

No. 3768

**OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE**

Date: JAN 08 2015

Subject Considered:

EDWARD LEE SAMPLE, P.E.
5321 Crestwick Drive
Corpus Christi, Texas 78413

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 8164

General remarks and official action taken:

The commissioner of insurance considers whether disciplinary action should be taken against Edward Lee Sample, P.E.

WAIVER

Sample acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Sample waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

FINDINGS OF FACT

1. The Texas Department of Insurance appointed Sample as a qualified inspector to perform building inspections for the purpose of establishing that buildings or structures are eligible for windstorm and hail insurance through the Texas Windstorm Insurance Association (TWIA).
2. Sample's license number is 42501 and he was associated with the firm Sample Engineering, Inc. prior to July 31, 2014, and Tradewinds Consulting Group as of July 31, 2014.

2517 Fulton Drive, Corpus Christi, Texas

3. TDI received an Application for Windstorm Building Inspection Form WPI-1 (WPI-1) March 11, 2014, for an entire re-roof on the residential structure located at 2517 Fulton Drive, Corpus Christi, Texas (Fulton Drive Re-Roof). The WPI-1 listed Sample as the engineer-of-record. The WPI-1 contained a signature date of March 10, 2014.

4. TDI also received an Inspection Verification Form WPI-2-BC-5 (WPI-2-BC-5) for the Fulton Drive Re-Roof March 11, 2014. The WPI-2-BC-5 listed Sample as the engineer-of-record for the structure and contained his engineering seal and signature.
5. By his submission of the WPI-2-BC-5, Sample certified that he was personally responsible as the engineer-of-record for the windstorm inspection of the Fulton Drive Re-Roof and that he provided standard and customary review services, including inspections of the Fulton Drive Re-Roof.
6. Sample further certified that the Fulton Drive Re-Roof was designed and inspected in compliance with the wind load provisions of *International Residential Code, 2006 Edition (Amended with 2006 Texas Revisions)* (IRC 2006). Sample certified that the 120 mph, 3-second gust design conditions were used. Sample stated that he understood and intended that TDI would rely on his statement of compliance in determining whether to issue a WPI-8 for the structure and to notify TWIA the structure was eligible for windstorm insurance.
7. TDI received a written complaint from the homeowner March 20, 2014.
8. TDI conducted inspections of the Fulton Drive Re-Roof March 25, 2014, April 30, 2014, and May 20, 2014. TDI found deficiencies with the re-roof during each inspection.
9. TDI sent Sample a certified letter June 16, 2014. The certified letter provided Sample with the results of TDI's three inspections. The letter further requested additional information from Sample and reminded Sample of his obligation to respond within 15 days.
10. TDI received Sample's request for an extension June 26, 2014.
11. TDI sent Sample an email June 30, 2014, granting a 10-day extension.
12. TDI received Sample's second request for an extension July 14, 2014. Sample requested an extension until July 18, 2014.
13. TDI granted Sample's extension request July 14, 2014, and extended his deadline until July 18, 2014.
14. TDI received Sample's response July 18, 2014.
15. TDI conducted a field inspection of the Fulton Drive Re-Roof July 23, 2014. Sample was present at the TDI inspection.
16. TDI received a letter from Sample July 25, 2014. Sample represented to TDI that there was litigation in place regarding the roof. As a result, Sample stated he is unable to make any corrections until the litigation was complete.

17. TDI sent Sample a certified letter August 1, 2014. The certified letter confirmed that TDI had received Sample's July 18, 2014, response. TDI's letter also detailed the issues found and discussed at the July 23, 2014, inspection of the Fulton Drive Re-Roof. The letter further described communications between Sample and TDI regarding Sample's plan of action for the re-roof, and outlined the discrepancies which needed to be corrected. Finally, TDI's letter requested additional information from Sample and reminded Sample of his obligation to respond within 15 days.
18. TDI received Sample's response August 13, 2014. Sample stated that he agreed with what TDI stated needed to be corrected in its August 1, 2014, letter. Sample further stated that the homeowner does not want the contractor and the crew to work on the roof. Sample stated that he had never been involved in this type of situation and was unable to provide a course of action to solve the problem.
19. TDI sent Sample a certified letter August 18, 2014. The certified letter requested that Sample provide TDI with his detailed action plan for the Fulton Drive Re-Roof. Finally, TDI's letter requested additional information from Sample and reminded Sample of his obligation to respond within 15 days.
20. TDI received Sample's response September 2, 2014. Sample's letter restated his response in his August 1, 2014, letter. Sample stated that his plan of action was to stand by ready to perform the work once the homeowner grants him and the contractor permission to complete the work on the roof.
21. TDI sent Sample an email September 4, 2014. The email summarized a phone conversation between TDI and Sample September 2, 2014, regarding the Fulton Drive Re-Roof and the information that TDI was requesting from Sample. The email requested Sample to provide TDI with his plan of action and reminded Sample of his obligation to respond within 15 days.
22. TDI received Sample's response September 18, 2014. Sample's response included narrative explanations of corrections to be made, a copy of Sample's instruction letter to the contractor regarding what and how the roof repairs are to be made, a plan view sketch showing the areas of concern, and a copy of the response sent from the Better Business Bureau to the contractor, regarding the homeowner's complaint against the contractor. Finally, Sample stated again that the homeowner was not permitting them on the property to make the corrections to the roof, but that he and the contractor were still ready to make the corrections should the homeowner change his mind.
23. TDI sent Sample an email with the aggregate plan view drawing of the structure's roof covering deficiencies observed on March 25, 2014, and July 24, 2014. TDI asked Sample to reply September 29, 2014, to discuss the issues.
24. Sample replied to TDI September 29, 2014, and stated that he did not agree with the number of deficiencies shown on TDI's aggregate plan view drawing.

25. TDI sent Sample a certified letter October 3, 2014. The certified letter informed Sample that TDI had reviewed his response and had determined that there were more deficiencies remaining on the structure than were noted in Sample's plan view sketch. The letter stated that TDI sent Sample a copy of its aggregate plan view drawing of the structure's roof covering with the deficiencies that TDI found during its inspections. The letter stated that during the September 29, 2014, phone call between TDI and Sample, Sample disagreed with the number of deficiencies that TDI noted. TDI's letter further noted TDI met with and discussed with Sample on several occasions, issues that needed to be corrected to bring the roof into compliance and be eligible for TWIA insurance coverage. Finally, the letter stated that, because the roof had not been brought into compliance, it was not eligible for TWIA insurance coverage, the WPI-8 would be rescinded, and the matter would be referred to TDI's Enforcement Section for appropriate action.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. GOV'T CODE §§ 2001.051-2001.178; TEX. INS. CODE §§ 82.051-82.055 and 2210.001-2210.256; and 28 TEX. ADMIN. CODE § 5.4604.
2. The commissioner has the authority to dispose of this case informally pursuant to the provisions of TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104, 82.055, and 2210.256(e); and 28 TEX. ADMIN. CODE §§ 1.47 and 5.4604(f)(3).
3. Sample failed to comply with 28 TEX. ADMIN. CODE §§ 5.4604(g)(1)-5.4604(g)(5).
4. Sample knowingly, willfully, fraudulently, or with gross negligence, signed or caused to be prepared an inspection report or sworn statement that contains a false, fictitious, or fraudulent statement or entry, as contemplated by TEX. INS. CODE § 2210.256 and 28 TEX. ADMIN. CODE § 5.4604(f)(1).

The commissioner of insurance orders that the qualified inspector appointment held by Edward Lee Sample, P.E. be placed on probation for one year, effective as of the date of this order. Sample's probation is subject to the following terms and conditions:

1. These terms and conditions apply to all inspections performed on or after the date of this order for the purpose of establishing that a building, structure, addition, alteration, roof, foundation, or repair is eligible for wind and hail insurance and all WPI-1s and WPI-2s submitted on or after the date of this order.
2. Any requirement in this order for Sample to submit methods of installation or contractor methods of installation means:
 - a. the manufacturer's recommended method(s) for installation;
 - b. the method(s) of installation set out in the builder's plans and specifications;

- c. the applicable TDI product evaluation, independent testing laboratory report, model code product evaluation report, or manufacturer's high wind installation requirements; and
 - d. Other construction standards adopted by the commissioner.
3. Sample will not act as a qualified inspector on any structure unless he or another person has submitted a WPI-1 to windstorm inspections prior to beginning to construct, alter, remodel, enlarge, or repair a structure. Sample will notify windstorm inspections, through submission of a WPI-1 by him or another person, of his intention to perform building inspections to establish that the structure is eligible for windstorm and hail insurance, as contemplated by TEX. INS. CODE § 2210.251(c).
4. If Sample deviates from the prescriptive building codes or construction guides adopted by the commissioner, windstorm inspections will require Sample to prepare and submit plans and structural calculations, as contemplated in 28 TEX. ADMIN. CODE § 5.4604(g)(2).
5. Windstorm plans and structural calculations for structures will include, when applicable, the following information:
 - a. The applicable building code standard used, the wind load standard used, the wind speed used, the wind importance factor used, and the exposure category used in the design of the structure;
 - b. A summary of the wind loads acting on the structure for the design of the main wind force-resisting systems, components, and cladding;
 - c. The uplift loads and building components used to transfer uplift loads caused by the applied wind loads from the roof down to the foundation;
 - d. The lateral shear loads and the building components used to transfer lateral shear loads caused by the applied wind loads from the roof down to the foundation;
 - e. The overturning loads and the building components used to transfer overturning loads caused by the applied wind loads from the roof down to the foundation;
 - f. Design of connections to transfer wind loads from one element to the next from the roof down to the foundation;
 - g. Roof cladding and roof framing connections;
 - h. Roof deck type and anchorage method, including fastener type and spacing;
 - i. Wall connections to the roof, floor, diaphragms, and framing;

- j. Roof and floor diaphragm systems, including collectors, drag struts, and boundary elements;
 - k. Vertical wind force resisting systems, including braced frames, moment frames, and shear walls;
 - l. Windforce resisting system connections to the foundation;
 - m. Foundation design, including the overturning resistance of the foundation system;
 - n. Design pressure requirements for any roof or exterior covering used on a structure;
 - o. Type of roof covering or exterior covering and anchorage method, including fastener type and spacing;
 - p. Type of soffit material and anchorage method, including fastener type and spacing;
 - q. Design pressure and high wind installation requirements for all exterior opening products, including windows, doors, garage doors, and skylights; and
 - r. The methods for protecting exterior openings from windborne debris, when applicable.
6. Sample must clearly mark windstorm plans and structural calculations with the words "WINDSTORM COMPLIANT PLANS." If Sample utilizes plans provided by the structure's builder and prepares modifications to the plans necessary to ensure that the modified plans meet the wind load requirements of the construction standards adopted by the commissioner, Sample must clearly mark such plan modifications with the words "WINDSTORM COMPLIANT PLANS."
7. As a part of the inspection process, Sample must determine, and the appointed engineer or the appointed engineer's employee will confirm building code compliance of the building products used during the construction process by obtaining and utilizing the following information during the design and inspection of the structure:
 - a. test information;
 - b. model code or department product evaluation reports; or
 - c. manufacturer's high wind installation requirements.
8. Sample must provide windstorm inspections with the name, address, telephone number, resume, and qualifications, of all individuals performing building inspections under his supervision for the purpose of establishing that a structure is eligible for wind and hail insurance.

9. Sample must perform follow-up or joint inspections with each individual identified in (8) on a weekly basis to ensure that the construction of structures conforms to the requirements set forth by Sample. On request by windstorm inspections, Sample must provide copies of signed and sealed inspection records for each of the inspections.
10. Sample must prepare quality control procedures or guidelines to ensure that inspections conducted by employees under his supervision are properly conducted. Sample must submit the quality control procedures to windstorm inspections for review.
11. Sample must prepare an inspection form or report, to be used during each of the inspections. Each inspection form or report will include, but is not limited to, the following information:
 - a. complete address of location being inspected;
 - b. type of inspection;
 - c. date and time of inspection;
 - d. status of inspection;
 - e. type of construction;
 - f. wind zone;
 - g. exposure category;
 - h. mean roof height;
 - i. products or a copy of the builder's specifications and the windstorm plans, and any deviations;
 - j. manufacturers of the products identified in (7) if not stated in the builder's specifications or windstorm plans;
 - k. product testing information of the products identified in (7);
 - l. manufacturer installation requirements of the products identified in (7);
 - m. deviations from the contractor methods of installation established by the manufacturer's recommendations;
 - n. the on-site compliance report, including the printed name and signature of the inspector; and

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COMMISSIONER'S ORDER

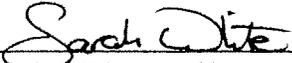
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- o. a reference to the appropriate windstorm plans for the building plan.
- 12. If Sample begins conducting building inspections under the supervision of an engineer appointed as a qualified inspector for the purposes of establishing that a structure is eligible for windstorm and hail insurance, Sample will notify windstorm inspections within 24 hours.
- 13. This order and the conditions of probation apply to any inspection Sample certifies or performs individually as an appointed qualified inspector, as well as those conducted under the supervision of another engineer appointed as a qualified inspector.
- 14. Sample must comply with TEX. INS. CODE §§ 2210.251, 2210.254, and 28 TEX. ADMIN. CODE § 5.4604. Any violation of the Texas Insurance Code, Texas Administrative Code, or the terms of this order, may result in disciplinary action against Sample and his appointment as a qualified inspector, pursuant to TEX. INS. CODE § 2210.256.


Julia Rathgeber
Commissioner of Insurance

APPROVED AS TO FORM AND CONTENT:


Sarah White, Staff Attorney
Texas Department of Insurance

