

No. 2017- 4946

**OFFICIAL ORDER
of the
COMMISSIONER OF INSURANCE**

Date: FEB 21 2017

Subject Considered:

JAMES W. LANE III
486 County Road 125
Whitesboro, Texas 76273-6953

CONSENT CEASE AND DESIST ORDER
TDI ENFORCEMENT FILE NO. 12348

General remarks and official action taken:

The commissioner of insurance considers whether a cease and desist order should be issued against James W. Lane III.

WAIVER

Lane acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Lane 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. James W. Lane III does not hold an insurance license issued by TDI.
2. Lane previously held an insurance license issued by TDI from January 30, 2007, until October 25, 2016, when it was revoked. Official Order No. 2016-4742 revoked Lane's general lines agent license with property and casualty and life, accident, and health qualifications. The Order, which he consented to, states Lane was revoked because he:
 - a. willfully violated an insurance law of the state;
 - b. misappropriated, converted to his own use, or illegally withheld \$40,085.20 belonging to an insurer;
 - c. engaged in fraudulent or dishonest acts or practices; and
 - d. failed to submit a name registration form, informing the department that he transacted an insurance agency business under the assumed name Jim Lane Equine Insurance Services.

3. After his license revocation, Lane continued to perform acts that constitute the business of insurance in Texas.
4. Lane collaborated with his mother, Gretchen H. Smith, and created a corporation, Performance Bloodstock Insurance Services, Inc. (the Corporation). Lane conducted the business of insurance under the Corporation's name, thereby attempting to evade insurance laws that prohibit him from doing so individually, without a license.
 - a. Neither Smith nor the Corporation hold licenses in Texas.
 - b. Smith holds licenses in other states and filed an application to become a nonresident agent with TDI on October 14, 2016. However, the department denied that application, effective January 11, 2017.
5. On October 28, 2016, three days after Lane's revocation order was signed by the commissioner, Smith formed the Corporation with the Texas Secretary of State under its original name, Jim Lane Equine Insurance Services, Inc.
 - a. The filing incorporated the name Lane had previously used as an assumed name, which includes his legal name.
 - b. The filing listed Smith as the Corporation's sole director.
 - c. The filing listed Smith's address as Lane's home address in Texas, not the address in Ohio that she provided on her license application to TDI.
6. On December 7, 2016, the Corporation changed its name to Performance Bloodstock Insurance Services, Inc.
7. In November of 2016, the department received information alleging that Lane was conducting the business of insurance without a license. A TDI investigator purporting to be Ms. Frances Smith, a consumer from Plantersville, Texas, began communicating with Lane. These communications happened via e-mail and phone. Each of Lane's e-mails were closed with the name of the Corporation in the signature block. Through this series of correspondence Lane, on behalf of the Corporation, did the following:
 - a. held himself out as an insurance agent,
 - b. solicited specific details regarding the property to be insured,
 - c. explained coverage options,
 - d. provided an application and other documentation for the consumer to fill out,
 - e. provided a detailed quote for annual premiums,
 - f. provided the specific insurer associated with the quoted coverage, and
 - g. explained how payments would be made from the consumer to himself and the Corporation.
8. When the TDI investigator, as Ms. Frances Smith, questioned Lane about the Corporation's name change during a December 14, 2016, phone call, Lane stated the name change was something he had planned for some time and he had finally taken the

time to do. Lane specifically confirmed that, regardless of the agency's name change, he would still be working with Ms. Frances Smith and that she would not need to work with another agent.

9. Since his revocation, Lane has continued to advertise on Facebook for insurance services. Originally, the Facebook page was listed under Lane's former dba. After the Corporation was incorporated, the Facebook page added "Inc." to its advertising. On December 5, 2016, it changed again to the Corporation's new name, Performance Bloodstock Insurance Services. The page stated that the entity was an insurance broker in Whitesboro, Texas, specializing in the needs of the western performance horse industry. After the Facebook page name changed to the Corporation's new name, the e-mail associated with the page changed from Lane's e-mail address to Smith's. Yet there was no announcement of a change in ownership for the Corporation.
10. Lane, a Texas resident, also conducted the business of insurance from Texas on behalf of an Oklahoma consumer without holding a license issued by the Oklahoma Department of Insurance.
 - a. Lane held a license in Oklahoma from October 29, 2010, until it expired on November 1, 2015.
 - b. On November 16, 2015, Lane forwarded a renewal application and payment for an existing policy held by K.B., an Oklahoma resident. The policy renewed, effective November 14, 2015.
 - c. On January 28, 2016, Lane filed an application for an endorsement to K.B.'s policy. The endorsement was added effective January 26, 2016.
 - d. Between August and November of 2016, Lane initiated a claim on behalf of K.B. and communicated with a licensed adjuster regarding the claim. The signature block of one of his e-mails to the adjuster includes the Corporation as the agency handling the claim for K.B.
11. On August 4, 2016, K.W. paid Lane \$610 to renew an existing policy. In January 2017, K.W. learned Lane had failed to forward K.W.'s payment, and the policy was not renewed. At the department's request, Lane has since refunded K.W. in full for the premium he failed to remit.

CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.052, 101.001, 101.051, 101.102, 101.103, 101.105, 101.151-101.153, 4001.051-4001.101, 4005.101, and 4005.051-4005.053 and TEX. GOV'T CODE §§ 2001.051-2001.178.
2. TEX. GOV'T CODE § 2001.056, TEX. INS. CODE § 82.055, and 28 TEX. ADMIN. CODE § 1.47 give the commissioner authority to informally dispose of this matter.

3. Lane does not hold a license or authorization to perform the acts of an agent or engage in the business of insurance, as required by TEX. INS. CODE §§ 101.102, 4001.101, and 4051.051.
4. Lane engaged in acts that constitute the business of insurance and the acts of an agent after his license was revoked, including:
 - a. directly or indirectly acting as an agent for or otherwise representing or assisting a person in:
 - i. soliciting, negotiating, procuring, or effectuating an application for insurance, as contemplated by TEX. INS. CODE §§ 101.051(b)(6)(A) and 4001.101(a)(1);
 - ii. disseminating information relating to coverage or rates, as contemplated by TEX. INS. CODE § 101.051(b)(6)(B);
 - iii. forwarding an insurance application, as contemplated by TEX. INS. CODE § 101.051(b)(6)(C); and
 - iv. investigating or adjusting a claim or loss, as contemplated by TEX. INS. CODE § 101.051(b)(6)(G); and
 - b. doing any kind of insurance business specifically recognized as constituting insurance business within the meaning of statutes relating to insurance, as contemplated by TEX. INS. CODE § 101.051(b)(8).
5. Lane and Smith created the Corporation in order to do or to propose to do insurance business in a manner designed to evade statutes relating to insurance, as contemplated by TEX. INS. CODE § 101.051(b)(9).
 - a. Smith filed the formation documents because Lane does not have the right or ability to control the Corporation because his insurance license was revoked, pursuant to TEX. INS. CODE § 4001.106(b)(7)(A).
 - b. The Corporation permitted Lane, an unlicensed employee, to perform the acts of an agent on its behalf, in violation of TEX. INS. CODE § 4001.101(d).
6. The department is charged with protecting its residents against evasion of the insurance regulatory laws of this state, as contemplated by TEX. INS. CODE § 101.001(b)(4).
7. Lane willfully violated an insurance law of this state, as contemplated by TEX. INS. CODE § 4005.101(b)(1).
8. Lane engaged in fraudulent or dishonest acts, in violation of TEX. INS. CODE § 4005.101(b)(5).
9. Lane published advertising that is misleading either in fact or in implication, in violation of 28 TEX. ADMIN. CODE § 21.103.
10. According to TEX. INS. CODE § 101.001(d), TDI is charged to ensure that Texas is not a safe harbor for Texas residents who engage in unauthorized insurance business in this

state that affects residents of other states. Any act constituting the business of insurance, as described in TEX. INS. CODE § 101.051(b), made by an unlicensed person that occurs in this state and that affects a person in another state constitutes the business of insurance in this state, pursuant to TEX. INS. CODE § 101.051(c).

11. TDI may seek disciplinary action against a former license holder for conduct committed before the effective date of a voluntary surrender or forfeiture of the license, as contemplated by TEX. INS. CODE § 4005.107.
12. Lane misappropriated, converted to his own use, or illegally withheld money belonging to an insured, in violation of TEX. INS. CODE § 4005.101(b)(4)(C).

The commissioner of insurance orders James W. Lane III to cease and desist performing the acts of an insurance agent and engaging in acts that constitute the business of insurance in Texas.

The commissioner further orders Lane to pay an administrative penalty of \$5,000. Lane must pay the penalty in full no later than six months from the date of this consent order. The penalty must be paid by cashier's check or money order made payable to the "State of Texas" and sent to the Texas Department of Insurance, Attn: Enforcement Section, Division 40111, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.



David C. Mattax, Texas Commissioner of Insurance
By: Kevin C. Brady, Deputy Commissioner
Delegation Order 4506

APPROVED AS TO FORM AND CONTENT:



Erin Dinsmore, Staff Attorney
Compliance Division, Enforcement Section

Affidavit

STATE OF Texas

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COUNTY OF Grayson

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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 James W. Lane III. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

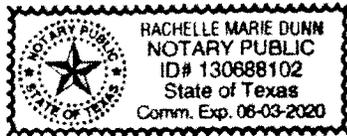
I waive rights provided by the Texas Insurance Code and other applicable laws, and acknowledge the jurisdiction of the commissioner.

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."

[Signature]
Affiant

SWORN TO AND SUBSCRIBED before me on this 17th day of February, 2017.

(NOTARY SEAL)



[Signature]
Signature of Notary Public