

No. 2017- 4910

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

**Date: JAN 24 2017**

**Subject Considered:**

ERNESTO ZAVALA  
3800 Blanco Road  
San Antonio, Texas 78212

**CONSENT ORDER**  
TDI ENFORCEMENT FILE NO. 11408

**General remarks and official action taken:**

The commissioner of insurance considers whether disciplinary action should be taken against Ernesto Zavala.

**WAIVER**

Ernesto Zavala acknowledges that the Texas Insurance Code and other applicable laws provide certain rights. Zavala waives all of these rights in consideration of the entry of this consent order.

**FINDINGS OF FACT**

The commissioner makes the following findings of fact:

1. Ernesto Zavala, individual identification no. 340138, holds a general lines agent license with a property and casualty qualification and a life, accident, and health qualification, originally issued by the Texas Department of Insurance on September 15, 1999.
2. Zavala was appointed by Farmers Insurance from September 1999, through May 2016.
3. Farmers Insurance cancelled Zavala's appointment on May 31, 2016, for failure to remit timely a homeowner's policy premium payment.
4. Zavala was authorized to collect premium payments on behalf of Farmers. Once the premium was collected, Zavala was required to apply the premium to the insured's policy by entering the payment into Farmers online system. After the payment was entered, a receipt was generated and given to the insured. Zavala was then required to remit the premium to Farmers by depositing it into a Farmers-owned account.

5. On April 10, 2015, Zavala received a \$1,284.00 premium payment from a mortgage company intended for an insured's homeowner policy. The payment was deposited on April 22, 2015, in an account other than the Farmers-owned account. There were no premium payments applied to the policy in April 2015.
6. The insured filed a claim on August 24, 2015. Since the policy showed as out of force due to non-payment of the premium, the claims adjuster handling the claim conducted a coverage investigation. The insured informed the adjuster that her mortgage company had made the premium payment to Zavala on April 10, 2015.
7. The claims adjuster spoke with Zavala on August 31, 2015, regarding the premium payment made by the insured's mortgage company. Zavala acknowledged that he had received the payment and that it had been misapplied by mistake. Further, the adjuster's notes indicated that Zavala acknowledged being made aware of the premium payment mishandling in May 2015. According to the adjuster's notes, on May 20, 2015, Zavala spoke with Farmers Policy Services and stated the check had been received and misapplied, and he requested to have the policy reinstated due to this mistake.
8. According to Zavala, during the conversation with the claims adjuster in August 2015, he was told not to receipt the premium payment or reinstate the policy until further notice as Farmers' investigation had not been completed.
9. The Farmers Internal Audit department contacted Zavala on February 16, 2016, regarding the missing premium payment. Zavala remitted the premium payment into the appropriate account on February 17, 2016, nearly 10 months after he received it.
10. Zavala has implemented the following procedures and practices to ensure that premiums are promptly paid and deposited into the correct account:
  - a. Daily log of premium payments that is reconciled at the end of each business day to ensure the payment collected has been applied correctly;
  - b. Weekly audit of each deposit account;
  - c. When premium payments are made in person, a receipt is issued and the amount is verified with the insured; and
  - d. When premium payments are mailed in, the insured is called to notify receipt of the payment and a receipt is provided electronically or mailed to the insured.
11. Zavala failed to complete two hours of the 24 hours of continuing education required for the 2013 to 2015 reporting period.

### CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.001-82.056, 84.021-84.022, 4005.101, 4005.102, 4051.051, and 4054.051; and

TEX. GOV'T CODE §§ 2001.051-2001.178.

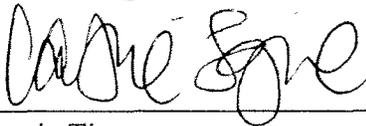
2. The commissioner has the authority to dispose of this case informally pursuant to the provisions of TEX. GOV'T CODE § 2001.056, TEX. INS. CODE §§ 36.104 and 82.055, and 28 TEX. ADMIN. CODE § 1.47.
3. Zavala withheld money belonging to an insured, insurer, or beneficiary in violation of TEX. INS. CODE § 4005.101(b)(4)
4. Zavala violated TEX. INS. CODE §§ 4004.051 (West 2005) and 4004.053, because he did not complete the required number of continuing education hours during one reporting period.

The commissioner of insurance orders Ernesto Zavala to pay a \$1,600 administrative penalty within 30 days from the date of this order. The administrative penalty must be paid by cashier's check or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: Enforcement Section, Division 40111, MC 9999, P.O. Box 149104, Austin, TX 78714-9104.

The commissioner also orders Ernesto Zavala to complete two additional hours of continuing education within 30 days from the date of this order. These two hours are in addition to, and shall not be applied toward, the 24 hours of continuing education required by TEX. INS. CODE § 4004.053. Zavala must send proof of completion of these two hours to the Texas Department of Insurance, Attn: Catherine Bell, or her successor, Enforcement Section, MC 110-1A, P.O. Box 149104, Austin, Texas 78714-9104 within 45 days of the date of this order.

  
\_\_\_\_\_  
David G. Mattax  
Commissioner of Insurance

APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
Cassie Tighe  
Staff Attorney  
Compliance Division, Enforcement Section  
Texas Department of Insurance

2017- 4910

COMMISSIONER'S ORDER  
Ernesto Zavala  
Page 4 of 4

Affidavit

STATE OF TEXAS

§  
§  
§

COUNTY OF Bexar

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

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

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

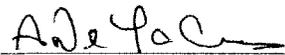
I have knowingly and voluntarily entered into this consent order and agree with and consent to the issuance and service of the same by the commissioner of insurance of the State of Texas."

  
\_\_\_\_\_

Affiant

SWORN TO AND SUBSCRIBED before me on this 23 day of December, 2016.

(NOTARY STAMP)

  
\_\_\_\_\_  
Signature of Notary Public

