

1. Violations against Mr. Santiago

Staff’s evidence shows—and Ms. Chavez did not dispute—that Respondents obtained four successive auto insurance policies for Mr. Santiago from three different insurers (Alinsco, Infinity, and Hallmark) between August 2017 and May 2018, and that each of the policies was cancelled for nonpayment. These cancellations occurred even though Mr. Santiago had authorized Ms. Chavez to have the premium payments automatically drafted from his bank account. A handful of

¹⁶⁶ Tr. Vol. 2 at 170-71.

¹⁶⁷ Tr. Vol. 2 at 171.

¹⁶⁸ Tr. Vol. 2 at 172.

payments were successfully auto-drafted and paid directly to the insurers, and there is no evidence that any payment from Mr. Santiago was attempted and failed for insufficient funds. Each time he inquired about the late payments, Ms. Chavez assured Mr. Santiago that the insurer had made an error, not her, and promised she would resolve the issue. None of these statements were true. Rather, the preponderance of the evidence shows that, contrary to Ms. Chavez's representations to Mr. Santiago, Respondents simply failed to make the payments when they were due, despite promising to do so, and Ms. Chavez allowed Mr. Santiago's auto policies to be cancelled rather than correcting her errors.

In addition, during this time L K Insurance also drafted two payments from Mr. Santiago's accounts—a \$253.71 payment on September 29, 2017, and a \$231.71 payment on December 22, 2017—both paid directly to L K Insurance rather than any of Mr. Santiago's insurers. Mr. Santiago testified that Ms. Chavez never clearly explained what these payments were for, and to this day he does not know if Respondents relayed those payments to any of his carriers or retained the funds in L K Insurance's account.

Mr. Santiago also claimed that Ms. Chavez told him he was insured by Mercury Insurance, and provided him with insurance identification cards reflecting that his coverage had begun on May 12, 2018. In her testimony, Ms. Chavez denied any involvement with a Mercury policy, claiming that L K Insurance could not have procured a policy or provided insurance cards because it does not have an appointment with Mercury. She contended that Mr. Santiago must have obtained a policy online by himself, without her involvement. However, Mercury's

representative (Mr. Lewis) testified unequivocally that Mr. Santiago was never covered by any Mercury policy, so it is not possible, as Ms. Chavez asserted, that the insurance cards were for a policy he independently purchased online.

The question, then, is how Mr. Santiago came to possess identification cards for a Mercury policy that listed his name and vehicles, but had a policy number that, in reality, had been issued to an entirely different insured. The evidence strongly suggests that someone with Respondents fabricated these documents, and Ms. Chavez offered no credible, alternative explanation.

Further, Mr. Santiago testified credibly that he believed he was covered by a Mercury policy from May 12, 2018 (when his identification cards said the policy incepted) until sometime in March 2019, when his bank statement suddenly reflected a payment to Gainsco, a different insurer. He said Ms. Chavez had told him to pay L K Insurance for the premiums and that she would ensure they were paid to Mercury. Consistent with this testimony, Mr. Santiago's bank records show that he made ten consecutive payments to L K Insurance at approximately the same time every month, beginning in May 2018.

Ms. Chavez denied all of this, but her contrary explanation—that Mr. Santiago was paying L K Insurance a monthly fee for the privilege of having been referred to someone who could help him build credit to buy a home—made little sense and was not credible. The only plausible explanation supported by the evidence for Mr. Santiago's monthly payments to L K Insurance is that he thought

the insurance agency was providing him with insurance, consistent with the identification cards Ms. Chavez had given him.

Finally, the preponderance of the evidence shows that Respondents misappropriated \$182.29 from Mr. Santiago when it had Gainsco draft that amount from his checking account on March 26, 2019. It is undisputed that Mr. Santiago never held a policy with Gainsco and never initiated or approved any payment to that insurer. He claimed that Ms. Chavez told him that Gainsco was going to be the administrator for his (nonexistent) Mercury policy, an allegation she did not address in her own testimony. Gainsco's representative (Mr. Williams) testified that this payment was posted to the account of another L K Insurance client with a similar name (Santiago Pineda, rather than Rafael Santiago). Though this charge was ultimately reversed by Mr. Santiago's bank, the evidence nonetheless shows that Ms. Chavez misused her access to Mr. Santiago's account to make a payment for the benefit of another L K Insurance customer. This action also constituted misappropriation.

In sum, Staff has proven that Ms. Chavez and her insurance agency, L K Insurance, made numerous representations to Mr. Santiago over approximately a ten-month period beginning in August 2017, about who was providing his auto insurance, why his premium payments were not being made, and why his policies were being cancelled. Then, beginning in May 2018, Respondents falsified insurance cards they provided to Mr. Santiago and lied to him about having auto coverage with Mercury for ten months. Pursuant to Texas Insurance Code section 4005.101(b)(5),

Respondents are subject to disciplinary action by the Commissioner for engaging in these fraudulent and dishonest acts.

In addition, Staff has shown that Ms. Chavez and L K Insurance misappropriated \$182.29 from Mr. Santiago by making a payment from his account for the benefit of a different client on March 26, 2019.¹⁶⁹ This misappropriation is further grounds for disciplinary action against Respondents, pursuant to Texas Insurance Code section 4005.101(b)(4)(A) and (C).

2. Violations against Mr. Ramos

Mr. Ramos's trucking business had a commercial liability policy with Progressive but, when the policy was up for renewal in April 2019, he and his wife retained Ms. Chavez to look for a less-expensive policy that could replace it.

The evidence clearly shows that that Mr. Ramos and Ms. Isaac paid a total of \$4,500 to L K Insurance for what they were told was an insurance policy from Apollo Insurance. Ms. Chavez also admitted that she provided Mr. Ramos certificates of insurance showing that the Apollo policy was in place beginning April 15, 2019, with additional coverage added on May 29, 2019, though she denied his and his wife's testimony that they had to ask her repeatedly for the proof of insurance. However, the evidence is undisputed that Mr. Ramos was never insured by Apollo at all. Thus, Staff has proven that Ms. Chavez and L K Insurance misrepresented that

¹⁶⁹ The evidence does not establish whether Respondents misappropriated or converted to their own use the \$253.71 drafted on September 29, 2017, or the \$231.71 drafted on December 22, 2017. Both payments were drawn from Mr. Santiago's checking account and paid directly to L K Insurance without explanation, but might have been paid to any of the insurers Ms. Chavez paid on his behalf during that time.

TX Transport was covered when, in fact, no policy had been purchased; and that Ms. Chavez and L K Insurance provided falsified certificates in furtherance of this misrepresentation. Ms. Chavez's claim that the certificates of insurance were issued by mistake and were supposed to reflect a different insurer (Pelican) was not credible, particularly because she acknowledged that Pelican ultimately did not agree to insure Mr. Ramos, either. In any case, whether the certificates were issued by reckless mistake or as a deliberate fraud, they constituted a misrepresentation to Mr. Ramos that his trucking company had auto liability coverage when it did not.

Mr. Ramos and Ms. Isaac also allege that Ms. Chavez meddled with the online FMCSA account for TX Transport, misrepresenting to the federal regulators that the business was covered by Progressive after that policy had lapsed, during the period they believed they were covered by Apollo. The evidence was insufficient to substantiate this allegation, as it is unclear from the testimony who updated the online account, let alone when or how.

Still, there is persuasive evidence that Ms. Chavez, through L K Insurance, at least tried to renew the Progressive policy that Mr. Ramos directed her to replace. Progressive's representative (Mr. Hale) confirmed that Mr. Ramos's policy was renewed effective May 29, 2019, before it was cancelled several days later, on June 4, 2019. During that six-day window, a \$2,441.00 payment was made from Mr. Ramos's business account to Progressive, and was either dishonored by his bank or returned by Progressive. Ms. Isaac and Mr. Ramos testified credibly that they were surprised by this charge and never authorized it, and had no reason to pay anything to Progressive after having already paid several thousand dollars to

L K Insurance for a different policy from Apollo. Ms. Chavez offered no alternative explanation, and the ALJ concludes from the evidence that she fraudulently tried to renew the Progressive policy against her clients' wishes after failing to secure the policy she had promised them from Apollo.

This evidence further shows that Ms. Chavez and L K Insurance misappropriated \$4,500 from Mr. Ramos, based on Ms. Chavez's false representations that the money would go to Apollo to secure a policy to replace their expiring Progressive policy. After misrepresenting that Mr. Ramos was covered by Apollo—and providing him with falsified certificates of insurance to support her lie—Ms. Chavez then misappropriated more funds when she tried to draw another \$2,441 from his account to pay to renew the Progressive policy—a renewal Mr. Ramos did not want, did not authorize, and did not know about. These misrepresentations and misappropriations are further grounds for disciplinary action against Ms. Chavez and L K Insurance pursuant to Texas Insurance Code section 4005.101(b)(4) and (5).

B. SANCTIONS

As a sanction for the violations found above, Staff seeks revocation of both Respondents' licenses, restitution for Mr. Santiago, and imposition of administrative penalties.

1. Revocation

The Department's rules specify that it is "very important that license and authorization holders . . . and any other persons who have the right to control a

license or authorization holder . . . be honest, trustworthy, and reliable.”¹⁷⁰ The public must be able to place trust in and rely upon licensees,¹⁷¹ and the Department may revoke a person’s license if they have engaged in fraudulent or dishonest activity or have misappropriated funds belonging to an insurer or an insured.¹⁷² Here, Staff contends that Ms. Chavez should have her general lines agent license revoked, and L K Insurance should have its general lines agency license revoked, based on their misconduct towards Mr. Santiago and Mr. Ramos. The ALJ agrees.

The record shows repeated instances where Ms. Chavez and her agency violated the trust of these customers. Respondents let at least three insurance policies of Mr. Santiago’s lapse because Ms. Chavez failed to arrange his premium payments as promised, and she repeatedly and untruthfully told him the insurers had erred, not her. During transitions between carriers, L K Insurance paid itself from Mr. Santiago’s account without accounting for or explaining those payments. Then, Ms. Chavez falsely told Mr. Santiago that he had insurance with Mercury, and provided false documents in furtherance of this lie. L K Insurance collected premiums from Mr. Santiago for ten months, between May 2018 and February 2019, never remitting those premiums to Mercury or any other carrier or informing Mr. Santiago that he was, in fact, uninsured. Respondents’ fraud was revealed only in March 2019, when Mr. Santiago saw payment had been made from his account to

¹⁷⁰ 28 Tex. Admin. Code § 1.502(c). Though this subchapter is titled “Effect of Criminal Conduct,” it also addresses, in addition to criminal offenses, licensees who have engaged in fraudulent or dishonest activity. *See* 28 Tex. Admin. Code § 1.501(a); *see also* Tex. Gov’t Code § 311.024 (heading of a title, subtitle, chapter, subchapter, or section does not limit its meaning).

¹⁷¹ 28 Tex. Admin. Code § 1.502(a).

¹⁷² Tex. Ins. Code §§ 82.051, 4005.101(b)(4)-(5), .102(2); 28 Tex. Admin. Code § 1.502(d).

an unfamiliar insurer; the evidence shows this charge occurred because Ms. Chavez had used Mr. Santiago's charge card without permission to make a payment for a different, similarly-named customer.

Much of this misconduct was repeated in Respondents' dealings with Mr. Ramos. Again, Ms. Chavez collected funds for insurance that was never actually provided, falsified coverage documents so her customer would not discover he was uninsured, and used the customer's charge card to make an unauthorized charge against his account.

Both Mr. Santiago and Mr. Ramos testified convincingly that they suffered actual economic harm as a result of Respondents' misconduct. Mr. Santiago had to pay higher insurance premiums because Ms. Chavez caused him to be uninsured for almost a year, and Mr. Ramos and his wife had to close their family business.

In addition to the violations against Mr. Santiago and Mr. Ramos, other evidence strongly suggests that Respondents engage in dishonest or illegal business practices. Ms. Chavez has equivocated on whether or not she owns L K Insurance and she offered implausible and baseless explanations for why her customers received documents purporting to show they were covered by policies that she never actually obtained. The ALJ is also concerned by the dubious legality of the "credit building" services Ms. Chavez claimed L K Insurance provided for Mr. Santiago, as well as her professed ignorance of that service despite her position as 100% record owner of the agency. Further, Representatives of Infinity and Hallmark both testified

that those insurers will no longer do business with Respondents due to their questionable business practices.

This evidence clearly shows that Ms. Chavez and L K Insurance are not trustworthy, honest, or reliable, and a lesser sanction (such as suspension or probation) would not correct these deficiencies. The ALJ therefore recommends that Respondents' licenses be revoked as a sanction for their violations in this case.

2. Restitution

Pursuant to Texas Insurance Code section 82.053, the Department may order a license-holder to make restitution to a person who resides or holds insurance in Texas, or an entity that operates in this state, if the person or entity is harmed by a violation of Texas insurance laws.¹⁷³ This sanction may be imposed in addition to revocation of the licenses.¹⁷⁴

Here, Staff has not sought restitution for Mr. Ramos because the evidence shows that Ms. Chavez eventually repaid the \$4,500 Mr. Ramos had paid L K Insurance for the Apollo policy (after first writing a check that was rejected for insufficient funds, she paid him in cash), and that the \$2441.00 renewal payment to Progressive was returned to his bank account. However, Staff does seek an order of

¹⁷³ Tex. Ins. Code § 82.053.

¹⁷⁴ Tex. Ins. Code § 82.052(4)-(5).

restitution for Mr. Santiago for premium payments he made to L K Insurance for the non-existent Mercury policy.¹⁷⁵

Staff's evidence shows that Mr. Santiago made a total of ten payments to L K Insurance for the Mercury policy:

- A payment of \$286.65, paid in May 2018;
- Payments of \$208.19, \$208.00, and \$208.11, paid in June, July, and August 2018, respectively; and
- Six payments of \$162.11, paid in September, October, November and December 2018, and January and February 2019.

These payments totaled \$1,883.61 that Mr. Santiago paid for insurance coverage he never received, and the ALJ recommends that restitution be made to him by Respondents in this amount.

3. Administrative Penalty

Finally, Staff requested that Respondents be fined for each violation they committed. Administrative penalties may be imposed in addition to and in combination with license revocation and restitution sanctions.¹⁷⁶ Penalties can be as

¹⁷⁵ Staff did not request restitution for the other unauthorized or improper charges made to Mr. Santiago's account. For the payments L K Insurance Services drafted on September 29, 2017 (\$253.71) and December 22, 2017 (\$231.71), the evidence does not establish whether it kept the payments or relayed them to one of the several insurers who briefly covered Mr. Santiago during those months. The charge from Mr. Santiago's account to Gainsco was refunded after Mr. Santiago disputed the charge with his bank. Therefore, the ALJ finds the evidence does not support restitution of these sums.

¹⁷⁶ Tex. Ins. Code §§ 82.052(3), (5), 84.021, 4005.102(4).

high as \$25,000 per violation, based on certain factors the Department must consider in determining the appropriate amount.¹⁷⁷

However, the Texas Insurance Code sets forth certain procedural requirements that must be met before an administrative penalty can be imposed. The Department has to give the affected person written notice containing a brief summary of the alleged violation(s) and “a statement of the amount of the recommended penalty,” and informing the person that they have a right to a hearing to contest the violation, penalty amount, or both.¹⁷⁸ The affected person can then request a hearing at SOAH to contest the penalty.¹⁷⁹

Staff presented no evidence that Respondents have ever been provided a statement of the amount of penalties the Department seeks to impose. Nor has such a statement been included with Staff’s pleadings or arguments in this case. Staff’s Original Petition (filed April 1, 2021) sought revocation, restitution, and “any other just and appropriate relief to which the [D]epartment may be entitled,” without specific reference to any administrative penalties.¹⁸⁰ Its Amended Petition (filed September 21, 2021) included a request for “an administrative penalty of up to \$25,000 per violation,”¹⁸¹ but did not specify how many violations Staff believed had been committed. In argument at the hearing, Staff reiterated its request for “an

¹⁷⁷ Tex. Ins. Code § 84.022.

¹⁷⁸ Tex. Ins. Code § 84.041.

¹⁷⁹ Tex. Ins. Code §§ 84.042-.43.

¹⁸⁰ TDI Ex. 1 at 3016.

¹⁸¹ TDI Ex. 4 at 3037.

administrative penalty of up to \$25,000 per violation” and asked that Respondents be “fined per violation.”¹⁸² None of these pleadings or arguments provided Respondents notice of the specific penalty amount associated with any violation, or the total amount sought, as required by the Insurance Code.

Further, while Staff’s evidence broadly showed that Respondents engaged in misappropriation and other fraudulent or dishonest conduct, Staff never specified a particular number of violations it contended had been committed, nor did it present evidence supporting a particular penalty amount for any particular violation. Therefore, the ALJ concludes that the record evidence is insufficient to support imposition of any administrative penalties in this case.

V. CONCLUSION

As detailed above, the ALJ concludes that Staff met its burden of proving that Ms. Chavez and her insurance agency, L K Insurance, engaged in fraudulent or dishonest practices in her dealings with two customers, Mr. Santiago and Mr. Ramos, and also misappropriated funds from those customers. This misconduct makes Respondents subject to disciplinary action, and the ALJ recommends that L K Insurance’s general lines agency license be revoked, and Ms. Chavez’s general lines agent license also be revoked. The ALJ further recommends that Respondents be ordered to make restitution to Mr. Santiago. In support of these recommendations, the ALJ makes the following findings of fact and conclusions of law.

¹⁸² Tr. Vol. 1 at 21; Tr. Vol. 2 at 177.

VI. FINDINGS OF FACT

1. Respondent L K Insurance Services, L.L.C. (L K Insurance) holds a general lines agency license issued by the Texas Department of Insurance (Department).
2. Respondent Nelci Chavez holds a general lines agent license issued by the Department.
3. Ms. Chavez is the 100% owner of L K Insurance.

Violations against Rafael Santiago

4. Rafael Santiago met Ms. Chavez at church in or around 2015, and eventually began using her and L K Insurance as his agents to obtain auto insurance for his three personal vehicles.
5. Ms. Chavez and L K Insurance (jointly, Respondents) obtained four successive auto insurance policies for Mr. Santiago from three different insurers between August 2017 and May 2018. Each of those policies was cancelled for nonpayment.
6. Mr. Santiago's policies were cancelled even though Mr. Santiago had given Ms. Chavez his account number; authorized her to have premium payments automatically paid from his bank account to the insurers, which she assured him she would arrange; and had the funds to pay the premiums.
7. Each time Mr. Santiago inquired about the payment problems, Ms. Chavez untruthfully told him that the insurer had made an error, not her, and promised she would resolve the issue.
8. Respondents repeatedly failed to make premium payments when they were due, despite promising to do so, and Ms. Chavez allowed Mr. Santiago's auto policies to be cancelled rather than correcting her errors.
9. L K Insurance also drafted two payments from Mr. Santiago's account—a \$253.71 payment on September 29, 2017, and a \$231.71 payment on December 22, 2017—both paid directly to L K Insurance rather than any of

Mr. Santiago's insurers. Respondents never explained to Mr. Santiago what these payments were for.

10. In May 2018, Ms. Chavez informed Mr. Santiago that he had a new insurance policy with Mercury Insurance Group (Mercury), and she provided him insurance identification cards reflecting that his three vehicles were covered by Mercury for a policy period beginning May 12, 2018.
11. Ms. Chavez told Mr. Santiago to pay his premiums to L K Insurance and she would make each month's payment to Mercury.
12. L K Insurance drafted \$286.65 from Mr. Santiago's checking account on May 21, 2018. Additional payments were drafted by L K Insurance on June 21, 2018 (\$208.19), July 23, 2018 (\$208.00), August 21, 2018 (\$208.11), September 21, 2018 (\$162.11), October 22, 2018 (\$162.11), November 21, 2018 (\$162.11), December 21, 2018 (\$162.11), January 22, 2019 (\$162.11), and February 21, 2019 (\$162.11). Mr. Santiago understood and believed each of those payments was made for payment on his Mercury auto insurance policy.
13. Ms. Chavez never procured a policy with Mercury for Mr. Santiago, and the insurance identification cards she gave him were falsified.
14. Though Ms. Chavez had told him he was covered, Mr. Chavez held no auto insurance at all from May 2018 through March 2019.
15. Respondents misappropriated \$1,883.61 from Mr. Santiago, the premium payments they charged him for ten months for a Mercury policy that did not exist.
16. In March 2019, Mr. Santiago saw a \$182.29 charge on his bank statement, drafted on March 26, 2019, and paid to Gainsco Automobile. Mr. Santiago was never insured by Gainsco.
17. When he asked Ms. Chavez about the Gainsco charge, Ms. Chavez untruthfully told Mr. Santiago that Gainsco was a new administrator for his Mercury policy.

18. The payment to Gainsco was posted to the account of another L K Insurance client with a similar name (Santiago Pineda, rather than Rafael Santiago), who did hold insurance with Gainsco.
19. Ms. Chavez misused her access to Mr. Santiago's account to make a payment for the benefit of another L K Insurance customer.
20. Mr. Santiago challenged the Gainsco charge with his bank, and it was refunded.
21. Mr. Santiago subsequently had to pay higher insurance premiums because Respondents caused him to be uninsured for almost a year.
22. Mr. Santiago filed a complaint against Respondents with the Department in April 2019.

Violations against Okell Ramos

23. Okell Ramos owned a small trucking company, TX Transport, that had a \$1 million liability policy with Progressive Insurance Company (Progressive) set to expire in April or May 2019, and he hired Ms. Chavez to look for a less-expensive policy that could replace it. A friend referred Mr. Ramos to Ms. Chavez.
24. Ms. Chavez provided Mr. Ramos with a quote for a new, less-expensive policy with Apollo Insurance.
25. TX Transport paid L K Insurance \$4,500 for the down-payment and first month's premium for the Apollo policy. Ms. Chavez told Mr. Ramos that L K Insurance would remit the premiums to Apollo.
26. Ms. Chavez provided Mr. Ramos with a certificate of insurance, dated April 15, 2019, indicating that Mr. Ramos and TX Transport had \$1 million in commercial general liability coverage from Apollo Insurance, with L K Insurance listed as the agent. A second Certificate of Liability Coverage was provided dated May 29, 2019, indicating that automobile liability coverage was also included with the Apollo policy.

27. Ms. Chavez never procured a liability policy for Mr. Ramos or TX Transport and the certificates of insurance she gave Mr. Ramos were falsified.
28. Ms. Chavez misrepresented to Mr. Ramos that his trucking company had liability coverage when it did not.
29. Ms. Chavez, through L K Insurance, attempted to renew the Progressive policy that Mr. Ramos had directed her to replace, and arranged for Progressive to charge \$2,441.00 from Mr. Ramos's business account without his authorization on May 29, 2019.
30. Ms. Chavez fraudulently tried to renew the Progressive policy against her clients' wishes after failing to secure the policy she had promised from Apollo.
31. The Progressive policy was renewed effective May 29, 2019, before it was cancelled several days later, on June 4, 2019. The \$2,441.00 payment was either dishonored by Mr. Ramos's bank or returned by Progressive.
32. When confronted by Mr. Ramos and his wife, Ms. Chavez agreed to refund them the \$4,500 they had paid for the Apollo policy. She first tried to pay them by check on L K Insurance's account, but the check was rejected for insufficient funds. She ultimately refunded them in cash.
33. Mr. Ramos had to close TX Transport because he was unable to get coverage with any insurance company after relying on the fraudulent Apollo certificate Ms. Chavez had provided, and after becoming uninsured. He had to start over in a different job and has lost income.
34. Mr. Ramos filed a complaint against Respondents with the Department in June 2019.

Sanctions Considerations

35. Respondents have engaged in dishonest or illegal business practices.
36. Both Mr. Santiago and Mr. Ramos suffered actual economic harm as a result of Respondents' misconduct.

37. Ms. Chavez has equivocated on whether or not she owns L K Insurance and she offered implausible and baseless explanations for why her customers received documents purporting to show they were covered by policies that she never actually obtained.
38. Infinity and Hallmark will no do business with Respondents due to their questionable business practices.
39. Ms. Chavez and L K Insurance are not trustworthy, honest, or reliable.
40. Respondents have not been provided with a statement of the amount of penalties the Department proposes to impose against them in this proceeding, or for which specific violations.
41. There is no pleading or evidence to support a determination of how much penalty should be imposed for any violation.

Procedural Matters

42. On September 21, 2022, Staff of the Department mailed a notice of hearing to Respondents. The notice of hearing 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.
43. The hearing in this case was held via Zoom videoconference on December 13-14, 2022, before Administrative Law Judge Sarah Starnes with the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff attorney Kaycee Crisp represented Staff. Ms. Chavez represented herself and L K Insurance.
44. The hearing concluded on December 14, 2022, and the record closed on January 3, 2023, when the court reporter's transcript was filed with SOAH.

VII. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, 4005.101-.102, 4051.051, 4054.051.
2. The Commissioner of Insurance is the chief executive and administrative officer of the Department. Tex. Ins. Code § 31.021.
3. 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.
4. Respondents received timely and sufficient notice of hearing. Tex. Gov't Code §§ 2001.051-.052.; Tex. Ins. Code § 4005.104(b).
5. Staff had the burden of proof to establish grounds for disciplinary action against Respondents. 1 Tex. Admin. Code § 155.427.
6. The standard of proof is by a preponderance of the evidence. *Granek v. Texas St. Bd. of Med. Examn'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
7. Respondents misappropriated, converted, or illegally withheld money belonging to an insurer or insured in violation of Texas Insurance Code section 4005.101(b)(4).
8. Respondents engaged in fraudulent or dishonest acts or practices in violation of Texas Insurance Code section 4005.101(b)(5).
9. The Commissioner is authorized to revoke the licenses held by Ms. Chavez and L K Insurance Services, L.L.C. Tex. Ins. Code §§ 82.051, 4005.101(b)(4)-(5), .102(2).
10. Ms. Chavez's general lines agent license should be revoked.
11. L K Insurance's general lines agency license should be revoked.

12. The Commissioner is authorized to order Respondents to make complete restitution to a Texas resident or insured that has been harmed by their violation of Texas insurance laws. Tex. Ins. Code § 82.053.
13. Respondents should be ordered to pay restitution to Rafael Santiago in the amount of \$1,883.61.
14. The Commissioner is authorized to assess administrative penalties against persons who have violated insurance laws but must first give the affected person written notice with a brief summary of each alleged violation and a statement of the amount of the recommended penalty, and the notice must inform the person that they have a right to a hearing to contest the violation, penalty amount, or both. Tex. Ins. Code §§ 82.052(3), 84.021-.022, 84.041, 4005.102(4).
15. No administrative penalties should be imposed against Respondents.

Signed February 13, 2023

ALJ Signature:



Sarah Starnes

Presiding Administrative Law Judge

2023-8114

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Associated Case Party: Texas Department of Insurance

Name	BarNumber	Email	TimestampSubmitted	Status
Rachel Cloyd		Rachel.Cloyd@tdi.texas.gov	2/13/2023 11:21:15 AM	SENT
Anna Kalapach		Anna.Kalapach@tdi.texas.gov	2/13/2023 11:21:15 AM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	2/13/2023 11:21:15 AM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	2/13/2023 11:21:15 AM	SENT

Associated Case Party: NelciChavez

Name	BarNumber	Email	TimestampSubmitted	Status
Nelci Chavez		[REDACTED]	2/13/2023 11:21:15 AM	SENT

FILED **2023-8114**
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3/17/2023 9:32 AM
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3/17/2023 9:33:44 am
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State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

Exhibit B

March 17, 2023

Anna Kalapach, attorney for Petitioner
Texas Department of Insurance

VIA EFILE TEXAS

Nelci Chavez and L K Insurance Services, L.L.C.
5504 Tara Oaks Ct.
Rosharon, TX 77583

VIA REGULAR MAIL

**RE: Docket Number 454-21-1868.C; Texas Department of Insurance
No. 22573, 25169; *Texas Department of Insurance v. Nelci Chavez
and L K Insurance Services, L.L.C.***

Dear Parties:

On February 13, 2023, I issued the Proposal for Decision (PFD) in this case. Staff of the Texas Department of Insurance filed timely exceptions on February 23, 2023. Nelci Chavez and L K Insurance Services, L.L.C. (Respondents) did not file exceptions, nor did they respond to Staff's exceptions. Their deadlines to do so have now passed.¹

In the PFD, I recommended that the general lines agency license held by L K Insurance Services and the general lines agent license held by Ms. Chavez both be revoked as a sanction for their fraudulent and dishonest acts with respect to two complainants. I also recommended that they be ordered to pay restitution to one of the complainants.

¹ 1 Tex. Admin. Code § 155.507(b).

Staff also requested imposition of an administrative penalty, but in the PFD I determined that no penalty could be awarded because Staff did not give required notice to Respondents of whether, or how much, penalty they were seeking, nor did Staff present any evidence or argument at the hearing from which the ALJ could determine how much Staff was seeking, or for which violations.

In its exceptions, Staff Excepted to Conclusion of Law 14, which held that Respondents had not been given the written notice required before administrative penalties can be assessed. Staff argues that Respondent was not entitled to such notice because Insurance Code section 84.041(a) says only that the Department “may” prepare a report with information about penalties, and that this language should be construed as discretionary and not a prerequisite to seeking administrative penalties. Staff also argues, for the first time, that there were “at least 14 violations by both the individual Respondent Chavez and Respondent L K Services, L.L.C.”²

While it is generally true that “may” is a term that confers discretion, not a requirement,³ the words and phrases in a statute must be read in context and as a whole, not in isolation.⁴ Here, Insurance Code section 84.041 begins by stating that:

If the department determines that a violation has occurred, *the department may issue to the commissioner* a report that states the facts on which the determination is based and the department’s recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.⁵

However, the Code goes on to *require* (“the department shall...”) that written notice of the report recommending penalties be given to the affected person.⁶

² Staff also conceded that its evidence addressed some, but not all, of the statutory factors to be considered in assessing a penalty, and therefore did not ask to change Conclusion of Law 15, which concluded no penalties should be imposed in this case.

³ Tex. Gov’t Code § 311.016(1).

⁴ *Brazos Elec. Power Coop., Inc. v. Tex. Comm’n on Env’tl. Quality*, 576 S.W.3d 374, 384 (Tex. 2019).

⁵ Tex. Ins. Code § 84.041(a) (emphasis added).

⁶ Tex. Ins. Code § 84.041(b).

Receipt of that written notice is what triggers the person's obligation to pay the recommended penalty or request a hearing to contest it, and sets up the Department's requirement to refer the case to SOAH for a hearing.⁷ When read in context, the discretionary *may* in section 84.041(a) applies only to the Department's determination of whether to or not recommend to the Commissioner that an administrative penalty be sought. If the Department does elect to pursue a penalty, then section 84.041(b) requires that written notice of that determination be given to the affected persons so that they can decide whether to pursue a hearing.

The evidence is undisputed that Staff did not give Respondents prior notice of the amount of penalties it would seek at the hearing. In fact, Staff did not give the Administrative Law Judge notice, either. Staff's response to exceptions marks the first time that Staff specified how many violations it contends were committed, and at no time has Staff advised Respondents or the ALJ of a particular dollar amount of penalties it contends should be imposed. For these reasons, and as further discussed in the PFD, Staff has not met the statutory prerequisites for requesting a penalty, nor has Staff proven by a preponderance of the evidence that any particular amount should be assessed, or for which violations.

Therefore, the ALJ finds no reason to modify Conclusion of Law 14 as requested in Staff's exceptions. The ALJ recommends no changes to the PFD, and it is ready for your consideration.

ALJ Signature:



Sarah Starnes

Presiding Administrative Law Judge

CC: Service List

⁷ Tex. Ins. Code §§ 84.042-.043.

2023-8114

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Associated Case Party: Texas Department of Insurance

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Rachel Cloyd		Rachel.Cloyd@tdi.texas.gov	3/17/2023 9:32:52 AM	SENT
Anna Kalapach		Anna.Kalapach@tdi.texas.gov	3/17/2023 9:32:52 AM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	3/17/2023 9:32:52 AM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	3/17/2023 9:32:52 AM	SENT

Associated Case Party: NelciChavez

Name	BarNumber	Email	TimestampSubmitted	Status
Nelci Chavez		[REDACTED]	3/17/2023 9:32:52 AM	SENT