

4275

No. _____

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

Date: JAN 22 2016

Subject Considered:

Kimberly Yeldell McCoy
3202 Oakland Lake Circle
Missouri City, Texas 77459

DEFAULT ORDER

SOAH Docket No. 454-16-1220.C
TDI Enforcement File No. 9145

General remarks and official action taken:

The commissioner of insurance considers whether disciplinary action should be taken against Kimberly Yeldell McCoy.

FINDINGS OF FACT

1. According to department records, Kimberly Yeldell McCoy, individual identification number 906673, obtained a county mutual license from TDI in July 2013, which expired in July 2015 when McCoy did not seek renewal.
2. The last known mailing address for McCoy is 3202 Oakland Lake Circle, Missouri City, Texas 77459. However, at some point before February 2015, McCoy stopped accepting mail at this address. McCoy failed to notify TDI that she had changed her mailing address.
3. On November 20, 2015, the department sent a notice of hearing to McCoy's last known mailing address. The department also sent the notice of hearing to two additional addresses known to be used by McCoy.
4. McCoy failed to file a written response to the notice of hearing.

5. McCoy failed to appear in person or through a representative at the hearing that was held on December 21, 2015.
6. Telly Smith (Smith) is an individual who has resided in Harris County, Texas.
7. McCoy is one of Smith's associates. McCoy is commissioned as a notary public in Texas.
8. Jason Kyle Gatzka (Gatzka) is one of Smith's associates. In December 2011, TDI issued Gatzka a general lines insurance license, which expired in December 2013 when Gatzka did not seek renewal.
9. On or about December 6, 2010, Smith registered an assumed name in Harris County. Smith's assumed name is Exodus Title Company, which is not a business organization that is licensed by TDI or registered with the Texas Secretary of State. Smith has never held a license or authorization issued by TDI.
10. However, TDI has issued a title agent license to Exodus Title, LLC, an entity that is not affiliated with Smith or Smith's assumed name.
11. Smith used his assumed name Exodus Title Company to mislead lenders from whom Smith and Gatzka sought to borrow money. Smith created a website, www.exodustitlecompany.com, and advertised that Exodus Title Company was able to sell title insurance in Texas.
12. On more than one occasion, Smith obtained title insurance commitments from a licensed title insurance agent. Smith manipulated these title commitments to falsely represent that the commitments had been issued by Exodus Title Company. Smith presented these fraudulent commitments to lenders.
13. On more than one occasion, Smith presented settlement statements to lenders that identified the settlement agent as Exodus Title Company.
14. By providing to lenders these title insurance commitments and settlement statements, Smith knowingly made false representations that Smith d/b/a Exodus Title Company was authorized to transact title insurance business in Texas. The lenders relied on these false representations and loaned money to entities controlled by Smith. The lenders have been harmed by Smith's conduct.

15. In October 2012, Gatzka entered a contract to purchase property owned by Pan Atlantic Investments, Inc. Gatzka agreed to pay \$175,800 cash and give Pan Atlantic a \$703,200 note.
16. Pan Atlantic required Gatzka to demonstrate his ability to pay the seller-financing loan. Gatzka gave the seller a bank statement that represented Gatzka had more than \$432,000 in a checking account. In fact, Gatzka had only \$6.20 in this account at this time. Pan Atlantic relied on Gatzka's fraudulent bank statement and was harmed by Gatzka's false representation. Gatzka has presented falsified financial statements to another lender on at least one other occasion.
17. Gatzka recommended that they open an escrow at Exodus Title Company. Pan Atlantic agreed, and sent the earnest money contract and closing instructions to an email address for Exodus Title Company that Gatzka provided.
18. Gatzka represented to Pan Atlantic that Exodus Title Company had received Gatzka's purchase funds. In fact, Gatzka never gave any money to Exodus Title Company. When Pan Atlantic did not receive the sale proceeds, it confronted Exodus Title Company.
19. On November 10, 2012, Pan Atlantic executed a deed to Gatzka notarized by McCoy. However, this deed never was recorded. Instead, on November 16, 2012, a deed from Pan Atlantic to EHG Investments, LLC was recorded. EHG Investments is controlled by Smith. Pan Atlantic did not execute, or otherwise authorize, the deed to EHG Investments.
20. In late November 2012, Pan Atlantic requested a title report from another title insurance company and discovered the deed to EHG Investments. Exodus Title Company explained that a third party recording company had mixed up documents between two transactions, and represented that it would correct the problem. Pan Atlantic canceled the transaction with Gatzka.
21. On December 18, 2012, EHG Investments, under Smith's signature, executed a deed of trust for Pan Atlantic's property as security for a loan from a third-party lender. EHG Investments did not have authority to execute this deed of trust.
22. In 2013, Smith obtained a second fraudulent loan on Pan Atlantic's property. On May 16, 2013, a deed was recorded purporting to convey Pan Atlantic's property to TJS Holdings, LLC, another entity controlled by Smith. On June 5, 2013, TJS executed a deed of trust notarized by McCoy. Also on June 5, McCoy signed a settlement statement on

behalf of Exodus Title Company promising to disburse the loan funds accordingly. In fact, Pan Atlantic never conveyed the property to TJS Holdings. Smith paid McCoy to notarize documents and sign settlement statements.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction pursuant to TEX. INS. CODE §§ 82.051 – 82.056, 101.101 – 101.153, 541.101 – 541.111, 2501.005, 2651.001, 2652.001, 4001.252, 4005.101, and 4005.107; TEX. BUS. & COM. CODE §§ 17.41 – 17.50; and TEX. GOV'T CODE §§ 2001.051 – 2001.178.
2. The commissioner has authority to dispose of this case informally pursuant to TEX. GOV'T CODE § 2001.056; and 28 TEX. ADMIN. CODE §§ 1.47, 1.88, and 1.89.
3. TDI sent a notice of hearing to McCoy's last known address as required by 28 TEX. ADMIN. CODE §§ 1.28(c) and 1.88(c); 1 TEX. ADMIN. CODE § 155.401; and TEX. GOV'T CODE Ch. 2001.
4. The allegations in the notice of hearing, set out as findings of fact numbers 6 – 22, are deemed admitted as true pursuant to 28 TEX. ADMIN. CODE § 1.89.
5. McCoy engaged in the unauthorized business of insurance, as contemplated by TEX. INS. CODE §§ 101.102, 2501.005, 2651.001, and 2652.001.
6. McCoy engaged in unfair or deceptive acts or practices in the business of insurance, as contemplated by TEX. INS. CODE §§ 541.003, 541.059, and 541.061.
7. McCoy engaged in false, misleading, or deceptive acts or practices, as contemplated by TEX. BUS. & COM. CODE § 17.46(b)(1), (2), (3), (5), and (24).
8. McCoy failed to notify TDI that she changed her mailing address, as contemplated by TEX. INS. CODE § 4001.252(a)(1).
9. McCoy wilfully violated an insurance law, as contemplated by TEX. INS. CODE §§ 4005.101(b)(1), 4001.252, and 2652.001.
10. McCoy engaged in fraudulent or dishonest acts or practices, as contemplated by TEX. INS. CODE § 4005.101(b)(5).
11. McCoy committed conduct for which she may be disciplined prior to the automatic forfeiture of her county mutual license, as contemplated by TEX. INS. CODE § 4005.107.

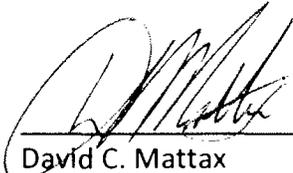
The commissioner revokes the county mutual license issued to Kimberly Yeldell McCoy.

COMMISSIONER'S ORDER

Kimberly Yeldell McCoy

Page 5 of 5

The commissioner orders Kimberly Yeldell McCoy to cease and desist from engaging in the unauthorized business of insurance. The commissioner orders Kimberly Yeldell McCoy to cease and desist from engaging in unfair methods of competition and deceptive acts or practices in the business of insurance.



David C. Mattax
Commissioner of Insurance

Affidavit

State of Texas §
County of Travis §

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

"My name is Judy Lopez and I am employed by the Texas Department of Insurance. I am of sound mind, capable of making this affidavit, and have personal knowledge of these facts which are true and correct.

I have reviewed TDI's records concerning Kimberly Yeldell McCoy. I have confirmed that:

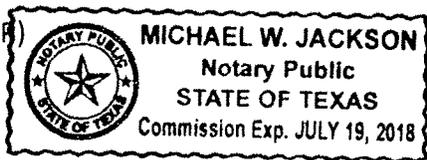
- a. the last mailing address Kimberly Yeldell McCoy provided to the department in writing was 3202 Oakland Lake Circle, Missouri City, Texas 77459;
- b. the file maintained by the Enforcement Section of the Compliance Division contains a notice of hearing that was served on Kimberly Yeldell McCoy and filed with the State Office of Administrative Hearings November 20, 2015;
- c. a certified letter, return receipt requested, and a first class mailing, both containing a notice of hearing addressed to Kimberly Yeldell McCoy's last known address, were deposited in the United States mail.

Copies of the first class and certified mail logs maintained by the Enforcement Section are attached as Exhibits A and B."

Judy Lopez
Affiant

SWORN TO AND SUBSCRIBED before me on December 17, 2015.

(NOTARY STAMP)



[Signature]
Signature of Notary Public

110-1A

Name and Address of Sender
 Texas Dept of Insurance
 Mail Code 110-1A
 333 Guadalupe St
 Austin TX 78701
 Ginger Yocom
 November 20, 2015

Check type of mail or service

<input type="checkbox"/> Adult Signature Required	<input type="checkbox"/> Priority Mail Express
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail
<input type="checkbox"/> Certified Mail	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation
<input type="checkbox"/> Collect on Delivery (COD)	<input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Insured Mail	
<input type="checkbox"/> Priority Mail	

Affix Stamp Here
 (If issued as an international certificate of mailing or for additional copies of this receipt). Postmark with Date of Receipt



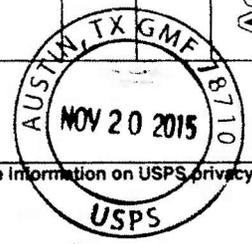
Casey/NOH	USPS Tracking/Article Number	Address (Name, Street, City, State, & Zip Code)	Postage	(Extra Service) Fee	Handling Charge	Actual Value If Registered	Insured Value	Due Sender If COD	ASR Fee	ASRD Fee	RD Fee	RR Fee
		Telly Smith Garza West Unit TDCJ#01971983 4250 Highway 202 Beeville, Texas 78102-8982	0.705									
		Jason Kyle Gatzka 4238 Winterborne Dr. Pasadena, Texas 77505	.705									
		Jason Kyle Gatzka 3004 Maple Street Michigan City, Indiana 46360	.705									
		Kimberly Yeldell McCoy 3202 Oakland Lake Circle Missouri City, Texas 77459	.705									
		Kimberly Yeldell McCoy 9615 S. Gessner Drive Houston, Texas 77071	.705									
		Kimberly Yeldell McCoy 8421 Hearth Drive No. 21 Houston, Texas 77054	.705									

Handling Charge if Registered and over \$50,000 in value

OFFICIAL BUSINESS
 STATE OF TEXAS
 PENALTY FOR PRIVATE USE

recpost # 11/20/2015
US POSTAGE \$002.28⁰⁰
 ZIP 78701
 041L12203074

Adult Signature
 Adult Signature Restricted
 Restricted Delivery
 Return Receipt
 Signature Confirmation
 Signature Confirmation Restricted Delivery
 Special Handling



4275

Total Number of Pieces Listed by Sender	Total Number of Pieces Received at Post Office	Postmaster, Per (Name of receiving employee)
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