

No. 2023-8318

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

**Date:** 11/2/2023

**Subject Considered:**

Texas Department of Insurance v.

Jared Michael Lancon, Elite Public Adjusters, LLC, and  
Elite Capital Insurance Group, LLC

SOAH Docket No. 454-22-2824.C

**General Remarks and Official Action Taken:**

The subjects of this order are the insurance licenses held by Jared Michael Lancon; Elite Public Adjusters, LLC; and Elite Capital Insurance Group, LLC. This order revokes the public insurance adjuster license and general lines agent license with property, casualty, life, accident, health, and HMO qualifications held by Jared Michael Lancon; the public insurance adjuster license held by Elite Public Adjusters, LLC; and the general lines agent license with a property and casualty qualification held by Elite Capital Insurance Group, LLC.

**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 the insurance licenses held by Jared Michael Lancon; Elite Public Adjusters, LLC; and Elite Capital Insurance Group, LLC be revoked. A copy of the proposal for decision is attached as Exhibit A.

Jared Michael Lancon; Elite Public Adjusters, LLC; and Elite Capital Insurance Group, LLC filed exceptions to the administrative law judge's proposal for decision.

TDI Enforcement filed a reply to the exceptions.

COMMISSIONER'S ORDER

TDI v. Jared Michael Lancon, Elite Public Adjuster, LLC and Elite Capital Insurance Group, LLC

SOAH Docket No. 454-22-2824.C

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

**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 the public insurance adjuster license and general lines agent license with property, casualty, life, accident, health, and HMO qualifications held by Jared Michael Lancon; the public insurance adjuster license held by Elite Public Adjusters, LLC; and the general lines agent license with a property and casualty qualification held by Elite Capital Insurance Group, LLC are revoked.

DocuSigned by:  
  
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Cassie Brown  
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:  
  
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Jessica Barta, General Counsel

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Justin Beam, Chief Clerk

**BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**TEXAS DEPARTMENT OF INSURANCE,  
PETITIONER**

**v.**

**JARED MICHAEL LANCON, ELITE PUBLIC ADJUSTERS, LLC,  
AND ELITE CAPITAL INSURANCE GROUP, LLC,  
RESPONDENTS**

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**BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE  
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**TEXAS DEPARTMENT OF INSURANCE,  
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RESPONDENTS**

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**PROPOSAL FOR DECISION**

The staff (Staff) of the Texas Department of Insurance (the Department) brought this enforcement action against Jared Michael Lancon; Elite Public Adjusters, LLC (Elite PA); and Elite Capital Insurance Group, LLC (Elite Capital) (collectively, Respondents), who all hold licenses issued by the Department. Staff sought to revoke all Respondents' licenses. Staff alleged that Mr. Lancon and Elite PA violated the Texas Insurance Code (Code) by: (1) failing to exercise fiduciary care over, and diverting, claim proceeds received while acting as a public

insurance adjuster (PIA); (2) engaging in activities that may reasonably be construed as presenting a conflict of interest; and (3) demonstrating incompetence or untrustworthiness in the conduct of affairs under their PIA licenses. Staff additionally alleged that, if Mr. Lancon's licenses are revoked, Elite PA and Elite Capital will no longer qualify for their business entity licenses and will be subject to discipline. After considering the evidence and applicable law, the Administrative Law Judge (ALJ) finds that Staff proved the violations alleged and recommends that the Commissioner of Insurance (Commissioner)<sup>1</sup> revoke all Respondents' licenses.

## **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 Zoom videoconference on November 8, 2022, before ALJ Heather D. Hunziker of the State Office of Administrative Hearings. Staff appeared and was represented by staff attorney Amanda Cagle. Mr. Lancon represented himself and the other Respondents. At the close of the hearing, the ALJ held the record open until December 21, 2022, for closing briefs.<sup>2</sup> The Department and Respondents timely filed closing briefs on

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<sup>1</sup> The Commissioner is the chief executive and administrative officer of the Department. Code § 31.021.

<sup>2</sup> SOAH Order Memorializing Hearing and Extending the Record Close Date (November 9, 2022).

December 9, 2022, and reply briefs on December 21, 2022.<sup>3</sup> Following closing briefing, the ALJ requested further briefing for clarification of specific questions;<sup>4</sup> and the record closed on January 25, 2023, the deadline for the parties to file their additional briefing on requested topics.

## **II. DISCUSSION**

### **A. APPLICABLE LAW**

**Authority.** The Department regulates the business of insurance in Texas.<sup>5</sup> The Department's regulatory purview includes complaint resolution and investigation of violations of the Code and related rules, such as alleged misconduct by insurance agents and adjusters.<sup>6</sup> After notice and opportunity for a hearing, the Commissioner may revoke, suspend, or deny renewal of a license, for a violation of the Code or the Commissioner's rules.<sup>7</sup> Staff bears the burden of proving that Respondents' licenses should be revoked, by a preponderance of the evidence.<sup>8</sup> Afterward, the ALJ prepares a proposal for decision with findings of fact and

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<sup>3</sup> Respondents also filed, after the briefing deadline and without leave, "Respondents [sic] Response to TDI's Closing Brief" on January 17, 2023, which is stricken for untimeliness.

<sup>4</sup> SOAH Order Reopening the Record for Briefs on Department's Requested Relief (January 13, 2023) requested clarification on: (1) the legal import/implications of Elite's charter being forfeited between January 2018 and June 2022 in relation to the Department's requested relief; (2) whether the Department seeks revocation of solely Mr. Lancon's PIA license, versus all of his licenses and qualifications including his general lines license and associated qualifications; and (3) if the Department seeks to revoke all Mr. Lancon's licenses, the Department's legal authority and basis for revoking his general lines agent license and associated qualifications.

<sup>5</sup> Code § 31.002(1).

<sup>6</sup> Code §§ 31.002(3), 521.002.

<sup>7</sup> Code §§ 82.051-.052, 4005.102, 4102.201.

<sup>8</sup> 1 Tex. Admin. Code § 155.427; *Granek v. Texas St. Bd. of Med. Examm'rs*, 172 S.W.3d 761, 777-78 (Tex. App.—Austin 2005, no pet.).

conclusions of law.<sup>9</sup> The Commissioner then considers the proposal for decision and issues a final order.<sup>10</sup>

**Payments.** A licensee may receive a commission for service as a PIA 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; but the total commission received may not exceed ten percent of the amount of the insurance settlement on the claim.<sup>11</sup> A PIA is entitled to reasonable compensation from the insured for services provided by the PIA on behalf of the insured, based on the time spent on the claim and expenses incurred, until the claim is paid or the insured receives a written commitment to pay from the insurer.<sup>12</sup> Except for the payment of a commission by the insured, all persons paying any proceeds of an insurance policy or making any payment affecting an insured's rights under an insurance policy must include the insured as a payee on the payment draft or check; and require the written signature and endorsement of the insured on the payment draft or check.<sup>13</sup> A PIA may not accept any payment that fails to conform with these parameters.<sup>14</sup> Notwithstanding any authorization the insured may have given to the PIA, a PIA may not sign and endorse any payment draft or check on behalf of an insured.<sup>15</sup> All

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<sup>9</sup> Code § 40.058.

<sup>10</sup> Code §§ 40.059-.060.

<sup>11</sup> Code § 4102.104(a).

<sup>12</sup> Code § 4102.104(b).

<sup>13</sup> Code § 4102.104(c).

<sup>14</sup> Code § 4102.104(d).

<sup>15</sup> Code § 4102.104(e).



funds received as claim proceeds by a PIA are received and held in a fiduciary capacity; and the PIA may not divert or appropriate fiduciary funds received or held.<sup>16</sup>

**Conflicts of Interest.** A PIA may not engage in any activity that may reasonably be construed as presenting a conflict of interest, including soliciting or accepting any remuneration from, having a financial interest in, or deriving any direct or indirect financial benefit from, any salvage firm, repair firm, construction firm, or other firm that obtains business in connection with any claim the PIA has a contract or agreement to adjust.<sup>17</sup> The Commissioner’s code of ethics for PIAs adopted pursuant to Code section 4102.005 includes, in relevant part: “Licensees must avoid conflicts of interest . . . .”<sup>18</sup>

**Corporate Licensees.** A corporate licensee must have at least one officer who is individually licensed by the Department separately from the corporation.<sup>19</sup> A corporate licensee cannot have as its officer, director, member, manager, partner, or any other person with the right or ability to control the corporation, an individual whose license has been suspended or revoked.<sup>20</sup> The Department must revoke or suspend the license of a license holder who fails to maintain qualifications.<sup>21</sup>

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<sup>16</sup> Code § 4102.111(a).

<sup>17</sup> Code § 4102.158(a)(2).

<sup>18</sup> 28 Tex. Admin. Code § 19.713(b)(8).

<sup>19</sup> Code §§ 4001.106(b)(2), 4102.055(c); 28 Tex. Admin. Code § 19.704(c)(3).

<sup>20</sup> Code §§ 4001.106(b)(6)(A), 4102.055(c); 28 Tex. Admin. Code § 19.704(c)(7).

<sup>21</sup> Code § 4001.254.

**License Revocation.** The Commissioner may revoke a license on the basis of a violation of the Code or of the Commissioner’s rules, either individually or through an officer, director, or shareholder.<sup>22</sup> The Commissioner may also revoke a PIA license, specifically: (1) for demonstrated incompetence or untrustworthiness in the conduct of the license holder’s affairs under the license; or (2) on a basis that would constitute grounds for denial of an original license, such as a finding that the corporate licensee does not have at least one officer, active partner, or other managing individual who is individually licensed.<sup>23</sup>

**B. SUMMARY**

Mr. Lancon holds the following licenses: (1) a PIA license issued on January 28, 2014; and (2) a general lines agent license with both a property and casualty qualification issued on March 7, 2018, and a life, accident, health, and HMO qualification issued on December 1, 2020.<sup>24</sup> Elite PA holds a PIA license issued on June 12, 2014, that expired on June 12, 2016, and was reactivated on March 9, 2018.<sup>25</sup> Elite PA’s organizational charter was forfeited between January 26, 2018, and June 9, 2022.<sup>26</sup> Elite Capital holds an active general lines

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<sup>22</sup> Code §§ 82.051, 4005.101(b)(1), 4102.201(a)(1). Under Code section 4005.101(b)(1), the violation must be “willful.”

<sup>23</sup> Code §§ 4102.055(c), .201(a)(2), (8).

<sup>24</sup> Staff Ex. 1 at TDI 007; Staff Ex. 13 at TDI 376-77.

<sup>25</sup> Staff Ex. 1 at TDI 006; Staff Ex. 12 at 371.

<sup>26</sup> Staff Ex. 9 at TDI 337-38.

license with a property and casualty qualification issued by the Department on April 23, 2018.<sup>27</sup>

This case arises out of consumer complaints involving Mr. Lancon receiving and endorsing, then delivering to a contractor, insured homeowners' claim proceeds in the form of checks issued jointly to the homeowners and Elite PA.<sup>28</sup> The contractor in question was Greenforce Restoration, LLC, and its controlling owner, member, or manager, Troy St. Pierre (collectively, Greenforce). Staff alleges that, with at least two clients, Mr. Lancon or Greenforce signed the homeowners' signatures on their checks without their knowledge, authorization, or consent; Greenforce deposited the checks; Greenforce failed to make the needed repairs, leaving the homeowners without the claim proceeds or the home repairs; and Mr. Lancon received payments from Greenforce.<sup>29</sup>

**Daniels Claim.** Oveta Daniels, a client of Elite PA, filed a complaint with the Department on April 11, 2019, alleging her repairs still had not been made although Mr. Lancon received her claim proceeds in the amount of \$13,574.73 on April 4, 2018.<sup>30</sup> Ms. Daniels's complaint was subsequently resolved and closed, after Mr. Lancon told the Department he had contacted Greenforce about the repairs and they were finally completed on October 9, 2019.<sup>31</sup>

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<sup>27</sup> Staff Ex. 1 at 8; Staff Ex. 14 at 387.

<sup>28</sup> Staff Ex. 8.

<sup>29</sup> Staff Ex. 1 at TDI 007-08.

<sup>30</sup> Staff Ex. 6 at TDI 249, line 22; Staff Ex. 8.

<sup>31</sup> Staff Ex. 8 at TDI 317, 328.

**Habash Claim.** Mr. Lancon, through Elite PA, was the PIA for George Habash in his damage claims with Allstate Insurance totaling \$28,493.55, filed March 29, 2019.<sup>32</sup> Mr. Lancon admitted that Elite PA received two checks for Mr. Habash's claim proceeds within weeks of filing; admitted that he endorsed them; and admitted that he passed them on to Greenforce.<sup>33</sup> The checks were then cashed and deposited at Greenforce's bank.<sup>34</sup> Staff and Mr. Habash also alleged that something similar happened with his third claim proceeds check from Allstate—Mr. Lancon directed Allstate to send it directly to Novos Energy (Novos), whose estimate for solar panel replacement Mr. Lancon had submitted to Allstate.<sup>35</sup> This, despite Mr. Habash not intending to use Novos and not knowing who Novos was.<sup>36</sup> Neither Greenforce nor Novos did any work for Mr. Habash.<sup>37</sup>

**Ramirez Claim.** Elite PA, through its employee Daniel Buckerfield, was the PIA for Javier and Victoria Ramirez in their damage claims with Allstate Insurance totaling approximately \$12,734, filed August 29, 2019.<sup>38</sup> Mr. Lancon admitted that

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<sup>32</sup> Staff Ex. 4 at 159, 163; Tr. 45, 65, 116-18, 120.

<sup>33</sup> Staff Ex. 4 at 154-55, 161; Tr. 65, 67. Staff notes that an order of the Commissioner incorporated as Findings of Fact the factual statements made in the original petition filed in SOAH Docket No. 454-22-2825, including factual statements detailing Elite PA's endorsement, through Mr. Lancon, of insureds' claim proceeds checks to Greenforce (Staff's Closing Arguments at FN 23, referencing Staff Ex. 15 [Commissioner Order No. 2022-7382, and Notice of Hearing and Original Petition in SOAH Docket No. 454-22-2825, default disposition after Respondent's failure to file a response] at 421, ¶¶ 5-6); however, the ALJ declines to accept those Findings of Fact as against Respondents in this case, because they were not named parties in that case and, thus, did not have the opportunity to respond to such allegations.

<sup>34</sup> Staff Ex. 4 at TDI 152-55.

<sup>35</sup> Staff's Closing Argument at 4; Staff. Ex. 4 at TDI 156, 204, 206; Tr. 48-49.

<sup>36</sup> Staff. Ex. 4 at TDI 206; Tr. 48-49, 124.

<sup>37</sup> Tr. 124-25.

<sup>38</sup> Staff Ex. 4 at TDI 110, 130; Tr. 73, 78-79.

Elite PA received three checks for Mr. and Mrs. Ramirez’s claim proceeds; and he admitted that he passed them on to Greenforce without telling the Ramirezes.<sup>39</sup> The checks were then cashed and deposited in Greenforce’s account within ten days of being issued;<sup>40</sup> but the Ramirezes never endorsed those checks and never received any money to make repairs.<sup>41</sup> Greenforce never repaired the Ramirezes’ home.

**Payments to Respondents.** Mr. Lancon admitted he and Elite PA received payments from Greenforce in direct relation to claims he and Elite PA had adjusted—confirming at least \$14,600 in payments known to be from Greenforce and another \$10,500 from contractors that could have been from Greenforce.<sup>42</sup>

### **C. EVIDENCE AND ARGUMENT**

At the hearing, Staff presented 21 exhibits that were admitted into evidence and presented the testimony of six witnesses. Respondent offered two exhibits that were admitted;<sup>43</sup> additionally, Respondent presented the testimony of seven witnesses and offered the testimony of two more who were excluded due to Respondents’ failure to disclose them during discovery.

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<sup>39</sup> Staff Ex. 4 at 122-24, 161; Staff Ex. 5 at TDI 215; Tr. 77-80.

<sup>40</sup> Staff Ex. 4 at TDI 101, 103, 123.

<sup>41</sup> Tr. 109.

<sup>42</sup> Staff Ex. 7 at TDI 256, 258-59, 283; Staff Ex. 2 at TDI 18; Tr. 88-89, 97-98.

<sup>43</sup> Respondent offered a third exhibit that was excluded on the bases of hearsay and irrelevance.

**1. Staff's Witnesses**

**a) Testimony of Jeremy Sawyers**

Mr. Sawyers is Claims Service Leader at Allstate Insurance and has been in insurance for almost 19 years. He gave an overview of the Ramirez and Habash claims and evidence. He testified that the Ramirezes had hail damage to their roof, so Allstate allowed for full roof replacement.<sup>44</sup> He confirmed that Allstate mailed the Ramirezes' claims payment checks to Elite PA, and that the checks were endorsed by Elite PA and deposited into Greenforce's account.<sup>45</sup> Mr. Sawyers testified that Mr. Habash had hail damage to his roof, solar screens, and gutters; so Allstate allowed for full roof replacement.<sup>46</sup> Mr. Sawyers confirmed that the three Allstate checks for Mr. Habash were all made out jointly to Mr. Habash and Elite PA; were all mailed to Elite PA; and were all cashed.<sup>47</sup>

**b) Testimony of Mrs. Ramirez and Maribel Deharo**

Mrs. Ramirez testified, with the assistance of an interpreter, about her client experience with Elite PA. She described Mr. Buckerfield coming to her house to meet with her and her husband, and Mr. Buckerfield explaining to them that Elite PA would take charge of the claim process and then notify the Ramirezes once

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<sup>44</sup> Staff Ex. 4 at 117; Tr. 33, 40.

<sup>45</sup> Staff Ex. 4 at 104-05, 122, 124; Tr. 35-37, 40-41.

<sup>46</sup> Staff Ex. 4 at 164; Tr. 44.

<sup>47</sup> Staff Ex. 4 at 150, 153, 155; Tr. 45-48.

payment was received.<sup>48</sup> She identified Staff Exhibit 6 as the contract they signed, with Mr. Buckerfield and Elite PA acting as their PIA.<sup>49</sup> She explained that she and her husband do not speak or read English fluently and no explanations were given in her native language of Spanish.<sup>50</sup> Nevertheless, Ms. Ramirez testified, she had trusted Elite PA to handle her claims, expecting not to have to worry.<sup>51</sup>

Mrs. Ramirez testified that the checks for her claims proceeds were all sent to Elite PA, who did not give them to her or her husband.<sup>52</sup> She said she and her husband never signed the checks, her family never got one cent of the money, and their roof was never replaced.<sup>53</sup>

Ms. Deharo, the daughter of Mr. and Mrs. Ramirez, testified on rebuttal. She said she was not present when Mr. Buckerfield contracted with her parents and did not translate or explain the contract to them.<sup>54</sup> She added that she found out from Allstate that the checks had been cashed, and she called Elite PA to ask what was going on.<sup>55</sup>

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<sup>48</sup> Tr. 103, 108.

<sup>49</sup> Tr. 105-07.

<sup>50</sup> Tr. 107.

<sup>51</sup> Tr. 53, 105.

<sup>52</sup> Tr. 108-09.

<sup>53</sup> Tr. 109.

<sup>54</sup> Tr. 224-25.

<sup>55</sup> Tr. 226-28.

**c) Testimony of George Habash**

Mr. Habash testified about his client experience with Elite PA. He identified Staff Exhibit 16 as the contract he signed with Greenforce to replace the roof, remove the solar panels, fix the gutters, and paint the fence at his home.<sup>56</sup> He identified Staff Exhibit 7, beginning at page TDI 271, as the contract he signed with Elite PA, specifically with Mr. Lancon, for their PIA services.<sup>57</sup> Mr. Habash stated that he never received any checks from Allstate and had never previously seen the checks.<sup>58</sup> He added that he has no idea who Novos is and did not ask Respondents to send Novos his claim proceeds check.<sup>59</sup> He concluded by saying he had sued Greenforce and won a settlement of about \$20,000; and he repaired his roof leak himself and spent \$11,000 on replacing his solar panels.<sup>60</sup>

**d) Testimony of Lewis Wright**

Mr. Wright is the Department's agency representative. He is an administrative review liaison responsible for licensing issues with new applicants and licensed agents. Before joining the Department, he worked as an insurance agent for twelve years and has also supervised claims examiners. He addressed Staff's exhibits and the Department's goals in this case. He noted that an insurance license conveys to the public that the licensee is trustworthy and reliable, and that

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<sup>56</sup> Tr. 118-19.

<sup>57</sup> Tr. 120-21.

<sup>58</sup> Tr. 123-24.

<sup>59</sup> Tr. 124.

<sup>60</sup> Tr. 125, 128-29.



is what the Department expects of them. He said the Department is protecting insurance consumers by upholding these expectations for licensing. He explained that a PIA represents the consumer's interests against the carrier in the loss-settlement process. He noted the Department had received at least four other complaints from both consumers and carriers about Elite PA and Mr. Lancon.<sup>61</sup>

Mr. Wright pointed out that the Department's licensing records for Respondents list Mr. Lancon as the designated responsible adjuster for Elite PA and the designated responsible licensed person for Elite Capital, and show the same address for all three Respondents.<sup>62</sup> He explained that the records show Mr. Lancon is also the owner of Elite Capital and his licensing is what qualifies the firm; so if Mr. Lancon's license is revoked then Elite Capital would no longer qualify for a license.<sup>63</sup> Mr. Wright pointed out that the Secretary of State records for Elite PA show that Elite PA's registration was forfeited on June 26, 2018, as a result of non-payment of tax, and not reinstated until June 8, 2022; therefore, Elite PA was "not legally operating within the state" in the interim period.<sup>64</sup>

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<sup>61</sup> Tr. 137, 144-45. Aside from Ms. Daniels, Respondents' licensing records actually include two other consumer complaints and five complaints by insurance companies. Staff Ex. 12 at TDI 372; Staff Ex. 13 at TDI 384-85.

<sup>62</sup> Staff Ex. 13 at TDI 382; Staff Ex. 14 at TDI 387; Tr. 152-53, 155.

<sup>63</sup> Tr. 153-54.

<sup>64</sup> Staff Ex. 9; Tr. 149.

## **2. Respondents' Witnesses**

### **a) Testimony of Mr. Lancon**

Mr. Lancon testified that he is the primary provider for his wife and eight children, so losing his license would be devastating. He said he is honest, fair, and reputable; he has always helped people; and he has trained agents. He estimated that Elite PA helped 275 customers over two years. He said consumers do not understand the system, and they “know nothing about the process and just—just need an advocate.”<sup>65</sup> He said he helped the Department put together its criminal investigation of Greenforce’s owner.

Mr. Lancon explained the claims process: (1) the first payment is given to the contractor, regardless of whether it is sent to the PIA or the insured; (2) the first payment has the deductible removed; and (3) repairs must be completed in order to collect the remainder of the claim proceeds. Mr. Lancon posited that his job is done, and he is done negotiating on the client’s behalf, when a settlement is agreed with the carrier; then, he gets his service fee from the contractor.<sup>66</sup> He said that, following this procedure, the customers involved in this case only had their first payment, and no others, sent to Greenforce.

Mr. Lancon testified that, in 2019, there was heavy spring rainfall, so contractors got behind on installations. Consequently, there was a long lag time

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<sup>65</sup> Tr. 53.

<sup>66</sup> Tr. 180.

between payments and installations; and when that lag time went beyond four to six months, customers started calling him. When such a customer called, he would call Greenforce and that customer would go to “the top of the list” to get installed.<sup>67</sup>

Mr. Lancon said he never got paid on any of the claims where Greenforce failed to complete the installation, because he did not feel right asking for his PIA fee when the customer was missing a significant portion of their claim payment.<sup>68</sup> He testified that he was not authorized to sign checks on anyone’s behalf and his understanding was that the checks needed the insured’s endorsement to sign them over to the contractor, which required a visit to the insured’s house.<sup>69</sup> He said he was not aware of checks not being brought before the insureds for their signatures.<sup>70</sup>

Mr. Lancon admitted that he and Elite PA received at least \$14,600 from Greenforce on behalf of Elite PA’s clients for fees due to Elite PA for its services; that those payments were related to claims on which Elite PA was the PIA; and that Respondent’s Exhibit 3 is a check for payment from Greenforce to Elite PA.<sup>71</sup> Additionally, he agreed that another \$10,500 in payments that were received possibly came from Greenforce.<sup>72</sup> Mr. Lancon explained these as payments on

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<sup>67</sup> Tr. 171.

<sup>68</sup> Tr. 172-73.

<sup>69</sup> Tr. 173.

<sup>70</sup> Tr. 173.

<sup>71</sup> Tr. 87-89, 92.

<sup>72</sup> Tr. 98; *see* Staff Ex. 7 at 256.

behalf of prior clients for Elite PA’s 7.5% service fees.<sup>73</sup> Yet, when opposing counsel extrapolated the amount of claims (\$330,000) that would have been necessary for Elite PA’s 7.5% to have totaled \$25,000 (the rounded total of payments from Greenforce to Elite PA, according to Mr. Lancon), Mr. Lancon denied delivering \$330,000 in claims checks to Greenforce.<sup>74</sup>

Regarding Respondents’ fiduciary duties, Mr. Lancon stood by his written statement to the Department: “We did nothing more than apply our company endorsement to any claim payments we received and passed the payment along to be endorsed by remaining parties.”<sup>75</sup> His position was that the contractor—not the PIA—is the fiduciary because “the contractor is the one who handles the funds and disburses the funds.”<sup>76</sup>

**Daniels Claim.** Mr. Lancon confirmed that Ms. Daniels had filed a complaint against him and Elite PA based on a yearlong delay between her claim being paid and her roof being repaired by Greenforce.<sup>77</sup>

**Ramirez Claim.** Mr. Lancon said he did not have much to do with the Ramirezes’ claim because Mr. Buckerfield was the PIA; but he confirmed that they

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<sup>73</sup> Tr. 98-99.

<sup>74</sup> Tr. 99-100.

<sup>75</sup> Staff Ex. 6 at 228; Tr. 65. That paragraph begins: “We did not make disbursements of claim funds and . . . absolutely do not handle claim funds in a fiduciary capacity.” Staff Ex. 6 at 228.

<sup>76</sup> Tr. 89 (“ . . . Greenforce was the—was the fiduciary. . .”), 177.

<sup>77</sup> Tr. 84; *see* Staff Ex. 8 at 301.

hired Elite PA.<sup>78</sup> Mr. Lancon also confirmed that Allstate paid out on the claims; that Elite PA was named on the three claim payout checks; and that he delivered the Ramirezes' checks to Greenforce more than six months after he knew that Greenforce had failed for over a year to install Ms. Daniels's roof.<sup>79</sup>

**Habash Claim.** Mr. Lancon confirmed that he met and contracted with Mr. Habash personally—possibly at Greenforce's recommendation—and was hired to be Mr. Habash's PIA.<sup>80</sup> He admitted that he personally instructed Allstate to send all Mr. Habash's payments to Elite PA and that Allstate paid out Mr. Habash's claim.<sup>81</sup> He identified Staff Exhibit 4, TDI 153, as a check for claim proceeds made out jointly to Elite PA and Mr. Habash, mailed to Respondents' address, and endorsed by Mr. Lancon.<sup>82</sup> Mr. Lancon could not recall whether he had contacted Mr. Habash to tell him about the payment, but did recall that he never got paid for Mr. Habash's job.<sup>83</sup>

### **b) Testimony of Mr. Buckerfield**

Mr. Buckerfield worked for Elite PA and handled the Ramirezes' claim.<sup>84</sup> He testified that he met with the Ramirezes, along with their daughter, who he said

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<sup>78</sup> Tr. 73-74.

<sup>79</sup> Tr. 77-78, 80, 85-86, 90-91.

<sup>80</sup> Tr. 54-55, 57.

<sup>81</sup> Tr. 62-63.

<sup>82</sup> Tr. 63-64.

<sup>83</sup> Tr. 66, 73.

<sup>84</sup> Tr. 181-82, 184.

explained everything to her parents.<sup>85</sup> He admitted that he did not read the Ramirezes their contract in Spanish and he did not tell them their checks would be sent to Elite PA.

Mr. Buckerfield testified that Mr. Lancon hired and trained him. He said a PIA takes the headache away from the claimant by filing their paperwork and making sure they are paid every penny due them. He said he has never seen Mr. Lancon be anything but upfront and honest; and he, himself, has never had any disciplinary actions against him.

**c) Testimony of William Ordesch**

Mr. Ordesch is a former Greenforce employee and identifies as a claims specialist although he is not licensed. He discussed the claims payment process. He said that a contractor's first payment is for materials and labor, and then they front the difference until the job is done. He confirmed that some of the Greenforce customers had to pay out of pocket to get their repairs completed.

**d) Testimony of Chad Goucher, Marilyn Joell,  
Daniel Hunley, and Pedro "Pete" Ximinez**

Mr. Goucher, Ms. Joell, Mr. Hunley, and Mr. Ximinez are former clients of Elite PA and testified that Elite PA helped get their repairs done successfully. They all opined that Mr. Lancon had done nothing wrong. Mr. Ximinez went further,

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<sup>85</sup> This conflicts with Ms. Daharo's testimony that she was not present when Mr. Buckerfield contracted with her parents and did not translate or explain the contract to them.

adding that neither Elite PA nor its agents had acted dishonestly or tried to divert funds.

Mr. Goucher testified that Mr. Lancon personally delivered Mr. Goucher's claim proceeds checks to him, and he signed them over to Greenforce.<sup>86</sup> Ms. Joell stated that Mr. Lancon helped her get out of her Greenforce contract after Greenforce got her first payment, because Greenforce was taking too long to complete the work.<sup>87</sup> Mr. Hunley said he never felt like Mr. Lancon was not acting as his advocate; and he added that when Greenforce failed to do the work, Mr. Lancon helped him get it done.<sup>88</sup>

Mr. Ximinez testified that his claim proceeds were sent directly to him from his insurer; his repairs were done quickly; he was satisfied with the work; and he had money left over after he paid Greenforce.<sup>89</sup>

### **III. ANALYSIS**

As explained below, Staff presented evidence that Mr. Lancon and Elite PA committed violations of insurance law; and their actions justify revocation of all Respondents' licenses.

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<sup>86</sup> Tr. 207.

<sup>87</sup> Tr. 208.

<sup>88</sup> Tr. 211, 213.

<sup>89</sup> Tr. 216, 219.

**A. FAILURE TO EXERCISE FIDUCIARY CARE OF, AND DIVERTING, CLAIM PROCEEDS**

Ms. Daniels, the Ramirezes, and Mr. Habash all hired Elite PA as their PIA; and Mr. Habash contracted directly with Mr. Lancon.<sup>90</sup> Code section 4102.111(a) states: “All funds received as claim proceeds by a license holder acting as a [PIA] are received and held by the license holder in a fiduciary capacity. A license holder may not divert or appropriate fiduciary funds received or held.” Texas’s regulation and licensing of PIAs, including requiring them to hold claims proceeds in a fiduciary capacity, is based on the policy of protecting the public.<sup>91</sup> Consumers hire PIAs to act on their behalf in negotiating their insurance loss claim settlement.<sup>92</sup>

Generally speaking, fiduciary duties go beyond ordinary marketplace ethics—the duties imputed to fiduciaries are “*additional and higher*” and include “good faith and candor” by the fiduciary toward his principal.<sup>93</sup> This includes the general duty of full disclosure respecting matters affecting the principal’s interests and a general prohibition against the fiduciary using the relationship to benefit his personal interest except with the full knowledge and consent of the principal.<sup>94</sup> The burden lies on the fiduciary to establish the validity of any particular transaction in

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<sup>90</sup> Staff Ex. 4 at TDI 106; Staff Ex. 8 at TDI 320-22; Tr. 54.

<sup>91</sup> *Lon Smith & Assocs., Inc. v. Key*, 527 S.W.3d 604, 618 (Tex. App.—Fort Worth 2017, pet. denied); Tr. 20, 136-37.

<sup>92</sup> Code § 4102.001(3)(A)(i).

<sup>93</sup> *Chien v. Chen*, 759 S.W.2d 484, 495 (Tex. App.—Austin 1988, no pet.) (emphasis in original) (citing 36A C.J.S. *Fiduciary*, at 381 (1961)).

<sup>94</sup> *Chien*, 759 S.W.2d at 495.



which he is involved.<sup>95</sup> More specifically, Code section 4102.104 (Commissions) states, in relevant part:

(c) Except for the payment of a commission by the insured, all persons paying any proceeds of a policy of insurance or making any payment affecting an insured's rights under a policy of insurance must:

...

(2) require the written signature and endorsement of the insured on the payment draft or check.

...

(e) Notwithstanding any authorization the insured may have given to the [PIA], a [PIA] may not sign and endorse any payment draft or check on behalf of an insured.<sup>96</sup>

As for diversion, no statute or rule defines it, but “divert” ordinarily denotes turning aside or turning from one course to another.<sup>97</sup>

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<sup>95</sup> *Chien*, 759 S.W.2d at 495 (citing 36A C.J.S. *Fiduciary*, at 381).

<sup>96</sup> Code section 4102.104 was not specifically cited in Staff's Amended Notice of Hearing (NOH) (filed September 20, 2022); however, the NOH included factual allegations regarding check endorsements, to which Code section 4102.104 applies.

<sup>97</sup> Black's Law Dictionary defines “divert” as “to turn aside; to turn out of the way; to alter the course of things.” *Divert*, Black's Law Dictionary (6th ed. 2004); *see also* *Divert*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/divert#legaldictionary> (defining “divert” as “to turn aside; deviate” as in “divert traffic to a side street” or “to turn from one course or use to another; deflect” as in “diverting funds to other projects”) (last visited March 7, 2023).

Mr. Lancon acknowledged that consumers often do not understand the claims process and need an advocate. His customer, Ms. Ramirez confirmed that she had trusted Elite PA to handle her claims, expecting not to have to worry.

In his testimony and in his written statements to the Department, Mr. Lancon admitted that Elite PA received claims proceeds checks for the Ramirezes and Mr. Habash and passed them on to Greenforce without the insureds' own written signature or endorsement; and he admitted he endorsed the Habash checks himself—all practices violating the Code. Ms. Ramirez and Mr. Habash testified that this was done without their knowledge or consent.

Additionally, according to Mr. Lancon's testimony and pleadings, he and Elite PA received at least \$14,600 in payments from Greenforce in direct relation to claims he and Elite PA had adjusted, and possibly another \$10,500 in payments that were received but he could not verify came from Greenforce. Respondents Exhibit 3 is a copy of a check for one such payment to Elite PA; and Respondents produced a (partial) list of such payments.<sup>98</sup> Mr. Lancon said these were payments on behalf of prior clients, for Elite PA's 7.5% service fees.<sup>99</sup> However, when opposing counsel extrapolated the number of claims for which 7.5% would have totaled the \$25,000 in payments that Mr. Lancon admitted Elite PA received from Greenforce, Mr. Lancon adamantly denied delivering that much in claims to Greenforce.<sup>100</sup> Thus, Mr. Lancon's testimony is inconsistent: without delivering

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<sup>98</sup> Staff Ex. 7 at TDI 283.

<sup>99</sup> Tr. 98-99.

<sup>100</sup> Tr. 99-100.

\$330,000 in claims to Greenforce, Respondents could not legitimately have made \$25,000 in fees. Lastly, the evidence does not show that Mr. Habash or the Ramirezes knew that Mr. Lancon and/or Elite PA were being paid by Greenforce. Mr. Lancon’s income from Greenforce—whether merely fee payments or more illicit—benefited his personal interest without his clients’ knowledge and consent, violating the fiduciary principal of full disclosure.

While Respondents do not appear to have personally appropriated the claims payments they received via checks, Mr. Lancon and Elite PA diverted them by endorsing them and giving them to Greenforce and Novos rather than to the insured client. Respondents argue that signing and passing checks along did not implicate their fiduciary duties because checks are not fiduciary funds until endorsed by the named recipient.<sup>101</sup> However, given the law concerning negotiable instruments including checks, the ALJ does not find this argument compelling.<sup>102</sup> Therefore, the ALJ finds substantial evidence that Mr. Lancon and Elite PA diverted fiduciary funds they received, and used their fiduciary relationships to benefit their personal interests without the full knowledge and consent of the principals, violating their fiduciary duties.

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<sup>101</sup> Respondent’s Response to TDI’s Closing Brief (Resp. Reply Brief) at 4-5.

<sup>102</sup> Tex. Bus. & Comm. Code § 3.104(a), (f); *Davila v. State*, 956 S.W.2d 587, 589 (Tex. App.—San Antonio 1997, pet. ref’d)(“A check may be the subject of theft, and the fact that the check was not endorsed when it was stolen will not protect an actor.”); *Simmons v. State*, 109 S.W.3d 469, 471, 477 (Tex. Crim. App. 2003); *see also, Johnson v. State*, 560 S.W.3d 224, 229-30 (Tex. Crim. App. 2018) (reversing holding that check was worthless piece of paper because fact that check was deposited and spent meant that the value written on the face of the check was stolen); *½ Price Checks Cashd v. United Auto. Ins. Co.*, 344 S.W.3d 378, 381 n.2 (Tex. 2011) (“Article 3’s definition of a negotiable instrument includes a check.”).

Under Code section 4102.201(a)(1), the Commissioner may suspend or revoke a license if the licensee is found to have violated chapter 4102 of the Code or a rule adopted under it. The ALJ finds that Mr. Lancon and Elite PA violated Code section 4102.104(c)(2) and (e) by making payments affecting insureds' rights without the written signature and endorsement of the insureds on the checks and by signing and endorsing checks on behalf of insureds. Additionally, the ALJ finds that Mr. Lancon and Elite PA violated Code section 4102.111(a), by failing to exercise fiduciary care of and diverting claim proceeds received while acting as PIA on behalf of the Ramirezzes and Mr. Habash. Accordingly, suspension or revocation of Mr. Lancon's and Elite PA's licenses are authorized.

**B. ENGAGING IN ACTIVITIES THAT MAY REASONABLY BE CONSTRUED AS PRESENTING A CONFLICT OF INTEREST**

The Commissioner's code of ethics for PIAs states clearly: "Licensees must avoid conflicts of interest . . . ." <sup>103</sup> And Code section 4102.158(a)(2) explicitly prohibits PIAs from engaging in activities that may be construed as presenting a conflict of interest, including:

soliciting or accepting any remuneration from, . . . or deriving any direct or indirect financial benefit from, any salvage firm, repair firm, construction firm, or other firm that obtains business in connection with any claim the [PIA] has a contract or agreement to adjust.

As discussed above, Mr. Lancon admitted that he and Elite PA received payments from repair contractor Greenforce in direct relation to claims he and

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<sup>103</sup> 28 Tex. Admin. Code § 19.713(b)(8).

Elite PA had adjusted as the PIA—totaling at least \$14,600. Those payments constitute a conflict of interest.

The ALJ finds that Staff has met its burden to show that Mr. Lancon and Elite PA violated Code section 4102.158(a)(2) and 28 Texas Administrative Code section 19.713(b)(8) by engaging in activities that constituted, and/or may be construed as presenting, a conflict of interest. Under Code section 4102.201(a)(1), the Commissioner may suspend or revoke a license for such a violation. Accordingly, suspension or revocation of Mr. Lancon’s and Elite PA’s licenses are authorized.

**C. INCOMPETENCE OR UNTRUSTWORTHINESS IN THE CONDUCT OF AFFAIRS UNDER PIA LICENSE**

Respondents suggest that their history with clients is stellar excluding Ms. Daniels, Mr. Habash, and the Ramirezes;<sup>104</sup> but Respondents’ licensing records, which include seven other complaints, suggest otherwise. As discussed above, Mr. Lancon’s and Elite PA’s treatment of claims payments to Ms. Daniels, Mr. Habash, and the Ramirezes, taken together, suggest Mr. Lancon and Elite PA routinely conducted practices contrary to the Code, whether out of incompetence

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<sup>104</sup> Resp. Reply Brief at 1; Tr. 169-70.

or fraudulence.<sup>105</sup> When considered alongside the payments from Greenforce to Mr. Lancon and Elite PA, these practices appear suspiciously similar to kick-backs and demonstrate untrustworthiness in their PIA affairs.

Additionally, Staff established through testimony and records that between January 26, 2018, and June 9, 2022, Elite PA failed to maintain its corporate entity status, which is a requirement for licensure under Code section 4001.106(b)(1)(A), demonstrating incompetence in the conduct of its affairs.

Under Code section 4102.201(a)(8), the Commissioner may suspend or revoke a license for demonstrated incompetence or untrustworthiness in the conduct of the licensee's affairs under the license. The ALJ finds that Staff has met its burden to show incompetence and/or untrustworthiness in Mr. Lancon's and Elite PA's conduct of their affairs under their PIA licenses. Accordingly, revocation or suspension of Mr. Lancon's and Elite PA's licenses are authorized.

#### **D. ELITE PA'S QUALIFICATIONS FOR ITS BUSINESS ENTITY LICENSE**

The Department's and Secretary of State's records show that Elite PA's sole owner, member, manager, and designated responsible licensed person (DRLP)

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<sup>105</sup> Staff has not alleged fraud, a Code violation which is its own ground for discipline. *See, e.g.*, Code §§ 4005.101(b)(5) (engaging in fraudulent or dishonest acts or practices), 4102.201(a)(7) (engaging in a fraudulent transaction). At common law, the term "fraud" means "an act, omission, or concealment in breach of a legal duty [such as a fiduciary duty], trust, or confidence justly imposed, when the breach causes injury to another or the taking of an undue and unconscientious advantage." *Flanary v. Mills*, 150 S.W.3d 785, 795 (Tex. App.—Austin 2004, pet. denied) (citing *Chien*, 759 S.W.2d at 495 (Tex. App.—Austin 1988, no pet.); *Russell v. Industrial Transp. Co.*, 258 S.W.462 (Tex. 1924); *Kellum v. Smith*, 18 Tex. 835 (1857)). Although Mr. Lancon's and Elite PA's handling of insurance payments discussed here might technically meet this definition, the ALJ makes no finding as to fraud because it was not raised by Staff.

is Mr. Lancon.<sup>106</sup> If Mr. Lancon's license is suspended or revoked, Elite PA cannot have Mr. Lancon as its officer, director, member, manager, partner, or person with the right or ability to control Elite PA.<sup>107</sup> Not having at least one officer, active partner, or other managing individual who is individually licensed constitutes grounds for denial of an original license.<sup>108</sup>

Under Code section 4102.201(a)(2), the Commissioner may suspend or revoke a PIA license on the basis of a cause that constitutes grounds for denial of an original license; and under Code section 4001.254, the Department *must* revoke or suspend the license of a license holder who fails to maintain necessary qualifications.<sup>109</sup> The ALJ finds that Staff has met its burden to show that, if Mr. Lancon's license is suspended or revoked, there will exist a cause constituting grounds for denying Elite PA's original license. Accordingly, if Mr. Lancon's license is suspended or revoked, then suspension or revocation of Elite PA's PIA license is authorized and required.

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<sup>106</sup> Staff Ex. 9 at TDI 334, 336, 339, 342; Staff Ex. 10 at TDI 344, 347, 349, 351, 354; Staff Ex. 12 at TDI 372; Tr. 140, 155.

<sup>107</sup> Code §§ 4001.106(b)(6)(A), 4102.055(c); 28 Tex. Admin. Code § 19.704(c)(7).

<sup>108</sup> Code §§ 4001.106(b)(2), (6)(A), 4102.055(c); 28 Tex. Admin. Code § 19.704(c)(3); *see* Tr. 147, 153-54.

<sup>109</sup> Code section 4001.254 was not specifically cited in Staff's NOH; however, it included this claim regarding Elite PA's and Elite Capital's business entity license qualifications, to which this section applies.

**E. ELITE CAPITAL'S QUALIFICATIONS FOR ITS BUSINESS ENTITY LICENSE**

The Department's and Secretary of State's records show that Elite Capital's sole owner, member, manager, and DRLP is Mr. Lancon.<sup>110</sup> Without his personal insurance license, Elite Capital does not qualify for an insurance license.<sup>111</sup> Similarly, for corporate licensure of an insurance business, the corporation's controlling person cannot have had his insurance license suspended or revoked.<sup>112</sup> Because Mr. Lancon controls Elite Capital, with his license suspended or revoked, Elite Capital is not qualified to provide insurance.

Under Code section 4001.254, the Department must revoke or suspend the license of a license holder who fails to maintain necessary qualifications. The ALJ finds that Staff has met its burden to show that, if Mr. Lancon's license is suspended or revoked, Elite Capital's insurance license must be revoked or suspended.

**F. SANCTION**

Staff established that Mr. Lancon and Elite PA engaged in conduct for which they can be disciplined; so, the issue becomes what discipline is appropriate. Under Code § 4102.201, the Commissioner may suspend *or* revoke a PIA license for violations of the Code or Commissioner's rules; for causes that constitute grounds

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<sup>110</sup> Staff Ex. 11 at TDI 363, 366, 368; Staff Ex. 14 at TDI 392; Tr. 140, 147.

<sup>111</sup> Code § 4001.106(b)(2).

<sup>112</sup> Code § 4001.106(b)(6)(A).



for denial of an original license; and for incompetence or untrustworthiness in the conduct of affairs under the license. Staff seeks license revocation and no other sanction; Respondents are opposed.<sup>113</sup>

The ALJ is aware of no mitigation or aggravation guidelines in the Code or rules for determining whether revocation or suspension is appropriate—the Department’s rules do not include a penalty matrix or other guidance. However, the ALJ finds instructive analogous guidelines in the Code directing that the amount of administrative penalties (where such penalties are applicable) be based on:

1. the seriousness of the violation, including:
  - (A) the nature, circumstances, extent, and gravity of the violation; and
  - (B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;
2. the economic harm to the public interest or public confidence caused by the violation;
3. the history of previous violations;
4. the amount necessary to deter a future violation;
5. efforts to correct the violation;
6. whether the violation was intentional; and
7. any other matter that justice may require.<sup>114</sup>

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<sup>113</sup> Staff’s Amended Petition in its NOH sought revocation and “any other just and appropriate relief to which the [D]epartment may be entitled by law.” Staff Ex. 1 at 9.

<sup>114</sup> Code § 84.022(b).

**Mr. Lancon and Elite PA** failed to exercise fiduciary care of, and diverted, claim proceeds while acting as PIA; routinely conducted practices that violated specific Code provisions regarding endorsement of claims proceeds checks; engaged in activities that may be construed as presenting a conflict of interest; and demonstrated incompetence and/or untrustworthiness in the conduct of their PIA affairs with the Ramirezes and Mr. Habash. Elite PA additionally allowed its corporate status to lapse for over four years, further demonstrating incompetence. As a result of Mr. Lancon's and Elite PA's practices, the Ramirezes never received their insurance proceeds and were unable to repair their home; and Mr. Habash had to sue to receive his proceeds and make his own repairs. Nor were they the first clients failed by Mr. Lancon and Elite PA. Ms. Daniels's claim proceeds were also diverted to Greenforce without her knowledge or consent; although her complaint was retracted once her work was, belatedly, completed. And the record shows numerous other complaints were made against Mr. Lancon and Elite PA by insurance carriers.

Throughout the Department's investigation and this case, Mr. Lancon has admitted the actions at issue, yet contended that Respondents have done no wrong. He insists that his actions were agreed to by his clients and are regular PIA practice, despite specific requirements to the contrary in the Code and Department rules, which override any contractual agreement. This was not a single event; these were serious, repeated violations that caused economic harm to the individuals involved. Moreover, Mr. Lancon clearly did not commit these violations by mistake; and he still does not seem to understand that his actions violated Texas insurance law.

On the other hand, no evidence was presented of any other disciplinary history. In truth, had Greenforce completed the repairs for which it was hired, Mr. Lancon's and Elite PA's questionable practices might not have come to light. And, Mr. Lancon appears to have been responsive to the Department's requests for information in its enforcement actions. He seems to have attempted to induce Greenforce to complete his clients' repairs once he realized they were overdue; and he claims he did not benefit from the jobs where work was not completed. One former client even recommended Mr. Lancon for helping her get out of her contract with Greenforce once it was clear they would not complete her repairs.<sup>115</sup> Yet the ALJ is concerned about the unclear nature of Greenforce's payments to Mr. Lancon and Elite PA. Taking these factors into consideration, the ALJ finds that Mr. Lancon's and Elite PA's violations justify revocation of their licenses and that revocation is appropriate.

As for **Elite Capital**, the Code directs that failure to maintain the requirements for licensure result in revocation or suspension. With the license of Elite Capital's sole owner, member, manager, and DRLP revoked, Elite Capital will not qualify to provide insurance. Therefore, Staff has established a basis for revoking Elite Capital's license.

#### **IV. RECOMMENDATION**

Code sections 82.051 and 4102.201(a)(1) authorize the Department to revoke a license for a violation of that chapter or a Department rule; Code

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<sup>115</sup> Respondents Ex. 2.

section 4102.201(a)(8) authorizes the Department to revoke a license for demonstrated incompetence or untrustworthiness in the conduct of the licensee's licensed affairs; and Code sections 4001.254 and 4102.201(a)(2) authorize the Department to revoke a license for a cause that constitutes grounds for denial of an original license or for failing to maintain qualifications. Based on Mr. Lancon's violations of Code sections 4001.106(b)(1)(A), (b)(2), (b)(6)(A), .201(a)(8), 4102.104(c)(2), (e), .111(a), .158(a)(2), and 28 Texas Administrative Code section 19.713(b)(8); on Mr. Lancon's and Elite PA's incompetence and untrustworthiness; and on Elite PA's and Elite Capital's failure to maintain qualifications, the ALJ recommends revocation of Mr. Lancon's, Elite PA's, and Elite Capital's insurance licenses. In support of these recommendations, the ALJ proposes the following findings of fact and conclusions of law.

**V. FINDINGS OF FACT**

1. Jared Michael Lancon holds the following licenses issued by the Texas Department of Insurance (Department): a public insurance adjuster (PIA) license; and a general lines agent license with property, casualty, life, accident, health, and HMO qualifications.
2. Elite Public Adjusters, LLC (Elite PA) holds a PIA license issued by the Department.
3. Elite Capital Insurance Group, LLC (Elite Capital) holds an active general lines license with a property and casualty qualification issued by the Department.
4. Mr. Lancon is the sole owner, member, manager, and designated responsible licensed person (DRLP) of Elite PA and Elite Capital.

5. Oveta Daniels, Javier and Victoria Ramirez, and George Habash (the Ramirezes and Mr. Habash are collectively Clients) all hired Elite PA to act as their PIA; and Mr. Habash contracted directly with Mr. Lancon.
6. Clients trusted Mr. Lancon and Elite PA to handle their insurance claims proceeds; and Mr. Lancon and Elite PA each had a fiduciary duty to Clients.
7. Without Clients' knowledge or consent, Elite PA received checks for the claim proceeds of Clients, endorsed the checks, and passed the checks on to Greenforce Restoration, LLC (Greenforce), who cashed or deposited the checks, and to Novos Energy (Novos).
8. Mr. Lancon endorsed the checks for Mr. Habash's claim settlement himself.
9. Mr. Lancon and Elite PA diverted Clients' claim proceeds while acting as PIA by endorsing them and giving them to Greenforce and Novos rather than to Clients.
10. Without Clients' knowledge or consent, Mr. Lancon and Elite PA received \$14,600-\$25,100 in payments from Greenforce in direct relation to claims Mr. Lancon and Elite PA adjusted.
11. Mr. Lancon and Elite PA failed to exercise fiduciary care of claim proceeds while acting as PIA.
12. Mr. Lancon and Elite PA engaged in activities that constitute, and/or may be construed as presenting, a conflict of interest by accepting remuneration from Greenforce, a repair or construction firm that obtained business in connection with claims Mr. Lancon and Elite PA had contracts to adjust.
13. Mr. Lancon and Elite PA routinely conducted their PIA practices contrary to the Code.
14. Mr. Lancon's and Elite PA's improper business practices and acceptance of payments from Greenforce demonstrate untrustworthiness in their PIA affairs.
15. Mr. Lancon's and Elite PA's violations of the Code and Department rules were not oversights—they were intentional.

16. Mr. Lancon still does not accept that his PIA practices are contrary to the Code and Department rules.
17. Elite PA's organizational charter was forfeited between January 26, 2018, and June 9, 2022.
18. Elite PA's failure to maintain its corporate entity status demonstrates incompetence in the conduct of its affairs.
19. If Mr. Lancon's license is suspended or revoked, Elite PA and Elite Capital will have no qualifying officer, director, member, manager, partner, or DRLP, and will consequently fail to maintain their qualifications.
20. Respondents' licensing records include two previous consumer complaints and five complaints by insurance companies, in addition to the Daniels, Habash, and Ramirez cases.
21. Marilyn Joell provided a letter of recommendation in support of Mr. Lancon.
22. The Ramirezes never received their insurance proceeds and were unable to repair their home; and Mr. Habash had to sue to receive his proceeds and made his own repairs.
23. Greenforce never repaired the Ramirez or Habash homes.
24. Ms. Daniels's claims proceeds were diverted to Greenforce without her knowledge or consent; and Greenforce only completed her work after she filed a complaint with the Department.
25. Mr. Lancon tried to induce Greenforce to complete his clients' repairs once he realized they were overdue.
26. On September 20, 2022, the Department's staff (Staff) sent Respondent amended notice of the hearing. The amended notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing would be held; a reference to the particular sections of the statutes and rules involved, except for Texas Insurance Code (Code) sections 4001.254 and 4102.104, which

were not specifically cited; and a short, plain statement of the matters asserted.

27. The hearing on the merits was held via Zoom videoconference on November 8, 2022, before Administrative Law Judge Heather D. Hunziker of the State Office of Administrative Hearings (SOAH). Staff Attorney Amanda Cagle represented Staff, and Mr. Lancon represented himself and the other Respondents. The record closed on December 21, 2022, after the parties filed post-hearing briefs.

## **VI. CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter. Tex. Ins. Code (Code) chs. 82, 4001, 4005, 4051, 4054, 4102.
2. SOAH has authority to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Code §§ 4005.104, 4102.201(b).
3. Proper and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052; Code § 4005.104(b).
4. Staff had the burden of proving a basis for revoking Respondents' licenses and that the licenses should be revoked. 1 Tex. Admin. Code § 155.427.
5. The standard of proof is by a preponderance of the evidence. *Granek v. Tex. St. Bd. of Med. Examn'rs*, 172 S.W.3d 761, 777-78 (Tex. App.—Austin 2005, no pet.).
6. Mr. Lancon and Elite PA held Clients' claims proceeds checks in a fiduciary capacity. Code § 4102.111(a). *See* Tex. Bus. & Comm. Code § 3.104(a), (f); *Davila v. State*, 956 S.W.2d 587, 589 (Tex. App.—San Antonio 1997, pet. ref'd); *Simmons v. State*, 109 S.W.3d 469, 471, 477 (Tex. Crim. App. 2003); *see also, Johnson v. State*, 560 S.W.3d 224, 229-30 (Tex. Crim. App. 2018); *½ Price Checks Cashed v. United Auto. Ins. Co.*, 344 S.W.3d 378, 381 n.2 (Tex. 2011).

7. Mr. Lancon's and Elite PA's fiduciary duties included a duty of good faith and candor to Clients, including the duty of full disclosure respecting matters affecting Clients' interests and a prohibition on Mr. Lancon or Elite PA using their Client relationship to benefit personal interests without Clients' full knowledge and consent. *Chien v. Chen*, 759 S.W.2d 484, 495 (Tex. App.—Austin 1988, no pet.).
8. Mr. Lancon and Elite PA were obligated to require the written signature and endorsement of Clients on payment checks to Greenforce. Code § 4102.104(c)(2).
9. Mr. Lancon and Elite PA routinely violated the Code by endorsing payment checks on behalf of Clients, and by not requiring the written signature and endorsement of the insured on the payment checks. Code § 4102.104(c)(2), (e).
10. Mr. Lancon and Elite PA violated their fiduciary duties by using their fiduciary relationships to benefit their personal interests without the full knowledge and consent of the principals, and by diverting fiduciary funds. Code § 4102.111(a).
11. By accepting remuneration from a repair or construction firm, Greenforce, which obtained business in connection with claims Mr. Lancon and Elite PA had contracts to adjust, Mr. Lancon and Elite PA engaged in activities that constituted a conflict of interest. Code § 4102.158(a)(2).
12. Mr. Lancon and Elite PA violated Code section 4102.158(a)(2) and 28 Texas Administrative Code section 19.713(b)(8) by engaging in activities that constituted, and/or may be construed as presenting, a conflict of interest.
13. Elite PA is required to maintain its corporate entity status in order to remain licensed. Code § 4001.106(b)(1)(A).
14. If Mr. Lancon's license is suspended or revoked, Elite PA and Elite Capital will have no qualifying officer, director, member, manager, partner, or DRLP. Code §§ 4001.106(b)(6)(A), 4102.055(c); 28 Tex. Admin. Code § 19.704(c)(7).

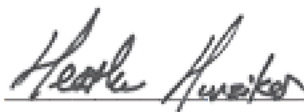


15. Not having at least one officer, active partner, or other managing individual who is individually licensed constitutes grounds for denial of an original license. Code §§ 4001.106(b)(2), (6)(A), 4102.055(c); 28 Tex. Admin. Code § 19.704(c)(3).
16. The Department shall revoke, suspend, or refuse to renew the license of a license holder who does not maintain the qualifications necessary to obtain the license. Code § 4001.254.
17. Mr. Lancon and Elite PA violated the Code and rules of the Commissioner, both of which are grounds for taking disciplinary action against a license holder. Code §§ 82.051-.052, 4102.201(a)(1).
18. Mr. Lancon demonstrated untrustworthiness, and Elite PA demonstrated incompetence and/or untrustworthiness, in the conduct of their affairs under their licenses, which are grounds for taking disciplinary action against license holders. Code § 4102.201(a)(8).
19. If Mr. Lancon's license is suspended or revoked, Elite PA's and Elite Capital's licenses must be suspended or revoked because they will not have at least one officer, active partner, or other managing individual who is individually licensed, and will thus fail to maintain their qualifications. Code §§ 4001.254, 4102.201(a)(2).
20. Grounds for denial of Elite PA's original license and Elite PA's failure to maintain its qualifications are each, individually, grounds for suspending or revoking Elite PA's license. Code §§ 4001.254, 4102.201(a)(2).
21. The Commissioner has the authority to cancel, revoke, or suspend Mr. Lancon's and Elite PA's licenses for their violations of Code and Commissioner's rules. Code §§ 82.051-.052, 4102.201(1).
22. To qualify for licensure, a corporation must have at least one officer individually licensed by the Department separate from the corporation, and a person who has the right or ability to control the corporation must not have had their insurance license revoked or committed an act for which an insurance license may be denied. Code § 4001.106(b)(2), (6).

23. The Commissioner may suspend or revoke a PIA license on the basis of demonstrated incompetence or untrustworthiness in the conduct of the license holder's affairs under the license, as determined by the Commissioner. Code § 4102.201(a)(8).
24. The Commissioner has the authority to revoke or suspend Mr. Lancon's and Elite PA's licenses for their demonstrated incompetence and/or untrustworthiness in the conduct of their affairs under their licenses. Code § 4102.201(a)(8).
25. If Mr. Lancon's license is suspended or revoked, the Commissioner is authorized to cancel, revoke, or suspend Elite PA's and Elite Capital's insurance licenses for their failure to maintain necessary qualifications. Code §§ 4001.106(b)(2), (6)(A), .254, 4102.201(a)(2).
26. If Mr. Lancon's license is suspended or revoked, Elite PA and Elite Capital cannot maintain their qualifications, and their licenses must be correspondingly suspended or revoked. Code § 4001.254.
27. Mr. Lancon's insurance license should be revoked.
28. Elite PA's insurance license should be revoked.
29. Elite Capital's insurance license should be revoked.

**Signed March 23, 2023.**

ALJ Signature:



Heather D. Hunziker,

Presiding Administrative Law Judge

**2023-8318**

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Associated Case Party: TDI

Name	BarNumber	Email	TimestampSubmitted	Status
Amanda Cagle		Amanda.Cagle@tdi.texas.gov	3/24/2023 2:40:42 PM	SENT
Rachel Cloyd		Rachel.Cloyd@tdi.texas.gov	3/24/2023 2:40:42 PM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	3/24/2023 2:40:42 PM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	3/24/2023 2:40:42 PM	SENT

Associated Case Party: Elite Public Adjusters, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Elite Public Adjusters, LLC		[REDACTED]	3/24/2023 2:40:42 PM	SENT
Jared Michael Lancon		[REDACTED]	3/24/2023 2:40:42 PM	SENT

Associated Case Party: JaredMichaelLancon

Name	BarNumber	Email	TimestampSubmitted	Status
Jared Michael Lancon		[REDACTED]	3/24/2023 2:40:42 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elite Public Adjusters LLC		[REDACTED]	3/24/2023 2:40:42 PM	SENT

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454-22-2824  
5/16/2023 1:54 PM  
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454-22-2824  
5/16/2023 1:56:39 pm  
STATE OFFICE OF  
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Crystal Rosas, CLERK

# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

**Exhibit B**

May 16, 2023

Rachel Cloyd

VIA EFILE TEXAS

Kerry Bloodsaw

VIA EFILE TEXAS

**RE: Docket Number 454-22-2824.C; Texas Department of Insurance No. 26658, 29389, and 29575; *Texas Department of Insurance v. Jared Michael Lancon, Elite Public Adjusters, LLC, and Elite Capital Insurance Group, LLC***

Dear Parties:

On March 24, 2023, the Administrative Law Judge (ALJ) issued the Proposal for Decision (PFD) in this case. On March 30, 2023, the ALJ granted Respondents' Unopposed Motion for an Extension of Time to File Exceptions and Replies to the PFD and extended the deadlines for the parties to file exceptions and responses. On April 21, 2023, exceptions to the PFD were timely filed by Jared Michael Lancon; Elite Public Adjusters, LLC (Elite PA); and Elite Capital Insurance Group, LLC (Elite Capital) (collectively, Respondents). On May 4, 2023, Staff (Staff) of the Texas Department of Insurance timely filed a reply to Respondents' exceptions.

In the PFD, the ALJ found that Mr. Lancon's and Elite PA's licenses should be revoked because they violated the Texas Insurance Code (Code) by: (1) failing to exercise fiduciary care over, and diverting, claim proceeds received while acting as a public insurance adjuster (PIA); (2) engaging in activities that may reasonably be construed as presenting a conflict of interest; and (3) demonstrating incompetence and untrustworthiness in the conduct of affairs under their PIA licenses. The ALJ also found that, with Mr. Lancon's licenses revoked, Elite PA and Elite Capital no

Exceptions Letter

May 16, 2023

Page 2 of 2

longer qualify for their business entity licenses; therefore, their licenses should be revoked. The ALJ's recommendations were based on her evaluation of all the evidence and law as described in the PFD.

In their exceptions, Respondents list Findings of Fact and Conclusions of Law that they maintain were incorrect. However, Respondents make arguments that were fully considered and were discussed in the PFD and are not addressed again here. Additionally, in support of their exceptions, Respondents rely in part on their clients' alleged contractual consent to various conditions that form the bases for Respondents' violations of Code. As unambiguously codified, and as a matter of law, client authorization to violate the Code is irrelevant to the dispositive issue of whether Respondents violated the Code and are therefore subject to discipline. *See* Code § 4102.104(e); *see also, Philadelphia Indemnity Ins. Co. v. White*, 490 S.W.3d 468, 483 (Tex. 2016).

The Proposal for Decision is ready for consideration with no changes, and the ALJ recommends its adoption.

Sincerely,

ALJ Signature:



Heather D. Hunziker,

Presiding Administrative Law Judge

CC: Service List

**2023-8318**

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Associated Case Party: TDI

Name	BarNumber	Email	TimestampSubmitted	Status
Rachel Cloyd		Rachel.Cloyd@tdi.texas.gov	5/16/2023 1:54:13 PM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	5/16/2023 1:54:13 PM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	5/16/2023 1:54:13 PM	SENT

Associated Case Party: JaredMichaelLancon

Name	BarNumber	Email	TimestampSubmitted	Status
Bertolino LLP		[REDACTED]	5/16/2023 1:54:13 PM	SENT
Melissa Hooper		[REDACTED]	5/16/2023 1:54:13 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kerry Bloodsaw		[REDACTED]	5/16/2023 1:54:13 PM	SENT