

No. 2017- 4908

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

Date: JAN 23 2017

Subject Considered:

**Texas Department of Insurance
v.
StarTex Title Company, LLC, and
Ronald Lang Buckalew**

SOAH Docket No. 454-15-1585.C

General remarks and official action taken:

The commissioner of insurance considers StarTex Title Company, LLC's (StarTex) title insurance agent license and Ronald Lang Buckalew's (Buckalew) escrow officer license. Following a hearing before the State Office of Administrative Hearings, the administrative law judge (ALJ) submitted a proposal for decision containing findings of fact and conclusions of law, recommending administrative penalties against Buckalew and that no action be taken against StarTex. StarTex, Buckalew, and Texas Department of Insurance (TDI) staff filed exceptions to the proposal for decision. The administrative law judge responded to the exceptions and submitted an amended proposal for decision containing corrections, but again recommending administrative penalties against Buckalew and that no action be taken against StarTex. The commissioner accepts the amended proposed findings of fact, conclusions of law, and recommendations of the ALJ, with non-substantive formatting and style changes.

FINDINGS OF FACT

1. Startex holds a title insurance agent license issued by TDI.
2. Buckalew holds an escrow officer license issued by TDI, and since about July 2011, has been employed by Startex.
3. On about December 16, 2011, Startex received an escrow contract with an order to provide title insurance and escrow services to the buyer and seller concerning a real estate transaction of property referred to as the Weimar Travel Center.

2017- 4908

StarTex Title Company, LLC, and Ronald Lang Buckalew
SOAH Docket No. 454-15-1585.C
Page 2 of 7

4. Startex accepted the escrow contract, created an escrow account, and assigned Buckalew as the escrow agent.
5. Buckalew knew the parties were not represented by attorneys or real estate brokers.
6. The escrow contract specified that the buyer would assume the existing Small Business Administration (SBA) loan secured by the property, which then had a balance of approximately \$2 million. In addition to the loan assumption, the contract stated that the buyer would pay the balance of the \$3.4 million sales price in cash at the time of closing.
7. As written in the contract, all notices regarding the contract were to be sent to the buyer and seller in writing at the addresses listed in the contract.
8. On December 16, 2011, a representative of the buyer sent an email to Buckalew but did not send a copy to seller.
9. In the email, the buyer indicated that the parties would "be doing a wrap note" on the Weimar Travel Center transaction instead of assuming the existing loan. The buyer's representative offered to provide a revised escrow contract. She also stated that the deal needed to close by the end of the year.
10. On December 23, 2011, Startex and Buckalew issued a title insurance commitment, which represented a policy would be issued in the amount of \$3.4 million.
11. On December 28, 2011, the buyer's representative sent another email to Buckalew. The seller was not copied on this email either.
12. The buyer's representative stated that the wrap note amount would be \$2,475,976.82 but stated nothing about the remainder of the total sales price. The buyer's representative also reiterated that the deal needed to close by the end of the year.
13. After Buckalew received the emails from the buyer, he did not forward them to the seller or make any attempt to communicate with the seller about them.
14. Buckalew did not obtain revisions to the escrow contract.
15. On December 29, 2011, Buckalew received a copy of an email that the buyer's representative had sent to the seller.

2017- 4908

StarTex Title Company, LLC, and Ronald Lang Buckalew
SOAH Docket No. 454-15-1585.C
Page 3 of 7

16. In the email, the buyer's representative instructed the seller to sign and scan the seller's statement and send it to her. She did not tell the seller to have the document notarized, and the document itself has no block for a notary's acknowledgment.
17. On December 29, 2011, Buckalew sent the buyer revised settlement statements. The new settlement statement represented that the total sales price was \$2,475,976.82.
18. Although the revised settlement statements materially changed the terms of the parties' agreement as reflected in the escrow contract, Buckalew did not send the new statements to the seller.
19. Neither Buckalew nor any other Startex representative discussed the new settlement statements with the seller.
20. On December 29, 2011, the buyer sent an email to the seller and requested the seller to appear at the buyer's office to sign the closing documents.
21. When the seller appeared at the buyer's office on December 29, 2011, neither Buckalew nor any other Startex representative was present.
22. Sometime after December 29, 2011, Buckalew was presented with closing documents from the buyer, including the revised settlement statements, and the documents appeared to have been executed by the seller.
23. The documents included an IRS Form 1099S that appeared to have the seller's signature.
24. The Form 1099S indicated that the purchase price was \$3.4 million.
25. When reviewing the closing documents and seeing the seller's signature on the Form 1099S, Buckalew should have realized that the seller may have been confused about the consideration he would receive for the transaction.
26. The seller did not realize the contract terms had been changed to include a wrap note in which he remained responsible for repayment of the SBA loan and in which the buyer would not pay him any funds at closing.
27. Buckalew did not know that the seller had not agreed to the changed terms.

2017- 4908

StarTex Title Company, LLC, and Ronald Lang Buckalew
SOAH Docket No. 454-15-1585.C
Page 4 of 7

28. Without discussing the closing documents with the seller, Buckalew proceeded to record the conveyance documents.
29. The seller continued to occupy the travel center property for at least three months, and he made payments on the existing SBA loan.
30. During December 2011 and continuing through April 2012, StarTex and Buckalew worked with the buyer on a separate transaction, the refinancing of loans secured by 38 properties apparently owned by the buyer, including the Weimar Travel Center.
31. In March 2012, Startex received the proceeds of that nearly \$29 million bank loan, along with title insurance premium of \$107,939.40.
32. From the proceeds, Buckalew wired \$1,946,657.73 to the bank holding the seller's existing SBA loan.
33. The seller next heard from the buyer's representative in March 2012 and thought the buyer wanted to complete the closing for the travel center at that time.
34. When the seller was asked to sign a release of the SBA loan, the seller contacted Buckalew and asked him when he would receive his money from the transaction.
35. Buckalew did not respond to the seller but instead asked the buyer to contact him to get the release.
36. The seller never received the sales price agreed to in the earnest money contract, although the parties later entered into a settlement agreement by which the seller received \$311,000.60.
37. Buckalew did not knowingly participate in fraud or intentionally misrepresent the terms of the sale.
38. In 2010, Buckalew, as authorized representative for Continental Title, L.L.C. (Continental Title), entered a plea agreement to resolve a federal proceeding.
39. Continental Title pled guilty to filing a false financial statement with a financial institution for a real estate closing for which Continental Title was ordered to pay a \$25,000 penalty.

40. Based on the facts in the plea agreement, the commissioner of insurance determined that Buckalew disbursed loan proceeds in a real estate transaction without determining that the buyer had satisfied the loan requirements.
41. By Order issued March 3, 2012, the commissioner ordered Buckalew to cease and desist from "failing to comply with the responsibilities of an escrow officer when closing a transaction, particularly the responsibility to determine that all proceeds have been properly disbursed."
42. In conjunction with the action against Buckalew, TDI revoked the license of the title insurance corporation that Buckalew owned at the time.
43. StarTex's officers had no knowledge of anything illegal or inappropriate about the work Buckalew did in completing the travel center transaction.
44. As the escrow agent, Buckalew acted independently of other StarTex officers, and his actions did not require him to act in his capacity as StarTex's executive vice president in order to process the transaction.
45. StarTex's officers and owners had no reason to suspect that Buckalew would not perform his escrow agent duties properly.
46. TDI staff sent petitioner notice of the hearing, dated December 11, 2014, to Buckalew's and StarTex's addresses of record. The notice informed them the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and the matters asserted.
47. The hearing on the merits was held on April 8 through 10, 2015, before Administrative Law Judge Sarah G. Ramos at the State Office of Administrative Hearings (SOAH), 300 W. 15th Street, Austin, Texas. Staff attorneys Casey Seeboth and Patrick Quigley represented TDI staff, attorneys Patrick Hyde and Cass Burton represented Buckalew, and attorney Catherine Fryer represented StarTex. The record closed on June 26, 2015, after the parties filed post-hearing briefs.

CONCLUSIONS OF LAW

1. The Commissioner of Insurance has jurisdiction over this matter. Tex. Ins. Code §§ 82.051-82.056, 541.101-541.111, 2501.002, 2651.201, and 2651.301.

2. SOAH has jurisdiction to conduct the administrative hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law. Tex. Gov't Code ch. 2003.
3. Proper and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052.
4. The hearing was conducted under the Administrative Procedure Act. Tex. Gov't Code ch. 2001.
5. As the escrow agent for the transaction, Buckalew served two conflicting principals and owed fiduciary duties to both the buyer and seller. *Boatright v. Texas Am. Title Co.*, 790 S.W.2d 722, 728 (Tex. App.-El Paso 1990, writ dismissed).
6. Buckalew's duties included the duty of loyalty, the duty to make full disclosure, and the duty to exercise a high degree of care to conserve the money placed in escrow and pay it only to those persons entitled to receive it. *City of Fort Worth v. Phippen*, 439 S.W.2d 660, 665 (Tex. 1969); *IQ Holdings, Inc. v. Stewart Title Guaranty Company and Stewart Title Company f/k/a Stewart Title Company*, 451 S.W.3d 861, 871 (Tex. App.- Houston [1st Dist.] 2014, no pet.).
7. The duty of full disclosure of material facts is especially important in cases of dual agency where the agent is representing both parties. *Guisinger v. Hughes*, 363 S.W.2d 861, 866 (Tex.Civ.App.-Dallas 1962, writ refused n.r.e.); *Grundmeyer v. McFadin*, 537 S.W.2d 764, 772 (Tex. Civ. App.-Tyler 1976, writ refused n.r.e.).
8. Buckalew failed to exercise the duties of full disclosure and loyalty he owed the seller.
9. Buckalew failed to state a material fact necessary to make other statements not misleading, in violation of Tex. Ins. Code § 541.003 and 541.061(2).
10. Failure to discuss the material fact with the seller was unfair and deceptive. Tex. Ins. Code § 541.003 and 541.061(2).
11. Buckalew did not properly close the transaction, in violation of Tex. Ins. Code § 2501.006.
12. Buckalew failed to comply with a previous order issued by the commissioner, as contemplated by Tex. Ins. Code § 82.054.

2017- 4908

StarTex Title Company, LLC, and Ronald Lang Buckalew

SOAH Docket No. 454-15-1585.C

Page 7 of 7

13. The commissioner of insurance should order Buckalew to pay an administrative penalty of \$10,000.00. Tex. Ins. Code §§ 82.051 - 82.052, 84.021 - 82.022, 82.054.

14. The commissioner of insurance should take no action against Startex.

The commissioner of insurance orders that Ronald Lang Buckalew is assessed an administrative penalty of \$10,000.00. The commissioner of insurance takes no action against StarTex Title Company, LLC.

A handwritten signature in black ink, appearing to read "D. Mattax", is written over a horizontal line.

David C. Mattax
Commissioner of Insurance