

No. 2018- 5817

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

Date: DEC 28 2018

Subject Considered:

Capital Title of Texas, LLC
2400 Dallas Parkway, Suite 560
Plano, Texas 75093

Consent Order
SOAH Docket No. 454-18-5258.C
TDI Enforcement File No. 14537

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against Capital Title of Texas, LLC (Capital Title).

Waiver

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

Pursuant to TEX. INS. CODE § 82.055(b), Capital Title agrees to this consent order with the express reservation that it does not admit to a violation of any provision of the Insurance Code or rule or regulation of TDI, and maintains the existence of any violation is in dispute.

The following findings of fact and conclusions of law are adopted:

Findings of Fact

1. Capital Title holds a title insurance agent license issued by the Texas Department of Insurance (TDI).
2. In August 2013, Capital Title was responsible for closing a residential sale transaction. The subject property was 3109 Woodbridge Drive, Hurst, Texas 76054, and the seller

was Kieran Patrick McMahon. The buyer was ERW, Inc., an entity owned and controlled by Ray Waddell.

3. On August 26, 2013, Capital Title issued a title insurance commitment. The commitment identified as exceptions on schedule C both an abstract of judgment against Mr. McMahon and a chapter 13 bankruptcy case concerning Mr. McMahon. Capital Title informed Mr. McMahon it would require documentation from the bankruptcy court approving the sale.
4. The abstract of judgment identified the creditor as "Spencer Clark Publishing Inc Katherine Clark" and listed the creditor's address as 1510 Pecan Valley Court, Corinth, Texas 76210.
5. On August 29, 2013, Mr. McMahon sent Capital Title a copy of an order granting Mr. McMahon's motion to sell real estate free and clear of liens except for a purchase money lien. That order identified 3312 Glade Creek Drive, Hurst, Texas 76054 as the subject property.
6. On August 30, 2013, Capital Title's escrow officer noticed that the bankruptcy order authorizing the sale concerned the wrong property and alerted Capital Title's examiner. The examiner told the escrow officer to "ask him for the order regarding the 3109 Woodbridge property."
7. On September 3, 2013, the escrow officer responded to the examiner's email, stating "here is the corrected [order], can you tell me if I am ok to fund this property today." The escrow officer had accepted the order from Mr. McMahon by email. The examiner responded with approval, and Capital Title disbursed the proceeds to Mr. McMahon that day.
8. Capital Title did not determine the authenticity of the bankruptcy order on which it relied to close the transaction.
9. Capital Title did not issue the title insurance policy until April 16, 2014.

Conclusions of Law

1. The Commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.056, 84.021 – 84.022, 2651.301, and 2704.001; 28 TEX. ADMIN. CODE

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§§ 9.1 (adopting the *Texas Title Insurance Basic Manual* "Basic Manual"); and TEX. GOV'T CODE §§ 2001.051 – 2001.178.

2. The Commissioner has the authority to dispose of this case informally pursuant to TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47.
3. Capital Title has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the Commissioner, and judicial review.
4. Capital Title issued a title insurance policy without determining insurability of title in accordance with sound title underwriting practices, in violation of TEX. INS. CODE § 2704.001.
5. Capital Title violated Procedural Rule P-61 of the Basic Manual because it failed to issue the title insurance policy within the prescribed timeperiod.

Order

It is ordered that Capital Title of Texas, LLC must pay an administrative penalty of \$6,000 within 30 days from the date of this order. The penalty must be paid by cashier's check or money order made payable to the "State of Texas" and sent to the Texas Department of Insurance, Attn: Enforcement Section, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

It is further ordered that Capital Title of Texas, LLC must pay restitution in the amount stated in the abstract of judgment. That amount, calculated as of October 31, 2018, is \$2,047.40 with the post-judgement interest accruing at the rate of \$0.386 per day until February 4, 2019, at which point the interest due will be compounded per section 304.006 of the Texas Finance Code. The restitution must be paid within 30 days from the date of this order. Within seven days of paying the restitution, Capital Title must submit evidence of having paid the restitution to EnforcementReports@tdi.texas.gov.



Kent C. Sullivan
Commissioner of Insurance

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Approved as to form and content:



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