

No. **2021-6807**

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

Date: 04/29/2021

Subject Considered:

Texas Department of Insurance

v.

Arthur Adan Urdiales

SOAH Docket No. 454-21-0354.C

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against Arthur Adan Urdiales, who holds an escrow officer license issued by the Texas Department of Insurance (TDI). The Commissioner of Insurance orders that no action be taken against Mr. Urdiales.

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 TDI take no action against Mr. Urdiales. A copy of the proposal for decision is attached as Exhibit A.

Findings of Fact

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

Conclusions of Law

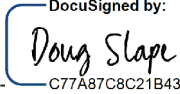
COMMISSIONER'S ORDER
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The conclusions of law contained in Exhibit A are adopted by TDI and incorporated by reference into this order.

Order

It is ordered that no action be taken against Arthur Adan Urdiales for this matter.

Commissioner of Insurance

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

Recommended and reviewed by:

 _____
James Person, General Counsel

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Justin Beam, Assistant General Counsel



**SOAH DOCKET NO. 454-21-0354.C
TDI ENFORCEMENT FILE NO. 19380**

**TEXAS DEPARTMENT OF
INSURANCE,
Petitioner**

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BEFORE THE STATE OFFICE

v.

OF

**ARTHUR ADAN URDIALES,
Respondent**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff (Staff) of the Texas Department of Insurance (TDI or the Department) brought this action seeking disciplinary sanctions against Respondent Arthur Adan Urdiales, who holds an escrow officer license. After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) concludes that Staff did not establish by a preponderance of the evidence that Mr. Urdiales violated the Texas Insurance Code. Accordingly, the ALJ recommends that the Department take no action against the escrow officer license held by Mr. Urdiales.

I. JURISDICTION, NOTICE 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 telephonically on December 1, 2020, before State Office of Administrative Hearings ALJ David DuBose. Staff was represented by staff attorney Casey Seeboth. Mr. Urdiales represented himself. The hearing concluded that day, and the record closed at the end of the briefing period on January 19, 2021.

II. DISCUSSION

This case arises from the sale of a condominium owned by Hebelin Cardenas Herrera (Ms. Cardenas). Mr. Urdiales helped Ms. Cardenas prepare for the closing of the sale. Ms. Cardenas asserts that, in that process, she gave cash to Mr. Urdiales for various fees he told

her would be refunded to her as part of the sales process. Mr. Urdiales denies asking for or receiving cash from Ms. Cardenas. The alleged cash payments were not refunded as part of the closing, but Mr. Urdiales's then-employer, First American Title Insurance (First American), later paid Ms. Cardenas \$926 plus the \$475 escrow fee after she complained to First American and filed this complaint.

A. Applicable Law

Staff alleged that Mr. Urdiales violated the Texas Insurance Code when he (1) misappropriated or converted to his own use or illegally withheld money belonging to another, and (2) was guilty of fraudulent or dishonest practices.¹ The Department has the burden to prove any violations by a preponderance of the evidence.²

The Commissioner may cancel or revoke a license if the holder of the license is found to be in violation of, or to have failed to comply with, the Code or a rule of the Commissioner.³ The Commissioner may, among other actions, suspend the license for a specified period of time not to exceed one year.⁴ The Commissioner may also impose an administrative penalty on a person licensed under the Code if that person violates the Code, another Texas insurance law, or a rule or order adopted under the Code or another Texas insurance law.⁵ The penalty may not exceed \$25,000 unless specified by other law.⁶ The Commissioner may also order the payment of restitution if a violation is found.⁷

¹ Tex. Ins. Code § 2652.201(a)(4), (5).

² See *Granek v. Texas St. Bd. of Med. Examn'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

³ Tex. Ins. Code § 82.051.

⁴ Tex. Ins. Code § 82.052(1).

⁵ Tex. Ins. Code §§ 84.021-.022.

⁶ Tex. Ins. Code § 84.022.

⁷ Tex. Ins. Code § 82.053.

B. Evidence and Testimony

Ms. Cardenas and Mr. Urdiales testified, as did Carmen Ann Furrow, with whom Mr. Urdiales worked as an escrow assistant during the sale of Ms. Cardenas's condominium in 2018. The documentary evidence comprises documents associated with the sale and a money order. Mr. Urdiales applied for and received an escrow officer license on October 9, 2020,⁸ which is the license at issue.

1. Ms. Cardenas's Testimony

Ms. Cardenas testified that she talked with Mr. Urdiales over the telephone and occasionally had to go to his office at First American to provide money or sign documents. She said that Mr. Urdiales told her she needed to pay \$300 for a resale certificate for her homeowners' association (HOA).⁹ She testified that she intended to use her debit card, but that Mr. Urdiales told her she needed to provide cash to him at his office.¹⁰ She provided the cash, and he said he would "do it."¹¹ She denied giving Mr. Urdiales a money order.

Ms. Cardenas testified that Mr. Urdiales then required her to provide three more cash payments. He told her that she needed to give him \$344 in cash for the HOA to obtain "the paper."¹² She gave him \$344 in cash and asked for a receipt, and he gave her a paper that showed what she owed.¹³ She testified that he told her she would get back the \$344, but not the \$300 because that was for the certificate.¹⁴ Mr. Urdiales called her again and told her she needed to pay

⁸ Tr. at 41-43.

⁹ Tr. at 51.

¹⁰ Tr. 51-52.

¹¹ Tr. at 52.

¹² Tr. at 53.

¹³ Tr. at 53.

¹⁴ Tr. at 53.

\$238 in maintenance for April.¹⁵ She gave him \$240 because she did not have change; he did not give her a receipt, but “place[d] it on the same paper where he had placed the ones before.”¹⁶ In May, near the closing date, Mr. Urdiales called her once more demanding \$344 or the closing would not happen; she gave him the cash after she was paid in cash by her employer.¹⁷ Ms. Cardenas identified the ledger on which she said Mr. Urdiales noted the cash payments she made to him.¹⁸ She testified that he marked each payment on the ledger printout with the letter “p” and said that she would get the money back after she sold the property.¹⁹

Ms. Cardenas testified that Mr. Urdiales attended the closing with her. She asked him why the settlement statement showed that she still owed \$1,603 for maintenance despite her cash payments.²⁰ She testified that Mr. Urdiales assured her that the HOA would repay her in two weeks.²¹ She called Mr. Urdiales and the HOA office several times, but no refund ever came.²² She said that the HOA told her that the only payment they had received from her was a \$300 money order.²³ Ms. Cardenas testified that she never gave the HOA a money order.²⁴ She said that Exhibit 2, a money order to the management company, has her name signed but not with her signature.²⁵ She contrasted that signature with other signatures that she claimed as hers in

¹⁵ Tr. at 54.

¹⁶ Tr. at 54.

¹⁷ Tr. at 54.

¹⁸ Tr. at 56; Ex. 1 at 0363.

¹⁹ Tr. at 57.

²⁰ Tr. at 61.

²¹ Tr. at 61.

²² Tr. at 61-62.

²³ Tr. at 62.

²⁴ Tr. at 62.

²⁵ Tr. at 62; Ex. 2.

Exhibit 1: an endorsement on a check and the contract for sale.²⁶ Ms. Cardenas testified that she was told the money order was purchased about 45 minutes from where she lives.²⁷

Ms. Cardenas testified that she called the title company repeatedly requesting her refund and spoke to “Ms. Carmen.”²⁸ Eventually, the title company set up a meeting, but Mr. Urdiales did not attend.²⁹ After the meeting, the title company paid Ms. Cardenas \$1,401, which included the money that she gave to Mr. Urdiales.³⁰

2. Ms. Furrow’s Testimony

Ms. Furrow testified that Mr. Urdiales was her escrow assistant for the condo transaction, and that he helped Ms. Cardenas on numerous occasions.³¹ Ms. Furrow testified that she delegated to Mr. Urdiales the task of contacting the HOA to obtain information needed to close the sale.³² She testified that outstanding HOA balances are often taken out of the proceeds at closing.³³

Ms. Furrow testified that the title company has no documentation that it received \$926 in cash from Ms. Cardenas.³⁴ Ms. Furrow testified that employees who receive cash from parties must fill out a form and photocopy the cash, reducing the image size.³⁵ The employee must also

²⁶ Tr. at 64-66; Ex. 1 at 0016 (check), 0372 (contract).

²⁷ Tr. at 66.

²⁸ Tr. at 67.

²⁹ Tr. at 67.

³⁰ Tr. at 68.

³¹ Tr. at 73.

³² Tr. at 76-77.

³³ Tr. at 79.

³⁴ Tr. at 83.

³⁵ Tr. at 83-84.

give the party a receipt and make an entry on the ledger or final balance sheet.³⁶ She testified that, if a customer came in with a money order made payable to an HOA, the title company would assist the customer in getting the money order to the HOA, but would not make an entry in its ledger because the money did not pass through the title company's accounts.³⁷ She would make a notation that the company had facilitated the payment, but she saw no such notation in the file for Ms. Cardenas's transaction.³⁸

Ms. Furrow testified that Mr. Urdiales denied Ms. Cardenas's claims.³⁹ Ms. Furrow testified that Mr. Urdiales told her he did not attend the meeting with Ms. Cardenas because his mother's lawyer told him not to attend.⁴⁰ Ms. Furrow testified that the title company paid Ms. Cardenas \$1,401, which included three amounts Ms. Cardenas said she had given Mr. Urdiales, plus a \$475 escrow fee.⁴¹ She testified that she believed the title company could not tell whether Ms. Cardenas gave the cash to Mr. Urdiales.⁴² According to Ms. Furrow, Mr. Urdiales told her he was quitting because Ms. Furrow did not support him.⁴³

3. Mr. Urdiales's Testimony

Mr. Urdiales testified that he assisted the closing of a sale by Ms. Cardenas.⁴⁴ Mr. Urdiales said that, though he and Ms. Cardenas both speak Spanish, they spoke mostly English.⁴⁵

³⁶ Tr. at 84.

³⁷ Tr. at 93.

³⁸ Tr. at 93-94.

³⁹ Tr. at 81.

⁴⁰ Tr. at 83.

⁴¹ Tr. at 83.

⁴² Tr. at 85-86.

⁴³ Tr. at 81.

⁴⁴ Tr. at 17.

⁴⁵ Tr. at 18.

Mr. Urdiales testified that he learned from the HOA that it needed a \$300 fee to provide a resale certificate.⁴⁶ He testified that he collected a money order *from* Ms. Cardenas to pay the HOA for the resale certificate and sent the money order to the HOA.⁴⁷ He denied procuring a money order *for* her.⁴⁸ He testified that she brought in a blank money order and that he had her sign it, then he filled out the name of the recipient management group.⁴⁹ Mr. Urdiales could not remember the address of the office where he sent the money order, but believed it was at a different location from the condo being sold.⁵⁰ An email from the HOA to Mr. Urdiales showed the office was at the same street and number as the condo.⁵¹ The resale certificate showed that there were unpaid amounts of \$2,647.39 for a special assessment and \$1,603 for other expenses.⁵² He said that Ms. Cardenas disputed the HOA's assessments.⁵³ He told her that the fees would be collected at closing.⁵⁴

Mr. Urdiales denied receiving any cash from Ms. Cardenas.⁵⁵ He testified that he did not enter any cash into the First American escrow system because she did not give him any.⁵⁶ The \$300 money order was not entered into the system because it was collected from her as a money order and mailed straight to the HOA.⁵⁷ He conceded that the \$300 for the resale should have been noted as having been paid outside of closing.⁵⁸ Mr. Urdiales denied that Ms. Cardenas asked him

⁴⁶ Tr. at 23.

⁴⁷ Tr. at 23.

⁴⁸ Tr. at 23.

⁴⁹ Tr. at 106.

⁵⁰ Tr. at 24.

⁵¹ Ex. 1 at 0306 (compare subject line address of condo with email text address of management company). *Compare* Ex. 1 at 0306 (management company address) *with id.* at 0366 (condo address in sale contract).

⁵² Tr. at 24; Ex. 1 at 0284.

⁵³ Tr. at 26-27.

⁵⁴ Tr. at 28-29.

⁵⁵ Tr. at 29.

⁵⁶ Tr. at 29-30.

⁵⁷ Tr. at 30.

⁵⁸ Tr. at 30.

at closing about the cash that she had given him, reiterating that she did not give him cash.⁵⁹ Mr. Urdiales notarized Ms. Cardenas's signatures on closing documents.⁶⁰

Mr. Urdiales said Ms. Cardenas showed him a printout of fees the HOA claimed and pointed out fees that she had already paid and should not be paying again. He told her that he had to collect the fees on the ledger, but marked the ones that she pointed out and told her that she should get a refund if she had paid them.⁶¹ The fees circled include the \$2,647.39 special assessment as well as a \$344.64 HOA fee and a \$238 fee.⁶² By the \$344.64 fee, Mr. Urdiales wrote "X2 pague +344";⁶³ by the \$238 fee, he wrote "X1" and "p"; and at the bottom of the page, he totaled the latter fees as \$926 and wrote "refund from HOA."⁶⁴ Mr. Urdiales testified that he was trying to comfort Ms. Cardenas, telling her "if you paid those, then you will get a refund."⁶⁵

Mr. Urdiales testified that Ms. Cardenas continued coming into First American's office asking about the refund.⁶⁶ Mr. Urdiales said that First American had not received anything from the HOA. After eight or nine visits, she asked to speak to his manager, and Ms. Furrow went to speak with her.⁶⁷ He testified that Ms. Furrow told Ms. Cardenas to leave because "she was going ballistic."⁶⁸ Mr. Urdiales testified that he participated in a conference call with Ms. Furrow and First American's legal team, with Ms. Cardenas on a separate line.⁶⁹ After the legal team decided

⁵⁹ Tr. at 34-35.

⁶⁰ Tr. at 32-33; Ex. 1 at 0253-0254, 0264.

⁶¹ Tr. at 36.

⁶² Ex. 1 at 0363.

⁶³ "Pague" is Spanish for "pay." <https://translate.google.com/?sl=auto&tl=en&text=pague&op=translate>.

⁶⁴ Ex. 1 at 0363.

⁶⁵ Tr. at 37.

⁶⁶ Tr. at 38.

⁶⁷ Tr. at 38.

⁶⁸ Tr. at 38-39.

⁶⁹ Tr. at 40.

to pay Ms. Cardenas's demand of \$926 plus her \$475 escrow fee, Mr. Urdiales gave two weeks' notice of his resignation.⁷⁰ He testified that he quit because he felt that First American was not supporting him and was paying the claim without sufficient investigation.⁷¹

C. Analysis

The central question is whether Mr. Urdiales demanded and collected \$926 in cash from Ms. Cardenas ostensibly as fees needed to close the sale but did not apply them for that purpose. Ms. Cardenas testified that, at his request, she brought cash for payments to facilitate closing that were supposed to be, but were not, credited and refunded to her after closing. Conversely, Mr. Urdiales testified that she never brought him cash. The documentary evidence is largely consistent with either version of events. The absence of formal receipts is as consistent with Ms. Cardenas's assertion of fraud and dishonesty as it is with Mr. Urdiales's claim that there were no receipts because she provided no cash. The ledger statement's annotations are equally consistent with her version that these noted fees she had paid as with his version that they marked fees she told him that she had paid, and that he said would be repaid to her after closing if she had in fact paid them. Ms. Furrow testified that First American could not determine what had happened but opted to pay Ms. Cardenas the sum she demanded.

The money order for the resale certificate fee does not provide any basis for resolving the credibility of witnesses or assessing whether Staff carried its burden regarding the alleged cash transactions. The money order and the funds underlying it were undisputedly used to obtain the resale certificate. Ms. Cardenas denied that she obtained a money order and testified that the money order in evidence was obtained at a store 45 minutes from her home and does not bear her signature. Mr. Urdiales testified that Ms. Cardenas brought the money order to him and he had her sign it. The signature on the money order differs from signatures she claims as hers in the check

⁷⁰ Tr. at 40-41.

⁷¹ Tr. at 18-19.

endorsement and the contract, primarily in the formation of the “H” in Ms. Cardenas’s first name;⁷² however, the Hs in the initials in the contract resemble the H in the signature on the money order.⁷³ No expert handwriting evidence was offered at the hearing, and the ALJ claims no handwriting expertise.

Accordingly, the ALJ finds that the evidence in the record does not preponderate in favor of a finding that Mr. Urdiales misappropriated or converted to his own use or illegally withheld \$926 in cash belonging to Ms. Cardenas, or was guilty of fraudulent or dishonest practices. The ALJ cannot determine which witness is more credible, and the documentary evidence does not tip the scales either way.

On this record, Staff has not carried its burden to prove by a preponderance of the evidence that Mr. Urdiales violated the Insurance Code as alleged. Accordingly, the ALJ recommends that the Department assess no sanction against Mr. Urdiales’s escrow officer license, assess no administrative penalty, and not order any restitution.

III. FINDINGS OF FACT

1. Arthur Adan Urdiales holds an escrow officer license issued by the Texas Department of Insurance (TDI).
2. In 2018, Mr. Urdiales was responsible as escrow assistant at First American Title Insurance Company (First American) for closing the transaction concerning a condominium owned by Hebelin Cardenas Herrera (Ms. Cardenas).
3. First American’s records do not contain any record of receipt of cash from Ms. Cardenas in the amounts alleged.
4. A preponderance of the evidence does not show that Mr. Urdiales requested that Ms. Cardenas bring cash in the amounts of \$344, \$238, and \$344 to effectuate the sale of the condominium.

⁷² Compare Ex. 2 (money order) with Ex. 1 at 0016 (check endorsement) and 0372 (contract). See also Ex. 1 at 0253 (closing affidavit).

⁷³ Compare Ex. 2 (money order) with Ex. 1 at 0366-72.

5. A preponderance of the evidence does not show that Mr. Urdiales took and withheld money from Ms. Cardenas.
6. Ms. Cardenas filed a complaint with TDI, which referred it to the State Office of Administrative Hearings (SOAH) for a contested case hearing.
7. First American then paid Ms. Cardenas \$1,401, which comprises the \$926 she claimed and First American's \$475 escrow fee.
8. A notice of hearing was issued on October 8, 2020, notifying Mr. Urdiales of the time, place, and nature of the December 1, 2020 hearing, stating that the hearing would be conducted under Tex. Government Code chapter 2001 and 1 Texas Administrative Code chapter 155, and incorporating the Amended Petition that described the factual matters asserted, alleged violations of Texas Insurance Code (Code) sections 2652.201(a)(4) and (5), and sought relief under Code sections 82.051-.055 and 2652.201
9. The hearing convened on December 1, 2020 via telephonic conference before Administrative Law Judge David DuBose. Staff appeared and was represented by attorney Casey Seeboth. Mr. Urdiales appeared and represented himself. The hearing concluded that day. The record closed on January 19, 2021, when the briefing period ended.

IV. CONCLUSIONS OF LAW

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to Code §§ 82.051-.055, and 2652.201.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Code § 4005.104; Tex. Gov't. Code ch. 2003.
3. Mr. Urdiales received proper and timely notice of the hearing pursuant to Texas Government Code §§ 2001.051-.052 and Code § 81.001(a)(2).
4. Staff did not prove by a preponderance of the evidence that Mr. Urdiales misappropriated or converted to his own use or illegally withheld money belonging to another.
5. Staff did not prove by a preponderance of the evidence that Mr. Urdiales was guilty of fraudulent or dishonest practices.
6. The evidence in the record does not preponderate in favor of finding the Code violations alleged by Staff.

7. Staff did not establish a basis for disciplinary action against Mr. Urdiales. Code §§ 84.021-.022, 82.051-.055, 2652.201.

SIGNED March 22, 2021.

David DuBoise

**DAVID DUBOSE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**