

No. 2023-8190

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

Date: 9/6/2023

Subject Considered:

Texas Department of Insurance

v.

Toby Philips and Toby Philips Insurance Agency LLC

SOAH Docket No. 454-22-1777.C

General Remarks and Official Action Taken:

The subject of this order is Toby Philips and his general lines agent license and Toby Philips Insurance Agency LLC and its general lines agency license. This order revokes both licenses due to the finding that Mr. Philips and the Toby Philips Insurance Agency LLC engaged in fraudulent and dishonest acts, and that they misappropriated funds.

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 Toby Philips and Toby Philips Insurance Agency LLC's licenses be revoked. 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 the commissioner and incorporated by reference into this order.


Conclusions of Law

The conclusions of law contained in Exhibit A are adopted by the commissioner and incorporated by reference into this order.

COMMISSIONER'S ORDER
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Order

It is ordered that Toby Philips' general lines agent license and Toby Philips Insurance Agency LLC's license is revoked.

DocuSigned by:

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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

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Jessica Barta, General Counsel

DocuSigned by:

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Kara Salmanson, Attorney

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

—
**TEXAS DEPARTMENT OF INSURANCE,
PETITIONER**

v.

**TOBY PHILIPS AND TOBY PHILIPS INSURANCE AGENCY LLC,
RESPONDENTS**

PROPOSAL FOR DECISION

The Staff of the Texas Department of Insurance (Department) seeks to revoke the general lines agency license held by Toby Philips Insurance Agency LLC (Philips Insurance) and the general lines agent license held by its owner, Toby Philips, based on allegations that Mr. Philips and Philips Insurance (collectively, Respondents) engaged in fraudulent or dishonest acts and misappropriated funds. After considering the evidence and applicable law, the Administrative Law Judge (ALJ) finds that Staff proved the wrongful conduct

alleged and recommends that the Commissioner of Insurance¹ revoke Respondents' licenses.

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 February 13, 2023, before ALJ Linda J. Burgess with the State Office of Administrative Hearings (SOAH). Staff attorney Amanda Cagle represented the Department. Mr. Philips represented himself and Philips Insurance. Prior to the hearing, Mr. Philips made an oral motion on behalf of Respondents to continue the February 13, 2023, hearing. Respondents' motion was denied by the ALJ,² and the hearing convened.³ The hearing concluded on February 13, 2023, and the record closed that same day on the filing of the admitted exhibits.

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

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

² Tr. at 16.

³ While Riddhi Patel, the Department's first witness, was testifying, Mr. Philips voluntarily left the hearing room and did not return. Tr. at 41-42, 49.

money belonging to an insurer or insured,⁴ or who has engaged in fraudulent or dishonest acts or practices.⁵ Among other possible sanctions, the Commissioner may suspend or revoke the license of a person who has violated insurance laws.⁶ The Department has the burden of proof in this proceeding.⁷ The standard of proof is by a preponderance of the evidence.⁸

III. EVIDENCE

At the hearing on the merits, Staff presented testimony from eight witnesses and had nineteen exhibits admitted into evidence. Mr. Philips presented no testimony and offered no exhibits into evidence. The Department's case against Respondents is based on several transactions involving alleged wrongdoing by Respondents.

A. TRANSACTION INVOLVING RIDDHI PATEL'S PARENTS

Riddhi Patel testified that her parents were first-time home purchasers when they first had dealings with Mr. Philips. Ms. Patel explained that because her parents are non-English speakers, she was fully involved in their purchase of a home. She

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

⁵ Tex. Ins. Code § 4005.101(b)(5).

⁶ Tex. Ins. Code §§ 82.051, 4005.102(2).

⁷ 1 Tex. Admin. Code § 155.427.

⁸ See *Granek v. Texas St. Bd. Of Med. Examn'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

said the real estate agent with whom she was working referred her to Mr. Philips for insurance for her parents' house.⁹ In October 2018, Mr. Philips purportedly assisted Ms. Patel in acquiring for her parents a homeowners policy with American Risk Insurance Company (American Risk) effective October 30, 2018, through October 30, 2019.¹⁰ On October 26, 2018, Ms. Patel's parents paid Philips Insurance \$1,126.48 to cover the premium for the policy.¹¹

A year later in November 2019, Ms. Patel contacted Mr. Philips about renewing her parents' homeowners policy for another year and additionally acquiring a flood insurance policy. Mr. Philips purportedly assisted Ms. Patel in renewing her parents' policy, effective November 12, 2019, through November 12, 2020. Ms. Patel's parents sent \$1,252.21 to Philips Insurance to cover the renewal premium.¹² Mr. Philips additionally purportedly assisted Ms. Patel in acquiring for her parents a flood insurance policy issued by The Hartford.¹³ On November 12, 2019, Ms. Patel's parents sent \$482 to Philips Insurance to cover the premium for the flood insurance policy.¹⁴

Ms. Patel explained that in January 2020, a representative from American Risk inspected her parents' home and that the insurer cancelled the 2019-

⁹ Tr. at 46.

¹⁰ Tr. at 46-47; Staff Ex. 5 at 8455.

¹¹ Staff. Ex. 5 at 8458.

¹² Staff Ex. 5 at 8457.

¹³ Staff Ex. 5 at 8472.

¹⁴ Staff Ex. 5 at 8457.

2020 policy effective February 11, 2020, because of the condition of the home's roof.¹⁵ Ms. Patel testified that at the time, the cancellation "didn't make sense" because the company had issued a policy in 2018, and in "one year my roof was so bad that they couldn't issue[?]" "[S]o, I started realizing that maybe there was something going on"¹⁶ Ms. Patel called American Risk on January 13, 2020. After providing the insurer the policy number given by Mr. Philips for her parents' 2018-2019 homeowners policy, she was told that no such policy existed.¹⁷ Ms. Patel also contacted The Hartford about the flood insurance policy, to learn no policy existed.¹⁸

Lisa Moya, the accounts receivable manager with American Risk, testified that after Ms. Patel called American Risk asking about the nonexistent 2018-2019 policy, it investigated the matter. She said that Mr. Philips "basically, . . . gave [the Patels] a binder with a policy number that was not . . . approved. . . . He just . . . quoted it, collected premium, and never issued it."¹⁹ During American Risk's investigation, Mr. Philips told the insurer on February 10, 2020, that the incident with Ms. Patel was "a mistake," "the only time that this mistake has occurred[,]" which will "never happen again" and that he had "reimbursed Ms. Patel back her money."²⁰

¹⁵ Tr. at 52-53; Staff Ex. 5 at 8470.

¹⁶ Tr. at 53.

¹⁷ Tr. at 54; Staff Ex. 8, Non-Existence of Business Records for American Risk, confirming no 2018-2019 homeowners policy for Ms. Patel's parents.

¹⁸ Tr. at 55; Staff Ex. 15, Non-Existence of Business Records for The Hartford, confirming no flood insurance policy for Ms. Patel's parents.

¹⁹ Tr. at 84.

²⁰ Staff. Ex. 9 at 8245.

During her testimony, Ms. Moya identified a May 1, 2020, letter from American Risk to Mr. Philips. In the letter, the insurer explains that “this week” it received calls from three insureds. The letter explains that for two insureds, American Risk never got the premium money (one policy never issued; one policy cancelled) and for the third insured, the premium was untimely sent to American Risk. The letter concludes with American Risk terminating its agency agreement with Mr. Philips “effective immediately.”²¹ American Risk terminated Philip Insurance’s agency agreement on July 14, 2020.²²

When American Risk cancelled Ms. Patel’s parents’ 2019-2020 homeowners policy, it forwarded the unearned portion of the premium to their mortgage company.²³ Ms. Patel testified that despite Mr. Philips agreeing to refund the money her parents paid for the nonexistent 2018-2019 policy, he did not.²⁴ Ms. Patel’s parents made a complaint with the Department against Mr. Philips in February 2020.²⁵ Ms. Patel testified she does not want any first-time home buyers to go through what her family did with Mr. Philips.²⁶

²¹ Staff Ex. 9 at 8353.

²² Staff Ex. 9 at 8355.

²³ Staff Ex. 9 at 8253.

²⁴ Tr. at 55.

²⁵ Staff Ex. 5 at 8451-8454.

²⁶ Tr. at 55.

B. TRANSACTIONS INVOLVING HAU NGUYEN AND HIS FATHER

Hau Nguyen testified that in October 2019, he bought a home.²⁷ His realtor referred him to Mr. Philips for homeowners insurance. Although the house is not in a flood zone, Mr. Nguyen thought it prudent to purchase flood insurance too.²⁸ On October 21, 2019, Philips Insurance provided Mr. Nguyen a written quote of \$1,344 for a Bankers Insurance Group (Bankers) homeowners insurance policy, to be effective October 31, 2019, through October 20, 2020.²⁹ Mr. Philips also quoted a premium of \$482 for a flood insurance policy purportedly offered through FEMA.³⁰ Mr. Nguyen paid Philips Insurance \$1,826 in premiums for the two insurance policies.³¹ In connection with Mr. Nguyen’s home closing, Mr. Philips provided documentation purporting to show Mr. Nguyen had an insurance policy with Bankers.³²

Unbeknownst to Mr. Nguyen, as testified to by Ruth Bennett, Director of Operations for Bankers, the “Bankers” insurance binder that Mr. Philips gave to Mr. Nguyen was a fake. Ms. Bennett said that the “binder” is not their form, the policy number on the document is not associated with Bankers, and the document

²⁷ Tr. at 57.

²⁸ Tr. at 58.

²⁹ Staff Ex. 4 at 8051-8054.

³⁰ Staff Ex. 4 at 8056. FEMA is the acronym for the Federal Emergency Management Agency, which operates the National Flood Insurance Program.

³¹ Staff Ex. 4 at 8068.

³² Staff Ex. 4 at 8059-8064.

does not look like anything Bankers provides.³³ She also testified that Bankers issued no homeowners policy to Mr. Nguyen. She said that Mr. Philips got a quote from Bankers for a policy, but no application was ever submitted for review.³⁴ Ms. Bennett reported that Bankers terminated Philips Insurance’s agent appointment in April 2020, for “repeated failure to remit premiums.”³⁵

Mr. Nguyen also testified that in mid-2020, he contacted Mr. Philips to obtain insurance for his father. Mr. Nguyen communicated with Mr. Philips for his father.³⁶ On May 26, 2020, Philips Insurance provided Mr. Nguyen a thirty-day written quote of \$1,217.21 for a homeowners insurance policy with American Risk to cover Mr. Nguyen’s father’s home.³⁷ Mr. Philips also provided Mr. Nguyen a verbal quote of \$461 for an auto insurance policy with Progressive Insurance (Progressive) to cover his father’s vehicle. To obtain the insurance, Mr. Nguyen gave Mr. Philips his father’s credit card information. On May 26, 2020, Philips Insurance charged the credit card \$1,217.21³⁸ for the homeowners premium. The next day, Philips Insurance charged Mr. Nguyen’s father’s credit card an additional \$461.³⁹

³³ Tr. at 74.

³⁴ Tr. at 75.

³⁵ Tr. at 72; Staff Ex. 11 at 8266.

³⁶ Tr. 61-62.

³⁷ Staff Ex. 4 at 8077-8078.

³⁸ Staff Ex. 4 at 8074.

³⁹ Staff Ex. 4 at 8074.

Mr. Nguyen testified that after waiting a few weeks for documentation about the auto coverage, he called Mr. Philips asking where it was. Mr. Philips responded that the auto insurance was activated and to “just wait.”⁴⁰ But after “waiting and waiting,” Mr. Nguyen became concerned and reached out to his realtor. At that time, the realtor told Mr. Nguyen that Mr. Philips was dishonest and to discontinue business with him. The realtor said that he had sent his clients an email at the beginning of 2020 advising them to not do business with Mr. Philips.⁴¹

Mr. Nguyen called his homeowners insurer, the auto insurer, and his father’s homeowners insurer, learning from each of them that there was no policy in effect.⁴² Upon this discovery, on May 26, 2020, Mr. Nguyen helped his father contest the two credit card charges as being fraudulent, and his father was refunded the payments. Mr. Nguyen testified that despite Mr. Philips agreeing to pay him back, neither Mr. Philips nor Philips Insurance refunded Mr. Nguyen the monies he paid for the purported Bankers homeowners insurance and the flood insurance coverage.⁴³ Mr. Nguyen made a complaint to the Department concerning Mr. Philips’ conduct.⁴⁴ Mr. Nguyen testified that no other person should have the

⁴⁰ Tr. at 64.

⁴¹ Tr. at 64-65.

⁴² Tr. at 65; Staff Ex. 10, Non-Existence of Business Records for Bankers, confirming no homeowners policy issued to Mr. Nguyen; Staff Ex. 12, Non-Existence of Business Records for Progressive, confirming no auto insurance policy issued to Mr. Nguyen’s father; Staff Ex. 8, Non-Existence of Business Records for American Risk, confirming no homeowners insurance policy issued covering Mr. Nguyen’s father’s house.

⁴³ Tr. at 68-69.

⁴⁴ Staff Ex. 16 at 8308.

same problems he did with buying insurance. He wants Mr. Philips “to stop.”⁴⁵

C. TRANSACTION INVOLVING ST. MARY’S MELANKARA CHURCH

Rejosh Pattanthaman testified on behalf of St Mary’s Melankara Orthodox Church (the Church) and its dealings with Respondents. In 2021, Mr. Pattanthaman was a Church trustee. He explained that since 2017, the Church had purchased its insurance through Respondents. He further testified that in 2019, the Church paid Philips Insurance \$10,330.96 (check dated March 6, 2019) to renew its general liability and its property insurance policies, both written through US Risk LLC (US Risk). Both policies had effective dates of March 7, 2019, through March 7, 2020.⁴⁶ In March 2020, the Church paid \$15,396.75 to Mr. Philips to extend coverage under both policies for an additional year.⁴⁷

Mr. Pattanthaman explained that when 2021 Winter Storm Uri hit, the Church fellowship hall had a pipe freeze, causing some property damage. He, therefore, contacted Mr. Philips to get details of the insurance to make a claim. Mr. Pattanthaman ended up calling US Risk directly because Mr. Philips did not give him the information he needed. Mr. Pattanthaman testified that when he spoke to the company, he learned no insurance policy was then in place through US Risk.⁴⁸

⁴⁵ Tr. at 69.

⁴⁶ Staff Ex. 7 at 8088; Staff Ex. 14 at 8373-8375; Staff Ex. 14 at 8394-8401.

⁴⁷ Staff Ex.7 at 8089.

⁴⁸ Tr. at 110.

Randall Goss, US Risk’s Chairman and Chief Executive Officer, testified that US Risk never received premium monies from Respondents for the 2019 and 2020 renewal insurance policies for the Church and that US Risk communicated to Respondents that the policies were cancelled for non-payment of premium as of August 16, 2019. Mr. Goss stated cancellation endorsements⁴⁹ for the two policies were provided to Respondents because, “we hadn’t been paid,” and “we wanted to make sure that he was aware of the situation that existed with respect to these policies.”⁵⁰ Mr. Goss reported that U.S. Risk no longer does business with Respondents.⁵¹

Mr. Pattanthaman said the Church confronted Mr. Philips, and Mr. Philips admitted he took the Church’s money and never procured the insurance in 2019 and 2020. But he promised to repay the Church.⁵² Mr. Pattanthaman related that the Church got two checks—both for \$12,870—from Mr. Philips. But when the Church tried to cash the checks, they bounced, resulting in the Church being “penalized by the bank for nonsufficient funds from the party.”⁵³ Neither Mr. Philips nor Philips Insurance refunded the \$25,727.71 in premiums the Church paid for the purported 2019 and 2020 renewal insurance policies.⁵⁴ Without property insurance during

⁴⁹ Staff Ex. 14 at 8378-8382 8402-8407.

⁵⁰ Tr. at 102.

⁵¹ Tr. at 103-104.

⁵² Tr. at 111; *See also* Staff Ex. 7 at 8093, the letter agreement signed by Mr. Philips wherein he acknowledges that he took the Church’s money and never obtained the 2019 and 2020 insurance policies, and he agrees to pay back the Church in two installments of \$12,870.

⁵³ Tr. at 112.

⁵⁴ Tr. at 112.

Winter Storm Uri, the Church paid \$6,850 out of pocket to repair damage to its fellowship hall.⁵⁵ Mr. Pattanthaman said that Mr. Philips is not a truthful person, and that his character is shown by the fact he defrauded a church.⁵⁶

D. TRANSACTION INVOLVING TURF CLUB APARTMENTS

Titus Thayil is managing partner of FJLMPS Ltd, which owns an apartment building called the Turf Club Apartments. FJLMPS Ltd is owned by Mr. Thayil's family: his mom, his brother, and his mom's brothers and sisters.⁵⁷ Mr. Thayil testified that in 2018 he wanted windstorm insurance on the Apartments. Mr. Thayil was introduced to Mr. Philips by Jake, Mr. Philips' brother-in-law. At the time, Mr. Thayil had known Jake for ten years and they were friends.⁵⁸

On June 1, 2018, Mr. Thayil provided a cashier's check for \$50,013 to Philips Insurance as a "Windstorm Deposit 2018" to secure windstorm insurance for the Apartments.⁵⁹ But Mr. Thayil was later informed that the age of the Apartments' roof prevented him from getting the insurance.⁶⁰ However, instead of Mr. Philips returning the deposit, Mr. Philips asked that the money be treated as a "short-term loan" to Mr. Philips for a down payment on the purchase of a house. As

⁵⁵ Tr. at 110-111; Staff Ex. 7 at 8090.

⁵⁶ Tr. at 113.

⁵⁷ Tr. at 87-88.

⁵⁸ Tr. at 89.

⁵⁹ Staff Ex. 6 at 8082.

⁶⁰ Tr. at 94.

Mr. Thayil stated: “Then he never actually gave it – bought the policy or anything. So, we just left the money there as the loan because there was no insurance.”⁶¹ Mr. Thayil testified Mr. Philips said he would repay the money upon the house closing. But “at the closing,” Mr. Philips never paid it back. Mr. Thayil’s family business ended up loaning Mr. Philips an additional \$100,000. That money was also never paid back. FJLMPS Ltd. eventually got a \$150,000 judgment against Mr. Philips, which Mr. Philips has paid \$6,000 toward.⁶² Mr. Thayil was asked his opinion about Mr. Philips’ trustworthiness. Mr. Thayil testified: “He promises, never delivers, and I believe he’s a compulsive liar.”⁶³

**E. TESTIMONY OF DEPARTMENT REPRESENTATIVE,
LEWIS WRIGHT**

Department representative Lewis Wright testified about the complex nature of insurance transactions. He explained that it is imperative that the agents licensed by the Department “conduct themselves in a transparent, honest, and forthright manner so that consumers aren’t confused related to coverage, when it exists and when it doesn’t, premium amounts owed, and deductible amounts, and coverage amounts.”⁶⁴ Mr. Wright testified the Department’s licensing records reflect that no less than twenty people made complaints to the Department about Mr. Philips.⁶⁵

⁶¹ Tr. at 94.

⁶² Tr. at 92; Staff. Ex. 18.

⁶³ Tr. at 93.

⁶⁴ Tr. at 116.

⁶⁵ Staff Ex. 16; Tr. at 120-121.

Mr. Lewis observed the presentation of Staff’s evidence in this matter and testified he was familiar with the Department’s investigation of Respondents.⁶⁶ Mr. Lewis opined that the Department needs to revoke the licenses of Mr. Philips and Philips Insurance.⁶⁷ He explained that the evidence shows a “pattern of fraudulent and deceptive conduct on behalf of the license holder, utilizing the entity’s license, as well as his own individual license, in collecting premiums for insurance policies or the attempt to place insurance[, and] in irresponsibly mishandling the funds and not forwarding them in a timely fashion to the entities that can provide coverage for Texas consumers.”⁶⁸

IV. ANALYSIS

The ALJ finds the Staff’s claims that Respondents engaged in fraudulent or dishonest conduct in their business dealings with Ms. Patel’s parents, Mr. Nguyen and his father, the Church, and Mr. Thayil’s family business, FJLMPS Ltd, well-supported by the evidence. The evidence shows that Respondents took premium monies from Ms. Patel’s parents, Mr. Nguyen and his father, the Church, and FJLMPS Ltd in the guise of procuring insurance for each of them. But Respondents instead converted the premium monies for their own use and left each of the consumers without the sought insurance to protect their important property and themselves. When caught in his wrongdoings, Mr. Philips did not dispute that he

⁶⁶ Tr. at 122.

⁶⁷ Tr. at 123.

⁶⁸ Tr. at 122-123.

took their money for his own use—he just lied to them again, promising he would reimburse them.

The evidence also establishes Respondents was cunning in his deceit. In the case of Ms. Patel’s parents and Mr. Nguyen, Mr. Philips created and gave them both made-up insurance binders with fake policy numbers to mislead the insureds into believing their homes were insured. And in the case of the Church, Mr. Philips, knowing that the Church’s policies had been cancelled in August 2019, impressed on the Church that it had active policies. In the case of Mr. Thayil’s family’s business, the evidence shows that Mr. Philips’ misappropriation of the \$50,013 windstorm insurance premium deposit and characterizing the misappropriation as a short-term loan was a ploy by Mr. Philips to take the money.

Because the Staff met its burden of proving that Mr. Philips and his insurance agency, Philips Insurance, engaged in fraudulent or dishonest practices in dealings with Ms. Patel’s parents, Mr. Nguyen and his father, the Church, and Mr. Thayil’s family business, FJLMPS Ltd, and misappropriated monies from these consumers, Respondents are subject to disciplinary action. The ALJ recommends that Philips Insurance’s general lines agency license be revoked, and Mr. Philips general lines agent license also be revoked. In support of these recommendations, the ALJ makes the following findings of fact and conclusions of law.

V. FINDINGS OF FACT

1. Toby Philips Insurance Agency LLC (Philips Insurance) holds a general lines agency license issued by the Texas Department of Insurance (Department).

2. Toby Philips holds a general lines agent license issued by the Department. Mr. Philips and Philips Insurance are collectively referred to as Respondents.
3. Mr. Philips owns Philips Insurance, and he is the designated responsible licensed person for Philips Insurance.

Riddhi Patel's Parents

4. Riddhi Patel's parents were first-time home purchasers when they first had dealings with Respondents. Ms. Patel was fully involved in her parents purchase of a home.
5. Mr. Philips purportedly assisted Ms. Patel in acquiring for her parents a homeowners policy with American Risk Insurance Company (American Risk) effective October 30, 2018, through October 30, 2019. On October 26, 2018, Ms. Patel's parents paid Philips Insurance \$1,126.48 to cover the premium for the policy.
6. Respondents did not remit Ms. Patel's parents' premium monies to American Risk, but instead they misappropriated the \$1,126.48. Respondents never procured an American Risk homeowners policy effective October 30, 2018, through October 30, 2019, for Ms. Patel's parents. The binder that Respondents gave to Ms. Patel's parents, identifying and describing such a policy, was falsified and deceived Ms. Patel and her parents.
7. Mr. Philips purportedly assisted Ms. Patel in renewing her parents' homeowners policy, effective November 12, 2019, through November 12, 2020. Ms. Patel's parents sent \$1,252.21 to Philips Insurance to cover the supposed renewal premium. Mr. Philips purportedly also assisted Ms. Patel in acquiring for her parents a flood insurance policy issued by The Hartford. On November 12, 2019, Ms. Patel's parents sent \$482 to Philips Insurance to cover the premium for the flood insurance policy.
8. Respondents did not remit Ms. Patel's parents' \$482 premium monies to The Hartford to procure flood insurance, but instead they misappropriated it. The Hartford did not issue a flood insurance policy covering the Ms. Patel's parents' home.

9. In January 2020, American Risk inspected Ms. Patel's parents' home and notified her parents that because of the condition of its roof, the homeowners policy, effective November 12, 2019, through November 12, 2020, would be cancelled effective February 11, 2020. When investigating American Risk's cancellation of the homeowners policy, Ms. Patel learned from the insurer that her parents were never issued a homeowners insurance policy in 2018. Ms. Patel called The Hartford, to learn that no flood insurance policy existed covering her parents' home.
10. When confronted by Ms. Patel about their fraudulent conduct, Respondents agreed to reimburse Ms. Patel's parents the premium monies Respondents misappropriated in connection with the nonexistent 2018-2019 homeowners policy and the flood insurance. But Respondents never repaid Ms. Patel's parents.
11. Mr. Philips untruthfully told American Risk on February 10, 2020, that he had reimbursed Ms. Patel's parents the premium monies they paid for the nonexistent 2018-2019 American Risk homeowners policy.
12. Ms. Patel's parents filed a complaint with the Department in February 2020.
13. By letter dated May 1, 2020, American Risk terminated its agency agreement with Mr. Philips.
14. American Risk terminated Philips Insurance's agency agreement on July 14, 2020.

Hau Nguyen and His Father

15. The realtor who sold Mr. Hau Nguyen a home in October 2019, referred him to Mr. Philips for homeowners insurance. On October 21, 2019, Philips Insurance provided Mr. Nguyen a written quote of \$1,344 for a Bankers Insurance Group (Bankers) homeowners policy, to be effective October 31, 2019, through October 20, 2020. Mr. Philips quoted Mr. Nguyen a premium of \$482 for a flood insurance policy on his house.
16. Mr. Nguyen paid Philips Insurance \$1,826 in premiums for a Bankers homeowners insurance policy and flood insurance coverage.

17. Respondents did not procure a homeowners policy with Bankers for Mr. Nguyen, but instead misappropriated the premium and gave Mr. Nguyen a falsified binder purportedly identifying and describing a Bankers homeowners policy covering his home, which deceived Mr. Nguyen. Respondents did not procure a flood insurance policy for Mr. Nguyen. Instead, Respondents misappropriate the \$482 in premium paid by Mr. Nguyen for flood insurance.
18. Bankers terminated Philips Insurance's agent appointment in April 2020, for "repeated failure to remit premiums."
19. In mid-2020, Mr. Nguyen contacted Mr. Philips to obtain insurance for his father. On May 26, 2020, Respondents provided Mr. Nguyen a thirty-day written quote of \$1,217.21 for a homeowners insurance policy with American Risk to cover Mr. Nguyen's father's home. Mr. Philips also provided Mr. Nguyen a verbal quote of \$461 for an auto insurance policy with Progress Insurance (Progressive) to cover his father's vehicle.
20. On May 26, 2020, Philips Insurance charged Mr. Nguyen's father's credit card \$1,217.21 for the homeowners premium. The next day, Philips Insurance charged Mr. Nguyen's father's credit card an additional \$461.
21. Respondents did not remit Mr. Nguyen's father's \$1,217.21 premium monies to American Risk, instead they misappropriated the monies. Respondents did not procure a homeowners policy for Mr. Nguyen's father. Respondents did not remit Mr. Nguyen's father's \$461 premium monies to Progressive, instead they misappropriated the monies. Respondents did not procure an auto insurance policy for Mr. Nguyen's father.
22. When Mr. Nguyen did not receive documentation about his father's auto coverage, he asked Mr. Philips about the auto coverage. In response, Mr. Philips told Mr. Nguyen that the auto policy was active and to "just wait." After "waiting" and receiving no documentation, Mr. Nguyen reached out to his realtor. The realtor told Mr. Nguyen that Mr. Philips was dishonest and to discontinue business with him. The realtor further related that he had sent his clients an email at the beginning of 2020 advising them to not do business with Mr. Philips.

23. Mr. Nguyen called Bankers, to learn there was no Bankers homeowners insurance policy in effect for him. Mr. Nguyen also called Progressive and American Risk, learning from each of them that there was no insurance policy in effect for his father.
24. On May 26, 2020, Mr. Nguyen helped his father contest the two credit card charges for the premium given to Philips Insurance as fraudulent, and his father was refunded the payments.
25. Respondents agreed to reimburse Mr. Nguyen the premium monies in connection with the nonexistent Bankers homeowners policy and flood insurance, but they did not.
26. Mr. Nguyen made a complaint to the Department concerning Respondents' misconduct.

St. Mary's Melankara Church

27. Since 2017, St. Mary's Melankara Orthodox Church (the Church) purchased its insurance through Respondents. By check dated March 6, 2019, the Church paid Philips Insurance \$10,330.96, to renew its general liability and property insurance policies, both written through US Risk LLC (US Risk). Both policies had effective dates of March 7, 2019, through March 7, 2020. In March 2020, the Church paid \$15,396.75 to Mr. Philips to extend coverage under both insurance policies for an additional year.
28. In 2019, Respondents did not remit the Church's \$10,330.96 premium monies to US Risk, but instead they misappropriated the monies. Respondents did not procure renewal general liability and property insurance policies for the effective dates of March 7, 2019, through March 7, 2020, for the Church.
29. In 2020, Respondents did not remit the Church's \$15,396.75 premium monies to US Risk, but instead they misappropriated the monies. Respondents did not procure renewal general liability and property insurance policies for the 2020-2021 coverage period for the Church.
30. US Risk cancelled the Church's general liability and property insurance policies effective as of August 16, 2019, for non-payment of premium. The cancellation endorsements for the two policies were provided to Respondents.

31. Despite Respondents not procuring renewal of general liability and property insurance policies for the Church for the 2019-2020 and 2020-2021 periods and knowing that there had been no coverage as of August 16, 2019, Mr. Philips impressed upon the Church during this same period that the Church had active policies.
32. When 2021 Winter Storm Uri hit, the Church fellowship hall had a pipe freeze, causing some property damage. In the process of making an insurance claim for the damage, the Church learned that there was no insurance policy in place through US Risk.
33. At a meeting between Church management and Mr. Philips, Mr. Philips admitted to taking the Church's money and not procuring insurance for the Church in 2019 and 2020. Mr. Philips agreed to repay the Church in two installments of \$12,870. The Church got two checks—both for \$12,870—from Mr. Philips. But when the Church tried to cash the checks, they bounced, and the Church was penalized by the bank for nonsufficient funds from the party. Respondents did not repay the Church the premium monies they misappropriated.
34. The Church paid \$6,850 to repair damage to its fellowship hall from Winter Storm Uri.
35. U.S. Risk no longer does business with Respondents.

FJLMPS Ltd

36. The managing partner of FJLMPS Ltd is Titus Thayil. FJLMPS Ltd is owned by Mr. Thayil and other members of his family. FJLMPS Ltd owns an apartment building called the Turf Club Apartments (the Apartments).
37. On June 1, 2018, Mr. Thayil gave a cashier's check for \$50,013 to Philips Insurance as a "Windstorm Deposit 2018" to secure windstorm insurance for the Apartments. Mr. Philips later informed Mr. Thayil that because of the age of the Apartments' roof, Mr. Philips would not be able to then obtain windstorm insurance for the Apartments.
38. Respondents did not return to FJLMPS Ltd the \$50,013 in premium deposit, but instead Mr. Philips asked to use the premium monies as a "short-term

loan” for a down payment on his house, to be paid back with interest at the house closing. At the house closing, the premium deposit was not refunded to FJLMPS Ltd. Respondents did not refund FJLMPS Ltd its \$50,013 premium deposit. Mr. Philips’ misappropriation of the \$50,013 windstorm insurance premium deposit as a supposed short-term loan was a con by Mr. Philips to dishonestly take FJLMPS Ltd’s money.

39. Respondents did not procure a windstorm insurance policy for FJLMPS Ltd, but instead misappropriated the \$50,013 premium deposit for their own use.

Sanction Considerations

40. Mr. Philips and Philips Insurance have engaged in fraudulent or dishonest business practices.
41. Ms. Patel’s parents, Mr. Nguyen, the Church, and Mr. Thayil’s family business, FJLMPS Ltd, have all suffered actual economic harm because of Mr. Philips’ and Philips Insurance’s misconduct.
42. Mr. Philips and Philips Insurance are not trustworthy, honest, or reliable.

Procedural Matters

43. On February 17, 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.
44. By Order Granting Motion to Reset or Clarify Hearing Time filed on July 28, 2022, the hearing on the merits was reset for February 13, 2023.
45. The hearing was held via Zoom videoconference on February 13, 2023, before Administrative Law Judge (ALJ) Linda J. Burgess with the State Office of Administrative Hearings (SOAH). Staff attorney Amanda Cagle represented the Department. Mr. Philips represented himself and Philips Insurance. Prior

to the hearing, Mr. Philips made an oral motion on behalf of Respondents to continue the February 13, 2023, hearing. Respondents' motion was denied by the ALJ, and the hearing convened.

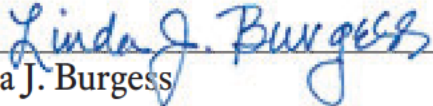
46. The hearing concluded on February 13, 2023, and the record closed that same day on the filing of the admitted exhibits.

VI. 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. Examin'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 Mr. Philips and Toby Philips Insurance Agency LLC. Tex. Ins. Code §§ 82.051, 4005.102(2).
10. Mr. Philips' general lines agent license should be revoked.
11. Philips Insurance's general lines agency license should be revoked.

Signed April 6, 2023.



Linda J. Burgess
Presiding Administrative Law Judge

2023-8190

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Associated Case Party: Texas Department of Insurance/ Enforcement Division

Name	BarNumber	Email	TimestampSubmitted	Status
Rachel Cloyd		Rachel.Cloyd@tdi.texas.gov	4/6/2023 4:22:07 PM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	4/6/2023 4:22:07 PM	SENT
Amanda Cagle		amanda.cagle@tdi.texas.gov	4/6/2023 4:22:07 PM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	4/6/2023 4:22:07 PM	SENT

Associated Case Party: Toby Philips

Name	BarNumber	Email	TimestampSubmitted	Status
Toby Philips		[REDACTED]	4/6/2023 4:22:07 PM	SENT
Toby Philips		[REDACTED]	4/6/2023 4:22:07 PM	ERROR