

No. 2017- 5071

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

Date: MAY 09 2017

Subject Considered:

JIM B. KIRBY, JR.
254 CR 33970
Powderly, Texas 75473

DEFAULT ORDER
SOAH DOCKET NO. 454-17-3033.C
TDI ENFORCEMENT FILE NO. 10017

General remarks and official action taken:

This Order is in consideration of whether disciplinary action should be taken against Jim B. Kirby, Jr.

FINDINGS OF FACT

The findings of fact are as follows:

1. Jim B. Kirby, Jr., individual identification no. 360344, holds a general lines agent license with a life, accident, and health qualification, originally issued by TDI on March 6, 2002.
2. On March 8, 2017, the department sent a notice of hearing to Kirby's last known address provided in writing to the department, 254 CR 33970, Powderly, Texas 75473, and one additional address, 4303 Texas Blvd., Suite 5, Texarkana, Texas 78368.
3. Kirby failed to file a written response to the notice of hearing within 20 days of the date the notice of hearing was mailed.
4. Kirby was appointed by Reliable Life Insurance Company from April 2015, through May 2015.
5. Kirby collected approximately \$3,624.77 in cash premium payments from policyholders and failed to remit those premiums to Reliable. Reliable applied Kirby's bond in the amount of \$90.05, reducing the amount owed to Reliable to \$3,534.72.
6. Kirby misappropriated and converted the collected insurance premiums for his own use and benefit.
7. Reliable cancelled Kirby's appointment on May 19, 2015.

8. On December 22, 2015, TDI sent Kirby a request for information pursuant to TEX. INS. CODE § 38.001 which required Kirby to respond in writing not later than the 15th day after he received the request. Kirby failed to respond.

CONCLUSIONS OF LAW

The conclusions of law are as follows:

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051-82.055, 4001.002, 4005.101, 4005.102, 4054.051, and TEX. GOV'T CODE §§ 2001.051-2001.178.
2. TEX. GOV'T CODE § 2001.056; TEX. INS. CODE § 82.055; and 28 TEX. ADMIN. CODE §§ 1.47, 1.88, and 1.89 give the commissioner authority to dispose of this case informally.
3. Based on 28 TEX. ADMIN. CODE § 19.906, Kirby's last known address is presumed to be 254 CR 33970, Powderly, Texas 75473.
4. The department sent a notice of hearing to Kirby'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.
5. The department's allegations in the notice of hearing, set out herein as findings of fact nos. 1 and 4-8, are deemed admitted as true pursuant to 28 TEX. ADMIN. CODE § 1.89.
6. Kirby has committed acts for which a license holder may be disciplined under TEX. INS. CODE § 4005.101, as contemplated in TEX. INS. CODE § 4005.102.
7. Kirby has willfully violated an insurance law of this state, pursuant to TEX. INS. CODE § 4005.101(b)(1).
8. Kirby has misappropriated, converted to his own use, or illegally withheld money belonging to an insured, insurer, or beneficiary, in violation of TEX. INS. CODE § 4005.101(b)(4).
9. Kirby has engaged in fraudulent or dishonest acts or practices, in violation of TEX. INS. CODE § 4005.101(b)(5).
10. Kirby failed to respond to a department inquiry in writing not later than the 15th day after the date he received the inquiry, in violation of TEX. INS. CODE § 38.001.

It is ordered that Jim B. Kirby, Jr.'s general lines agent license with a life, accident, and health qualification is revoked.

2017- 5071

COMMISSIONER'S ORDER

Jim B. Kirby, Jr.

Page 3 of 4

It is further ordered that Kirby pay \$3,534.72 in restitution to Reliable Life Insurance Company within 30 days from the date of this order. Kirby must send written proof of payment of restitution in full to the Texas Department of Insurance, Attn: Catherine Bell, or her successor, Enforcement Section, MC 110-1A, P.O. Box 149104, Austin, TX 78714-9104, within 45 days from the date of this order.



Kevin Brady
Deputy Commissioner For Agency Affairs
Texas Department of Insurance
Delegation Order 4506

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 Jim B. Kirby, Jr. I have confirmed that:

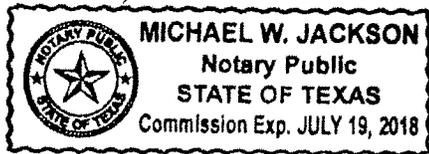
- a. The last mailing address provided to the department by Jim B. Kirby, Jr. in writing is 254 CR 33970, Powderly, Texas 75473.
- b. The file maintained by the Enforcement Section contains a notice of hearing dated March 8, 2017, filed with the State Office of Administrative Hearings.
- c. Certified letters, return receipts requested, and first class mailings, each containing a notice of hearing, were sent to Kirby's last known address, and one additional address, 4303 Texas Blvd., Suite 5, Texarkana, Texas 78368.

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

Judy Lopez
Affiant

SWORN TO AND SUBSCRIBED before me on 2 May 2017.

(NOTARY STAMP)



Notary without Bond
1242-1235-1

[Signature]
Signature of Notary Public

