

No. **4553**

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

Date: JUN 30 2016

Subject Considered:

JUANA MARIA LUA
16909 Stockton Drive
Leander, Texas 78641

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 7661

General remarks and official action taken:

The commissioner of insurance considers whether disciplinary action should be taken against Juana Maria Lua.

WAIVER

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

FINDINGS OF FACT

The commissioner makes the following findings of fact:

1. Juana Maria Lua, individual identification no. 434381, holds a general lines agent license with property and casualty qualifications, originally issued by the Texas Department of Insurance on March 6, 2002. Lua also attained life, accident, and health qualifications for her general lines agent license on January 9, 2003.
2. Lua conducted business as Ascension Insurance Agency from February 2009, through October 2013.
3. In October 2012, Gonzalez Trucking purchased commercial insurance coverage through Ascension. The coverage included commercial auto liability, physical damage, motor truck cargo liability, and umbrella policies.
4. Gonzalez financed the four policies through GBC Premium Financing. Gonzalez paid the amount due under the premium finance agreement for the original coverage in full.

5. During the coverage period, Gonzalez requested several changes to the policies through Ascension. These changes were made as endorsements to the respective policies.
6. Some of the endorsements resulted in additional premiums being owed.
7. On at least one occasion, Lua, through her employee, requested payment from Gonzalez for an amount due in excess of the total, additional premium owed for an endorsement.
8. Gonzalez requested that Ascension add a 2000 Peterbilt truck to the policies on April 1, 2013. On May 8, 2013, Ascension billed Gonzalez for \$2,744.50—\$2,198 for the additional premium for the endorsement on the liability policy per the April 1, 2013, request, and an additional \$546.50 for a previously uncollected amount. Allegedly, Ascension had not collected \$546.50 for previously adding this same truck on January 15, 2013. Per Ascension, Gonzalez had requested this same truck be added and removed before the April 1, 2013, request. However, Ascension never added the truck to the policies in January 2013, and the \$546.50 was never remitted to the insurance company. Gonzalez remitted \$2,744.50 to Ascension on May 9, 2013.
9. Ascension failed to notify Gonzalez timely of outstanding invoices for the endorsements to the physical damage and motor truck cargo liability policies, which resulted in cancellation of these policies.
10. Ascension collected payment from Gonzalez for a portion of the outstanding endorsement balance even though Lua knew the coverage had been cancelled a week earlier.
11. Subsequently, Gonzalez suffered a cargo loss. Gonzalez reported the loss to Ascension to make a claim.
12. After reporting the loss, Gonzalez learned both the physical damage and motor truck cargo liability policies had cancelled.
13. Lua paid \$8,204.86 to the cargo company to assist with a portion of the loss, explaining that “after doing some investigating regarding this matter, it looks like our agency will be picking up a portion of this loss” and “I feel bad for them.”
14. After the physical damage policy cancelled for non-payment of endorsements, the carrier refunded \$586.94 to Ascension. Lua failed to return the unearned cancellation premium to Gonzalez in a timely manner. After being contacted by a TDI Enforcement investigator, Lua returned the unearned cancellation premium to Gonzalez.
15. By failing to invoice Gonzalez for the premium payments due on the endorsements to the physical damage and motor truck cargo liability policies, Ascension represented to Gonzalez that the amount owed in the emails and invoices Gonzalez received was the total amount due on all endorsements.
16. Lua failed to complete 26.5 hours of the 30 hours of continuing education required for the 2010 to 2012 reporting period.

17. Lua failed to complete 22 hours of the 30 hours of continuing education required for the 2012 to 2014 reporting period.

CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.001-82.056, 84.021-84.022, 4005.101, 4005.102, 4051.051, and 4054.051; and TEX. GOV'T CODE §§ 2001.051-2001.178.
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 and 82.055, and 28 TEX. ADMIN. CODE § 1.47.
3. Pursuant to TEX. INS. CODE § 4005.101(b)(4), the commissioner may take disciplinary action against Lua because she misappropriated, converted to her own use, or illegally withheld money belonging to an insurer.
4. Pursuant to TEX. INS. CODE § 4005.101(b)(5), the commissioner may take disciplinary action against Lua because she engaged in fraudulent or dishonest acts or practices.
5. Lua violated TEX. INS. CODE §§ 4004.051, 4004.053, and 4004.054 because she did not complete the required number of continuing education hours during two reporting periods.

The commissioner of insurance orders Juana Maria Lua to pay \$546.50 in restitution to Gonzalez Trucking within one month from the date of this order. The restitution must be paid by cashier's check or money order made payable to "Gonzalez Trucking." Mail the restitution payment to Gonzalez Trucking, Attn: Salvador Gonzalez, 910 Greenfield Court, Kennedale, Texas, 76060. Lua must send written proof of payment of restitution in full to the Texas Department of Insurance, Attn: Catherine Bell, or her successor, Enforcement Section, MC 110-1A, P.O. Box 149104, Austin, TX 78714-9104 within one month from the date of this order.

The commissioner of insurance also orders Juana Maria Lua to pay a \$2,500 administrative penalty within six months from the date of this order. The administrative penalty must be paid by cashier's check or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: Enforcement Section, Division 40111, MC 9999, P.O. Box 149104, Austin, TX 78714-9104.



David C. Mattax
Commissioner of Insurance

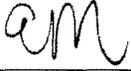
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COMMISSIONER'S ORDER

Juana Maria Lua

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APPROVED AS TO FORM AND CONTENT:



Elissa Mazza

Staff Attorney

Compliance Division, Enforcement Section

Texas Department of Insurance

Affidavit

STATE OF TEXAS

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COUNTY OF Williamson

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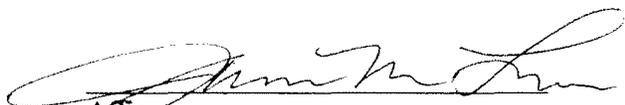
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Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

"My name is Juana Maria Lua. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

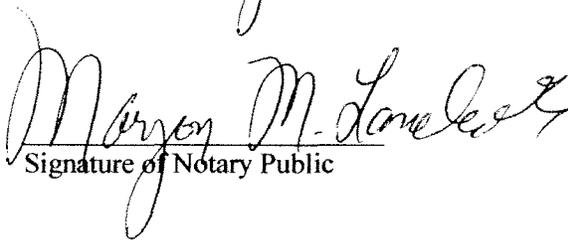
I waive rights provided by the Texas Insurance Code and other applicable law and acknowledge the jurisdiction of the commissioner.

I have knowingly and voluntarily entered into this consent order and agree with and consent to the issuance and service of the same by the commissioner of insurance of the state of Texas."


Affiant

SWORN TO AND SUBSCRIBED before me on this 16 day of June, 2016.

(NOTARY STAMP)


Signature of Notary Public

