

No. 2019-5967

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

Date: MAY 16 2019

Subject Considered:

Texas Department of Insurance

v.

Luis Carlos Sandoval, Jr.

SOAH Docket No. 454-18-3846.C

General remarks and official action taken:

The subject of this order is the general lines agent license held by Luis Carlos Sandoval, Jr.

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 and underlying rationale and including separately stated findings of fact and conclusions of law.

In the proposal for decision, the administrative law judge concluded that Mr. Sandoval engaged in fraudulent or dishonest acts or practices, misappropriated money, failed to meet his continuing education requirements, and failed to respond to an inquiry from the Texas Department of Insurance. The administrative law judge recommended that the general lines agent license held by Mr. Sandoval be revoked.

A copy of the proposal for decision is attached as Exhibit A.

COMMISSIONER'S ORDER
TDI v. Luis Carlos Sandoval, Jr.
SOAH Docket No. 454-18-3846.C
Page 2 of 3

Findings of Fact

The findings of fact contained in Exhibit A are adopted by the Texas Department of Insurance and incorporated by reference into this order.

Conclusions of Law

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

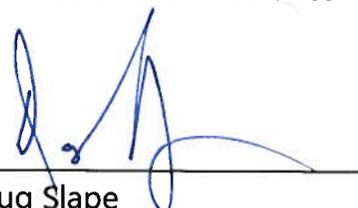
Order

It is ordered that the general lines agent license held by Luis Carlos Sandoval, Jr. is revoked.

If enforcement of this order is restrained or enjoined by an order of a court, this order shall become effective upon a final determination by said court or appellate court in favor of the Texas Department of Insurance.

A copy of this order will be provided to law enforcement and other appropriate administrative agencies for further investigation as may be warranted.

Kent C. Sullivan
Commissioner of Insurance

By: 
Doug Slape
Chief Deputy Commissioner
Commissioner's Order No. 2018-5528

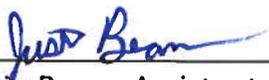
2019- 5967

COMMISSIONER'S ORDER
TDI v. Luis Carlos Sandoval, Jr.
SOAH Docket No. 454-18-3846.C
Page 3 of 3

Recommended and reviewed by:



James Person, Interim General Counsel
General Counsel and Chief Clerk Division



Justin Beam, Assistant General Counsel
General Counsel and Chief Clerk Division

2019 - 5967

State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

April 22, 2019

Kent Sullivan
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe, Tower 1, 13th Floor, Mail Code 113-2A
Austin, Texas 78714

INTERAGENCY

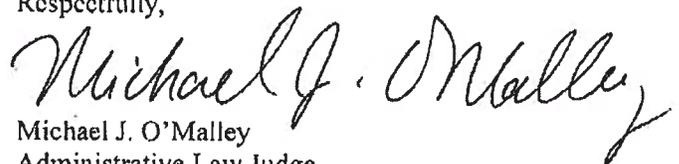
RE: Docket No. 454-18-3846.C, Texas Department of Insurance v. Luis Carlos Sandoval, Jr.

Dear Commissioner Sullivan:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Texas Administrative Code § 155.507, a SOAH rule which may be found at www.soah.texas.gov.

Respectfully,


Michael J. O'Malley
Administrative Law Judge

MJO/sh
Enclosure includes 1 CD

cc: Amanda A. Cagle, Staff Attorney, Texas Department of Insurance, 333 Guadalupe, Tower 1, 13th Floor, Austin, Texas 78701 VIA INTER-AGENCY
Luis Carlos Sandoval, Jr., 3141 Amarillo Street, El Paso, TX 79936 - VIA REGULAR MAIL

SOAH DOCKET NO. 454-18-3846.C

TEXAS DEPARTMENT OF
INSURANCE,
Petitioner

v.

LUIS CARLOS SANDOVAL, JR.,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff (Staff) of the Texas Department of Insurance (the Department or TDI) brought this enforcement action to revoke the general lines agent license (license) held by Luis Carlos Sandoval, Jr. Staff alleges that Mr. Sandoval engaged in fraudulent or dishonest acts and misappropriated money in violation of the Texas Insurance Code by fraudulently creating false applications for insurance policies. The Administrative Law Judge (ALJ) finds that Staff established the violations and recommends that Mr. Sandoval’s license be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no disputed issues of notice or jurisdiction in this case. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing on the merits was held on January 15, 2019, before ALJ Michael J. O’Malley at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff appeared and was represented by Staff Attorneys Amanda Atkinson Cagle and Stephanie Andrews. Mr. Sandoval represented himself. The record closed on February 26, 2019, after the parties filed post-hearing briefs.

II. ALLEGATIONS AND APPLICABLE LAW

Staff alleges that Mr. Sandoval forged signatures, prepared and submitted fraudulent insurance applications, took advance commissions for the fraudulent applications, and lied about it. Staff also alleges that Mr. Sandoval failed to respond to a Department inquiry and failed to meet continuing education requirements.

The Texas Insurance Code authorizes the Department to regulate the business of insurance in this state, including investigating misconduct by insurance agents.¹ Texas Insurance Code § 4005.101 provides that the Department may take disciplinary action against a license-holder who has:

- willfully violated an insurance law of this state;²
- misappropriated, converted for his own use, or illegally withheld money belonging to an insurer or insured;³
- engaged in a fraudulent or dishonest act or practice;⁴
- failed to respond to a Department inquiry;⁵ and
- failed to meet continuing education requirements.⁶

Staff bears the burden of proof on these allegations.⁷

¹ Tex. Ins. Code § 31.002(1), (3), (4).

² Tex. Ins. Code § 4005.101(b)(1).

³ Tex. Ins. Code § 4005.101(b)(4)(A).

⁴ Tex. Ins. Code § 4005.101(b)(5).

⁵ Tex. Ins. Code § 38.001.

⁶ Tex. Ins. Code § 4005.051-.054.

⁷ 1 Tex. Admin. Code § 155.427.

III. EVIDENCE, ARGUMENT, AND ANALYSIS

At the hearing, the ALJ admitted 8 exhibits in evidence and heard the testimony of 6 witnesses, including Mr. Sandoval.

A. Evidence

1. Background

Mr. Sandoval has held his license since January 28, 2003.⁸ Mr. Sandoval contracted with American Family Life Assurance Company of Columbus (Aflac) on June 2, 2009, and held that position for 7 years until Aflac terminated him on September 6, 2016.⁹ In the spring of 2015, Mr. Sandoval approached employees of Brock & Bustillos about purchasing supplemental insurance.¹⁰ The Brock & Bustillos employees opted to purchase the supplemental insurance from Mr. Sandoval.¹¹ Mr. Sandoval submitted the policies to Aflac in May 2015.¹² At the end of 2015, the Brock & Bustillos employees decided to cancel with Aflac. They met with Mr. Sandoval and decided to move their policies to Colonial Insurance (Colonial).¹³ As the producing and managing agent on the Brock & Bustillos accounts, Mr. Sandoval had access to the employees' personal information.¹⁴

2. Investigation

The Department alleges that shortly after creating the legitimate policies for the Brock & Bustillos employees, Mr. Sandoval used their personal information to create and submit

⁸ TDI Ex. 5.

⁹ TDI Exs. 5, 6.

¹⁰ Tr. at 59.

¹¹ Tr. at 59, 77, 90.

¹² Tr. at 23.

¹³ Tr. at 59, 77, 91.

¹⁴ Tr. at 55.

fake applications with forged signatures for new and different coverages at Aflac. Mr. Sandoval submitted these new Aflac policies between February and April of 2016. During this time, Mr. Sandoval submitted 15 policies for 10 people at Brock & Bustillos: Brock, Alvarado, Bustillos, Garcia, Marroquin, Ybarra, Rojas, Romero, Adame, and Madrid. Aflac paid Mr. Sandoval approximately \$2,825.67 in advance commissions for these applications.¹⁵ When Brock & Bustillos failed to pay for the 2016 policies placed with Aflac, Aflac initiated an investigation and discovered that the employees had not submitted the applications and their signatures had likely been forged.¹⁶ Aflac concluded that Mr. Sandoval had written business on individuals who had no knowledge and no intent to pay. Aflac further concluded that Mr. Sandoval forged the signatures on the applications and other required forms.¹⁷

3. Testimony of the Brock & Bustillos Employees and Aflac Special Investigations Unit Supervisor

Julie Bustillos, the employee benefits and payroll coordinator at Brock & Bustillos, testified that she knew the 10 employees impacted by the 2016 Aflac applications. Ms. Bustillos explained that, as part of her job duties, she handled employee payroll deductions and, in 2015, she handled the payroll deductions for the Aflac policies and, in 2016, she handled the deductions for the Colonial policies.¹⁸ She stated she would have been involved in any payroll deductions. Ms. Bustillos emphatically stated that the 10 Brock & Bustillos employees on the 2016 Aflac policies did not authorize policies with Aflac through Mr. Sandoval.¹⁹ Ms. Bustillos also testified that no one at Brock & Bustillos was seeking insurance with Aflac in 2016 because they had all recently switched to Colonial.²⁰

¹⁵ TDI Ex. 6.

¹⁶ TDI Ex. 6; Tr. at 24-25.

¹⁷ TDI Ex. 6.

¹⁸ Tr. at 88-90.

¹⁹ Tr. at 93-96.

²⁰ Tr. at 93.

Randy Powell Brock, Vice President at Brock & Bustillos, testified that he did not complete or sign an application for a 2016 Aflac insurance policy. He explained that he always includes his middle initial when he signs legal or business documents because Roman Bustillos, his business partner, has the same first and last initials. Furthermore, Mr. Brock indicated that the signature on the application did not look like his signature.²¹ Mr. Brock emphasized that he was not seeking additional insurance with Aflac in 2016.²² He also noted that the 2016 Aflac application was for short-term disability insurance—a type of coverage in which he already had the maximum amount and would not need any additional coverage.²³ Finally, Mr. Brock stated that the application included an incorrect email address for him, which included a domain name that has never existed.²⁴

Roman Bustillos, President and Chief Executive Officer of Brock & Bustillos, testified that on April 28, 2016, he was not seeking any additional insurance coverage through Aflac. He further indicated that he did not sign an application in 2016 for insurance with Aflac and did not authorize Mr. Sandoval to complete any application for insurance with Aflac in 2016 because additional insurance was not necessary at that time.²⁵ Mr. Bustillos also pointed out that his job title on the application indicated “VP” but he has been president of the company since 1999; therefore, this would not have been a mistake he would have made. He also noted that the application contained an incorrect email address.²⁶

Christopher O’Brien, Aflac Special Investigations Unit Supervisor, testified that a fake email address is a technique he has seen in other fraud cases involving falsified insurance applications. He explained that, by using a fake email address, the policyholder would not know that a new policy had been issued because the email bounces back.²⁷ He also noted that it is very

²¹ Tr. at 61-65.

²² Tr. at 62.

²³ Tr. at 64-65.

²⁴ Tr. at 62-63.

²⁵ Tr. at 77-81.

²⁶ Tr. at 79.

²⁷ Tr. at 31-32.

unusual to see email addresses change from the legitimate 2015 applications to the fraudulent 2016 applications.²⁸ Mr. O'Brien also explained that it was unusual that Mr. Sandoval submitted the fraudulent 2016 applications a few at a time over several weeks in a total of 7 separate transmissions. He stated that businesses typically want to finish enrolling employees within a day or two.²⁹ Mr. O'Brien indicated that the coverage elections on the 2016 applications involved higher-end coverages with higher premiums, resulting in higher advance commissions.³⁰ Mr. Sandoval had a 75% "no pay" rate and a debit balance of \$11,761.91. Mr. O'Brien explained that a high "no pay" rate indicates that a large part of the agent's business has not paid premiums. And, in this case, since the Brock & Bustillos employees did not know about the fraudulent policies, they would have no reason to pay.³¹

4. Lewis Wright's Testimony

Lewis Wright, Administrative Review Liaison, oversees the process of misconduct by adjusters and agents for TDI. He opined that Mr. Sandoval fabricated applications for insurance coverage and received unearned commissions. He stated that it is the duty of TDI to protect consumers; therefore, it is necessary to ensure the honesty of agents licensed by the Department. When fraudulent activity occurs, it undermines the whole industry, according to Mr. Wright. He also stated that Mr. Sandoval has never taken responsibility for his actions and that concerns the Department.³² In addition, Mr. Wright pointed out that Mr. Sandoval has never returned the advance commissions he received on these fraudulent policies, which he considers to be another fraudulent act and misappropriation of money in violation of the Texas Insurance Code.³³

²⁸ Tr. at 30-31.

²⁹ Tr. at 39-40.

³⁰ Tr. at 38, 45.

³¹ Tr. at 22-24.

³² Tr. at 115-18.

³³ Tr. at 125-26.

Mr. Wright also testified that Mr. Sandoval refused to respond to the Department's request for information and he was not compliant with his continuing education requirements from 2013 through 2015.³⁴ Based on the severity of Mr. Sandoval's actions, Mr. Wright testified that the appropriate sanction in this case would be revocation of Mr. Sandoval's license.³⁵

5. Mr. Sandoval's Testimony

Mr. Sandoval testified that, when he provided his resignation notice to Aflac, that prompted the investigation. He stated that he resigned from Aflac because he believed they did not have a secure enrollment system to protect against fraud. Furthermore, he claimed that the Aflac investigation had nothing to do with fraudulent applications or a client complaint but had to do with his pay rate. Mr. Sandoval explained that his high "no pay" percentage involved one account with a trusted client who did not pay the premium. According to Mr. Sandoval, Aflac found no wrongdoing in that case. Mr. Sandoval also testified that Aflac has not provided him information that he has requested involving this investigation. He also asserted that the investigation was incomplete because only 4 people from Brock & Bustillos were interviewed.³⁶

Mr. Sandoval stated that the Brock & Bustillos employees who testified were confused about their insurance policies. He claimed that over the course of about a year he introduced the employees to various types of supplemental insurance with various companies. He further claimed that these employees do not remember the specific dates and are confused as to the type of insurance that they authorized him to enroll them in. He said that he had to change certain dates and over time it became confusing. He explained that he initially enrolled them with Aflac, then Colonial, and back to Aflac at their request. He stated that the 2016 Aflac policies were issued because the Colonial policies did not get issued. Furthermore, he testified, if Brock & Bustillos believed incorrect policies had been issued, they should have terminated or canceled the policies.³⁷

³⁴ Tr. at 118-21.

³⁵ Tr. at 127.

³⁶ Tr. at 146-48.

³⁷ Tr. at 149-51.

Mr. Sandoval claimed that much of the information that TDI requested from him he did not possess; therefore, he could not respond. For example, he stated that TDI requested personal information about his clients, and he responded that he did not have their personal information. He also testified that he tried to retrieve information from Aflac, but Aflac failed to provide it to him.³⁸ Mr. Sandoval admitted, however, that he did not have the required continuing education hours for the 2013-2015-time period.

B. ALJ's Analysis

Staff seeks to revoke Mr. Sandoval's license for engaging in fraudulent or dishonest acts and misappropriating money.³⁹ Staff contends that Mr. Sandoval engaged in such practices by submitting fraudulent policy applications to Aflac and receiving advance commissions, which he did not return. Staff also alleges that Mr. Sandoval failed to respond to TDI's requests for information and failed to have the required hours for his continuing education. The ALJ finds that sufficient evidence exists to support Staff's allegations.

The testimony of Mr. Brock, Mr. Bustillos, and Ms. Bustillos was very persuasive. These individuals had no reason to misrepresent their testimony. They testified unequivocally that they did not request the 2016 policies from Aflac. Their testimony is corroborated by the applications. The applications include incorrect signatures, incorrect email addresses, and requests for insurance coverages that were not needed by these individuals.⁴⁰

Although Mr. Sandoval offered an explanation that the Brock & Bustillos employees were confused, his explanation was not credible or plausible. Based on the testimony of these individuals, it seems very unlikely that they forgot or were confused about the 2016 Aflac insurance applications. They remembered meeting with Mr. Sandoval in 2015 and requesting the 2015 Aflac policies. They also remembered switching the policies in late 2015 and early 2016 to Colonial.

³⁸ Tr. at 148-49.

³⁹ Tex. Ins. Code § 4005.101(b)(5).

⁴⁰ TDI Ex. 6.

Mr. Sandoval's claim that Aflac retaliated against him because he resigned also seems unlikely. The 2016 applications contained numerous unexplained errors, which caused Aflac concern because the policies had not been paid and Mr. Sandoval had an extremely high "no pay" rate. With this information, Aflac had a duty to investigate potentially fraudulent insurance applications/policies. Aflac's investigation had nothing to do with retaliating against Mr. Sandoval.

Using fake email addresses on applications is a common technique used in fraudulent insurance applications, according to Mr. O'Brien. In this case, because fake email addresses were used, the policyholders (the Brock & Bustillos employees) never received the policies and could not notify Aflac. Additionally, Aflac noticed the email addresses for the Brock & Bustillos employees changed within the year, which is another red flag. The evidence shows multiple red flags indicating fraudulent applications—incorrect email addresses, incorrect signatures, errors on the applications, and expensive, unnecessary coverages. The ALJ, therefore, concludes that Staff proved that Mr. Sandoval engaged in fraudulent or dishonest acts when he submitted the fraudulent 2016 applications to Aflac and misappropriated money when he received advance commissions on the fraudulent insurance applications, and that under Texas Insurance Code § 4005.101, the Department may discipline Mr. Sandoval for these acts. The evidence also shows that Mr. Sandoval failed to respond to TDI's request for information and failed to have the required continuing education for the 2013-2015-time period.

C. Penalty

Because Staff established violations, the issue becomes what discipline is appropriate. Mr. Lewis testified that Mr. Sandoval's actions undermine the whole industry. He elaborated by stating that it is the duty of TDI to protect the public and, when agents are fraudulent, the insurance industry reputation is impacted. Mr. Wright further stated that Mr. Sandoval has never returned his advance commissions on these fraudulent applications and has never taken any responsibility for his actions. Mr. Wright testified that the Department has determined that it is important for insurance agents to be honest, trustworthy, and reliable, and that he believes Mr. Sandoval's license should be revoked.

Texas Insurance Code § 4005.101 authorizes disciplinary action to be taken against an agent who has engaged in fraudulent or dishonest acts or practices and misappropriated money.⁴¹ License revocation is one of the disciplinary actions that the Department may take. Based on the evidence about Mr. Sandoval's conduct, along with Mr. Wright's testimony, the ALJ concludes that Mr. Sandoval's license should be revoked. The ALJ proposes the following Findings of Fact and Conclusions of Law.

IV. FINDINGS OF FACT

1. On January 28, 2003, the Texas Department of Insurance (Department) issued a general lines agent license to Luis Carlos Sandoval, Jr.
2. On May 24, 2018, the Department mailed a Notice of Hearing to Respondent. 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 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.
3. The Administrative Law Judge (ALJ) convened the hearing on this case on January 15, 2019, at the State Office of Administrative Hearings (SOAH) in Austin, Texas, before Administrative Law Judge (ALJ) Michael J. O'Malley. Department staff (Staff) was represented by Staff Attorneys Amanda Atkinson Cagle and Stephanie Andrews. Mr. Sandoval represented himself. The record closed on February 26, 2019, after the parties filed post-hearing briefs.
4. Mr. Sandoval contracted with American Family Life Assurance Company of Columbus (Aflac) on June 2, 2009, and held that position for 7 years until Aflac terminated him on September 6, 2016.
5. In the spring of 2015, Mr. Sandoval approached employees of Brock & Bustillos about purchasing supplemental insurance.
6. The Brock & Bustillos employees opted to purchase the supplemental insurance from Mr. Sandoval.
7. Mr. Sandoval submitted the policies to Aflac in May 2015.

⁴¹ Tex. Ins. Code § 4005.101(b)(5).

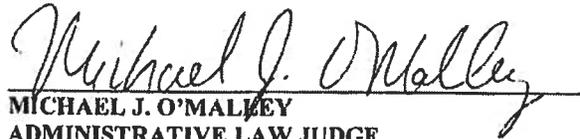
8. At the end of 2015, the Brock & Bustillos employees decided to cancel with Aflac. They met with Mr. Sandoval and decided to move their policies to Colonial Insurance.
9. As the producing and managing agent on the Brock & Bustillos accounts, Mr. Sandoval had access to the employees' personal information.
10. In the spring of 2016, Mr. Sandoval used Brock & Bustillos personal information to create and submit fake applications with forged signatures for new and different coverages at Aflac.
11. The new and different insurance coverages were not authorized by the Brock & Bustillos employees.
12. Mr. Sandoval submitted these new Aflac policies between February and April of 2016.
13. During this time, Mr. Sandoval submitted 15 policies for 10 people at Brock & Bustillos: Brock, Alvarado, Bustillos, Garcia, Marroquin, Ybarra, Rojas, Romero, Adame, and Madrid.
14. Aflac paid Mr. Sandoval approximately \$2,825.67 in advance commissions for these applications.
15. When Brock & Bustillos failed to pay for the 2016 policies placed with Aflac, Aflac initiated an investigation and discovered that the Brock & Bustillos employees had not submitted the applications and their signatures had likely been forged.
16. Aflac concluded that Mr. Sandoval had written business on individuals who had no knowledge and no intent to pay. Aflac also concluded that Mr. Sandoval forged the signatures on the applications and other required forms.
17. On February 17, 2017, the Department sent Mr. Sandoval an inquiry requesting that he summarize the circumstances that led to his termination with Aflac. Mr. Sandoval failed to respond to the Department's inquiry.
18. Mr. Sandoval failed to meet his continuing education requirements from 2013-2015.

V. CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter of this proceeding. Tex. Ins. Code §§ 4005.101, 4001.002.
2. SOAH has jurisdiction over all matters relating to the conduct of the proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.

3. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052; Tex. Ins. Code § 4005.104(b).
4. Staff had the burden of proof to establish grounds for revocation of Mr. Sandoval's license. 1 Tex. Admin Code § 155.427.
5. Mr. Sandoval engaged in fraudulent or dishonest acts or practices in violation of Texas Insurance Code § 4005.101(b)(5).
6. Mr. Sandoval misappropriated money by accepting advance commissions on the fraudulent applications. Tex. Ins. Code § 4005.101(b)(4)(A).
7. Mr. Sandoval failed to meet his continuing education requirements in violation of Texas Insurance Code §§ 4004.051, .053, and .054.
8. Mr. Sandoval failed to respond to a Department inquiry in violation of Texas Insurance Code § 38.001.
9. The Department is authorized to revoke Respondent's license. Tex. Ins. Code § 4005.101.
10. Respondent's license should be revoked.

SIGNED April 22, 2019.


MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING