No. 2021-6962

Official Order of the Texas Commissioner of Insurance

Date: 08/12/2021

Subject Considered:

Robert Balderas

San Antonio, Texas 78245-2896

Default Order SOAH Docket No. 454-21-1990 TDI Enforcement File No. 21159

General remarks and official action taken:

The subject of this default order is whether a general lines agent license with a property and casualty qualification should be issued to Robert Balderas (Respondent). Respondent did not respond to the Second Amended Notice of Hearing filed by the Texas Department of Insurance. This order denies Respondent's license application.

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

Findings of Fact

Failure to Respond to the Second Amended Notice of Hearing

- 1. On May 26, 2021, the department filed a Second Amended Notice of Hearing, attached as Exhibit A, and an Original Petition, attached as Exhibit B, with the State Office of Administrative Hearings.
- 2. The department's factual allegations set out in the attached Second Amended Notice of Hearing and Original Petition are incorporated in this order as findings of fact.

2021-6962 Commissioner's Order

Robert Balderas SOAH Docket No. 454-21-1990 Page 2 of 5

- 3. The department sent the Second Amended Notice of Hearing and Original Petition to Respondent's last known address provided in writing to the department, , San Antonio, Texas 78245-2896. The Second Amended Notice of Hearing and Original Petition were also sent by electronic mail and to two additional addresses associated with Respondent: Antonio, Texas 78249 and P.O. Box 90164, Alamo Heights, Texas 78209-9080.
- 4. Respondent failed to file a written response to the Second Amended Notice of Hearing within 20 days of the date the Second Amended Notice of Hearing and Original Petition were mailed.

Conclusions of Law

- 1. The commissioner has jurisdiction under Texas law, including TEX. INS. CODE §§ 82.051-82.055, 4001.002, 4005.101, 4005.102, and 4051.051; TEX. OCC. CODE §§ 53.021-53.023; 28 TEX. ADMIN. CODE § 1.502; and TEX. GOV'T CODE §§ 2001.051-2001.178.
- 2. The commissioner has authority to dispose of this case informally under TEX. GOV'T CODE § 2001.056; TEX. INS. CODE § 82.055; and 28 TEX. ADMIN. CODE §§ 1.47, 1.88, and 1.89.
- 3. The department provided proper notice of the hearing under TEX. GOV'T CODE §§ 2001.051, 2001.052, and 2001.054, and 28 TEX. ADMIN. CODE §§ 1.28, 1.88, 1.89, and 19.906.
- 4. Based on Respondent's failure to file a written response to the Second Amended Notice of Hearing, the department is entitled to disposition by default under 28 TEX. ADMIN. CODE §§ 1.88 and 1.89.
- 5. The department's factual and legal allegations set out in the attached Second Amended Notice of Hearing and Original Petition are incorporated in this order and deemed admitted as true under 28 TEX. ADMIN. CODE § 1.89.

Commissioner's Order Robert Balderas SOAH Docket No. 454-21-1990 Page 3 of 5

Order

It is ordered that Robert Balderas' application is denied. A copy of this order will be provided to law enforcement and/or other appropriate administrative agencies for further investigation as may be warranted.

Commissioner of Insurance

-DocuSigned by:

By: <u>______</u>C77A87C8C21

Doug Slape Chief Deputy Commissioner TEX. GOV'T CODE § 601.002 Commissioner's Order No. 2018-5528

Prepared and reviewed by:

Stephanie Daniels, Staff Attorney Enforcement Division

Commissioner's Order Robert Balderas SOAH Docket No. 454-21-1990 Page 4 of 5

Affidavit

STATE OF TEXAS	§
	§
COUNTY OF TRAVIS	§

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

"My name is David Moreno 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 Robert Balderas. I have confirmed that:

- a. The last mailing address provided to the department in writing by Robert Balderas is San Antonio, Texas 78245-2896.
- b. The file maintained by the Enforcement Division contains a Second Amended Notice of Hearing and Original Petition dated May 26, 2021, which were filed with the State Office of Administrative Hearings.
- c. On May 26, 2021, the Second Amended Notice of Hearing and Original Petition addressed to Robert Balderas were mailed by certified mail, return receipt requested, to his last known address, electronic mail, and two additional addresses: San Antonio, Texas 78249 and P.O. Box 90164, Alamo Heights, Texas 78209-9080.

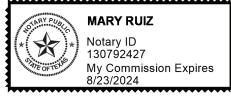
A copy of the certified mail log maintained by the Enforcement Division is attached as Exhibit C."

DocuSigned by: David Moreno 943B543EC2C9460 Affiant

Commissioner's Order Robert Balderas SOAH Docket No. 454-21-1990 Page 5 of 5

SWORN TO AND SUBSCRIBED before me by means of an interactive two-way audio and video communication on _______. This notarial act was an online notarization.

Notary Seal



Digital Certificate

DocuSigned by: Mary Ruiz -795DC4D59167489.

Notary Public State of Texas

STATE OFFICE OF ADMINISTRATIVE HEARIN	IGS RECEIVED ON 5/26/20		
2021-6962		EXHIBIT	
FILED 454-21-1990 5/26/2021 9:48 AM		A	ACCEPTED 454-21-1990 05/26/2021 10:15 AM STATE OFFICE OF
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Carol Hale, CLERK		NT FILE NO. 21159	Carol Hale, CLERK
TEXAS DEPARTMEN	T OF INSURANCE,	BEFORE TH	E STATE OFFICE
Petitioner			
v .			OF
ROBERT BALDERAS,			ATIVE HEARINGS
Respondent		ADMINISTRA	ATTVE TEAKINGS

SECOND AMENDED NOTICE OF HEARING

The Texas Department of Insurance seeks to deny your license application. This Second Amended Notice of Hearing and the Original Petition, which is attached and incorporated for all purposes, states the allegations against you and the relief sought by the Department.

A public hearing will be held before an Administrative Law Judge on **Wednesday**, July **21**, **2021**, **at 9:00 a.m.** The hearing will take place via videoconference using a videoconference platform controlled by the State Office of Administrative Hearings, unless otherwise ordered to proceed in another manner by the Administrative Law Judge.

The hearing shall be conducted pursuant to TEX. GOV'T CODE, ch. 2001 and 1 TEX. ADMIN. CODE, ch. 155. Unless otherwise directed by the Administrative Law Judge, the hearing shall continue from day to day in the offices of the State Office of Administrative Hearings until concluded. You have the right to appear at this hearing and to be represented by an attorney.

Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH.

YOU MUST FILE A WRITTEN RESPONSE TO THE SECOND AMENDED NOTICE OF HEARING WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 20 DAYS OF THE DATE THE SECOND AMENDED NOTICE OF HEARING WAS MAILED. FAILURE TO FILE A WRITTEN RESPONSE BY THIS DEADLINE SHALL ENTITLE TDI TO

Second Amended Notice of Hearing Robert Balderas SOAH Docket No. 454-21-1990 Page 2 of 5

SEEK DISPOSITION BY DEFAULT PURSUANT TO 1 TEX. ADMIN. CODE § 155.501 AND 28 TEX. ADMIN. CODE §§ 1.88 AND 1.89.

IF YOU FAIL TO FILE A WRITTEN RESPONSE, THE SCHEDULED HEARING CAN BE CANCELED AND WITHOUT FURTHER NOTICE TO YOU THE COMMISSIONER OF INSURANCE CAN ISSUE AN ORDER IN WHICH THE ALLEGATIONS IN THE SECOND AMENDED NOTICE OF HEARING ARE DEEMED ADMITTED AS TRUE AND THE RELIEF SOUGHT IN THE SECOND AMENDED NOTICE OF HEARING, INCLUDING ISSUANCE OF A CEASE AND DESIST ORDER AND DENIAL OF YOUR LICENSE APPLICATION, IS GRANTED BY DEFAULT.

IF YOU FILE A WRITTEN RESPONSE BUT THEN FAIL TO APPEAR ON THE DAY AND TIME SET FOR HEARING, WITHOUT FURTHER NOTICE TO YOU, THE COMMISSIONER OF INSURANCE CAN ISSUE AN ORDER IN WHICH THE ALLEGATIONS IN THE SECOND AMENDED NOTICE OF HEARING ARE DEEMED ADMITTED AS TRUE AND THE RELIEF SOUGHT IN THE SECOND AMENDED NOTICE OF HEARING, INCLUDING ISSUANCE OF A CEASE AND DESIST ORDER DENIAL OF YOUR LICENSE APPLICATION, IS GRANTED BY DEFAULT.

In accord with 28 TEX. ADMIN. CODE § 1.90(e) and 1 TEX. ADMIN. CODE §§ 155.101 and 155.103, you should send copies of your written response to:

- Docketing Division
 State Office of Administrative Hearings
 300 West 15th Street, Room 504
 P.O. Box 13025
 Austin, Texas 78711-3025
 (512) 322-2061 (Fax);
- (2) Chief Clerk Texas Department of Insurance P.O. Box 149104, MC112-2A Austin, Texas 78714-9104 (512) 490-1064 (Fax) chiefclerk@tdi.texas.gov; and
- (3) Stephanie Daniels, Staff Attorney Texas Department of Insurance

Second Amended Notice of Hearing Robert Balderas SOAH Docket No. 454-21-1990 Page 3 of 5

> Enforcement Division, MC110-1A P.O. Box 149104 Austin, Texas 78714-9104 (512) 490-1020 (Fax) Stephanie.Daniels@tdi.texas.gov

Receiving Documents

The State Office of Administrative Hearings (SOAH) offers you the ability to receive service of orders and other documents issued by SOAH through email instead of by mail or fax. If you want to receive SOAH-issued documents by email, go to SOAH's website, www.soah.texas.gov, click on the "E-Services" tab, then click the hyperlink "Request Service by Email (only for use by self-represented litigants)," and follow the instructions.

NOTE: A request to receive SOAH-issued documents by email does not change the procedures you must follow to file documents with SOAH. The rules for filing documents and providing copies to all other parties in the case are described in SOAH's Procedural Rules, which are available on SOAH's website. Click the "Agency" tab, then click "Administrative Rules and Laws" to view SOAH's Procedural Rules.

Important Security Notice

ALL VISITORS TO THE WILLIAM P. CLEMENTS BUILDING WITHOUT AN AGENCY OR DPS ISSUED ID CARD MUST PROVIDE THE BUILDING SECURITY OFFICER WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS DOCKET NUMBER AND RECEIVE A VISITOR'S PASS IN ORDER TO BE ALLOWED ACCESS TO THE HEARING ROOM. INDIVIDUALS SHOULD ALLOW ADDITIONAL TIME TO GO THROUGH THE SECURITY PROCESS.

If you have any questions, please contact me at the address or telephone number shown below.

Second Amended Notice of Hearing Robert Balderas SOAH Docket No. 454-21-1990 Page 4 of 5

Respectfully Submitted,

Stephanie Daniels State Bar No. 24107343 Texas Department of Insurance Enforcement Division P.O. Box 12030 MC ENF Austin, Texas 78711-2030 (512) 676-6334 (Direct) (512) 490-1020 (Fax) Stephanie.Daniels@tdi.texas.gov

ATTORNEY FOR THE PETITIONER TEXAS DEPARTMENT OF INSURANCE

Enclosure: Original Petition

cc: Leah Gillum, Deputy Commissioner, Enforcement Division, MC-110-1A Ginger Loeffler, Litigation Director, Enforcement Division, MC-110-1A Administrative Review, MC107-1A **2021-6962** Second Amended Notice of Hearing Robert Balderas SOAH Docket No. 454-21-1990 Page 5 of 5

CERTIFICATE OF SERVICE

I, Stephanie Daniels, certify that a true and correct copy of the *Second Amended Notice of Hearing and the Original Petition* were sent by certified mail, return receipt requested, and by email on this 26th day of May, 2021 to:

Robert Balderas

San Antonio, Texas 78249

P.O. Box 90164 Alamo Heights, Texas 78209-9080

San Antonio, Texas 78245-2896 Respondent Pro Se Via CM/RRR No.: 9214 8901 9403 8340 9031 48 Via Email:

Via CM/RRR No.: 9214 8901 9403 8340 9033 60

Via CM/RRR No.: 9214 8901 9403 8340 9037 66

Stephanie Daniels

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TEXAS DEPARTMENT OF	INSURANCE,	BEFORE THE ST	ATE OFFICE
Petitioner			
v .		OF	
ROBERT BALDERAS,			
Respondent		ADMINISTRATIV	E HEAKINGS

ORIGINAL PETITION

The Texas Department of Insurance seeks to deny Robert Balderas' license application. In support of this petition, the department makes the following allegations upon information and belief:

Jurisdiction

The Commissioner of Insurance has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051-82.055, 4001.002, 4005.101, 4005.102, and 4051.051; TEX. GOV'T CODE §§ 2001.051-2001.178; TEX. OCC. CODE §§ 53.021-53.023; and 28 TEX. ADMIN. CODE § 1.502.

Factual Allegations

License Application

- 1. Robert Balderas (Balderas) submitted an application for a general lines agent license with a property and casualty qualification on November 9, 2017.
- 2. The department proposed to deny his application on February 28, 2019. Balderas appealed the decision and made a written request for a hearing.

Unauthorized Business of Insurance

3. In April 2019, the department initiated an investigation into Balderas' then spouse, Diana Gonzalez (Gonzalez), individual identification 1852950, who held a general lines agent license with a property and casualty qualification issued by the

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department on January 17, 2018. At the time of the department's investigation into Gonzales, Balderas worked for her agency, Texas Commerce Insurance.

- 4. Gonzales voluntarily surrendered her license to the department on December 20, 2019, in lieu of disciplinary action.
- 5. On July 26, 2019, Gonzalez and Balderas traveled to Austin to deliver documents requested by the department's investigator. At this meeting Balderas presented the investigator with a business card which identified him as an insurance agent with Texas Commerce Insurance, although Balderas did not hold an insurance agent license issued by the department.
- 6. The department's investigator spoke with Balderas both over the phone and through email. In these conversations Balderas provided descriptions of his activities at Texas Commerce Insurance. These activities included representing himself as a licensed insurance agent and negotiating with car dealerships to obtain their business.

Criminal History

- 7. On April 19, 1991, Balderas committed felony Burglary of a Building, and on May 26, 1992, pled guilty to the same in the 144th Judicial District Court of Bexar County, Texas, in Cause no. 1992-CR-1895, and was sentenced to seven years confinement. On February 2, 1993, Balderas pled guilty to misdemeanor Criminal Trespass, also in Cause no. 1992-CR-1895 and was sentenced to sixty days confinement.
- 8. On July 6, 2001, Balderas committed misdemeanor Driving While Intoxicated, and on January 15, 2002, pled nolo contendere to the same in County Court at Law No. 2 of Bexar County, Texas, in Cause no. 790841, and was sentenced to 90 days confinement, probated for one year. On March 10, 2003, Balderas' probation was revoked when he violated the conditions of his probation, and he was sentenced to ninety days confinement.
- 9. On July 6, 2001, Balderas committed misdemeanor Attempted Possession of a Dangerous Drug, and on January 15, 2002, he pled nolo contendere to the same in County Court at Law No. 2 of Bexar County, Texas, in Cause no. 790840, and was sentenced to ninety days confinement, probated for six months. On March 11,

2003, Balderas' probation was unsatisfactorily terminated due to his failure to comply with the conditions.

- 10. On July 6, 2001, Balderas committed misdemeanor Driving While License Invalid, and on January 15, 2002, he pled nolo contendere to the same in County Court at Law No. 2 of Bexar County, Texas, in Cause no. 790842, and was sentenced to ninety days confinement, probated for six months. On March 11, 2003, Balderas' probation was unsatisfactorily terminated due to his failure to comply with the conditions.
- 11. On November 1, 2001, Balderas committed misdemeanor Theft \$500 \$1,500, and on March 10, 2003, he pled nolo contendere to the same in County Court at Law No. 2 of Bexar County, Texas, in Cause no. 839564, and was sentenced to ninety days confinement.
- 12. On March 25, 2002, Balderas committed state jail felony Forgery of Commercial Institution by Check. On July 6, 2004, Balderas was placed on probation for five years in the 399th District Court of Bexar County, Texas, in Cause no. 2003-CR-9638. On November 27, 2007, his probation was revoked due to violations of the terms, and he was sentenced to six months confinement.
- On April 30, 2002, Balderas committed misdemeanor Theft by Check \$20 \$500, and on December 23, 2003, he pled guilty to the same in County Court at Law No.
 12 of Bexar County, Texas, in Cause no. 862661, and was sentenced to six months confinement.
- 14. On May 21, 2002, Balderas committed misdemeanor Theft of Service \$500 \$1,500, and on December 23, 2003, he pled guilty to the same in County Court at Law No. 12 of Bexar County, Texas, in Cause no. 862666, and was sentenced to twelve months and twenty-six days confinement.
- 15. On May 31, 2002, Balderas committed misdemeanor Theft of Service \$500 \$1,500, and on December 23, 2003, pled guilty to the same in County Court at Law No. 12 of Bexar County, Texas, in Cause no. 862664, and was sentenced to twelve months and twenty-six days confinement.
- 16. On November 21, 2002, Balderas committed misdemeanor Theft \$500 \$1,500, and on December 23, 2003, he pled guilty to same in County Court at Law No. 12

Original Petition Robert Balderas Page 4 of 6

of Bexar County, Texas, in Cause no. 861196, and was sentenced to six months confinement.

- On December 5, 2002, Balderas committed misdemeanor Theft by Check \$20 -\$500, and on December 23, 2003, he pled guilty to the same in County Court at Law No. 12 of Bexar County, Texas, in Cause no. 862660, and was sentenced to six months confinement.
- 18. On December 10, 2003, Balderas committed state jail felony Possession of a Controlled Substance. On July 6, 2004, Balderas was placed on probation for five years in the 399th District Court of Bexar County, Texas, in Cause no. 2004-CR-2614. On November 27, 2007, his probation was revoked when he violated the terms, and he was sentenced to six months confinement.
- 19. On June 7, 2004, Balderas committed third-degree felony Theft \$20,000 \$100,000. On November 18, 2005, he was placed on probation for ten years in the 399th District Court of Bexar County, Texas, in Cause no. 2005-CR-1890. On November 27, 2007, his probation was revoked when he violated the terms, and he was sentenced to two years confinement.
- 20. On August 22, 2005, Balderas committed misdemeanor Theft by Check \$20 \$500, and on May 11, 2007, he pled nolo contendere to the same in County Court at Law No. 12 of Bexar County, Texas, in Cause no. 211488, and was sentenced to thirty days confinement.
- 21. On August 26, 2005, Balderas committed misdemeanor Theft by Check \$20 \$500, and on May 11, 2007, he pled nolo contendere to the same in County Court at Law No. 12 of Bexar County, Texas, in Cause no. 211487, and was sentenced to thirty days confinement.
- 22. On May 16, 2010, Balderas committed felony Driving While Intoxicated 3rd or More. On February 12, 2013, Balderas was placed on probation for five years, which was extended by three months on February 9, 2018, in the 144th District Court of Bexar County, Texas, in Cause no. 2010-CR-8477. On May 18, 2018, Balderas was unsatisfactorily discharged from probation.

Legal Allegations

- 1. Balderas committed acts for which a license may be denied pursuant to TEX. INS. CODE § 4005.101, as contemplated in TEX. INS. CODE § 4005.102.
- 2. Balderas willfully violated an insurance law of this state, as contemplated by TEX. INS. CODE § 4005.101(b)(1).
- 3. Balderas engaged in fraudulent or dishonest acts or practices, as contemplated by TEX. INS. CODE § 4005.101(b)(5).
- 4. Balderas engaged in acts constituting the business of insurance without a license, as defined in TEX. INS. CODE §§ 101.051 and 4001.051, in violation of TEX. INS. CODE §§ 101.102, 4001.101, and 4051.051, and 28 TEX. ADMIN. CODE § 19.902.
- 5. Balderas is a convicted felon, as contemplated by 28 TEX. ADMIN. CODE § 1.502(d), TEX. INS. CODE § 4005.101(b)(8), and TEX. OCC. CODE §§ 53.021-53.025.
- 6. Balderas committed offenses which directly relate to the duties and responsibilities of the licensed occupation, as contemplated by TEX. OCC. CODE § 53.021(a)(1).
- 7. Balderas committed offenses the department considers to be of such a serious nature that they are of prime importance in determining fitness for licensure, as contemplated by 28 TEX. ADMIN. CODE § 1.502(e)(1), (e)(4)(E), and (e)(4)(F), and TEX. OCC. CODE § 53.025.
- 8. Texas Department of Insurance guidelines, 28 TEX. ADMIN. CODE § 1.502(c)-(e), emphasize the department:
 - a. considers it very important that applicants be honest, trustworthy, and reliable;
 - b. may refuse to issue an original license if the department determines that the applicant has committed an offense that directly relates to the duties and responsibilities of the licensed occupation;
 - c. considers any offense for which fraud, dishonesty, or deceit is an essential element to be of prime importance when determining fitness for licensure; and

- d. considers the offenses of burglary, theft, and forgery to be of such a serious nature that they are of prime importance when determining ability and capacity for licensure.
- 9. Balderas was convicted of a felony involving dishonesty or breach of trust, as specified in 18 U.S.C. § 1033, and requires written consent from the commissioner of insurance to engage or participate in the business of insurance.

Relief Sought

If one or more of the above allegations is found to be true, the department asks the Administrative Law Judge to enter a Proposal for Decision recommending that the Commissioner of Insurance issue an order:

- 1. denying Robert Balderas' license application;
- 2. ordering Robert Balderas to cease and desist from performing the acts of an agent without a license; and
- 3. imposing any other just and appropriate relief to which the department may be entitled to by law.

Respectfully Submitted,

Stephanie Daniels State Bar No. 24107343 Texas Department of Insurance Enforcement Division, MC110-1A P.O. Box 149104 Austin, Texas 78714-9104 (512) 676-6334 (Direct) (512) 490-1020 (Fax) Stephanie.Daniels@tdi.texas.gov

ATTORNEY FOR THE PETITIONER TEXAS DEPARTMENT OF INSURANCE

2021-6962		
2021-0902	EXHIBIT	
A. Mailer Action		Shipment Confirmation Acceptance Notice
Note to Mailer: The labels and volume associated to this form online, must match the labeled packages being presented to the USPS® employee with this form.		3 GUADALIPE ST

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International*	
Other	3
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*Start time for products with service guarantees will begin when mail arrives at the local Post Office™ and items receive individual processing and acceptance scans.

B. USPS Action

- Note to RSS Clerk: 1. Home screen > Mailing/Shipping > More 2. Select Shipment Confirm 3. Scan or enter the barcode/label number from PS Form 5630 4. Confirm the volume count message by selecting Yes or No 5. Select Pay and End Visit to complete transaction

USPS EMPLOYEE: Please scan upon pickup or receipt of mail. Leave form with customer or in customer's mail receptacle."

RECEIVED

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S. DANIELS/21159

PS Form 5630, September 2016 PSN 7530-08-000-4335

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