

No. 2019- 6081

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

Date: SEP 10 2019

Subject Considered:

Texas Department of Insurance

v.

Everett Wayne Collier

SOAH Docket No. 454-18-4457.C

General remarks and official action taken:

On July 31, 2019, the Commissioner of Insurance adopted findings of fact and conclusions of law and ordered that Everett Wayne Collier's general lines agent license be revoked. The order was issued following a hearing on the merits of the proposed revocation of his license.

On September 3, 2019, Mr. Collier filed a motion for rehearing of the matter. A motion for rehearing in a contested case must be filed by a party not later than the 25th day after the date the order is signed, unless the time for filing the motion has been extended pursuant to TEX. GOV'T. CODE § 2001.146(a). Mr. Collier's motion for rehearing was not filed within 25 days of the order's signing.

On September 6, 2019, Mr. Collier filed a Sworn Motion and Notice to Establish Revised Time Period in Which to File Motion for Reconsideration (motion to extend). Mr. Collier's motion to extend was filed under TEX. GOV'T. CODE § 2001.142, which provides that a state agency may revise the deadline to file a motion for rehearing if the party's attorney does not receive notice of an order or acquire actual knowledge of a signed order before the 15th day after the order is signed.¹ To establish a revised deadline, the adversely affected party must prove, among other things, that "the date the party or the party's attorney of record first received notice from the state agency

¹ TEX. GOV'T. CODE § 2001.146(a) also recognizes that an extension can be granted by an agreement under TEX. GOV'T. CODE § 2001.147 or by a written order of the Commissioner under TEX. GOV'T. CODE § 2001.146(e). However, neither of those provisions are applicable in this case. The Texas Department of Insurance has not agreed to an extension under § 2001.147, and the deadline for the Commissioner to issue an extension under § 2001.146(e) has passed.

or acquired actual knowledge of the signing of the decision or order was after the 14th day after the date the decision or order was signed[.]" TEX. GOV'T. CODE § 2001.142(d). The state agency must grant or deny a motion to extend no later than the 10th day after receiving the motion, otherwise the motion is considered granted. *Id.* § 2001.142(e)-(f).

In Mr. Collier's motion to extend, his attorney concedes that his law firm received the Commissioner's order on August 5, 2019, but claims he did not acquire actual knowledge of the order until September 3, 2019, because he failed to fully read the order until that later date. However, failure to read the order is insufficient to invoke TEX. GOV'T. CODE § 2001.142. The standard under the statute is not actual knowledge of the *substance* of the order, but rather "actual knowledge of the signing of the decision or order[.]" *Id.* § 2001.142(d)(1). Mr. Collier's motion to extend demonstrates that his attorney knew he received a signed order on August 5, but just failed to fully read that order. As such, Mr. Collier's motion to extend did not establish the requisite proof required under TEX. GOV'T. CODE § 2001.142(d) and is hereby denied.²

Mr. Collier's motion for rehearing is untimely and is rejected.³ Therefore, pursuant to TEX. GOV'T. CODE § 2001.144(a)(1), the Commissioner's order revoking Mr. Collier's license became final on August 26, 2019.



Kent C. Sullivan
Commissioner of Insurance

² Even if Mr. Collier's motion to extend did prove that his attorney acquired actual knowledge of the signing of the order on September 3, his motion for a rehearing would still be considered untimely, because under TEX. GOV'T. CODE § 2001.142(c), the period to file a motion for rehearing would begin "on the date the party or the party's attorney of record receives the notice or acquires actual knowledge of the signed decision or order, whichever occurs first." (emphasis added). Mr. Collier's attorney concedes that he received the notice on August 5, meaning the motion for rehearing would have been due August 30.

³ Mr. Collier's motion for rehearing also failed to identify with particularity any alleged errors in the original order or underlying facts that would warrant a rehearing, as required by TEX. GOV'T. CODE § 2001.146(g).

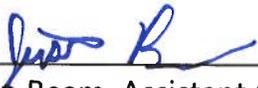
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Recommended and reviewed by:



James Person, General Counsel



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