

No. 2017- 4935

**OFFICIAL ORDER  
of the  
TEXAS COMMISSIONER OF INSURANCE**

Date: FEB 15 2017

**Subject Considered:**

HARISH N. SHAH, P.E.  
P.O. Box 270994  
Corpus Christi, Texas 78427

**CONSENT ORDER**  
TDI ENFORCEMENT FILE NO. 10628

**General remarks and official action taken:**

The commissioner of insurance considers whether disciplinary action should be taken against Harish N. Shah, P.E.

**WAIVER**

Shah acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Shah waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

**FINDINGS OF FACT**

1. The Texas Department of Insurance appointed Shah as a qualified inspector to perform building inspections for the purpose of establishing that building or structures are eligible for windstorm and hail insurance through the Texas Windstorm Insurance Association (TWIA).
2. Shah's license number is 67169, and he is associated with the firm HNS Engineering.

**518 East Main Avenue, Robstown, Texas**

3. TDI received an Application for Windstorm Building Inspection Form WPI-1 (WPI-1) July 15, 2013, for a partial re-roof on the commercial structure located at 518 East Main Avenue, Robstown, Texas (East Main Re-Roof). The WPI-1 listed Shah as the engineer-of-record.
4. TDI received a revised WPI-1 on September 6, 2013, for the East Main Re-Roof. The WPI-1 listed Shah as the engineer-of-record.

5. TDI received an Inspection Verification Form WPI-2-BC-5 (WPI-2-BC-5) for the East Main Re-Roof on September 6, 2013. The WPI-2-BC-5 listed Shah as the engineer-of-record for the structure and contained his engineering seal and signature.
6. TDI received a revised WPI-1 on September 27, 2013, for the East Main Re-Roof. The WPI-1 listed Shah as the engineer-of-record.
7. TDI received a revised WPI-2-BC-5 for the East Main Re-Roof on September 27, 2013. The WPI-2-BC-5 listed Shah as the engineer-of-record for the structure and contained his engineering seal and signature.
8. By his submission of the WPI-2-BC-5, Shah certified that he was personally responsible as the engineer-of-record for the windstorm inspection of the East Main Re-Roof and that he provided standard and customary review services, including inspections of the East Main Re-Roof.
9. Shah further certified that the East Main Re-Roof was designed and inspected in compliance with the wind load provisions of *International Building Code, 2006 Edition (Amended with 2006 Texas Revisions)*(IBC 2006). Shah certified that the 110 mph, 3-second gust design conditions were used. Shah certified that inspections were conducted on July 3, 2013, July 11, 2013, July 12, 2013, July 26, 2013, and August 24, 2013. Shah stated that he understood and intended that TDI would rely on his statement of compliance in determining whether to issue a WPI-8 for the structure and to notify TWIA the structure was eligible for windstorm insurance.
10. Based on Shah's certification, TDI issued a Certificate of Compliance, Form WPI-8 (WPI-8) for the East Main Re-Roof on September 30, 2013.
11. On June 18, 2015, TDI received a complaint from a representative of the building owner regarding concerns about the certification of the East Main Re-Roof.
12. In response to the complaint, TDI conducted an inspection of the East Main Re-Roof on June 26, 2015. TDI found deficiencies with the re-roof during the inspection.
13. TDI sent a certified letter to Shah on July 3, 2015. The letter outlined the findings of the June 26, 2015, inspection. The letter further requested additional information from Shah and reminded Shah of his obligation to respond within 15 days.
14. TDI conducted a second inspection of the East Main Re-Roof on July 8, 2015. TDI found deficiencies with the re-roof during the inspection.
15. On July 21, 2015, TDI received Shah's response to TDI's July 3, 2015, letter. Shah's response contained documentation providing a proposed scope of work to address TDI's concerns.

16. Between August 1, 2015, and August 4, 2015, TDI and Shah exchanged emails regarding the removal of the pony walls at the East Main Re-Roof.
17. TDI sent a certified letter to Shah on August 11, 2015. The letter outlined deficiencies and concerns TDI found during its oversight inspections. The letter further requested Shah to provide a plan to correct the observed deficiencies. Finally, the letter reminded Shah of his obligation to respond within 15 days.
18. On August 19, 2015, TDI sent an email to Shah. The email contained additional items and concerns regarding the East Main Re-Roof.
19. On September 1, 2015, TDI received Shah's email response to TDI's August 19, 2015, email. The email stated that Shah would proceed with the following work items:
  - a. Install new crickets,
  - b. Install new truss connectors,
  - c. Remove or disconnect the pony wall, and
  - d. Anchor all new and existing air conditioners to the roof.
20. TDI sent an email to Shah on September 2, 2015, expressing TDI's concerns with Shah's proposal to begin work on the roof.
21. TDI sent an email to Shah on September 22, 2015, suggested that Shah conduct additional review prior to starting his proposed work on the East Main Re-Roof. Shah responded to TDI on the same day and stated he would conduct further review before work proceeded.
22. On October 19, 2015, TDI met with Shah and the roofing contractor at the East Main Re-Roof to discuss the following:
  - a. Removal of the ceiling and plywood decking at the rear of the roof, and
  - b. Installation of board decking at the rear of the roof.
23. Between October 21, 2015, and October 22, 2015, TDI and Shah exchanged emails regarding pull tests to be conducted at the East Main Re-Roof.
24. On October 23, 2015, Shah performed pull tests on the East Main Re-Roof.
25. On October 27, 2015, TDI received Shah's test results and photographs taken during the testing.
26. On November 13, 2015, TDI received an email from Shah. The email contained the Dura-Last wind pressure calculations and a proposed method to repair the installed roof.

27. TDI emailed its response to Shah on November 13, 2015. The email listed concerns TDI still had with the East Main Re-Roof and requested that Shah respond with applicable information.
28. On November 17, 2015, TDI received Shah's Notice of Acceptance report (NOA report) to quantify the performance of the roof.
29. On November 25, 2015, TDI received Shah's revised uplift calculations from the roof covering manufacturer.
30. TDI sent Shah an email on December 1, 2015. The email stated that TDI accepted Shah's proposed design wind pressure values.
31. TDI sent Shah a certified letter on December 2, 2015. The letter stated that Shah had failed to respond to TDI's November 13, 2015, request for information.
32. TDI sent an email to Shah on December 16, 2015. The email reminded Shah that his plan to bring the roof into compliance was due on December 18, 2015.
33. On December 22, 2015, TDI received Shah's response. The letter stated work would not be conducted to bring the roof into compliance until the warranty issues were resolved with the manufacturer of the low slope roof covering system.
34. TDI sent a certified letter to Shah on January 8, 2016. The letter listed TDI's concerns with the East Main Re-Roof. The letter further stated that despite continued correspondence, meetings, and discussions, Shah failed to bring a resolution to the East Main Re-Roof and Shah failed to produce a proposed plan of action to correct deficiencies found in his certified work on the East Main Re-Roof. Finally, the letter stated that this matter would be referred to TDI's Enforcement Section for appropriate action.

#### **Texas Board of Professional Engineers**

35. On February 11, 2016, the Texas Board of Professional Engineers (TBPE) entered an official agreed order against Shah for:
  - a. issuing misleading windstorm inspection verification forms to TDI;
  - b. issuing misleading statements when he certified the East Main-Re-Roof complied with all applicable windstorm codes and was eligible for windstorm and hail insurance policies issued by TWIA by affixing his signature and seal to three WPI-2s;
  - c. falsely certifying the East Main Re-Roof complied with all applicable windstorm codes and was eligible for windstorm and hail insurance policies issued by TWIA;
  - d. failure to act as a faithful agent to his client;

- e. failure to practice engineering in an honest and ethical manner; and
  - f. failure to practice engineering in a careful and diligent manner.
36. The TBPE agreed order suspended Shah's Texas professional engineer license for one year.
37. The TBPE agreed order probated the suspension term, contingent upon Shah's payment of a \$1,950 administrative penalty, his enrollment and completion of the Texas Tech University Engineering Ethics course.

### CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. GOV'T CODE §§ 2001.051-2001.178; TEX. INS. CODE §§ 82.051-82.055 and 2210.001-2210.256; and 28 TEX. ADMIN. CODE § 5.4604.
2. The commissioner has the authority to dispose of this case informally pursuant to the provisions of TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104, 82.055, and 2210.256(e); and 28 TEX. ADMIN. CODE §§ 1.47 and 5.4604(f)(3).
3. Shah failed to comply with TEX. INS. CODE § 38.001 and 28 TEX. ADMIN. CODE §§ 5.4604(g) and 5.4604(h).
4. Shah knowingly, willfully, fraudulently, or with gross negligence, signed or caused to be prepared an inspection report or sworn statement that contains a false, fictitious, or fraudulent statement or entry, as contemplated by TEX. INS. CODE § 2210.256 and 28 TEX. ADMIN. CODE § 5.4604(f)(1).

The commissioner of insurance orders that the qualified inspector appointment held by Harish N. Shah, P.E. be placed on probation for one year, effective as of the date of this order. Shah's probation is subject to the following terms and conditions:

1. These terms and conditions apply to all inspections performed on or after the date of this order for the purpose of establishing that a building, structure, addition, alteration, roof, foundation, or repair is eligible for wind and hail insurance and all WPI-1s and WPI-2s submitted on or after the date of this order.
2. Any requirement in this order for Shah to submit methods of installation or contractor methods of installation means:
  - a. the manufacturer's recommended method(s) for installation;

- b. the method(s) of installation set out in the builder's plans and specifications;
  - c. the applicable TDI product evaluation, independent testing laboratory report, model code product evaluation report, or manufacturer's high wind installation requirements; and
  - d. other construction standards adopted by the commissioner.
3. Shah will not act as a qualified inspector on any structure unless he or another person has submitted a WPI-1 to windstorm inspections prior to beginning to construct, alter, remodel, enlarge, or repair a structure. Shah will notify windstorm inspections, through submission of a WPI-1 by him or another person, of his intention to perform building inspections to establish that the structure is eligible for windstorm and hail insurance, as contemplated by TEX. INS. CODE § 2210.251.
4. Windstorm plans and structural calculations for structures will include, when applicable, the following information:
  - a. The applicable building code standard used, the wind load standard used, the wind speed used, the wind importance factor used, and the exposure category used in the design of the structure;
  - b. A summary of the wind loads acting on the structure for the design of the main wind force-resisting systems, components, and cladding;
  - c. The uplift loads and building components used to transfer uplift loads caused by the applied wind loads from the roof down to the foundation;
  - d. The lateral shear loads and the building components used to transfer lateral shear loads caused by the applied wind loads from the roof down to the foundation;
  - e. The overturning loads and the building components used to transfer overturning loads caused by the applied wind loads from the roof down to the foundation;
  - f. Design of connections to transfer wind loads from one element to the next from the roof down to the foundation;
  - g. Roof cladding and roof framing connections;
  - h. Roof deck type and anchorage method, including fastener type and spacing;
  - i. Wall connections to the roof, floor, diaphragms, and framing;
  - j. Roof and floor diaphragm systems, including collectors, drag struts, and boundary elements;

- k. Vertical wind force resisting systems, including braced frames, moment frames, and shear walls;
  - l. Windforce resisting system connections to the foundation;
  - m. Foundation design, including the overturning resistance of the foundation system;
  - n. Design pressure requirements for any roof or exterior covering used on a structure;
  - o. Type of roof covering or exterior covering and anchorage method, including fastener type and spacing;
  - p. Type of soffit material and anchorage method, including fastener type and spacing;
  - q. Design pressure and high wind installation requirements for all exterior opening products, including windows, doors, garage doors, and skylights; and
  - r. The methods for protecting exterior openings from windborne debris, when applicable.
5. Shah must clearly mark windstorm plans and structural calculations with the words "WINDSTORM COMPLIANT PLANS." If Shah utilizes plans provided by the structure's builder and prepares modifications to the plans necessary to ensure that the modified plans meet the wind load requirements of the construction standards adopted by the commissioner, Shah must clearly mark such plan modifications with the words "WINDSTORM COMPLIANT PLANS."
6. As a part of the inspection process, Shah must determine, and the appointed engineer or the appointed engineer's employee will confirm building code compliance of the building products used during the construction process by obtaining and utilizing the following information during the design and inspection of the structure:
- a. test information;
  - b. model code or department product evaluation reports; or
  - c. manufacturer's high wind installation requirements.
7. Shah must provide windstorm inspections with the name, address, telephone number, resume, and qualifications, of all individuals performing building inspections under his supervision for the purpose of establishing that a structure is eligible for wind and hail insurance.
8. Shah must perform follow-up or joint inspections with each individual identified in (8) on a weekly basis to ensure that the construction of structures conforms to the requirements

set forth by Shah. On request by windstorm inspections, Shah must provide copies of signed and sealed inspection records for each of the inspections.

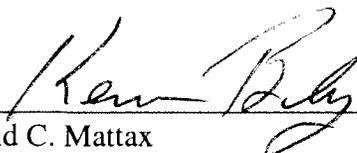
9. Shah must prepare quality control procedures or guidelines to ensure that inspections conducted by employees under his supervision are properly conducted. Shah must submit the quality control procedures to windstorm inspections for review.
10. Shah must prepare an inspection form or report, to be used during each of the inspections. Each inspection form or report will include, but is not limited to, the following information:
  - a. complete address of location being inspected;
  - b. type of inspection;
  - c. date and time of inspection;
  - d. status of inspection;
  - e. type of construction;
  - f. wind zone;
  - g. exposure category;
  - h. mean roof height;
  - i. products or a copy of the builder's specifications and the windstorm plans, and any deviations;
  - j. manufacturers of the products identified in (7) if not stated in the builder's specifications or windstorm plans;
  - k. product testing information of the products identified in (7);
  - l. manufacturer installation requirements of the products identified in (7);
  - m. deviations from the contractor methods of installation established by the manufacturer's recommendations;
  - n. the on-site compliance report, including the printed name and signature of the inspector; and
  - o. a reference to the appropriate windstorm plans for the building plan.

COMMISSIONER'S ORDER

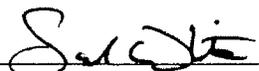
Harish N. Shah, P.E.

Page 9 of 10

11. If Shah begins conducting building inspections under the supervision of an engineer appointed as a qualified inspector for the purposes of establishing that a structure is eligible for windstorm and hail insurance, Shah will notify windstorm inspections within 24 hours.
12. This order and the conditions of probation apply to any inspection Shah certifies or performs individually as an appointed qualified inspector, as well as those conducted under the supervision of another engineer appointed as a qualified inspector.
13. Shah must comply with TEX. INS. CODE §§ 2210.251, 2210.254, and 28 TEX. ADMIN. CODE §§ 5.4601-5.4642. Any violation of the Texas Insurance Code, Texas Administrative Code, or the terms of this order, may result in disciplinary action against Shah and his appointment as a qualified inspector, pursuant to TEX. INS. CODE § 2210.256.

  
\_\_\_\_\_  
David C. Mattax  
Commissioner of Insurance  
By: Kevin Brady  
Delegation Order 4506

APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
Sarah White, Staff Attorney  
Texas Department of Insurance

**AFFIDAVIT**

STATE OF Texas

§

COUNTY OF Nueces

§

§

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

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

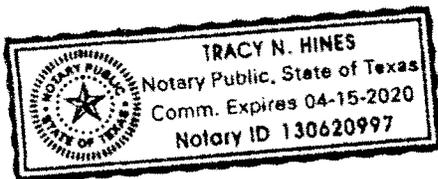
I am waiving rights provided by the Texas Insurance Code and other applicable law and acknowledge the jurisdiction of the commissioner of insurance.

I voluntarily enter into this consent order and consent to the issuance and service of this consent order."

Harish N. Shah  
Affiant 1/13/17

SWORN TO AND SUBSCRIBED before me on January 13, 2017.

(NOTARY STAMP)



Tracy Hines  
Signature of Notary Public