

No. 2024-8515

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

Date: 2/6/2024

Subject Considered:

Texas Department of Insurance

v.

Marisa Kathleen Quintero

SOAH Docket No. 454-22-02836.C

General Remarks and Official Action Taken:

The subject of this order is the contested case hearing concerning Marisa Kathleen Quintero. This order determines that no disciplinary action should be taken against Ms. Quintero.

Background

After proper notice was given, the above-styled case was heard by an administrative law judge for the State Office of Administrative Hearings. The administrative law judge made and filed a proposal for decision containing a recommendation that no disciplinary action should be taken against Ms. Quintero. A copy of the proposal for decision is attached as Exhibit A.

Enforcement staff for the Texas Department of Insurance (TDI) filed exceptions to the administrative law judge's proposal for decision, and Ms. Quintero filed a reply to the exceptions.

The administrative law judge, in her response to the exceptions, did not recommend revising the proposal for decision. A copy of the administrative law judge's response to exceptions is attached as Exhibit B.

Discussion of Definition of Recklessness

In her response to the exceptions, the administrative law judge says she is unaware of a TDI decision defining the term "recklessness." TDI has referenced the definition for "reckless" from the case *Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 527 (Tex. 1998) twice in recent orders: *TDI v. Perez*, Commissioner's Order No. 2021-6974 and *TDI v. Cervantes*, Commissioner's Order No. 2022-7152. *Kenneco*

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Energy, Inc. addresses the meaning of "recklessness" in terms of statements a person makes, saying that "a representation is recklessly made if the speaker knows that he does not have sufficient information or basis to support it, or if he realizes that he does not know whether or not the statement is true."

In the matter at hand, TDI accepts the administrative law judge's ultimate determination. Therefore, no changes to the proposed findings of fact or conclusions of law are necessary to address this issue.

Findings of Fact

The findings of fact contained in Exhibit A are adopted and incorporated by reference into this order.

Conclusions of Law

The conclusions of law contained in Exhibit A are adopted and incorporated by reference into this order.

Order

It is ordered that no disciplinary action be taken against Marisa Kathleen Quintero.

DocuSigned by:

FC5D7EDDFFB4F8... _____
Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

5DAC5618BBC74D4... _____
Jessica Barta, General Counsel

DocuSigned by:

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Justin Beam, Chief Clerk

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

—
**TEXAS DEPARTMENT OF INSURANCE,
PETITIONER**

v.

**MARISA KATHLEEN QUINTERO,
RESPONDENT**

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department or TDI) seeks to take disciplinary action against Marisa Kathleen Quintero for allegedly engaging in fraudulent or dishonest acts or practices, and failing to notify the Department of an administrative action against her by the Financial Industry Regulatory Authority (FINRA). After considering the evidence and applicable law, the Administrative Law Judge (ALJ) finds that Staff did not meet its burden to prove the allegations. Therefore, the ALJ recommends that no disciplinary action be imposed against Ms. Quintero.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Jurisdiction and notice were not contested, so those matters are addressed solely in the findings of fact and conclusions of law below.

The hearing on the merits convened on June 22, 2023, via videoconference before ALJ Cassandra Quinn with the State Office of Administrative Hearings (SOAH). Staff was represented by attorneys Allison Anglin and Stephanie Andrews. Ms. Quintero was represented by attorney Kerry Bloodsaw. The hearing concluded that same day, and the record closed on July 11, 2023, when the court reporter’s transcript was filed with SOAH.

II. APPLICABLE LAW

The Texas Insurance Code authorizes the Department to regulate the business of insurance in this state and to take disciplinary action against agents who violate the laws or rules related to insurance.¹ As is relevant to this case, the Department may take disciplinary action against a license holder who has wilfully violated an insurance law of this state or has engaged in fraudulent or dishonest acts or practices.² Among the insurance laws a licensed agent must comply with is to notify the Department of an administrative action taken against the license holder by a financial or insurance regulator of this state, another state, or the United States.³

¹ Tex. Ins. Code §§ 31.002(1), (3); 4005.102.

² Tex. Ins. Code § 4005.101(b)(1), (5).

³ Tex. Ins. Code § 4001.252(a)(3).

Staff has the burden of proof in this proceeding.⁴ The standard of proof is by a preponderance of the evidence.⁵

III. EVIDENCE

The Department offered six exhibits, which were admitted,⁶ and called Ms. Quintero as a witness. Ms. Quintero offered one exhibit, which was admitted.⁷ She also called her current supervisor, Steve Kelley, as a witness, and testified on her own behalf.

A. BACKGROUND

Ms. Quintero was issued a general lines agent license with a life, accident, and health qualification by the Department on February 15, 2019.⁸ Ms. Quintero had also become registered with FINRA as an Investment Company and Variable Contracts Products Representative in 2018.

From 2012 to July 2019, Ms. Quintero was employed as a bank teller with JPMorgan Chase. The allegations in this case stem from a series of unauthorized transactions in which Ms. Quintero paid her Citibank and Macy's credit card bills

⁴ 1 Tex. Admin. Code § 155.427.

⁵ *Granek v. Tex. St. Bd. of Med. Examin'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

⁶ TDI Exs. 1-6. TDI Exhibits 2 through 5 were prefiled as confidential in their entirety. However, at the ALJ's request, the Department eFiled revised versions after the hearing that were public with the specific confidential information redacted. See Staff's Amended Exhibit List (June 23, 2023); see also Tr. at 95-98.

⁷ Respondent (Resp.) Ex. 1.

⁸ TDI Ex. 3 at 28.

with funds from a bank customer's JPMorgan Chase and Wells Fargo accounts. The transactions totaled \$10,117.64, as follows:⁹

5/21/2019 Citibank payment \$3,022.51 (JPMorgan Chase)
6/13/2019 Citibank payment \$2,807.58 (JPMorgan Chase)
6/17/2019 Macy's payment \$537.46 (Wells Fargo)
6/24/2019 Citibank payment \$1,160.54 (JPMorgan Chase)
7/5/2019 Citibank payment \$375.80 (JPMorgan Chase)
7/5/2019 Macy's payment \$388.56 (Wells Fargo)
7/15/2019 Macy's payment \$597.31 (Wells Fargo)
7/29/2019 Macy's payment \$1,227.88 (Wells Fargo)

The bank customer whose accounts Ms. Quintero used was Sergio Cabrera, the boyfriend of Ms. Quintero's friend and fellow JPMorgan Chase bank teller, Jorgelina Ahualli. As discussed further below, Ms. Quintero contends that the unauthorized transactions resulted from an error in which she mistakenly entered Mr. Cabrera's account numbers into the online payment systems for her two credit cards rather than the account numbers of Ms. Quintero's husband, Elkin Quintero. After Mr. Cabrera discovered the unauthorized withdrawals, Ms. Quintero paid him back within 13 days.

JPMorgan Chase investigated Ms. Quintero's conduct and terminated her employment. FINRA also investigated her conduct because conversion of a customer's funds is a FINRA rule violation. On December 1, 2020, Ms. Quintero reached a settlement with FINRA consenting to be barred from associating with any

⁹ TDI Ex. 1 at 2; TDI Ex. 2 at 18.

FINRA member in any capacity, but “without admitting or denying the findings and solely for the purposes of this [FINRA] proceeding.”¹⁰

B. MS. QUINTERO’S POSITION

Ms. Quintero does not dispute that the unauthorized transactions listed above occurred, but she disagrees that she made the payments from Mr. Cabrera’s accounts intentionally.¹¹ She recounted her version of events in an email to a prior Staff attorney with the Department as follows:

During my employment at JPMorgan Chase, I developed a personal friendship with a teller named Jorgelina Ahualli. In May 2019, she asked if I could help her open a joint business account for her and her partner, Sergio Cabrera. One day they asked for a balance summary sheet for one of Sergio’s business accounts at Chase, and to gain access to their summary, Jorgelina sent me two of the account numbers via text message. Additionally, Jorgelina had asked for assistance in calling Wells Fargo to settle a check which had a seven-day clearance timeframe. They needed the money sooner, and since I was off the day she requested my assistance, I decided to record the account numbers in my phone’s notes app for future reference once I was back in the office. This was my first mistake. I had meant for the account numbers to stay in my notes only temporarily, intending to delete them after accessing Sergio’s balance sheet and settling their check issue with Wells Fargo. Out of negligence and lack of attention, I forgot to delete those account numbers from my phone as I was also out of office.

The biggest mistake came after these events when I logged onto my personal accounts to pay off some credit card debt. Now, I do not know my own account numbers or my husband[’]s by memory. I often use my phone’s notes app for my own personal account numbers so that I can

¹⁰ TDI Ex. 2 at 24.

¹¹ TDI Ex. 2 at 2.

easily copy and paste them into my online payment portal. Using what I thought were my husband's funds, I copy and pasted an account number ending in "0990" into my payment portal. My husband has an account ending in "0991."¹² Out of pure lack of focus and awareness, I failed to recognize that the account I used to pay my personal debt was Sergio's business account – it does not help that both accounts used the same routing number (111000614), but of course this is ubiquitous among Chase accounts in Texas. So, I proceeded to mistakenly make payments to my credit card using Sergio's account until it was brought to my attention at work by Jorgelina. She and Sergio were confused, rightfully so, as to why his funds were being inexplicably used. I realized my ignorant mishap and after explaining it to Jorgelina, she assured me that Sergio was not angry and wished no repercussions upon me. All he wanted was for the funds to be restored to his business accounts, which I immediately took care of. Over the course of 13 days, I repaid Sergio in the full amount of \$10,117.21. The reason for the delay was because one, I had to get the funds out of my husband's personal account. Also, Jorgelina asked me to hold off on the other deposits while they were away for several days in Las Vegas and to wait until the[y] returned.¹³

At the hearing, Ms. Quintero said she thought the Citibank credit card payments were coming from her husband's Chase account and the Macy's credit card payments were coming from their "Cy-Fair account," a credit union account.¹⁴ She testified that her husband had taken a loan from his 401(k) account of \$12,000 to pay her credit card bills, which included purchases for their household.¹⁵ A

¹² Compare TDI Ex. 4 at 43 (showing Mr. Quintero's account number ending in 0991) with TDI Ex. 4 at 37 (showing Mr. Cabrera's account number ending in 0990).

¹³ TDI Ex. 4 at 35-36.

¹⁴ Tr. at 31.

¹⁵ Tr. at 29, 55.

statement for the credit union account shows a deposit of \$12,000 on June 17, 2019, the same date as the first payment to the Macy's account.¹⁶

According to Ms. Quintero, the note in her phone with Mr. Cabrera's account numbers was labeled "Chase account," and she mistakenly thought it was her husband's Chase account.¹⁷ She then mistakenly assumed the other account number was the credit union account number. Ms. Quintero explained that, to pay her credit card bills, she logged into each account one time, copied and pasted the routing and account numbers from her phone's notes app, and then did not have to enter the payment information again because it was saved.¹⁸ Each time she made a payment, she received a payment confirmation, but she did not check her account statements to confirm the funds were coming from the correct accounts.¹⁹

Ms. Quintero said she learned about the Citibank charges to Mr. Cabrera's JPMorgan Chase account from Ms. Ahualli on July 14.²⁰ No further payments were made from that account after that date; however, two additional payments were made from his Wells Fargo account to the Macy's account on July 15 and 29. Ms. Quintero said that Ms. Ahualli informed her of the charges to that account on July 30.²¹

¹⁶ Resp. Ex. 1; Tr. at 48.

¹⁷ Tr. at 33, 49.

¹⁸ Tr. at 43-44, 48-49.

¹⁹ Tr. at 34, 44, 52.

²⁰ Tr. at 53-54.

²¹ Tr. at 54.

When asked at the hearing about the multiple payments made in June, Ms. Quintero confirmed that she would commonly pay her credit card bills more than once a month to “try to prevent the balances from racking up.”²² When asked why it took 13 days to repay Mr. Cabrera if the money was available, Ms. Quintero explained that the funds were in the credit union account, which was not local.²³ She said it required an approximately 30-to-40-minute drive to visit,²⁴ and finding the time was difficult because her husband and she both worked bank hours, which was also when the credit union was open. She noted that, at the time, they were also raising six children and caring for her husband’s sick mother and Ms. Quintero’s sick aunt. A 2019 statement for the credit union account dated May through July shows only one debit, a payment of \$995.69 to an American Express credit card, was made from the \$12,000 deposit, and thus, the majority of the funds remained throughout July.²⁵

Ms. Quintero testified that, because she could not immediately access the credit union funds, she first attempted a cash advance, but the transaction was declined because it exceeded her cash advance limit.²⁶ On the same day, she went on her lunch break to Capital One, which was local, to get a portion of the funds.²⁷ She also tried to make a deposit into Mr. Cabrera’s Wells Fargo account, but at that point

²² Tr. at 20, 42.

²³ Tr. at 29-30.

²⁴ Tr. at 67.

²⁵ Resp. Ex. 1; Tr. at 51.

²⁶ Tr. at 28-29.

²⁷ Tr. at 30.

the account had been closed. Ms. Quintero said that Ms. Ahualli then asked her to wait to pay the money back because they were out of town in Las Vegas.²⁸

Ms. Quintero testified that she was good friends with Ms. Ahualli—they often worked together, saw each other outside of work, went on several trips together, and their daughters were best friends.²⁹ In fact, Ms. Quintero said one of the reasons she put Mr. Cabrera’s account numbers in the notes app on her phone was because they text so frequently that she did not want the account information to get lost in the messages.³⁰ Additionally, Ms. Quintero and Ms. Ahualli would sometimes borrow money from each other for incidental expenses and use Quickpay to pay the other person back.³¹ Ms. Quintero also recounted that Mr. Cabrera once deposited \$15,000 in her husband’s Chase account so her husband could make bets for Mr. Cabrera in Las Vegas. Despite this history, however, Ms. Quintero confirmed that she did not have authorization for the transactions at issue in this case.³²

Ms. Quintero’s employer learned of the unauthorized transactions from Ms. Ahualli, who had reported them to a manager.³³ Ms. Ahualli had also asked Ms. Quintero to look into the transactions, and then learned that Ms. Quintero was responsible for them. According to Ms. Quintero, Ms. Ahualli suggested that she

²⁸ Tr. at 60-61.

²⁹ Tr. at 38.

³⁰ Tr. at 40.

³¹ *See, e.g.*, TDI Ex. 5 at 425.

³² Tr. at 62.

³³ Tr. at 55.

report it as fraud so that she would not get in trouble, but Ms. Quintero believed she should be honest and pay Mr. Cabrera back.³⁴ Two security employees with Chase bank met with Ms. Quintero, and she explained what happened, after which she was terminated for misconduct, specifically, storing a customer's account information in her phone. However, her employer never threatened criminal action, and she was never questioned by police.³⁵

Ms. Quintero testified that she disclosed all the same information to FINRA as part of their investigation.³⁶ She stated that, when that investigation was completed, she disclosed the FINRA agreed order to the Department.³⁷ Specifically, on March 2, 2021, she called the Department, explained that her FINRA license had been barred, and asked if she was still able to work with her current insurance license.³⁸ Ms. Quintero believed that “they would just be one and the same, like I would lose both of them,” but the person she spoke with at the Department said she was in good standing and did not advise her that she needed to report the FINRA matter in writing or any other way.³⁹ Ms. Quintero admitted that she did not recall what phone number she called or the name of the person she spoke with.⁴⁰ However,

³⁴ Tr. at 56.

³⁵ Tr. at 57.

³⁶ Tr. at 57-58.

³⁷ Tr. at 58.

³⁸ Tr. at 58, 69.

³⁹ Tr. at 58.

⁴⁰ Tr. at 68.

she stated that she later called the Department to see if they had a record of the call, and they provided her with the date of the call.⁴¹

For the last two years, Ms. Quintero has been employed as a licensed policy sales agent with All Web Leads, Inc. (AWL) where she speaks with individuals about Medicare and insurance products.⁴² She is currently a licensed insurance agent in 28 states, including Texas.⁴³ She was previously licensed in California, but surrendered that license because she did not timely provide notice regarding her FINRA license. Ms. Quintero testified that, if she lost her license in Texas, she could not keep her current job.⁴⁴

C. TESTIMONY OF STEVE KELLEY

Mr. Kelley is a sales manager for AWL where he has worked for four years.⁴⁵ He met Ms. Quintero when she interviewed in 2021 for her position with AWL, and he is her supervisor. Mr. Kelley explained that, because Ms. Quintero is a policy sales agent, she must have her insurance license in her resident state of Texas to maintain her position with AWL.

⁴¹ Tr. at 69-70.

⁴² Tr. at 17-18.

⁴³ Tr. at 61.

⁴⁴ Tr. at 59.

⁴⁵ Tr. at 76.

Mr. Kelley recalled that, in Ms. Quintero’s job interview, he asked her if anything would prevent her from passing a background check, and she disclosed that she had been terminated from her previous employer because she had written an account number in her phone and did a transaction on a customer’s account, “but they were friends or something like that.”⁴⁶ Mr. Kelley described Ms. Quintero as “extremely nervous” and “very remorseful” in the interview, which he interpreted as her thinking that this “mistake was going to cost her her career.”⁴⁷ He asked her if she had been arrested, and she said no. She ultimately passed the background check and was hired by AWL.

Mr. Kelley described Ms. Quintero as “an outstanding agent.” She has been promoted four times and been the employee of the quarter multiple times. He testified that, not only is she a top producer, she is caring, has received customer accolades, works well with operations, and has been proactive in getting licensed in other states.⁴⁸ She also has worked to get approved by various insurance carriers to write policies for them, which requires her to submit a “letter of explanation” disclosing what had happened.⁴⁹ There have been no complaints against her while working at AWL.⁵⁰ Mr. Kelley testified that Ms. Quintero is “one of my most trusted employees.”⁵¹

⁴⁶ Tr. at 77-78.

⁴⁷ Tr. at 79.

⁴⁸ Tr. at 81.

⁴⁹ Tr. at 81, 86-87.

⁵⁰ Tr. at 82.

⁵¹ Tr. at 84.

Regarding what happened at Ms. Quintero’s previous employer, Mr. Kelley testified that he was initially surprised that she was not arrested because he would consider taking money from someone else’s account to be fraud.⁵² However, he viewed her actions as negligent, and believed her that it was an accident.⁵³ He was particularly persuaded when he learned that the account numbers were just one off. He clarified that he believed Ms. Quintero’s actions were intentional in that she committed them, but she did not know she was using Mr. Cabrera’s account numbers.⁵⁴

On cross-examination, Mr. Kelley acknowledged that he had not spoken to the victim of Ms. Quintero’s actions or to her previous employer.⁵⁵ He was aware that each licensed agent must have a designated responsible person who is registered with the Department, and he said the two people listed in that role for AWL know about Ms. Quintero’s background. When asked if those people would surrender their licenses if Ms. Quintero were to misbehave, Mr. Kelley said “I know that they love Ms. Quintero. I don’t know if they will want to do that.”⁵⁶ He also confirmed that he would not continue to employ a person who had committed fraud at AWL.⁵⁷

⁵² Tr. at 80, 90, 92.

⁵³ Tr. at 83.

⁵⁴ Tr. at 93.

⁵⁵ Tr. at 90.

⁵⁶ Tr. at 89.

⁵⁷ Tr. at 91-92.

IV. ALJ'S ANALYSIS

Staff contends that disciplinary action should be imposed against Ms. Quintero because: (1) she engaged in fraudulent or dishonest acts or practices, and (2) she failed to notify the Department of the administrative action against her by FINRA.⁵⁸ The ALJ addresses each of these allegations in turn.

A. ALLEGED FRAUDULENT OR DISHONEST ACTS OR PRACTICES

The Department has found that a fraudulent act may be committed by a person acting intentionally, knowingly, or recklessly, but negligence is not sufficient.⁵⁹ Similarly, the Department has found that “a dishonest act is marked by deliberate or reckless deception—an honest mistake will not suffice.”⁶⁰

As an initial matter, the ALJ does not find Mr. Kelley's testimony that he viewed Ms. Quintero's actions as “fraud” controlling. There is no indication that he is an attorney or familiar with the Department's standard for fraud. In fact, his testimony contradicts that Ms. Quintero's actions satisfy the Department's standard for fraud because he believed that Ms. Quintero did not know she was using the wrong account numbers.⁶¹

⁵⁸ TDI Ex. 1 at 3.

⁵⁹ *Tex. Dep't of Ins. v. Jose Jaime Rodriguez & Aguila Insurance Co.*, SOAH Docket No. 454-21-0107.C, Commissioner's Order 2023-7904, at 3-4 (Apr. 25, 2023).

⁶⁰ *Id.* at 4.

⁶¹ Tr. at 93.

The ALJ likewise finds Ms. Quintero’s explanation of events credible. The evidence shows that she has been consistent in describing what happened since she learned that her credit card payments were being made from Mr. Cabrera’s accounts. Most notably, her testimony is consistent with her contemporaneous text messages with Ms. Ahualli.⁶² It is also consistent with her statements to FINRA and to the Department’s Staff attorney.⁶³ Her version of what happened is further supported by the statement from her credit union account showing a \$12,000 deposit before the Macy’s payments, which indicates that she had the funds available to make the payments herself.⁶⁴ It also is not unreasonable that Ms. Quintero failed to notice her mistake given that Mr. Cabrera and her husband each had accounts with Chase with the same routing number and account numbers ending in 0990 and 0991, respectively. The ALJ also finds it unlikely that Ms. Quintero, who was familiar with financial transactions given her job as a bank teller, would have believed that a series of obvious, large payments to her personal credit cards would not be discovered, nor is it credible that she was seeking to take advantage of a close friend.

Ms. Quintero also has consistently accepted responsibility for her actions, which tends to show she made a mistake and was not trying to hide something. In particular, she promptly repaid the money to Mr. Cabrera; disclosed what happened to Chase bank, which resulted in her termination; disclosed what happened to

⁶² TDI Ex. 5 at 750 (text message from Ms. Quintero to Ms. Ahualli stating, “Soooo I think those payments were mine!!!!!! So I have Elkin[’]s account number in my notes and the last four numbers of his is 0991 well I must have taken the wrong account and I put Sergio’s! And since it said Chase I didn’t even think anything of it. Omgosh I am so sorry! This is bad!!! What do I do?!?!? I can pay him today!!!!!!”).

⁶³ TDI Ex. 4 at 35-36; TDI Ex. 5 at 52-257 (FINRA deposition of Ms. Quintero).

⁶⁴ Resp. Ex. 1.

FINRA, which resulted in her losing her license; and disclosed what happened to AWL in her job interview even though it could have prevented her from being hired.

The question then is whether Ms. Quintero's actions constitute fraud or dishonest acts or practices. The preponderance of the evidence does not show that her use of Mr. Cabrera's accounts was intentional, deliberate, or knowing. While she intended to make the payments, she did not intend to make them from Mr. Cabrera's accounts. However, as noted above, the Department may find acts to be fraudulent if they were committed "recklessly," or dishonest if they were done with "reckless deception." In the criminal context, recklessness is described as follows:

A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.⁶⁵

Similarly, Black's Law Dictionary defines reckless as: "Characterized by the creation of a substantial and unjustifiable risk of harm to others and by a conscious (and sometimes deliberate) disregard for or indifference to that risk; heedless; rash."⁶⁶ While putting Mr. Cabrera's account numbers in her phone's notes app was a poor decision, the ALJ does not find that Ms. Quintero consciously disregarded a substantial and unjustifiable risk of harm, and thus, she did not act recklessly. Instead, the ALJ finds that her actions are more appropriately characterized as an

⁶⁵ Tex. Penal Code § 6.03(c).

⁶⁶ *Reckless*, Black's Law Dictionary (11th ed. 2019).

honest mistake. Notably, although she was terminated, it was due to her storing a customer's information in her phone, not for her use of that information. Additionally, there was no criminal action or police inquiry.

Accordingly, the ALJ concludes that Staff failed to meet its burden of proof to show that Ms. Quintero engaged in fraudulent or dishonest acts or practices.

B. ALLEGED FAILURE TO NOTIFY THE DEPARTMENT

Under Texas Insurance Code § 4001.252(a)(3), Ms. Quintero was required to notify the Department of the administrative action taken against her by FINRA. The ALJ finds credible Ms. Quintero's testimony that she called the Department and informed them of the action taken against her by FINRA. Staff has not identified any further act of notification that was required. In addition, to the extent that Staff believes that Ms. Quintero violated the Insurance Code, Staff has not alleged that the violation was "willful" as would be required to impose disciplinary action under Texas Insurance Code § 4005.101(b)(1). Accordingly, the ALJ concludes that Staff failed to meet its burden of proof to show that disciplinary action is warranted.

V. CONCLUSION

For the foregoing reasons, the ALJ concludes that Staff did not meet its burden to prove the allegations against Ms. Quintero, and therefore, no disciplinary action should be imposed against her. In support of this determination, the ALJ makes the following findings of fact and conclusions of law.

VI. FINDINGS OF FACT

1. Marisa Kathleen Quintero was issued a general lines agent license with a life, accident, and health qualification by the Texas Department of Insurance (Department) on February 15, 2019.
2. Ms. Quintero become registered with the Financial Industry Regulatory Authority (FINRA) as an Investment Company and Variable Contracts Products Representative in 2018.
3. From 2012 to July 2019, Ms. Quintero was employed as a bank teller with JPMorgan Chase.
4. In May 2019, Ms. Quintero's friend and fellow bank teller, Jorgelina Ahualli, asked Ms. Quintero for assistance with two accounts for Ms. Ahualli's boyfriend, Sergio Cabrera. Ms. Quintero was not at work at the time, so she recorded the two account numbers, one with JPMorgan Chase and one with Wells Fargo, in the notes app in her phone labeled "Chase account."
5. Around this time, Ms. Quintero and her husband, Elkin Quintero, decided to take out a loan from his 401(k) account to make payments on Ms. Quintero's credit card accounts, including with Citibank and Macy's
6. Ms. Quintero does not know her husband's or her account numbers by memory, so she stored them in her phone's notes app.
7. Ms. Quintero intended to pay her Citibank account online using Mr. Quintero's JPMorgan Chase account, but she mistakenly referenced the note with Mr. Cabrera's account information and entered his JPMorgan Chase account number into the payment system.
8. Mr. Cabrera's and Mr. Quintero's accounts with JPMorgan Chase had the same routing number and had account numbers that ended in 0990 and 0991, respectively.
9. Ms. Quintero intended to pay her Macy's account online using her credit union account, but she mistakenly referenced the note with Mr. Cabrera's account information and entered his Wells Fargo account number into the

payment system. Ms. Quintero mistakenly assumed that the account number listed under the “Chase” account number in the note on her phone was for her credit union account.

10. Ms. Quintero made the following unauthorized transactions totaling \$10,117.64 from Mr. Cabrera’s accounts:
 - a. 5/21/2019 – Citibank payment \$3,022.51 (JPMorgan Chase)
 - b. 6/13/2019 – Citibank payment \$2,807.58 (JPMorgan Chase)
 - c. 6/17/2019 – Macy’s payment \$537.46 (Wells Fargo)
 - d. 6/24/2019 – Citibank payment \$1,160.54 (JPMorgan Chase)
 - e. 7/5/2019 – Citibank payment \$375.80 (JPMorgan Chase)
 - f. 7/5/2019 – Macy’s payment \$388.56 (Wells Fargo)
 - g. 7/15/2019 – Macy’s payment \$597.31 (Wells Fargo)
 - h. 7/29/2019 – Macy’s payment \$1,227.88 (Wells Fargo)
11. Ms. Ahualli notified Ms. Quintero of the charges on Mr. Cabrera’s JPMorgan Chase account on July 14, 2019, after which no further charges were made to that account.
12. Ms. Ahualli notified Ms. Quintero of the charges on Mr. Cabrera’s Wells Fargo account on July 30, 2019, after which no further charges were made to that account.
13. Ms. Quintero repaid all funds to Mr. Cabrera within 13 days.
14. There was no criminal action or police inquiry into the unauthorized transactions.
15. Ms. Quintero’s employer, JPMorgan Chase, investigated her actions and terminated her employment.
16. FINRA investigated Ms. Quintero’s actions, and she entered into an agreed order consenting to be barred from associating with any FINRA member in any capacity, but “without admitting or denying the findings and solely for the purposes of this [FINRA] proceeding.”

17. On March 2, 2021, Ms. Quintero called the Department, explained that her FINRA license had been barred, and asked if she was still able to work with her current insurance license. The person she spoke with at the Department said she was in good standing and did not advise her that she needed to report the FINRA matter in any other way.
18. On June 15, 2022, the staff (Staff) of the Department mailed a Notice of Hearing to Ms. Quintero that contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
19. After multiple continuances, State Office of Administrative Hearings (SOAH) Order No. 5, issued on April 11, 2023, reset the hearing on the merits for June 22, 2023, via videoconference.
20. The hearing on the merits convened on June 22, 2023, via videoconference before SOAH Administrative Law Judge Cassandra Quinn. Staff was represented by attorneys Allison Anglin and Stephanie Andrews. Ms. Quintero was represented by attorney Kerry Bloodsaw. The hearing concluded that same day, and the record closed on July 11, 2023, when the court reporter's transcript was filed with SOAH.
21. The preponderance of the evidence did not show that Ms. Quintero acted intentionally, knowingly, or recklessly in storing Mr. Cabrera's account numbers in her phone's note app or in using them to make payments on her credit card accounts.
22. The preponderance of the evidence did not show that Ms. Quintero's actions involved deliberate or reckless deception.
23. Ms. Quintero made an honest mistake in using Mr. Cabrera's accounts to make payments on her credit card accounts.
24. Ms. Quintero notified the Department of the administrative action taken against her by FINRA.

VII. CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter of this proceeding. Tex. Ins. Code §§ 82.051-.055, 84.021-.044, 4001.002, 4005.101-.102.
2. SOAH has jurisdiction over all matters relating to the conduct of the proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052; Tex. Ins. Code § 4005.104(b).
4. Staff has the burden of proof to establish a violation by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427; *Granek v. Tex. St. Bd. of Med. Examin'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
5. The Department may take disciplinary action against a license holder who has willfully violated an insurance law of this state or has engaged in fraudulent or dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(1), (5).
6. Staff did not demonstrate that Ms. Quintero willfully violated an insurance law of this state or engaged in fraudulent or dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(1), (5).
7. A licensed agent must notify the Department of an administrative action taken against the license holder by a financial or insurance regulator of this state, another state, or the United States. Tex. Ins. Code § 4001.252(a)(3).
8. Staff did not demonstrate that Ms. Quintero failed to notify the Department of the administrative action taken by FINRA.
9. Disciplinary action should not be imposed against Ms. Quintero.

2024-8515

SIGNED August 17, 2023.



Cassandra Quinn

Presiding Administrative Law Judge

2024-8515

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Associated Case Party: Texas Department of Insurance

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Ginger Loeffler		Ginger.Loeffler@tdi.texas.gov	8/17/2023 4:15:36 PM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	8/17/2023 4:15:36 PM	SENT

Associated Case Party: Chief Clerk

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Associated Case Party: Marisa Kathleen Quintero

Name	BarNumber	Email	TimestampSubmitted	Status
Kerry J.Bloodsaw		[REDACTED]	8/17/2023 4:15:36 PM	SENT
Marisa Kathleen Quintero		[REDACTED]	8/17/2023 4:15:36 PM	SENT
Penny Smith		[REDACTED]	8/17/2023 4:15:36 PM	SENT
Melissa Hooper		[REDACTED]	8/17/2023 4:15:36 PM	SENT
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Exhibit B

FILED
454-22-02836
9/19/2023 1:16 PM
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State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

September 19, 2023

Allison Anglin
Texas Department of Insurance

VIA EFILE TEXAS

Kerry Bloodsaw
Bertolino LLP
Counsel for Respondent

VIA EFILE TEXAS

RE: SOAH Docket No. 454-22-02836.C; TDI No. 27016;
Texas Department of Insurance v. Marisa Kathleen Quintero

Dear Parties:

On August 17, 2023, the undersigned Administrative Law Judge (ALJ) issued a Proposal for Decision (PFD) in this matter. On September 1, 2023, the staff (Staff) of the Texas Department of Insurance (TDI) filed exceptions to the PFD. On September 11, 2023, Marisa Kathleen Quintero filed a reply to the exceptions.¹ The ALJ does not recommend changes to the PFD, but responds to three issues raised by Staff.

First, Staff contends the PFD misapplies the law by relying on Ms. Quintero's testimony and not describing or considering Staff's evidence. The ALJ, however, considered the entirety of the evidence presented in this case. Many of the facts established by Staff's evidence were uncontested and therefore summarized only in the Background section of the PFD, with citations to Staff's exhibits. While Staff

¹ On September 14, 2023, Staff filed a reply to Ms. Quintero's reply to exceptions. Such a filing is not authorized by SOAH's rules, and Staff did not present good cause for submitting a reply. *See* 1 Tex. Admin. Code § 155.507. The ALJ therefore did not consider the additional filing.

frames this issue as a purported legal error, its arguments generally relate to the ALJ's weighing of the evidence. As discussed in the PFD, the ALJ found Ms. Quintero's explanation of events credible. Staff did not present a witness (other than Ms. Quintero), and the ALJ found Staff's documentary evidence generally supported and, at a minimum, did not outweigh Ms. Quintero's position. Staff argues for the first time in exceptions that the report in TDI Exhibit 3 contradicts Ms. Quintero's statement that she called TDI to ask about the effect of her agreed order with FINRA. However, the record contains no evidence that this report would include such communications if they had occurred, thus leaving Ms. Quintero's statement un rebutted.² Ultimately, Staff had the burden of proving its allegations by a preponderance of the evidence and, in the ALJ's view, did not meet that burden.

Next, Staff asserts that the PFD erroneously required that an insurance agent's failure to report an adverse administrative action to TDI must be "willful." In Staff's view, the PFD conflated two separate violations of the Insurance Code: (1) Section 4001.252(a)(3), which states that "[a]n individual licensed as an agent shall notify [TDI] on a monthly basis of...an administrative action taken against the license holder...;" and (2) Section 4005.101(b)(1), which states that TDI may discipline a license holder if TDI determines the person "has wilfully violated an insurance law of this state." Yet, Section 4001.252 does not specify any consequence for failing to notify TDI. Instead, the authority to discipline a license holder for statutory violations is contained in Section 4005.101(b)(1), which applies only to willful violations. The ALJ therefore concludes that, to discipline a license holder for a violation under Section 4001.252(a)(3), the violation must have been committed willfully, as contemplated under Section 4005.101(b)(1).

Finally, Staff states that the PFD inappropriately included a definition of "recklessness" that applies in criminal, not civil, cases. As noted in the PFD, TDI has determined that a license holder's recklessness can support a finding of fraudulent or dishonest acts or practices. The standard for determining whether conduct is reckless is not defined in the Insurance Code or TDI's rules, and the ALJ is unaware of a TDI decision defining the term. Staff also did not provide an

² Staff also alleges that Ms. Quintero admitted she failed to report the FINRA action to TDI; however, this allegation is not supported by the evidence. *See* TDI Ex. 2 at 21 ("Quintero denies that she violated Tex. Ins. Code § 4005.252(a)(3) by failing to notify the department of the administrative action against her by FINRA.").

2024-8515

Exceptions Letter

September 19, 2023

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applicable definition. The ALJ therefore considered how the term is defined in other contexts, specifically in the Penal Code and Black's Law Dictionary. Considered together, these definitions indicate that reckless conduct is characterized by a conscious disregard of a substantial and unjustifiable risk of harm, which is the standard the ALJ applied in this case. The ALJ leaves it to the Commissioner's discretion to determine whether a different definition is more appropriate for cases arising under the Insurance Code.

For the reasons discussed above, the ALJ does not recommend adopting Staff's proposed changes to the PFD. Because the State Office of Administrative Hearings has concluded its involvement in this matter, the case is being remanded to TDI. *See* Tex. Gov't Code § 2003.051 a .



Cassandra Quinn,

Presiding Administrative Law Judge

CC: Service List

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Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	9/19/2023 1:16:44 PM	SENT

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Associated Case Party: Marisa Kathleen Quintero

Name	BarNumber	Email	TimestampSubmitted	Status
Bertolino LLP		[REDACTED]	9/19/2023 1:16:44 PM	SENT
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Marisa Kathleen Quintero		[REDACTED]	9/19/2023 1:16:44 PM	SENT
Penny Smith		[REDACTED]	9/19/2023 1:16:44 PM	SENT
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