No. 2023-7741

Official Order of the Texas Commissioner of Insurance

Date: 07/17/2023

Subject Considered:

James Edward Harshaw

Mansfield, Texas 76063-7682

Default Order SOAH Docket No. 454-23-07280 TDI Enforcement File No. 30022

General remarks and official action taken:

The subject of this default order is whether a life agent license should be issued to James Edward Harshaw (Respondent). Respondent did not respond to a 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 Notice of Hearing

- 1. On December 16, 2022, the department filed a 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 Notice of Hearing and Original Petition are incorporated in this order as findings of fact.
- 3. The department sent the Notice of Hearing and Original Petition to Respondent's last known address provided in writing to the department,

2023-7741 Commissioner's Order James Edward Harshaw SOAH Docket No. 454-23-07280 Page 2 of 5

Mansfield, Texas 76063-7682. The Notice of Hearing and Original Petition were also sent by electronic mail.

4. Respondent failed to file a written response to the Notice of Hearing within 20 days of the date the 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, 4005.102, and 4054.301; 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 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 Notice of Hearing and Original Petition are incorporated in this order and deemed admitted as true under 28 TEX. ADMIN. CODE § 1.89.

Order

It is ordered that James Edward Harshaw's application is denied. A copy of this order will be provided to law enforcement or other appropriate administrative agencies for further investigation as may be warranted.

DocuSigned by: Anour FC5D7EDDFFBB4F8...

Cassie Brown Commissioner of Insurance

Commissioner's Order James Edward Harshaw SOAH Docket No. 454-23-07280 Page 3 of 5

Prepared and reviewed by:

and Calie

Sarah White, Staff Attorney Enforcement

Commissioner's Order James Edward Harshaw SOAH Docket No. 454-23-07280 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 James Edward Harshaw. I have confirmed that:

- a. The last mailing address provided to the department in writing by James Edward Harshaw is **1997**, Mansfield, Texas 76063-7682.
- b. The file maintained by Enforcement contains a Notice of Hearing dated December 16, 2022, and Original Petition dated December 7, 2023, which were filed with the State Office of Administrative Hearings.
- c. On December 16, 2022, the Notice of Hearing and Original Petition addressed to James Edward Harshaw were mailed first-class and certified, return receipt requested, to his last known address and electronically.

Copies of the first-class mail log and certified mail log maintained by Enforcement are attached as Exhibit C and Exhibit D, respectively.

DocuSigned by: David Moreno -21248B7DC9CB47C... Affiant

Commissioner's Order James Edward Harshaw SOAH Docket No. 454-23-07280 Page 5 of 5

SWORN TO AND SUBSCRIBED before me by means of an interactive two-way audio and video communication on $\frac{1/12/2023}{2}$. This notarial act was an online notarization.

Notary Seal



Digital Certificate

DocuSigned by: Mary Ruiz -795DC4D59167489.

Notary Public State of Texas

FILED 454-23-07280 12/16/2022 10:00 AM STATE OFFICE OF ADMINISTRATIVE HEARINGS Carol Hale, CLERK

SOAH DOCKET NO. 454-23-07280 TDI ENFORCEMENT FILE NO. 30022

TEXAS DEPARTMENT OF INSURANCE,

BEFORE THE STATE OFFICE

Petitioner

v.

ACCEPTED 454-23-07280 12/16/2022 10:08:50 am STATE OFFICE OF ADMINISTRATIVE HEARINGS Carol Hale, CLERK

JAMES EDWARD HARSHAW,

Respondent

ADMINISTRATIVE HEARINGS

OF

NOTICE OF HEARING

The Texas Department of Insurance seeks to deny your license application. This 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 **Thursday, March 9**, **2023, 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 under 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 NOTICE OF HEARING WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 20 DAYS OF THE DATE THE NOTICE OF HEARING WAS MAILED. FAILURE TO FILE A WRITTEN RESPONSE BY THIS DEADLINE SHALL ENTITLE TDI TO SEEK DISPOSITION BY DEFAULT UNDER 1 TEX. ADMIN. CODE § 155.501 AND 28 TEX. ADMIN. CODE §§ 1.88 AND 1.89.

EXHIBIT	٦
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Notice of Hearing James Edward Harshaw SOAH Docket No. 454-23-07280 Page 2 of 5

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 NOTICE OF HEARING ARE DEEMED ADMITTED AS TRUE AND THE RELIEF SOUGHT IN THE NOTICE OF HEARING, INCLUDING 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 NOTICE OF HEARING ARE DEEMED ADMITTED AS TRUE AND THE RELIEF SOUGHT IN THE NOTICE OF HEARING, INCLUDING 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:

- (1) (by mail, fax, or electronically) 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); www.soah.texas.gov
- (by mail, fax, or email)
 Chief Clerk
 Texas Department of Insurance
 P.O. Box 12030, MC GC-CCO
 Austin, Texas 78711-2030
 (512) 490-1064 (Fax)
 chiefclerk@tdi.texas.gov; and
- (3) (by mail, fax, or email) Sarah White, Staff Attorney Texas Department of Insurance Enforcement, MC ENF

Notice of Hearing James Edward Harshaw SOAH Docket No. 454-23-07280 Page 3 of 5

> P.O. Box 12030 Austin, Texas 78711-2030 (512) 490-1020 (Fax) Sarah.White@tdi.texas.gov

Receiving Documents Electronically and Filing Documents with SOAH

The State Office of Administrative Hearings (SOAH) offers you the ability to electronically receive orders and other documents issued by SOAH by email instead of by mail. If you want to receive SOAH-issued documents by email, follow the instructions on SOAH's website: www.soah.texas.gov.

A request to receive SOAH-issued documents by email does <u>not</u> change the procedures you must follow to file documents or exhibits with SOAH. Instructions on how to file documents and exhibits are on SOAH's website. SOAH's website also includes guidance for representing yourself.

Important Security Notice (for In-Person Hearings ONLY)

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.

Notice of Hearing James Edward Harshaw SOAH Docket No. 454-23-07280 Page 4 of 5

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

Respectfully Submitted,

and Calie

Sarah White State Bar No. 24064644 Texas Department of Insurance Enforcement, MC ENF P.O. Box 12030 Austin, Texas 78711-2030 (512) 676-6354 (Direct) (512) 490-1020 (Fax) Sarah.white@tdi.texas.gov

ATTORNEY FOR THE PETITIONER TEXAS DEPARTMENT OF INSURANCE

Enclosure: Original Petition

cc: Leah Gillum, Deputy Commissioner, Fraud and Enforcement Division, MC ENF Rachel Cloyd, Litigation Director, Enforcement, MC ENF Administrative Review, MC CO-AAL

Notice of Hearing James Edward Harshaw SOAH Docket No. 454-23-07280 Page 5 of 5

CERTIFICATE OF SERVICE

I, Sarah White, certify that a true and correct copy of the *Notice of Hearing and the Original Petition* were sent by regular, first-class mail and by certified mail, return receipt requested, on this 16th day of December, 2022 to:

James Edward Harshaw

Mansfield, Texas 76063-7682 Respondent Pro Se Via CM/RRR No.: 9214 8901 9403 8398 8129 35 Via First Class Mail Via Email:

Chi

Sarah White

454-23-07280

FILED 454-23-07280 12/7/2022 3:49 PM STATE OFFICE OF ADMINISTRATIVE HEARINGS Pegah Nasrollahzadeh, CLERK

2023-7741

SOAH DOCKET NO. 454-TD

ENFORCEMENT	FILE	NO.	30022	

TEXAS DEPARTMENT OF INSURANCE,

BEFORE THE STATE OFFICE

Petitioner

v.

JAMES EDWARD HARSHAW,

Respondent

OF

ADMINISTRATIVE HEARINGS

ORIGINAL PETITION

The Texas Department of Insurance seeks to deny James Edward Harshaw's 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 under TEX. INS. CODE §§ 82.051-82.055, 4001.002, 4005.101, 4005.102, and 4054.301; 28 Tex. ADMIN. CODE § 1.502; TEX. OCC. CODE §§ 53.021-53.023; and TEX. GOV'T CODE §§ 2001.051-2001.178.

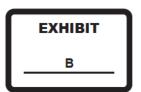
Factual Allegations

License Application

- 1. On January 28, 2022, James Edward Harshaw (Harshaw) applied for a life agent license to be issued by the Texas Department of Insurance (TDI).
- 2. On May 3, 2022, TDI proposed to deny Harshaw's application based on his criminal history. Harshaw appealed that decision and made a written request for a hearing.

Criminal History

3. On June 6, 1994, Harshaw was convicted of the felony offense of Theft Over \$500 in cause no. 93CR0586, in the District Court of Wyandotte County, Kansas. The



ACCEPTED 454-23-07280 12/7/2022 4:29:09 pm STATE OFFICE OF ADMINISTRATIVE HEARINGS Pegah Nasrollahzadeh, CLERK court sentenced Harshaw to six months probation and ordered him to pay \$3,068.50 in restitution.

- 4. On September 13, 2001, Harshaw was convicted of the misdemeanor offense of Domestic Battery in cause no. 01DV0450, in the District Court of Johnson County, Kansas. The court sentenced Harshaw to 90 days in jail and 12 months probation.
- 5. On March 9, 2009, Harshaw was convicted of the federal felony offense of Conspiracy to Commit Wire Fraud in cause no. 2:08CR20074-001-JWL in the U.S. District Court of Kansas. The court sentenced Harshaw to five years probation and him ordered to pay \$51,279.01, jointly and severally with his wife.

Material Misstatement in License Application

- 6. On March 6, 2007, the Court of Common Pleas of Lucas County, Ohio, entered a default judgment against Harshaw in case no. Cl020065738, for breach of contract, fraud, conversion, unjust enrichment, and theft.
- 7. The default judgment ordered Harshaw and his co-defendant to pay the plaintiff \$48,431.02, plus interest, and to pay treble damages of \$120,000, the costs of the action, and attorney fees totaling \$3,910.
- 8. Question No. 8 in TDI's licensing application required that Harshaw disclose whether he currently is or was ever previously found liable in any lawsuit, arbitrations, or mediation proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty. Harshaw answered "no".
- 9. By answering "no" to question no. 8, Harshaw was misleading and deceptive to TDI by omitting this information.

Legal Allegations

- 1. Harshaw has committed an act for which a license may be denied pursuant to TEX. INS. CODE § 4005.101(b) because he:
 - a. intentionally made misstatements in his license application, as contemplated by TEX. INS. CODE § 4005.101(b)(2);

- b. attempted to obtain a license by fraud or misrepresentation, as contemplated by TEX. INS. CODE § 4005.101(b)(3);
- c. engaged in fraudulent or dishonest acts or practices, as contemplated by TEX. INS. CODE § 4005.101(b)(5); and
- d. has been convicted of a felony, as contemplated by TEX. INS. CODE § 4005.101(b)(8) and TEX. OCC. CODE § 53.021(a).
- 2. Harshaw committed felony or misdemeanor offenses and has engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation, as contemplated in 28 TEX. ADMIN. CODE §§ 1.502(d) and (f).
- 3. Harshaw committed an offense that TDI considers to be of such serious nature that it is of prime importance in determining fitness for licensure or authorization, as contemplated by 28 TEX. ADMIN. CODE § 1.502(e).
- 4. Harshaw committed an offense for which fraud, dishonesty, or deceit is an essential element, as contemplated by 28 TEX. ADMIN. CODE § 1.502(e)(1) and TEX. OCC. CODE §§ 53.021-53.023.
- 5. Harshaw committed a felony offense involving moral turpitude, as contemplated by 28 TEX. ADMIN. CODE § 1.502(e)(3).
- 6. Harshaw committed an offense with the essential elements of a theft offense, as contemplated in 28 TEX. ADMIN. CODE § 1.502(e)(4)(F).
- 7. Pursuant to TEX. OCC. CODE § 53.021(a)(1), the commissioner may deny Harshaw's application because he has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.
- 8. TDI guidelines, 28 TEX. ADMIN. CODE § 1.502(c)-(e), emphasize that TDI:
 - a. considers it very important that applicants be honest, trustworthy, and reliable;

- b. may refuse to issue an original license if TDI determines that the applicant has committed an offense that directly relates to the duties and responsibilities of the licensed occupation; and
- c. considers any offense for which fraud, dishonesty, or deceit is an essential element to be of prime importance when determining fitness for licensure, pursuant to 28 TEX. ADMIN. CODE § 1.502(e)(1); and,
- d. considers any felony involving moral turpitude to be of such a serious nature that it is of prime importance when determining fitness for licensure, pursuant to 28 TEX. ADMIN. CODE § 1.502(e)(3); and,
- e. considers any theft offense to be of such a serious nature that it is of prime importance when determining fitness for licensure, pursuant to 28 TEX. ADMIN. CODE § 1.502(e)(4)(F).
- 9. Harshaw has been convicted of a felony involving dishonesty or breach of trust, as specified in 18 U.S.C. § 1033 and requiring 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 James Edward Harshaw's license application;
- 2. denying consent to allow James Edward Harshaw to engage or participate in the business of insurance under 18 U.S.C. § 1033; and
- 3. imposing any other just and appropriate relief to which the department may be entitled to by law, including any combination of the above actions.

Original Petition James Edward Harshaw Page 5 of 5

Respectfully Submitted,

and With

Sarah White State Bar No. 24064622 Texas Department of Insurance Enforcement, MC ENF P.O. Box 12030 Austin, Texas 78711-2030 (512) 676-6354(Direct) (512) 490-1020 (Fax) Sarah.white@tdi.texas.gov

ATTORNEY FOR THE PETITIONER TEXAS DEPARTMENT OF INSURANCE

Automated Certificate of eService

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Mary Ruiz on behalf of Sarah White Bar No. 24064622 Enforcementgeneral@tdi.texas.gov Envelope ID: 70798468 Status as of 12/7/2022 4:30 PM CST

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	12/7/2022 3:49:19 PM	SENT

Associated Case Party: Texas Department of Insurance

Name	BarNumber	Email	TimestampSubmitted	Status
Sarah White		Sarah.White@tdi.texas.gov	12/7/2022 3:49:19 PM	SENT
Rachel Cloyd		Rachel.Cloyd@tdi.texas.gov	12/7/2022 3:49:19 PM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	12/7/2022 3:49:19 PM	SENT

Associated Case Party: James Edward Harshaw

Name	BarNumber	Email	TimestampSubmitted	Status
James Edward Harshaw			12/7/2022 3:49:19 PM	SENT

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Mary Ruiz on behalf of Sarah White Bar No. 24064622 Enforcementgeneral@tdi.texas.gov Envelope ID: 71080151 Status as of 12/16/2022 10:09 AM CST

Associated Case Party: Texas Department of Insurance

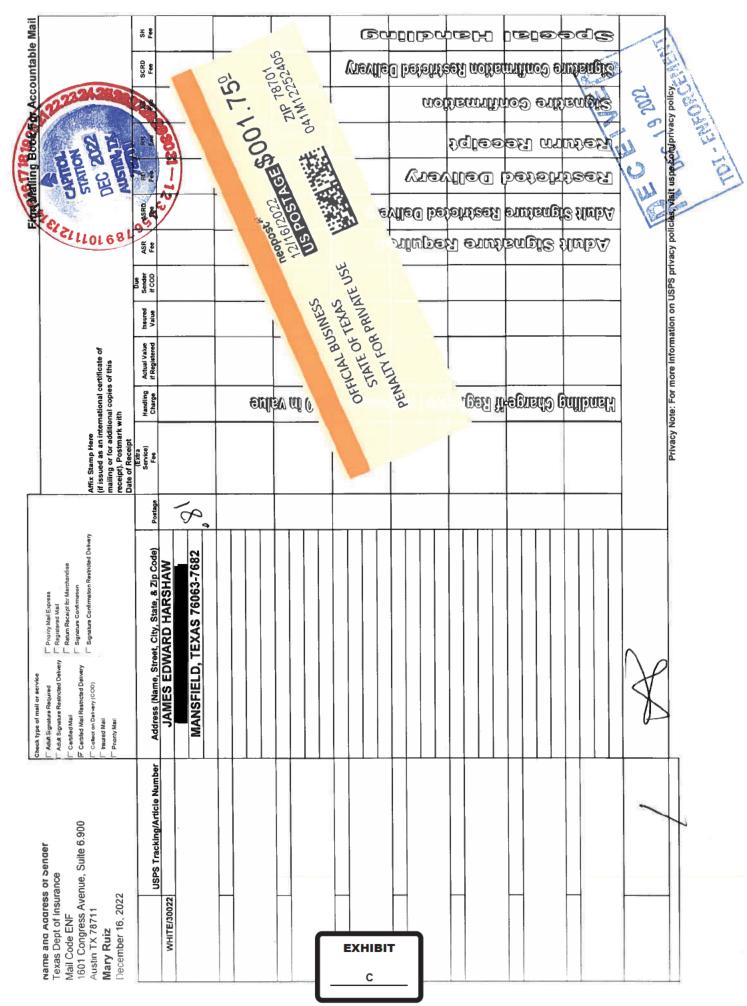
Name	BarNumber	Email	TimestampSubmitted	Status
Rachel Cloyd		Rachel.Cloyd@tdi.texas.gov	12/16/2022 10:00:32 AM	SENT
Sarah White		Sarah.White@tdi.texas.gov	12/16/2022 10:00:32 AM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	12/16/2022 10:00:32 AM	SENT
Leah Gillum		Leah.Gillum@tdi.texas.gov	12/16/2022 10:00:32 AM	SENT
Catarina Tapia		Catarina.Tapia@tdi.texas.gov	12/16/2022 10:00:32 AM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	12/16/2022 10:00:32 AM	SENT

Associated Case Party: James Edward Harshaw

Name	BarNumber	Email	TimestampSubmitted	Status
James Edward Harshaw			12/16/2022 10:00:32 AM	SENT





Shipment Confirmation Acceptance Notice

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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

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- Scan or enter the barcode/label number from PS Form 5630
 Confirm the volume count message by selecting Yes or No
 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.

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

EXHIBIT

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VITTED STATES	Name and Address of Sender MC ENF M RUIZ TEXAS DEPARTMENT OF INSURANCE 1601 CONGRESS AVENUE, SUITE 6,900 AUSTIN TX 78711	USPS Tracking/Article Number	1. 9214 8901 9403 8398 8129 35	WHITE/30022														100 000 000 000 000 000 000 000 000 000			Total Number of Pieces Total Number of Pieces Listed by Sender Received at Post Office	PS Form 3877 , January 2017 (Page 1 of PSN 7530-02-000-9098 Jobid: 3872628

2023-7741