

No. 4606

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

Date: JUL 28 2016

Subject Considered:

MACCHIA GENERAL AGENCY, INC.
6410 Southwest Blvd, No. 222
Benbrook, TX 76109

NUNC PRO TUNC ORDER
TDI ENFORCEMENT FILE NO. 10821

General remarks and official action taken:

The commissioner of insurance considers whether Official Order No. 4447 should be revised to correct a clerical error.

The commissioner of insurance has plenary power to correct an order which contains a clerical error due to inadvertence or mistake at any time by the entry of a nunc pro tunc order. *Railroad Comm'n v. McClain*, 356 S.W.2d 330, 334 (Tex. Civ. App.—Austin 1962, no writ). Correction of a clerical error is not a substantive change in the order. *In re Ward*, 137 S.W.3d 910, 913 (Tex.App.—Texarkana 2004, no pet.).

Official Order No. 4447, entered May 9, 2016, recites that the subject of the order is Macchia General Agency, LLC. The correct name of the subject is Macchia General Agency, Inc. Based on this clerical error, the commissioner of insurance grants the motion for nunc pro tunc order. The commissioner of insurance further orders that this order will stand in the place of Official Order No. 4447 and read as follows:

The commissioner of insurance considers disciplinary action against Macchia General Agency, Inc. for failure to timely file new or renewal surplus lines insurance policies with the Surplus Lines Stamping Office of Texas.

Findings of Fact

1. Macchia General Agency, Inc., organization identification number 19840, holds a surplus lines license issued by the Texas Department of Insurance.
2. Pursuant to TEX. INS. CODE § 981.105(a), a surplus lines insurance agent must file with the Surplus Lines Stamping Office of Texas either:
 - a. a copy of the policy issued, or

- b. if the policy has not yet been issued, a copy of the certificate, cover note, or other confirmation of insurance delivered to the insured.

This information is due not later than the 60th day after the later of the effective date or the issue date of new or renewal surplus lines insurance.

3. In 2014, Macchia General Agency, Inc. filed surplus lines policies late.
4. On June 3, 2015, TDI assessed fees against Macchia General Agency, Inc. because the late-filed surplus lines policies met at least one of the conditions in TEX. INS. CODE § 981.105(d-e).
5. Macchia General Agency, Inc. did not timely pay the fees assessed pursuant to TEX. INS. CODE § 981.105(c-e).
6. The commissioner previously disciplined Macchia General Agency, Inc. for violating TEX. INS. CODE § 981.105(a) in Official Order No. 3453, entered on July 28, 2014.

Conclusions of Law

1. The commissioner of insurance has jurisdiction over this matter pursuant to TEX. INS. CODE § 981.105.
2. The commissioner of insurance has authority to informally dispose of this matter under TEX. INS. CODE § 82.055, TEX. GOV'T CODE § 2001.056, and 28 TEX. ADMIN. CODE § 1.47.
3. Macchia General Agency, Inc. 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. Macchia General Agency, Inc. violated TEX. INS. CODE § 981.105(a) by failing to timely file new or renewal surplus lines policies and related documents.

The commissioner orders Macchia General Agency, Inc. to pay an administrative penalty of \$5,100. The administrative penalty must be paid 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, Texas 78714-9104.

The commissioner further orders Macchia General Agency, Inc. to implement internal policies, procedures, and other safeguards designed to ensure future surplus lines policies and related documents are timely filed in compliance with TEX. INS. CODE § 981.105(a).

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COMMISSIONER'S ORDER
MACCHIA GENERAL AGENCY, INC.
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David C. Mattax
Commissioner of Insurance

For the Department:



Mandy Meesey, Staff Attorney

Affidavit

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

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

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

I hold the office of President and am the authorized representative of Macchia General Agency, Inc. I am duly authorized by the organization to execute this statement.

Macchia General Agency, Inc. has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the same by the commissioner of insurance of the state of Texas."

[Signature]
Affiant

SWORN TO AND SUBSCRIBED before me on 28th JUNE, 2016.

(NOTARY STAMP)

[Signature]
Signature of Notary Public

