

FILED
454-22-02837
6/22/2022 2:09 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jessie Harbin, CLERK

ACCEPTED
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6/22/2022 3:07 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jessie Harbin, CLERK

**SOAH DOCKET NO. 454-22-02837
TDI ENFORCEMENT FILE NO. 17928**

TEXAS DEPARTMENT OF INSURANCE,

BEFORE THE STATE OFFICE

Petitioner

v.

OF

ANDREW JOSEPH MITCHELL,

ADMINISTRATIVE HEARINGS

Respondent

NOTICE OF HEARING

The Texas Department of Insurance seeks to take disciplinary action against you. This Notice of Hearing and the Original Petition, which is attached and incorporated for all purposes, states the allegations against you and the relief sought by the Department.

A public hearing will be held before an Administrative Law Judge on **Wednesday, October 12, 2022, at 9:00 a.m.** The hearing will take place via videoconference using a videoconference platform controlled by the State Office of Administrative Hearings, unless otherwise ordered to proceed in another manner by the Administrative Law Judge.

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

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

YOU MUST FILE A WRITTEN RESPONSE TO THE NOTICE OF HEARING WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 20 DAYS OF THE DATE THE NOTICE OF HEARING WAS MAILED. FAILURE TO FILE A WRITTEN RESPONSE BY THIS DEADLINE SHALL ENTITLE TDI TO SEEK DISPOSITION BY DEFAULT UNDER 1 TEX. ADMIN. CODE § 155.501 AND 28 TEX. ADMIN. CODE §§ 1.88 AND 1.89.

IF YOU FAIL TO FILE A WRITTEN RESPONSE, THE SCHEDULED HEARING CAN BE CANCELED AND WITHOUT FURTHER NOTICE TO YOU THE COMMISSIONER OF INSURANCE CAN ISSUE AN ORDER IN WHICH THE ALLEGATIONS IN THE NOTICE OF HEARING ARE DEEMED ADMITTED AS TRUE AND THE RELIEF SOUGHT IN THE NOTICE OF HEARING, INCLUDING REVOCATION OF YOUR LICENSE, ISSUANCE OF A CEASE AND DESIST ORDER, IMPOSITION OF ADMINISTRATIVE PENALTIES, AND/OR PAYMENT OF RESTITUTION, IS GRANTED BY DEFAULT.

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

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

- (1) *(by mail, fax, or electronically)*
Docketing Division
State Office of Administrative Hearings
300 West 15th Street, Room 504
P.O. Box 13025
Austin, Texas 78711-3025
(512) 322-2061 (Fax);
www.soah.texas.gov
- (2) *(by mail, fax, or email)*
Chief Clerk
Texas Department of Insurance
P.O. Box 12030, MC GC-CCO
Austin, Texas 78711-2030
(512) 490-1064 (Fax)
chiefclerk@tdi.texas.gov; and
- (3) *(by mail, fax, or email)*
Cassie Tigue, Staff Attorney

Texas Department of Insurance
Enforcement, MC ENF
P.O. Box 12030
Austin, Texas 78711-2030
(512) 490-1020 (Fax)
Cassie.Tigue@tdi.texas.gov

Receiving Documents Electronically and Filing Documents with SOAH

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

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

Important Security Notice (for In-Person Hearings ONLY)

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

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

Respectfully Submitted,



Cassie Tighe
State Bar No. 24099994
Texas Department of Insurance
Enforcement, MC ENF
P.O. Box 12030
Austin, Texas 78711-2030
(512) 676-6356 (Direct)
(512) 490-1020 (Fax)
Cassie.Tighe@tdi.texas.gov

ATTORNEY FOR THE PETITIONER
TEXAS DEPARTMENT OF INSURANCE

Enclosure: Original Petition

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

CERTIFICATE OF SERVICE

I, Cassie Tigue, certify that a true and correct copy of the *Notice of Hearing and the Original Petition* were sent by certified mail, return receipt requested and via eFile, on this 22nd day of June, 2022 to:

Andrew Joseph Mitchell
1500 Marina Bay Dr., Bldg. 122A
Clear Lake Shores, Texas 77565-2575
Email: drew@mitchelladjusting.com
Respondent Pro Se

Via CM/RRR No.: 9214 8901 9403 8380 3564 54



Cassie Tigue

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454-22-02837
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STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

SOAH DOCKET No. 454-22-02837

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TDI ENFORCEMENT FILE NO. 17928

TEXAS DEPARTMENT OF INSURANCE,

Petitioner

v.

ANDREW JOSEPH MITCHELL,

Respondent

BEFORE THE STATE OFFICE

ACCEPTED
454-22-02837
6/9/2022 2:18:34 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

OF

ADMINISTRATIVE HEARINGS

ORIGINAL PETITION

The Texas Department of Insurance seeks to take disciplinary action against Andrew Joseph Mitchell. In support of this petition, the department makes the following allegations upon information and belief:

Jurisdiction

The Commissioner of Insurance has jurisdiction over this matter under TEX. INS. CODE §§ 82.051-82.055, 84.021-84.044, 101.102, 4001.002, 4001.101, 4005.101, 4005.102, and 4102.051, and TEX. GOV'T CODE §§ 2001.051-2001.178.

Factual Allegations

Licensure

1. Andrew Joseph Mitchell (Mitchell), individual identification number 670795, holds a public insurance adjuster license originally issued by the Texas Department of Insurance on January 12, 2011.
2. Mitchell previously held an adjuster license with a property and casualty qualification originally issued by the department on February 16, 2006, but this license expired on February 16, 2016, due to Mitchell's failure to renew.
3. On December 5, 2019, Mitchell legally changed his name to Andrew Joseph Mitchell. On March 4, 2020, Mitchell notified the department of his name change.

Mitchell was originally issued both licenses referenced above under the name Andrew Joseph Aga.

4. On June 2, 2020, Mitchell became associated with Mitchell Adjusting International, LLC (Mitchell Adjusting) as a designated responsible licensed person.

Unauthorized Business of Insurance

5. On September 7, 2017, Mitchell filed a Certificate of Assumed Business name for International Consulting Group (ICG) under Loss Consultants, LLC with the Texas Secretary of State. Mitchell conducts the business of insurance through ICG. ICG is not licensed or registered with the department.
6. Texas Wind Consultants, LLC (TWC) is an active Texas Domestic Liability Company. Mitchell serves as director of TWC. TWC is not licensed or registered with the department.
7. Loss Consultants of Texas LLC (LCT) is an active Texas Domestic Liability Company. Mitchell serves as owner of LCT. LCT is not licensed or registered with the department.

Agent Misconduct

G.Z. and A.Z.

8. On or around May 9, 2019, G.Z. and A.Z.'s roof sustained damage. G.Z. and A.Z. retained Mitchell to represent them as the public insurance adjuster on their roof damage claim. Mitchell inspected G.Z. and A.Z.'s roof and provided an estimate. On June 21, 2019, one of Mitchell's employees filed a claim with QBE Insurance Corporation a/k/a North Queensland Insurance Company Limited (QBE) on behalf of the insureds.
9. On or around October 29, 2019, Mitchell received a settlement check for G.Z. and A.Z.'s claim in the amount of \$4,171.27. Mitchell forged both G.Z. and A.Z.'s signatures on the check and negotiated the check without remitting any funds to them.

10. The insureds sent QBE a notice stating they no longer wanted Mitchell to represent them. The insureds were aware the signatures on the settlement check were forged and the funds were misappropriated. QBE subsequently filed a complaint with the department.
11. The insureds ultimately hired a roofing company to complete the roof repairs in May 2020. The insureds paid for the repairs out of pocket and received a payment less recoverable depreciation in the amount of \$3,119.70 once the repairs were completed.

L.R. and N.R.

12. On or around May 10, 2019, L.R. and N.R.'s roof sustained damage. L.R. and N.R. retained Mitchell to represent them as the public insurance adjuster on their roof damage claim.
13. On or around September 25, 2019, Mitchell received a settlement check for L.R. and N.R.'s claim in the amount of \$2,150.97. Mitchell forged both L.R. and N.R.'s signatures on the check and negotiated the check without remitting any funds or services to the insureds.
14. The insurer, Metropolitan General Insurance Company, later filed a complaint with the department after the insureds reported the forged signatures.

M.V.

15. On or around September 10, 2019, M.V.'s roof sustained wind and hail damage. M.V. reported the loss but stated he never hired Mitchell as a public insurance adjuster and did not sign a letter of representation. The insurer, Cypress Property and Casualty Insurance Company (Cypress) sent a roof inspector to M.V.'s property. After the inspection, M.V. was informed he would receive payment within a few weeks.
16. On or around January 9, 2020, M.V. contacted Cypress to inquire about repairs and the status of payment on his claim. M.V. advised Cypress that he had not hired a public insurance adjuster and had not signed a letter of representation.

17. On or around October 31, 2019, Mitchell received a settlement check for M.V.'s claim in the amount of \$8,618.02. Mitchell forged M.V.'s signature on the check and negotiated the check without remitting any funds to the insured.
18. Cypress later filed a complaint with the department.

R.S. and M.S.

19. On or around May 9, 2020, R.S. and M.S.'s roof sustained damage. R.S. and M.S. retained Mitchell to represent them as the public insurance adjuster on their roof damage claim.
20. On or around July 14, 2020, Mitchell received a settlement check for R.S. and M.S.'s claim in the amount of \$6,623.30. Mitchell forged both R.S. and M.S.'s signatures on the check and negotiated the check without remitting any funds or services to the insureds.
21. The insureds ultimately hired another company to complete the roof repairs around May 2021. The insureds paid for the repairs out of pocket.
22. The insureds later filed a complaint with the department specifically complaining about MZM Consulting (MZM), the company who offered roof repair initially. Allstate Insurance Company responded to the complaint on behalf of MZM and stated payment had already been sent to the insureds' public insurance adjuster, Mitchell. The insureds claimed the signatures on the check were forged.

A.R.

23. On or around May 9, 2019, A.R.'s roof sustained wind and hail damage. A.R. reported the loss but stated he never hired Mitchell as a public insurance adjuster and did not sign a letter of representation.
24. On or around February 18, 2020, Mitchell received a settlement check for A.R.'s claim in the amount of \$17,172.36. Mitchell forged A.R.'s signature on the check and negotiated the check without remitting any funds to the insured.
25. The department discovered Mitchell's misconduct through its investigation into another complaint previously submitted to the department.

L.A. and G.A.

26. On or around February 16, 2021, L.A. and G.A.'s home sustained a loss due to the winter storm. L.A. and G.A. retained Mitchell Adjusting to represent them as the public insurance adjusting firm on their claim.
27. On or around January 31, 2022, Mitchell received settlement checks for L.A. and G.A.'s claim in the amounts of \$27,826.08 and \$206.72. Mitchell forged both L.A. and G.A.'s signatures on the checks and negotiated the checks without remitting any funds or services to the insureds.

S.P.

28. On or around May 17, 2021, S.P.'s roof sustained damage. S.P. retained Mitchell Adjusting to represent him as the public insurance adjusting firm on his roof damage claim.
29. On or around October 22, 2021, Mitchell received a settlement check for S.P.'s claim in the amount of \$102,078.51. Mitchell forged S.P.'s signature on the check and negotiated the check without remitting any funds or services to the insured.
30. On or around February 9, 2022, Mitchell received an additional settlement check for S.P.'s claim in the amount of \$166,235.33. Mitchell forged S.P.'s signature on the check and negotiated the check without remitting any funds or services to the insured.
31. On or around March 4, 2022, Mitchell remitted checks to S.P. in the amounts of \$97,604.53 and \$206,728.99 but the checks were returned due to insufficient funds.

Legal Allegations

1. Mitchell willfully violated an insurance law of this state as contemplated by TEX. INS. CODE § 4005.101(b)(1).

2. Mitchell misappropriated, converted to his own use, or illegally withheld money belonging to an insured, insurer, or beneficiary, in violation of TEX. INS. CODE § 4005.101(b)(4).
3. Mitchell engaged in fraudulent or dishonest acts or practices in violation of TEX. INS. CODE § 4005.101(b)(5).
4. Mitchell has engaged in acts constituting the business of insurance without a license as defined in TEX. INS. CODE §§ 101.102, 4001.101, and 4102.051.
5. The commissioner has adopted a code of ethics for public insurance adjusters under 28 TEX. ADMIN. CODE § 19.713, pursuant to TEX. INS. CODE § 4102.005. Mitchell failed to comply with this code of ethics because he failed to conduct business fairly with his clients, insurance companies, and the public, in violation of 28 TEX. ADMIN. CODE § 19.713(b)(1).

Relief Sought

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

1. revoking Andrew Joseph Mitchell's license;
2. directing Andrew Joseph Mitchell to pay an administrative penalty under TEX. INS. CODE §§ 84.021-84.022;
3. directing Andrew Joseph Mitchell to make restitution to the victims under TEX. INS. CODE § 82.053;
4. ordering International Consulting Group to cease and desist from engaging in the business of insurance without a license;
5. ordering Texas Wind Consultants, LLC to cease and desist from engaging in the business of insurance without a license;
6. ordering Loss Consultants of Texas LLC to cease and desist from engaging in the business of insurance without a license; and
7. imposing any other just and appropriate relief to which the department may be entitled to by law, including any combination of the above actions.

Respectfully Submitted,



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ATTORNEY FOR THE PETITIONER
TEXAS DEPARTMENT OF INSURANCE