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ADMINISTRATIVE HEARINGS  
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# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

December 20, 2022

Cassie Tigue  
Texas Department of Insurance  
Enforcement, MC ENF  
PO Box 12030  
Austin, Texas 78711-2030

**VIA EFILE TEXAS**

**RE: Docket Number 454-22-02837.C; *Texas Department of Insurance*  
*v. Andrew Joseph Mitchell***

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas Administrative Code section 155.507(b), a SOAH rule which may be found at [www.soah.texas.gov](http://www.soah.texas.gov).

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# BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

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TEXAS DEPARTMENT OF INSURANCE,  
PETITIONER

v.

ANDREW JOSEPH MITCHELL,  
RESPONDENT

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**BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

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**TEXAS DEPARTMENT OF INSURANCE,  
PETITIONER**

**V.**

**ANDREW JOSEPH MITCHELL,  
RESPONDENT**

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**PROPOSAL FOR DECISION**

The staff (Staff) of the Texas Department of Insurance (Department) brought this disciplinary action against Andrew Joseph Mitchell (Respondent). Staff alleges that Respondent violated the Texas Insurance Code and demonstrated his lack of fitness as a public insurance adjuster by: willfully violating insurance laws of this state; misappropriating, converting to his own use, or illegally withholding money belonging to an insured, insurer, or beneficiary; engaging in fraudulent or dishonest acts; conducting the business of insurance without a license; failing to conduct

business fairly; receiving commissions exceeding ten percent of the amount of the insurance settlement on the claim; and failing to notify the Department of administrative actions taken against him. The Administrative Law Judge (ALJ) finds that Staff established violations sufficient to support revocation of Respondent's license, ordering Respondent to make restitution to the victims, ordering Respondent to pay administrative penalties, and issuing a cease and desist order.

## **I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY**

There are no disputed issues of notice or jurisdiction in this case. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing on the merits was held via the Zoom videoconferencing platform on October 12, 2022, before ALJ Rachelle Nicolette Robles of the State Office of Administrative Hearings (SOAH). Staff attorney Cassie Tigue represented Staff. Respondent appeared and was represented by his attorney, David W. Alexander. The record closed on November 10, 2022, upon submission of written closing briefs.

## **II. APPLICABLE LAW**

The Texas Insurance Code (Code) authorizes the Department to regulate the

business of insurance in this state.<sup>1</sup>

The Department may take disciplinary action against a license holder for violation of an insurance law.<sup>2</sup> For a violation of the Code, the Department may revoke, suspend, or deny renewal of a license; place the license holder on probation if the license holder was suspended; assess an administrative penalty; or issue a reprimand.<sup>3</sup> The grounds for disciplinary action include, but are not limited to, willfully violating an insurance law of this state; misappropriating or illegally withholding money belonging to an insured; and engaging in fraudulent or dishonest acts or practices.<sup>4</sup> After notice and opportunity for a hearing, the Department may cancel or revoke an authorization of a public insurance adjuster if the holder of the authorization is found to be in violation of the Code or a commissioner rule.<sup>5</sup>

Additionally, the commissioner can set a hearing on whether to seek administrative relief if the commissioner has reason to believe that a person has engaged in the practice of unauthorized business of insurance.<sup>6</sup> Conduct that constitutes the business of insurance includes directly or indirectly representing a person in investigating or adjusting a claim or loss or doing any kind of insurance business specifically recognized as constituting insurance business within the

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<sup>1</sup> Tex. Ins. Code § 31.002(1).

<sup>2</sup> Tex. Ins. Code § 4005.101.

<sup>3</sup> Tex. Ins. Code § 4005.102.

<sup>4</sup> Tex. Ins. Code § 4005.101(b).

<sup>5</sup> Tex. Ins. Code § 4102.201.

<sup>6</sup> Tex. Ins. Code § 101.151.

meaning of statutes relating to insurance.<sup>7</sup> The remedies for engaging in such practice include, but are not limited to: the issuance of a cease and desist order; the imposition of an administrative penalty; directing the individual to make restitution; requesting the attorney general to recover a civil penalty or seek restitution; or a combination of these actions.<sup>8</sup>

A license holder may not use a name different from the name under which the license holder is currently licensed in advertisement, solicitation, or contract for business unless the name is used under a valid assumed name certificate as provided by Business and Commerce Code, chapter 71.<sup>9</sup>

A licensee may receive a commission for service as a public insurance adjuster consisting of an hourly fee, a flat rate, a percentage of the total amount paid by an insurer to resolve a claim, or other method of compensation.<sup>10</sup> The total commission may not exceed 10 percent of the amount of the insurance settlement on the claim.<sup>11</sup> A licensee may not accept any payment that fails to conform with these parameters.<sup>12</sup>

A public insurance adjuster must abide by a code of ethics, which requires him or her to conduct business fairly with their clients, insurance companies, and the

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<sup>7</sup> Tex. Ins. Code § 101.051(b).

<sup>8</sup> Tex. Ins. Code § 101.103.

<sup>9</sup> Tex. Ins. Code § 4102.162.

<sup>10</sup> Tex. Ins. Code § 4102.104(a).

<sup>11</sup> Tex. Ins. Code § 4102.104(a).

<sup>12</sup> Tex. Ins. Code § 4102.104(d).

public; not misrepresent to an insured or insurance company in the conduct of their actions as public insurance adjusters; only charge commissions that comply with Chapter 4102 of the Code and the applicable rules; and must only use contracts that comply with Texas law.<sup>13</sup>

The Code provides that an individual licensed as an agent shall notify the department on a monthly basis of an administrative action taken against the license holder by a financial or insurance regulator of this state, another state, or the United States.<sup>14</sup>

Staff bears the burden to prove these allegations by a preponderance of the evidence.<sup>15</sup>

### **III. EVIDENCE**

At the hearing, Staff offered 28 exhibits, all of which were admitted, and provided the testimony of 15 witnesses:

- (1) Pastor Carl White, Friendship Missionary Baptist Church (Friendship Missionary);
- (2) Deborah de la Paz-Boxer, Cypress Insurance Group (Cypress);

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<sup>13</sup> 28 Tex. Admin. Code § 19.713.

<sup>14</sup> Tex. Ins. Code § 4001.252(a)(3).

<sup>15</sup> 1 Tex. Admin. Code § 155.427.



- (3) Richard Galaviz, Farmers Insurance (Farmers);
- (4) Xenia Morales, on behalf of Ricardo and Maria Sanchez;
- (5) Alfonso Ramirez;
- (6) Robes St. Juste, on behalf of St. Juste Management Corporation (St. Juste);
- (7) Jose Fernandez, on behalf of Tilo's Tex Mex (Tilo's);
- (8) Garth Andress;
- (9) Carmen Waukau, Church Mutual Insurance Company (Church Mutual);
- (10) Sanjay Patel, Om Sai Hotel d/b/a Econo Lodge (Econo Lodge);
- (11) Man "Sunny" Mohan Singh, Durba Hospitality, Inc. d/b/a Travelodge (Travelodge);
- (12) Tim Flitter, Brevent Financial;
- (13) Russell Meyers, Midland Health;
- (14) Kevin Smith, Church Insurance Company of Vermont (Church Insurance); and
- (15) Lewis Weldon Wright, IV of the Department.

Respondent offered 16 exhibits, none of which were admitted.<sup>16</sup> Additionally, Respondent testified on his own behalf.

## **A. Allegations and Evidence**

### **1. Allegations Related to Specific Parties**

The allegations related to individual insureds involve similar assertions: (1) Respondent misrepresented to the insurance company that he was representing the insured for purposes of the insured's insurance claim; (2) Respondent forged the insured's signature on checks issued payable to the insured, without the insured's knowledge and consent; (3) Respondent failed to remit the funds owed to the insured; or a combination of the above, depending on the circumstances. Facts specific to each insured will be addressed in turn below.

In sum, Respondent obtained \$7,619,531.25 by forging signatures on checks intended for insureds, but Respondent paid back \$1,022,968.27 to various insureds, resulting in a balance of \$6,606,562.98 owed to insureds.

#### **a) Friendship Missionary Baptist Church**

Friendship Missionary, located in Albany, Georgia, filed a claim with its insurer, Brotherhood Mutual Insurance Company (Brotherhood Mutual), for

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<sup>16</sup> Staff objected to all 16 exhibits proposed by Respondent. Staff objected to Respondent Ex. 1, because there was no substantive information in the document. Staff objected to Respondent Exs. 2 through 15, because of a lack of authentication. Respondent withdrew Respondent Ex. 16 from consideration.

damages incurred during a hurricane.<sup>17</sup> It received its first settlement check for \$183,207.89, dated November 15, 2018, and received the funds from this check.<sup>18</sup>

Pastor Carl White testified that, on or about December 18, 2018, Friendship Missionary entered into an agreement with a building contractor that purported to be able to obtain additional funds for repairs. Pastor White also stated that Respondent was present for the meetings between the contractor and Friendship Missionary.

On July 24, 2019, Brotherhood Mutual issued a check payable to Friendship Missionary and “[LCT] dba Texas Claim Consultants”, in the amount of \$3,376,102.18.<sup>19</sup> Respondent endorsed the check and deposited it into his account, without remitting funds to Friendship Missionary.<sup>20</sup> Between July and August 2019, Respondent, through another one of his companies, Texas Wind Consultants, issued several checks from his account to the insured, for a total of \$800,000.<sup>21</sup>

On December 11, 2019, Brotherhood Mutual issued a third check, in the amount of \$2,762,783.93, made payable again to Friendship Missionary and “[LCT] dba Texas Claim Consultants”.<sup>22</sup> Respondent forged the insured’s signature,

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<sup>17</sup> TDI Initial Brief.

<sup>18</sup> TDI Ex. 10.

<sup>19</sup> TDI Ex. 10.

<sup>20</sup> TDI Ex. 10.

<sup>21</sup> TDI Ex. 10.

<sup>22</sup> TDI Ex. 10.

depositing the check into his own account the next day.<sup>23</sup> Respondent did not subsequently remit the funds to Friendship Missionary.<sup>24</sup>

On January 6, 2021, Brotherhood Mutual issued a fourth check, in the amount of \$544,512.80, made payable to the same parties.<sup>25</sup> Respondent forged insured's signature on this check, depositing the funds into his account.<sup>26</sup> Respondent did not remit funds from the fourth check from the insurer to the insured.<sup>27</sup>

**b) Guillermo Zapata**

On May 9, 2019, Mr. Zapata's roof sustained damage; he filed a claim with QBE Insurance Corporation a/k/a North Queensland Insurance Company Limited (QBE) on June 21, 2019.<sup>28</sup> Lewis Wright testified on behalf of the Department regarding records in connection with Mr. Zapata's insurance claim.

A contract dated June 3, 2019, purportedly executed between Mr. Zapata and Respondent, was forwarded to QBE; Mr. Zapata's name is typed into the signature

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<sup>23</sup> TDI Ex. 10.

<sup>24</sup> TDI Ex. 10.

<sup>25</sup> TDI Ex. 10.

<sup>26</sup> TDI Ex. 10.

<sup>27</sup> TDI Ex. 10.

<sup>28</sup> TDI Ex. 11.

line.<sup>29</sup> On October 28, 2019, Respondent's employee emailed QBE, informing it that Respondent ceased representing the insured as of the previous day.<sup>30</sup>

On October 29, 2019, QBE issued a check payable to Mr. Zapata, Respondent, and "Mr. Cooper," in the amount of \$4,171.27.<sup>31</sup> Respondent forged Mr. Zapata's signature on the check, depositing the funds into his own account.<sup>32</sup> Respondent did not remit funds from the check to Mr. Zapata.<sup>33</sup>

On March 2, 2020, Respondent sent another email to QBE, reaffirming that Respondent was again representing Mr. Zapata on his insurance claim.<sup>34</sup> On May 12, 2020, Respondent sent a confirmation that the repairs were completed by MZM Consulting, LLC (MZM), requesting a release of all recoverable depreciation.<sup>35</sup> On May 13, 2020, QBE issued a check to Mr. Zapata, Respondent, and Mr. Cooper, in the amount of \$3,119.70.<sup>36</sup> Respondent forged the insured's signature and attempted to deposit the check into his account, but the check was returned.<sup>37</sup>

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<sup>29</sup> TDI Ex. 11.

<sup>30</sup> TDI Ex. 11.

<sup>31</sup> TDI Ex. 11.

<sup>32</sup> TDI Ex. 11.

<sup>33</sup> TDI Ex. 11.

<sup>34</sup> TDI Ex. 11.

<sup>35</sup> TDI Ex. 11.

<sup>36</sup> TDI Ex. 11.

<sup>37</sup> TDI Ex. 23.

Ultimately, QBE reissued a check payable only to Mr. Zapata on May 18, 2020, in the amount of \$4,171.21, the same amount of the original check that was intended for the insured.<sup>38</sup> Burton Restoration, LLC informed QBE that it was the company that completed repairs for the insured, not MZM.<sup>39</sup> On August 11, 2020, Mr. Zapata sent a notarized letter to QBE, notifying it that he wanted to ensure that Respondent was not involved in his insurance claim, and that he would interact with QBE directly.<sup>40</sup>

**c) Luis and Norma Rodriguez**

Richard Galaviz, employed in the Special Investigations Unit of Farmer's Insurance (Farmer's), testified as to its business records regarding Luis and Norma Rodriguez's insurance claim.<sup>41</sup>

On or about May 10, 2019, the Rodriguez's roof sustained damage. Subsequently, two men approached Mr. Rodriguez and presented him with a document.<sup>42</sup> However, Mr. Rodriguez is a native Spanish speaker and does not speak English.<sup>43</sup> He signed the document, which was in English, as he had been informed that it was a document for a free roof inspection, not that it was a contract; he was

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<sup>38</sup> TDI Ex. 11.

<sup>39</sup> TDI Ex. 11.

<sup>40</sup> TDI Ex. 11.

<sup>41</sup> Farmer's acquired MetLife in 2020.

<sup>42</sup> TDI Ex. 14.

<sup>43</sup> TDI Ex. 14.

not given a copy of the document.<sup>44</sup> Mr. Rodriguez did not authorize the company to cash a check on his behalf.<sup>45</sup>

Respondent sent a contract, dated September 12, 2019, to Mr. Rodriguez's insurance company, Metropolitan Lloyds Company of Texas (MetLife).<sup>46</sup> On September 25, 2019, MetLife issued a check payable to Respondent and the insureds, in the amount of \$2,150.97.<sup>47</sup> Respondent forged the insured's signature, depositing the check into his own account.<sup>48</sup> Respondent did not remit any funds from the check to the insureds.<sup>49</sup>

On April 23, 2020, Respondent, through Texas Wind Consultants LLC, issued a cashier's check payable to MetLife, in the amount of \$2,150.97, intended as restitution for the funds he received from the check issued to the insureds.<sup>50</sup>

**d) Martin and Valerie Villanueva**

Deborah de la Paz-Boxer, a manager in the Special Investigations Unit of Cypress, testified regarding facts contained in Cypress's business records regarding Martin and Valerie Villanueva's insurance claim.

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<sup>44</sup> TDI Ex. 14.

<sup>45</sup> TDI Ex. 14.

<sup>46</sup> TDI Ex. 14.

<sup>47</sup> TDI Ex. 14.

<sup>48</sup> TDI Ex. 14.

<sup>49</sup> TDI Ex. 23.

<sup>50</sup> TDI Ex. 14.

On January 8, 2019, the Villanueva's roof sustained wind and hail damage. They filed a claim with Cypress, which sent a roof inspector to their property.<sup>51</sup>

A contract between Respondent and Mr. Villanueva, dated August 19, 2019, was sent to Cypress; the contract had a digital signature was purported to be Mr. Villanueva's signature.<sup>52</sup> On October 31, 2019, Cypress issued a check payable to the insureds and "Texas Claim Consultants Andrew J. Aga," in the amount of \$8,618.02.<sup>53</sup> Respondent received the check, forged the insured's signature, and deposited it into his account.<sup>54</sup> Respondent did not remit any of the funds from the check to the insureds.<sup>55</sup>

Ms. de la Paz-Boxer testified that Mr. Villanueva contacted Cypress on January 9, 2020, following up on the status of the check.<sup>56</sup> When he learned that a settlement check had been sent out and cleared, he informed Cypress that he did not endorse the check.<sup>57</sup> After the adjuster for Cypress obtained copies of the insureds'

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<sup>51</sup> TDI Ex. 13A.

<sup>52</sup> TDI Ex. 13.

<sup>53</sup> TDI Ex. 13.

<sup>54</sup> TDI Ex. 13.

<sup>55</sup> TDI Ex. 13.

<sup>56</sup> TDI Ex. 13.

<sup>57</sup> TDI Ex. 13.



drivers licenses, confirming their actual signatures, it remitted another check directly to the insureds.<sup>58</sup>

**e) Ricardo and Maria Sanchez**

Xenia Morales testified on behalf of her parents, Ricardo and Maria Sanchez. Her parents are native Spanish speakers and speak a minimal amount of English, but Ms. Morales lives with them and aids them in navigating issues that might require translation.

Ms. Morales testified that, on or about May 19, 2019, Mr. and Mrs. Sanchez's roof sustained damage. She was the primary contact for the insurance claim the insureds filed on August 2, 2019, with Allstate Vehicle and Property Insurance Company (Allstate).

On April 14, 2020, Allstate issued a check payable to "Andrew J. Aga and Ricardo and Maria H. Sanchez", in the amount of \$6,623.30.<sup>59</sup> Respondent forged the insureds' signature, depositing it into his account on July 9, 2020.<sup>60</sup> Respondent did not remit any of the funds from the check made payable to the insureds to Mr. and Mrs. Sanchez.<sup>61</sup>

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<sup>58</sup> TDI Ex. 13.

<sup>59</sup> TDI Ex. 17.

<sup>60</sup> TDI Ex. 23.

<sup>61</sup> TDI Ex. 23.

On July 13, 2020, a representative from Respondent's firm contacted Allstate to follow up on the payment for the claim, asking for the check to be canceled and reissued.<sup>62</sup> Allstate reissued the check the same day, but it was never deposited, by either Respondent or the insureds.<sup>63</sup> Allstate had a separate conversation with Ms. Morales that day, where she had informed Allstate that she had left a voicemail with Respondent, indicating that she would be hiring an attorney to represent her parents regarding the payment for the insurance claim.<sup>64</sup>

Allstate had received three different documents in connection with the insureds' insurance claim, all purportedly signed by Mr. Sanchez, including a contract for Respondent's services as a public insurance adjuster.<sup>65</sup> However, Ms. Morales testified her parents did not enter into a contract with Respondent, and that they would have enlisted her assistance if they had. She confirmed the signature on the documents was not her father's.

**f) Alfonso Ramirez**

On May 9, 2019, Alfonso Ramirez's roof sustained wind and hail damage. He testified that he filed an insurance claim with Farmer's.

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<sup>62</sup> TDI Ex. 17.

<sup>63</sup> TDI Ex. 17.

<sup>64</sup> TDI Ex. 17.

<sup>65</sup> TDI Ex. 17.

Respondent sent Farmer's a contract purportedly between himself and Mr. Ramirez, dated June 12, 2019, to provide services as a public insurance adjuster; his name is typed into the signature line.<sup>66</sup> Subsequently, Mr. Ramirez was approached by MZM regarding roofing services, and he entered into an agreement with that company on July 26, 2019.<sup>67</sup>

On February 18, 2020, Farmer's issued a check payable to insured and Respondent, in the amount \$17,172.36.<sup>68</sup> Respondent forged the insured's signature, depositing it into his own account. Respondent did not remit funds from the check to Mr. Ramirez.<sup>69</sup>

On March 26, 2020, Mr. Ramirez contacted Farmer's to follow up on the status of his insurance claim.<sup>70</sup> He testified that the check was sent to Respondent and cashed. Mr. Ramirez stated that the contact at Farmer's put him in touch with David Swindell in its Fraud Division so that he could initiate an investigation.

Mr. Ramirez testified that he never signed a contract with Respondent and that he did not authorize Respondent to endorse the check on his behalf.

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<sup>66</sup> TDI Ex. 7.

<sup>67</sup> TDI Ex. 7.

<sup>68</sup> TDI Ex. 7.

<sup>69</sup> TDI Ex. 7.

<sup>70</sup> TDI Ex. 7.

**g) St. Juste Management Corporation**

Robes St. Juste, owner of St. Juste Management Corporation's testified at the hearing.

On May 27, 2020, five of St. Juste's buildings sustained wind and hail damage. Mr. St. Juste testified that Roof 911 approached him regarding repairing the roofs on his properties, since they had previously successfully performed similar services for him in the past.

On September 1, 2020, Respondent sent Nationwide Insurance Agency (Nationwide) a letter informing it that his public adjusting firm, Mitchell Adjusting International, was representing St. Juste in its insurance claim filed with Nationwide regarding its five damaged roofs.<sup>71</sup>

On December 8, 2020, Nationwide issued a check payable to the insured and Respondent, in the amount of \$31,961.77.<sup>72</sup> Respondent forged the insured's signature on the check, depositing the funds into his own account.<sup>73</sup> Respondent did not remit any of the funds from that check to the insured.<sup>74</sup>

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<sup>71</sup> TDI Ex. 18.

<sup>72</sup> TDI Ex. 18.

<sup>73</sup> TDI Ex. 18.

<sup>74</sup> TDI Ex. 18.

On January 11, 2021, Nationwide issued a second check payable the insured and Respondent, in the amount of \$30,558.40.<sup>75</sup> Respondent forged the insured's signature on the check, depositing the funds into his own account.<sup>76</sup> Respondent did not remit any of the funds from that check to the insured.<sup>77</sup>

#### **h) Tilo's Tex Mex**

Jose Fernandez, owner of Tilo's, testified at the hearing. On May 27, 2020, the Tilo's roof sustained wind and hail damage.<sup>78</sup> Mr. Fernandez testified that he hired Roof 911 to represent him against the insurance company, Nationwide, on his insurance claim. He was aware that Roof 911 had engaged Respondent's services, but he only had a contract with Roof 911, and not a separate agreement with Respondent. Mr. Fernandez testified that he did not authorize Respondent to be able to endorse checks on his behalf.

On September 2, 2020, Nationwide issued a check payable to "Mitchell Adjusting & BB&T & Wallis State Bank & Tilo Tex Mex LLC," in the amount of \$53,269.74.<sup>79</sup> Respondent forged the insured's signature on the check, depositing

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<sup>75</sup> TDI Ex. 18.

<sup>76</sup> TDI Ex. 18.

<sup>77</sup> TDI Ex. 18.

<sup>78</sup> TDI Ex. 21.

<sup>79</sup> TDI Ex. 21.

the funds into his own account.<sup>80</sup> Respondent did not remit of the funds from this check to the insured. A portion of the funds were sent to Roofing 911.<sup>81</sup>

On January 6, 2022, Nationwide issued a second check payable to “Mitchell Adjusting and BBandT and Wallis State Bank and Tilo Tex Mex LLC,” in the amount of \$35,963.12.<sup>82</sup> Respondent forged the insured’s signature on the check, depositing the funds into his own account.<sup>83</sup> Respondent did not remit any of the funds from this check to the insured.<sup>84</sup>

To date, Mr. Fernandez has not received any of the funds from the checks intended for him. He testified that made the repairs himself and paid for them out of pocket.

### **i) Garth and Lola Andress**

On February 16, 2021, Garth and Lola Andress’s home sustained damage during Winter Storm Uri, when the water in the pipes froze and burst.<sup>85</sup> Mr. Andress testified that they retained the services of “Mitchell Adjusting” as their public insurance adjuster in their insurance claim filed with their insurance company, Swyfft, LLC (Swyfft).

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<sup>80</sup> TDI Ex. 21.

<sup>81</sup> TDI Ex. 21.

<sup>82</sup> TDI Ex. 21.

<sup>83</sup> TDI Ex. 21.

<sup>84</sup> TDI Ex. 21.

<sup>85</sup> TDI Ex. 12.

On January 31, 2022, Swyfft issued two checks payable to Mr. Andress and Mitchell Adjusting International, one in the amount of \$27,826.08, and another in the amount of \$206.72.<sup>86</sup> Respondent forged the insured's signature on the check, depositing the funds into his own account.<sup>87</sup>

Mr. Andress testified that he had not endorsed the checks and that they had not received the funds from the checks from Respondent. They repeatedly contacted Respondent regarding the money. Ultimately, Respondent remitted the funds to the insureds in May 2022, after Mr. and Mrs. Andress filed a complaint with the Department.

**j) Debra Hile Saint Raguel Ethiopian Orthodox Church**

Carmen Waukau, a claims representative for Church Mutual, testified as to facts contained in Church Mutual's business records.

Respondent sent Church Mutual a letter dated June 17, 2021, stating that it was representing Debra Hile in its insurance claim.<sup>88</sup>

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<sup>86</sup> TDI Ex. 23.

<sup>87</sup> TDI Ex. 23.

<sup>88</sup> TDI Ex. 8.

On August 2, 2021, Church Mutual issued two checks: one made payable to “[Debra Hile] Peoplefund and Mitchell Adjusting International LLC,” in the amount of \$15,624.10; the other, made payable to “[Debra Hile],” in the amount of \$22,863.21.<sup>89</sup> Respondent forged the insured’s signature on the check, depositing the funds into his own account.<sup>90</sup> Respondent did not remit of the funds from this check to the insured.<sup>91</sup>

On September 1, 2021, Church Mutual issued a third check made payable to “[Debra Hile] and Peoplefund and Mitchell Adjusting International, LLC,” in the amount of \$9,219.93.<sup>92</sup> Respondent forged the insured’s signature on the check, depositing the funds into his own account.<sup>93</sup> Respondent did not remit any of the funds from this check to the insured.<sup>94</sup>

In an email dated June 4, 2022, sent from Father Bewketw Mihereta, the church administrator for Debra Hile, to Ms. Waukau and others at Church Mutual, he had several questions about the status of the claim, the lack of consultation being done with the insured, and stated that “the public adjuster we have been provided by Church Mutual adjuster is not responding”(emphasis added).<sup>95</sup> Moreover, he

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<sup>89</sup> TDI Ex. 8.

<sup>90</sup> TDI Ex. 8.

<sup>91</sup> TDI Ex. 8.

<sup>92</sup> TDI Ex. 8.

<sup>93</sup> TDI Ex. 8.

<sup>94</sup> TDI Ex. 8.

<sup>95</sup> TDI Ex. 8.



refers to the “the contractor from” Church Mutual and whether payment was directed to him.<sup>96</sup>

In a subsequent email to Church Mutual, Mr. Mihereta stated that Debra Hile had hired Roof 911 to perform the repairs.<sup>97</sup> However, he confirmed that Debra Hile did not enter into a contract with a third-party, Mitchell Adjusting International, LLC, with whom the insured does not have “any prior communication, knowledge, or agreement.”<sup>98</sup> He learned of another check issued to Mitchell Adjusting International, LLC, in the amount of \$47,707.24, only after calling Church Mutual and following up on its insurance claim.<sup>99</sup> In this email, Mr. Mihereta requested that Church Mutual clarify and provide documentation as to why it made payments in connection with its insurance claim to a third party.<sup>100</sup>

To date, the insured had not received any of the funds intended for its repairs. Ms. Waukau testified that the insured’s claim has been undergoing an appraisal process, at Respondent’s request, and that the insurance claim has been subjected to a protracted process because Respondent disputes the amount that should be paid out on the claim.

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<sup>96</sup> TDI Ex. 8.

<sup>97</sup> TDI Ex. 8.

<sup>98</sup> TDI Ex. 8.

<sup>99</sup> TDI Ex. 8.

<sup>100</sup> TDI Ex. 8.

**k) Om Sai Hotel LLC d/b/a Econo Lodge**

Sanjay Patel, owner of Econo Lodge, testified at the hearing.

On or about February 14, 2021, Econo Lodge sustained a loss due to Winter Storm Uri.<sup>101</sup> On June 11, 2021, Mr. Patel entered into a contract on behalf of Econo Lodge with Mitchell Adjusting as its public insurance adjuster in connection with its insurance claim filed with its insurance company.<sup>102</sup> Mr. Patel had not given Respondent the authority to endorse any checks received from the insurance company on Econo Lodge's behalf.

On October 22, 2021, Geico Texas County Mutual Insurance Company (Geico) issued a check payable to Econo Lodge and "Mitchell Adjusting International LLC", in the amount of \$102,078.51.<sup>103</sup> Respondent forged the insured's signature on the check, depositing the funds into his own account.<sup>104</sup>

On February 9, 2022, Northfield Insurance Company (Northfield) issued a check payable to the insured and "Mitchell Adjusting International," in the amount

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<sup>101</sup> TDI Ex. 15.

<sup>102</sup> TDI Ex. 15.

<sup>103</sup> TDI Ex. 15.

<sup>104</sup> TDI Ex. 23.

of \$166,235.33.<sup>105</sup> Respondent forged the insured's signature on the check, depositing the funds into his own account.<sup>106</sup>

Respondent issued two checks to the insured: one dated March 4, 2022, in the amount of \$97,604.53; and the other dated April 15, 2022, in the amount of \$206,728.99.<sup>107</sup> However, Mr. Patel testified that he was not able to cash the checks, due to insufficient funds. Subsequently, he received two wire transfers of \$25,000 each, and, as of the date of the hearing, he had been in ongoing settlement negotiations with Respondent as to the remaining amount owed.

### **l) Durga M. Hospitality, Inc. d/b/a Travelodge**

Man "Sunny" Mohan Singh, owner of Travelodge, testified at the hearing.

On May 3, 2021, Travelodge's roof sustained hail damage. On June 22, 2021, Travelodge entered into a contract with "Mitchell Adjusting International" to represent it in its insurance claim filed with Travelers Insurance Company (Travelers).<sup>108</sup>

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<sup>105</sup> TDI Ex. 15.

<sup>106</sup> TDI Ex. 23.

<sup>107</sup> TDI Ex. 15.

<sup>108</sup> TDI Ex. 9.

On September 28, 2021, Travelers issued a check payable to the insured and Texstar National Bank, in the amount of \$98,985.70.<sup>109</sup> Mr. Singh testified that first check was sent directly to him, not Respondent, and he received these funds from the insurance company.

On November 22, 2021, Travelers issued a second check payable to the insured and “Mitchell Adjusting International,” in the amount of \$6,984.20.<sup>110</sup> Respondent forged the insured’s signature on the check, depositing the funds into his own account.<sup>111</sup> Respondent did not remit any of the funds from this check to the insured.<sup>112</sup>

On May 9, 2022, Travelers issued a third check payable to only Respondent, in the amount of \$25,298.13.<sup>113</sup> Respondent forged the insured’s signature on the check, depositing the funds into his own account.<sup>114</sup> Respondent did not remit any of the funds from this check to the insured.<sup>115</sup>

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<sup>109</sup> TDI Ex. 9.

<sup>110</sup> TDI Ex. 9.

<sup>111</sup> TDI Ex. 23.

<sup>112</sup> TDI Ex. 9.

<sup>113</sup> TDI Ex. 9.

<sup>114</sup> TDI Ex. 23.

<sup>115</sup> TDI Ex. 9.

### **m) St. Paul's Lutheran Church**

Tim Flitter, an insurance and investment salesperson of Brevent Financial, testified during the hearing in connection with the allegations concerning St. Paul's Lutheran Church (St. Paul), located in St. Paul, Minnesota; Mr. Flitter is also a member of the church.

On June 20, 2019, St. Paul's roof sustained hail damage. St. Paul retained Respondent's services as a public insurance adjuster on its insurance claim with Brotherhood Mutual.<sup>116</sup> The contract allows Respondent to be an additional payee on the check, but it does not give him authority to endorse the check.<sup>117</sup>

On April 18, 2022, Brotherhood Mutual issued a check payable to the insured and "Andrew J. Aga," in the amount of \$179,746.47.<sup>118</sup> Respondent forged the insured's signature on the check, depositing the funds into his own account.<sup>119</sup>

Mr. Flitter testified that, on or about July 13, 2022, a representative of St. Paul's filed a police report regarding Respondent's conduct. That same day, Respondent issued a check to the insured, in the amount of \$142,784.50.<sup>120</sup>

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<sup>116</sup> TDI Ex. 20.

<sup>117</sup> TDI Ex. 20.

<sup>118</sup> TDI Ex. 20.

<sup>119</sup> TDI Ex. 23.

<sup>120</sup> TDI Ex. 20. Fifteen percent of the claim amount is \$29,961.97. If that amount were deducted from the total claim, Respondent should have remitted \$152,784.50 to St. Paul, leaving a shortfall of \$10,000 still owed.

#### **n) St. Nicholas Episcopal Church**

Russell Meyers, Chief Executive Officer of Midland Health, and Kevin Smith, employed with Church Insurance, testified at the hearing.

On or about March 4, 2020, St. Nicholas Episcopal Church's (St. Nicholas) roof sustained hail damage.<sup>121</sup> On or about March 5, 2020, Respondent sent correspondence to the insured's insurance company, Church Insurance, including a contract, stating that he was representing St. Nicholas in its insurance claim.<sup>122</sup> However, Mr. Meyers testified that St. Nicholas neither entered into a contract with Respondent nor give Respondent the authority to endorse checks in connection with its insurance claim on its behalf.

On or about November 19, 2020, Church Insurance issued a check payable to the insured, the Diocese of Northwest Texas, and Texas Claims, in the amount of \$6,352.82.<sup>123</sup> The check was sent to Respondent, because it was addressed to "Texas Claim Consultants Andrew Aga."<sup>124</sup> Respondent forged the insured's signature on the check, depositing the funds into his own account.<sup>125</sup> Respondent did not remit any of the funds from this check to the insured.<sup>126</sup>

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<sup>121</sup> TDI Ex. 20.

<sup>122</sup> TDI Ex. 20.

<sup>123</sup> TDI Ex. 20.

<sup>124</sup> TDI Ex. 20.

<sup>125</sup> TDI Ex. 23.

<sup>126</sup> TDI Ex. 20.

On January 27, 2022, Church Insurance issued another check payable to the insured and the Diocese of Northwest Texas, in the amount of \$11,413.97.<sup>127</sup> This time, the check was addressed to “ICG Claims Andrew Aga,” but it was still sent to Respondent.<sup>128</sup> Respondent forged the insured’s signature on the check, depositing the funds into his own account.<sup>129</sup> Respondent did not remit any of the funds from this check to the insured.<sup>130</sup>

## **2. Unlicensed Activity**

Mr. Wright, of the Department, testified that Respondent currently holds a valid public insurance adjuster license, initially issued in January 2011. Originally, the license was issued under his previous name, Andrew Joseph Aga.<sup>131</sup> His name was changed to his current name on December 5, 2019; he notified the Department of the name change on March 4, 2020.<sup>132</sup>

On May 22, 2020, the Department granted a public insurance adjuster firm license to Mitchell Adjusting International, LLC (Mitchell Adjusting), and

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<sup>127</sup> TDI Ex. 20.

<sup>128</sup> TDI Ex. 20.

<sup>129</sup> TDI Ex. 23.

<sup>130</sup> TDI Ex. 20.

<sup>131</sup> TDI Ex. 3.

<sup>132</sup> TDI Ex. 3.

Respondent was designated as the point of contact for the company as of June 2, 2020.<sup>133</sup> The license lapsed as of May 22, 2022, due to failure to renew.<sup>134</sup>

Respondent also conducted business as a public insurance adjuster under the name of various entities: International Consulting Group (ICG), Loss Consultants of Texas (LCT), Texas Wind Consultants (TWC), in addition to various other entities listed on contracts and in correspondence between Respondent, insurance companies, and insureds, in connection with outstanding insurance claims. Mr. Wright testified that ICG, LCT, and TWC do not hold current licenses with the Department.<sup>135</sup>

### **3. Payment of Improper Fees**

Staff argues that, by misappropriating and converting entire settlement checks intended for the insureds, Respondent received commissions that far exceed the 10 percent allowed under state law.<sup>136</sup> Moreover, his alleged fraudulent and dishonest conduct negates his entitlement to collect any commissions.<sup>137</sup>

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<sup>133</sup> TDI Ex. 3.

<sup>134</sup> TDI Ex. 3.

<sup>135</sup> *Also see* TDI Exs. 4, 5, and 6.

<sup>136</sup> Staff Initial Brief.

<sup>137</sup> Staff Initial Brief.



#### **4. Violation of the Code of Ethics**

Staff argues that Respondent violated the code of ethics by which public insurance adjusters are required to abide by allegedly defrauding insureds of the payments owed to them.<sup>138</sup>

#### **5. Failure to Report Other State Administrative Actions**

Mr. Wright testified as to records kept by the Department regarding administrative actions taken against the Respondent in other states and the fact that Respondent failed to notify the Department regarding those actions.

On November 12, 2020, the Louisiana Department of Insurance (LA DOI) ordered Respondent to cease and desist from violating insurance laws in that state and ordered him to pay a penalty.<sup>139</sup>

On October 13, 2021, the Colorado Department of Insurance issued an order suspending Respondent's license for failure to report other state administrative actions.<sup>140</sup>

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<sup>138</sup> Staff Initial Brief.

<sup>139</sup> TDI Ex. 26.

<sup>140</sup> TDI Ex. 25.

On February 18, 2022, the Washington Department of Insurance revoked Respondent's license for failure to report other state administrative actions.<sup>141</sup>

On May 27, 2022, the LA DOI imposed another obligation to pay a penalty, this time in connection with Respondent's failure to report other state's administrative actions taken against him.<sup>142</sup>

## **B. Respondent's Evidence and Argument**

Respondent testified that he has a business relationship with MZM, but he is not under an obligation to refer any business to them.

Respondent also provided some information regarding each of the insureds and his interactions with them. He generally contends that he does not owe the insureds any money, but he failed to submit any documentation to support this contention.

Respondent stated that he returned Mr. and Mrs. Rodriguez's check to the insurance adjuster. Respondent asserted that he wired the money he received from Mr. and Mrs. Villanueva's insurance claim, as well as money he received for Mr. Ramirez's insurance claim, to MZM so that it can repair their respective roofs. He stated that he wired money he received for St. Juste's, Tilo's, and Debra Hile's

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<sup>141</sup> TDI Ex. 28.

<sup>142</sup> TDI Ex. 27.

roofs to Roof 911 to make repairs. Respondent testified that Mr. and Mrs. Andress have been paid in full. Finally, he asserted that he is entitled to be paid a fee of 15 percent in Minnesota for work performed for St. Paul, since that amount is allowed under Minnesota law. However, Respondent failed to cite to applicable Minnesota law that would allow a 15 percent fee. Additionally, Respondent failed to explain why he kept \$10,000 more than the 15 percent fee when he finally sent a check to St. Paul.

Respondent denies Staff's assertion that he had endorsed the insureds' checks without authorization. He also argues that the Department should not revoke his license because the issue is moot, since he is willing to surrender the license.<sup>143</sup> Additionally, Respondent asserts that he cannot be ordered to pay restitution to parties that are based out of state.<sup>144</sup> Finally, he makes a blanket statement that he should not be ordered to pay an administrative penalty.<sup>145</sup>

#### **IV. ALJ's ANALYSIS**

The Commissioner may revoke a public insurance adjuster license on the basis of a violation of Insurance Code chapter 4102 or any rule adopted by the Commissioner under this chapter.<sup>146</sup> Moreover, the Commissioner may also order other disciplinary actions, such as ordering the Respondent to pay restitution and

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<sup>143</sup> Respondent Initial Brief.

<sup>144</sup> Respondent Initial Brief.

<sup>145</sup> Respondent Initial Brief.

<sup>146</sup> Tex. Ins. Code § 4102.201(a)(1).

administrative penalties, in addition to other remedies.<sup>147</sup> The Commissioner may impose a similar suite of sanctions if a person engages in the unauthorized practice of the business of insurance.<sup>148</sup>

Staff alleges several violations of the Insurance Code and Department rules as the basis for the revocation of Respondent's license, the imposition of administrative penalties, the payment of restitution, and ordering the Respondent to cease and desist.

The ALJ finds that Staff proved all the allegations by a preponderance of the evidence and that Respondent's conduct warrants revocation of his public insurance adjuster license, in addition to the imposition of further disciplinary actions. The alleged violations are addressed below.

#### **A. Willful Violation of Insurance Law**

The Department may discipline a license holder if the Department determines that the license holder has willfully violated an insurance law of this state.<sup>149</sup>

Staff argues that Respondent willfully violated an insurance law of this state by engaging in unauthorized practice of insurance, misappropriating or converting money belonging to insureds, and performing fraudulent or dishonest acts, in

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<sup>147</sup> Tex. Ins. Code § 4005.102.

<sup>148</sup> Tex. Ins. Code § 101.103.

<sup>149</sup> Tex. Ins. Code § 4005.101(b)(1).

addition to several other allegations.<sup>150</sup> Respondent issued a blanket denial that he willfully violated an insurance law of this state.<sup>151</sup>

As discussed in greater detail below, the ALJ finds that Staff proved by a preponderance of the evidence that Respondent willfully violated insurance laws of this state.

### **B. Misappropriation, Conversion, or Illegally Withholding Money Belonging to an Insured**

The Department may discipline a license holder if the Department determines that the license holder has misappropriated, converted to the license holder's own use, or illegally withheld money belonging to an insured.<sup>152</sup>

Staff presented firsthand witness testimony from insureds who testified that they did not authorize Respondent to endorse checks on their behalf. Additionally, employees of various insurance companies testified as to the investigations into Respondent's conduct in connection with insurance claims and findings of their investigations. Staff presented reams of documents corroborating the testimony, including email exchanges, purported contracts, bank statements, cancelled checks, and internal investigations made by insurance companies.

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<sup>150</sup> Staff Initial Brief.

<sup>151</sup> Respondent Initial Brief.

<sup>152</sup> Tex. Ins. Code §4005.101(b)(4)(C).

In contrast, Respondent issued a blanket denial he forged insureds' signatures on checks so that he could deposit them into his own account.<sup>153</sup>

Respondent also counters by stating that he owes less money than Staff alleges, either because the insured was out of state, and, thus, not required to return the money; he already made restitution of his own volition; or the money was sent to a roof repair service.<sup>154</sup> For several of the insureds, Respondent points to the witnesses' failure to testify as to whether Respondent paid the roofing company for repairs to justify Respondent's contention that he is not obligated to make restitution to the insureds for the missing funds.<sup>155</sup> However, Respondent is the only one who can testify as to whether the roofers were paid, since he is the one who actually received the money intended for the insureds to be able to pay the businesses that would repair their homes and commercial buildings. Respondent failed to provide any documentary evidence that he actually paid the repair companies on the insureds' behalf. Thus, Respondent failed to rebut Staff's argument as to the amount of money owed to insureds. Without accounting for any offsets, Respondent misappropriated approximately \$7.6 million from insureds.

The misconduct occurred when he forged the insured's signature on the check without the insured's authorization and deposited that money, intended for the insured, into his own account, regardless of what subsequently transpired. Thus,

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<sup>153</sup> Respondent Reply Brief.

<sup>154</sup> Respondent Reply Brief.

<sup>155</sup> Respondent Initial and Reply Briefs.

the ALJ finds that Staff proved by a preponderance of the evidence that Respondent misappropriated, converted to the license holder's own use, or illegally withheld money belonging to an insured.

### **C. Fraudulent or Dishonest Acts**

The Department may discipline a license holder if the Department determines that the license holder has engaged in fraudulent and dishonest acts.<sup>156</sup>

In some instances, Respondent sent a contract to the insurance company, purporting to represent an insured as his or her public insurance adjuster in connection with that insured's insurance claim. Staff presented witness testimony from insureds, or those familiar with the circumstances, that give credence to the argument that the insured did not actually enter into a contract with Respondent. Respondent's action of holding himself out as a public insurance adjuster representing the insured to the insurance company resulted in him receiving checks on behalf of the insureds. This, in turn, enabled him to receive the checks made payable to the insureds in connection with their respective insurance claims, allowing him to forge their signatures, converting money intended for the insureds, and deposit the funds into his own account.

These actions, in conjunction with the discussion above regarding whether Respondent misappropriated, converted, or illegally withheld funds belonging to the

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<sup>156</sup> Tex. Ins. Code § 4005.101(b)(5).

insureds, lead the ALJ to find that Staff proved by a preponderance of the evidence that Respondent engaged in fraudulent and dishonest acts.

#### **D. Unauthorized Practice of the Business of Insurance**

The Texas Insurance Code states that it is Texas's policy to protect residents against acts by a person who is not authorized to do insurance business in this state by protecting against evasion of the insurance regulatory laws of this state.<sup>157</sup> The policy also states that Texas will not become a safe harbor for persons engaged in the unauthorized business of insurance in Texas, regardless of whether the insureds or other persons affected by the unauthorized business of insurance are residents of Texas.<sup>158</sup>

If the Commissioner has a reason to believe that a person has engaged in the unauthorized practice of the business of insurance, the Commissioner may issue a cease and desist order, impose an administrative penalty, direct a person to make restitution, or a combination of thereof.<sup>159</sup> Conduct that constitutes the business of insurance includes, but is not limited to, directly or indirectly acting as an agent for or otherwise representing a person in forwarding an insurance application or investigating or adjusting a claim or loss.<sup>160</sup> A person may not act as a public

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<sup>157</sup> Tex. Ins. Code § 101.001(a).

<sup>158</sup> Tex. Ins. Code § 101.001(d).

<sup>159</sup> Tex. Ins. Code § 101.103(a).

<sup>160</sup> Tex. Ins. Code § 101.051(b).



insurance adjuster in Texas unless the person holds a license issued by the Commissioner.<sup>161</sup>

Staff argues that Respondent engaged in the unauthorized practice of the business of insurance because Respondent conducted the business of insurance under a multitude of business names, while the only valid license issued by the Department is the one that he holds on an individual basis. He allowed the public insurance adjuster license under Mitchell Adjusting to lapse, and the other entities, ICT, LCT, and TWC, were never issued licenses by the Department.

Moreover, in addition the foregoing listed business names, he also conducted business as Andrew Aga, Andrew J. Aga, Texas Claim Consultants, and a multitude of others. A public insurance adjuster license must be held under the name under which business will be conducted.<sup>162</sup>

Respondent countered by first acknowledging that none of the entities hold a valid license, but then he argues that none of the entities are currently engaged in the business of insurance.<sup>163</sup> Respondent states that “failure to register is solely an administrative violation” and that no evidence was provided that the complainants “were harmed by Respondent’s failure to register any of them.”<sup>164</sup>

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<sup>161</sup> Tex. Inc. Code § 4102.051(a).

<sup>162</sup> Tex. Ins. Code § 4102.162

<sup>163</sup> Respondent Reply Brief.

<sup>164</sup> Respondent Reply Brief.

However, the Code does not require mere registration, as characterized by Respondent, but a license application process, outlined in Subchapter B of Chapter 4102, pertaining specifically to public insurance adjusters that wish to conduct business in Texas. The statute specifically states that a public insurance adjuster may not act as such in Texas or hold himself or herself out to be a public insurance adjuster unless the person holds a license issued by the Commissioner.<sup>165</sup>

Texas regulates public insurance adjusters, and Respondent's conduct only highlights the importance of regulation of professionals that work in the insurance industry in Texas. The harm to the insureds is the Respondent's misappropriation of a total of \$7.6 million of their funds for his own use. Thus, Respondent's failure to apply for and obtain licenses from the Department for the various entities in which he conducted business was not a simple "administrative violation."

The ALJ finds that Staff by a preponderance of the evidence that Respondent engaged in the unauthorized practice of the business of insurance.

### **E. Payment of Improper Fees**

The Texas Insurance Code provides that a license holder may receive a commission for service consisting of an hourly fee, a flat rate, a percentage of the total amount paid by an insurer to resolve a claim, or another method of

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<sup>165</sup> Tex. Ins. Code § 4102.051.

compensation, but the total commission received may not exceed 10 percent of the amount of the insurance settlement on the claim.<sup>166</sup>

Staff argues that, because Respondent misappropriated and converted the entire settlement checks intended for insureds, he received a compensation that far exceeds the amount to which he is entitled, a maximum of 10 percent. Respondent did not provide a direct counterargument, only stating that, St. Paul contractually agreed to pay a fee of 15 percent, rather than 10 percent. Although the ALJ makes no specific finding as to the St. Paul claim pursuant to this allegation, she notes that Respondent kept \$10,000 more than the purported 15 percent fee allowed by Minnesota law and contracted for by St. Paul.

Staff provided evidence that Respondent received the funds, and, with the exception of those whom he made whole, he was paid compensation well above the statutory ceiling allowable by Texas law. Additionally, Respondent is not entitled to contract away a statutory requirement.

Thus, the ALJ finds that Staff established by a preponderance of the evidence that Respondent improperly received fees that far exceeded that allowed by relevant law.

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<sup>166</sup> Tex. Ins. Code § 4102.104(a).

## **F. Failure to Comply with Code of Ethics**

Under the applicable code of ethics, a public insurance adjuster must conduct business fairly with their clients, insurance companies, and the public; must not misrepresent to an insured or insurance company in the conduct of their actions as public insurance adjusters; must only charge commissions that comply with Chapter 4102 of the Texas Insurance Code and the relevant rules; and must only use contracts that comply with Texas law.<sup>167</sup>

Staff argues that Respondent violated the code of ethics by taking advantage of his clients and defrauding insureds of nearly \$7.6 million.<sup>168</sup> Respondent declared with a blanket denial that he failed to conduct business fairly with his clients, insurance companies, and the public.<sup>169</sup>

However, as reflected in the foregoing discussion, the record is replete with evidence that Respondent failed to conduct business fairly with his clients, insurance companies, and the public, not one or two times, but more than a dozen times.

Thus, the ALJ finds that Staff proved by a preponderance of the evidence that Respondent failed to comply with the code of ethics by which public insurance adjusters must abide.

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<sup>167</sup> 28 Tex. Admin. Code § 19.713.

<sup>168</sup> TDI Initial Brief.

<sup>169</sup> Respondent Initial Brief.

## **G. Failure to Notify Department of Other State Administrative Actions**

The Code provides that an individual licensed as an agent shall notify the Department on a monthly basis of an administrative action taken against the license holder by a financial or insurance regulator of this state, another state, or the United States.<sup>170</sup>

Staff presented several administrative actions taken by other states: Louisiana, Washington, and Colorado. These include a suspension of his license, in addition to the imposition of administrative penalties. Respondent failed to notify the Department of these administrative actions, and he does not give a counterargument to Staff's argument regarding his failure to abide by the statutory requirement. Respondent only stated that he has agreed to voluntarily relinquish his public insurance adjuster license.<sup>171</sup>

However, Respondent's willingness to relinquish his license is not relevant to this analysis. Thus, the ALJ finds that Staff proved by a preponderance of the evidence that Respondent failed to notify the Department of other states' administrative actions.

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<sup>170</sup> Tex. Ins. Code § 4001.252(a)(3).

<sup>171</sup> Respondent Reply Brief.

## **H. Remedies**

Under the Code, the Commissioner may revoke a public insurance adjuster's license on several grounds, including, but not limited to, the misappropriation or conversion of money required to be held in a fiduciary capacity, engaging in a fraudulent transaction, and demonstrated incompetence or untrustworthiness in the conduct of the license holder's affairs under the license.<sup>172</sup>

The preponderance of the evidence demonstrates that Respondent fraudulently endorsed and deposited funds, thereby willfully misappropriating and converting money belonging to the insureds. Staff provided a wealth of evidence supporting this, including firsthand testimony of either the insureds or investigators that were familiar with investigations into the allegations of fraud, and documentary evidence, including bank statements or fraudulently executed contracts.

Respondent argues that his willingness to surrender his license renders this issue moot. However, his willingness to surrender his license is not relevant to the analysis. Respondent cannot escape the consequences of revocation simply by offering to surrender his license. The Commissioner may revoke Respondent's license on any of the enumerated statutory grounds. Thus, the argument that this issue is moot is without merit.

The ALJ finds that Staff proved by a preponderance of the evidence that

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<sup>172</sup> Tex. Ins. Code § 4102.201.

Respondent's conduct warrants revocation of his public insurance adjuster license. Additionally, the ALJ finds that Staff established by a preponderance of the evidence that Respondent owes the vast majority of the insureds restitution, because he misappropriated and converted funds intended to be paid out to them from their insurance companies on their respective insurance claims. The ALJ also finds that it is appropriate for the Department to issue a cease and desist to the Respondent. Finally, the ALJ finds that it is appropriate to impose administrative penalties on the Respondent for every violation that occurred.

## **V. CONCLUSION**

Code section 4102.201(a)(1) authorizes the Department to revoke a public adjuster license for a violation of that chapter or a Department rule. Based on Respondent's violations of the Code, the ALJ recommends revocation of Respondent's Department-issued license. Moreover, the ALJ recommends that the Department issue a cease and desist letter, that Respondent be ordered to make full restitution to the insureds, and the payment of an administrative penalty for each violation.

In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

## **VI. FINDINGS OF FACT**

1. Andrew James Mitchell (Respondent) holds a public insurance adjuster license issued by the Texas Department of Insurance (Department) on January 12, 2011. The license was previously issued under the name Andrew Joseph Aga. Respondent also held a public insurance adjuster license under Mitchell Adjusting International, LLC, from June 2, 2020, through May 22, 2022.
2. Respondent also conducts business under other names, including, but not limited to, International Consulting Group (ICG), Loss Consultants of Texas LLC (LCT), and Texas Wind Consultants, none of which have been issued public insurance adjuster licenses by the Department.
3. Respondent entered into contracts with the following clients, under his own name, and under other business names: Friendship Missionary Baptist Church (Friendship Missionary); Garth and Lola Andress; Om Sai Hotel LLC d/b/a Econo Lodge (Econo Lodge); and Durga M. Hospitality, Inc. d/b/a Travelodge (Travelodge). The contracts did not give Respondent authority to endorse checks on his own.
4. Respondent forwarded contracts to insurance companies purported to be signed by the following insureds: Martin and Valerie Villanueva; Ricardo and Maria Sanchez; Alfonso Ramirez; and St. Nicholas Episcopal Church (St. Nicholas). These clients did not enter into contracts with Respondent.
5. Luis Rodriguez signed a document that was a contract with Respondent, but he had been informed that he was signing up for a free roof inspection, not entering into an agreement with Respondent for his services as a public insurance adjuster. Mr. Rodriguez is a native Spanish speaker and does not speak English.
6. Respondent forged the signatures on checks issued to the following insureds from their insurance companies on their respective claims and deposited money belonging to the insureds into his own account: Friendship Missionary; Guillermo Zapata; Luis and Norma Rodriguez; Martin and Valerie



Villanueva; Ricardo and Maria Sanchez; Alfonso Ramirez; St. Juste Management Corp. (St. Juste); Tilo's Tex Mex (Tilo's); Garth and Lola Andress; Debra Hile Saint Raguel Ethiopian Orthodox Church (Debra Hile); Econo Lodge; Travelodge; St. Paul's Lutheran Church (St. Paul); and St. Nicholas.

7. Respondent defrauded insureds in the amount of \$7,619,531.25 by forging the insureds' signatures on the checks made payable to them in connection with their insurance claims. He paid back \$1,022,968.27, leaving a balance of \$6,606,562.98 in restitution to insureds.
8. Respondent received more than 10 percent of the amount of the insurance settlement on the insureds' claims, with the exception of the amount he received as compensation in connection with St. Paul's claim.
9. On November 12, 2020, and May 27, 2022, the Louisiana Department of Insurance issued two separate administrative actions against Respondent. Respondent failed to notify the Department regarding these actions.
10. On October 13, 2021, the Colorado Department of Insurance issued an administrative action suspending Respondent's license. Respondent failed to notify the Department regarding this action.
11. On February 18, 2022, the Washington Department of Insurance issued an administrative action suspending Respondent's license. Respondent failed to notify the Department regarding this action.
12. Respondent's pattern of communication is harmful to the profession of public insurance adjusting.
13. Respondent lacks the trustworthiness and moral character to conduct public adjuster business fairly and in good faith.
14. On June 22, 2022, an Initial Order was issued, setting the videoconference hearing and providing instructions for participation.

15. On June 22, 2022, Staff of the Department (Staff) filed a Notice of Hearing and sent it to Respondent.
16. Together, the Notice of Hearing and the Initial Order 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 either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint.
17. The hearing on the merits was held via videoconference on October 12, 2022, before Administrative Law Judge Rachelle Nicolette Robles of the State Office of Administrative Hearings (SOAH). Staff attorney Cassie Tigue represented Staff; David W. Alexander represented Respondent. The record closed on November 10, 2022, upon submission of written closing briefs.

## **VII. CONCLUSIONS OF LAW**

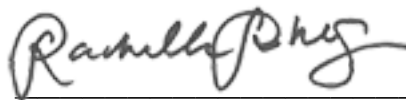
1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 82.051-.055, ch. 4102.
2. SOAH has jurisdiction to conduct the administrative hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law. Tex. Ins. Code § 4102.201(b); Tex. Gov't Code ch. 2003.
3. Proper and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052; Tex. Ins. Code § 4005.104(b).
4. The hearing was conducted pursuant to the Administrative Procedure Act. Texas Gov't Code ch. 2001.
5. Staff had the burden of proof to establish grounds for revocation of Respondent's license. 1 Tex. Admin Code § 155.427.

6. The Department met its burden of proof in establishing Respondent violated Texas Insurance Code §§ 4102.104, .156 or 28 Texas Administrative Code § 19.713(b)(6), (7).
7. Respondent willfully violated the insurance laws of this state in violation of Texas Insurance Code section 4005.101(b)(1).
8. Respondent has engaged in fraudulent or dishonest acts or practices.
9. Respondent misappropriated, converted to his own use, or illegally withheld money belonging to insureds, violating Texas Insurance Code section 4005.101(b)(4).
10. Respondent engaged in fraudulent transactions in violation of Texas Insurance Code section 4102.201(a)(7).
11. Respondent engaged in the unauthorized practice of the business of insurance, violating Texas Insurance Code section 101.102, 4001.101, and 4102.051.
12. Respondent received more than 10 percent of the amount of the insurance settlement on the claim as compensation, in violation of Texas Insurance Code section 4102.104(a).
13. Respondent failed to conduct business fairly with clients, insurance companies, and the public, in violation of 28 Texas Administrative Code section 19.713(b)(1).
14. Respondent demonstrated untrustworthiness in the conduct of his affairs as a licensee, in violation of Texas Insurance Code sections 4102.053(a)(4) and 4102.201(a)(8).
15. Respondent failed to notify the Department of other states' administrative actions, in violation of Texas Insurance Code section 4001.252.
16. Respondent's violations of the Insurance Code and Department rules are grounds for the Department to revoke a public adjuster license pursuant to Texas Insurance Code section 4102.201(a)(1).

17. Respondent's license should be revoked.
18. Respondent's violations of the Texas Insurance Code and Department rules are grounds for the Department to direct Respondent to make restitution. Tex. Ins. Code § 101.103(a)(3).
19. Respondent should be ordered to pay restitution to the insureds, in the amount of the balance of the money owed.
20. Respondent's violations of the Insurance Code and Department rules are grounds for the Department to impose an administrative penalty under Chapter 84. Tex. Ins. Code § 101.103(a)(2).
21. Respondent should be ordered to pay an administrative penalty for each violation.
22. Respondent's violations of the Insurance Code and Department rules are grounds for the Department to issue a cease and desist order. Tex. Ins. Code § 101.103(a)(1).
23. A cease and desist order should be imposed on Respondent.

**SIGNED DECEMBER 20, 2022.**

ALJ Signature(s):



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Rachelle Nicolette Robles  
Presiding Administrative Law Judge

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Associated Case Party: Texas Department of Insurance

Name	BarNumber	Email	TimestampSubmitted	Status
Ginger Loeffler		Ginger.Loeffler@tdi.texas.gov	12/20/2022 12:07:52 PM	SENT
Cassie Tigue		Cassie.Tigue@tdi.texas.gov	12/20/2022 12:07:52 PM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	12/20/2022 12:07:52 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
David W.Alexander		davidalexanderlaw1249@gmail.com	12/20/2022 12:07:52 PM	SENT
Jessie Harbin		jessie.harbin@soah.texas.gov	12/20/2022 12:07:52 PM	ERROR

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	12/20/2022 12:07:52 PM	SENT

Associated Case Party: Andrew Joseph Mitchell

Name	BarNumber	Email	TimestampSubmitted	Status
David W.Alexander		info@davidalexanderlaw.com	12/20/2022 12:07:52 PM	SENT