

No. 2018 - 5616

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

Date: **AUG 31 2018**

**Subject Considered:**

Texas Department of Insurance

v.

Vitalis O. Asoluka

SOAH Docket No. 454-17-4142.C

**General remarks and official action taken:**

This order is in consideration of the Texas Department of Insurance's enforcement action to revoke the adjuster all lines license held by Vitalis O. Asoluka. Following a hearing before the State Office of Administrative Hearings (SOAH), the administrative law judge (ALJ) submitted a proposal for decision containing findings of fact and conclusions of law, recommending that Mr. Asoluka's adjuster all lines license be revoked.

Mr. Asoluka filed exceptions to the ALJ's proposal for decision and department staff replied to Mr. Asoluka's exceptions. The ALJ responded to the exceptions and reply, but declined to make any changes to the proposal for decision.

The proposed findings of fact, conclusions of law, and recommendation of the ALJ are adopted with nonsubstantive formatting and style changes.

**FINDINGS OF FACT**

1. On May 27, 2015, the department issued an adjuster all lines license to Vitalis Asoluka.
2. On May 25, 2017, the Department filed and issued a notice of hearing to Mr. Asoluka. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted.
3. On June 9 and June 16, 2017, Mr. Asoluka filed and issued original answers to the department's notice of hearing.

4. On August 9, 2017, the department filed and issued a first amended notice of hearing to Mr. Asoluka.
5. The hearing on this case was convened on December 7, 2017, at SOAH in Austin, Texas, before ALJ Travis Vickery. Department staff was represented by Staff Attorney Stephanie Maugham Andrews. Mr. Asoluka appeared and represented himself. The record closed on February 15, 2018, after the parties filed post-hearing briefs.
6. Mr. Asoluka is intelligent and well-educated.
7. After the issuance of his license, Mr. Asoluka had expertise in the adjustment of insurance claims.
8. On May 10, 2015, Mr. Asoluka was driving his wife's vehicle with friends. While Mr. Asoluka was in traffic, a verbal altercation occurred between occupants of the vehicle and a pedestrian. The pedestrian kicked and struck the vehicle, causing damage to the body of the vehicle, consisting of a dent in the left rear quarter panel, and a broken passenger window. The authorities were contacted, and the pedestrian was arrested.
9. Mr. Asoluka filed an insurance claim for the damage sustained to the vehicle during the altercation (first claim).
10. Insurance for the vehicle was provided by Foremost County Mutual (Foremost). Foremost is a subsidiary of Farmers Insurance.
11. Mr. Asoluka's wife was the primary insured for the vehicle.
12. David Crumpton is a field claims supervisor with Farmers Insurance. Mr. Crumpton was assigned to Mr. Asoluka's insurance claim.
13. Mr. Crumpton and Mr. Asoluka met at Mr. Asoluka's apartment complex for an inspection of the vehicle's damage. Mr. Crumpton found a large dent in the vehicle's left quarter panel where it appeared someone had kicked it. There was damage to the right rear door from broken glass.
14. Mr. Asoluka also pointed out some damage to the left front of the vehicle. Mr. Asoluka stated that the pedestrian had hit the front of the vehicle with some type of object and demonstrated by standing at the front of the vehicle and making the motion of someone hitting the area.
15. Mr. Crumpton created an estimate for the damages and issued a check to Mr. Asoluka for \$773.02 to cover damage to the left rear quarter panel and right rear door (first

payment). Mr. Crumpton refused coverage for damage to the left front of the vehicle, because it was "consistent with a collision type loss."

16. On May 29, 2015, Mr. Asoluka endorsed the \$773.02 check from Foremost.
17. After Mr. Crumpton informed Mr. Asoluka of the coverage denial for the damage to the left front of the vehicle, Mr. Asoluka stated that he had struck another vehicle while trying to flee the person vandalizing his car. Mr. Crumpton informed Mr. Asoluka that this was a change from his original version of events and that this would constitute a separate loss. Mr. Crumpton stated there was no report of Mr. Asoluka hitting another vehicle nor had any third party sought coverage for such a loss.
18. Mr. Asoluka told Mr. Crumpton that he would be filing a second claim.
19. On May 26, 2015, Mr. Asoluka filed a second insurance claim with Foremost seeking coverage for the damage to the front-end of his wife's vehicle, for which Mr. Crumpton had denied coverage (second claim).
20. Mr. Asoluka stated that Mr. Crumpton instructed him to file the second claim.
21. Mr. Crumpton denied he instructed Mr. Asoluka to file the second claim. Mr. Crumpton told Mr. Asoluka that the "damages were consistent with a collision loss and not a vandalism loss" and "if he wanted those damages to be covered, under his policy, he would need to file a separate claim for those damages."
22. Matthew Lynch, an adjuster with Farmers Insurance, was assigned to the second claim. Mr. Asoluka told Mr. Lynch that the vehicle's front-end damage resulted from striking a stationary object. Mr. Asoluka provided to Mr. Lynch two estimates and photos for the second claim.
23. On June 1, 2015, Mr. Lynch contacted Mr. Asoluka, reviewed the claims process with Mr. Asoluka, and notified Mr. Asoluka that he had "approved the Richardson Automotive estimate as it was more in line with the photos that he had sent in."
24. Mr. Lynch issued a check for \$4,375.94, to cover damage to "the front left, driver's left side of the vehicle, the driver's rear quarter of the vehicle, and the right rear door of the vehicle primarily" (second payment).
25. At the time of this adjustment and second payment, Mr. Lynch was unaware of a prior claim made by Mr. Asoluka for some of the same damage.
26. After Mr. Lynch issued the second payment, Mr. Crumpton contacted Oscar Moreno, a senior special investigator with Farmers Insurance, with a concern that Mr. Asoluka,

through the second claim, had been compensated twice for damages covered under the first claim.

27. Mr. Moreno initiated an investigation, during which he reviewed the first and second claims, the estimates, the first and second payments, and a phone call from Mr. Asoluka to Foremost regarding the second claim. During the call, Mr. Asoluka stated that the vehicle had been damaged by brushing up against something but Mr. Asoluka was not specific.
28. Mr. Moreno concluded that the first payment covered damage to the rear quarter-panel of Mr. Asoluka's wife's vehicle. The second payment covered the front-end damage denied by Mr. Crumpton, and the rear quarter-panel damage for which Mr. Asoluka had already been compensated through the first payment.
29. During Mr. Moreno's first conversation with Mr. Asoluka, Mr. Asoluka stated that he was rejecting the first payment. At that time, Mr. Asoluka had already accepted and endorsed the first payment check.
30. Mr. Asoluka told Mr. Moreno that the rear quarter panel on the vehicle had been replaced. Mr. Asoluka never provided documentation that this had actually occurred.
31. Mr. Moreno contacted the body shop owner. After initially claiming that he had replaced the quarter panel, the body shop owner stated that he had only repaired the quarter panel, a less expensive option than replacement.
32. The department investigated Mr. Asoluka's conduct.
33. On October 6, 2016, Mr. Asoluka stated to the department that, during the incident, the angry pedestrian created huge dents on every side of his vehicle, broke a window, and that the police arrived on scene while the vandalism was ongoing.
34. On October 8, 2016, Mr. Asoluka stated to the department that he used the total amount received from the first and second payments to cover damages not seen in either inspection. Mr. Asoluka did not file a supplemental claim for the allegedly unseen damage.
35. On October 24, 2016, Mr. Asoluka stated to the department that he thought the body shop owner had submitted a supplemental claim to Foremost. Mr. Asoluka also stated that the police arrived on scene while the pedestrian was breaking his rear passenger window.
36. Mr. Asoluka stated to the department that the vehicle hit a curb while trying to leave the scene.

37. At the hearing, Mr. Asoluka testified "I have never hit an object."
38. At the hearing, Mr. Asoluka testified "the curb that I hit that caused damages on my car was not on that date."
39. At the hearing, when asked why he had told a Foremost representative that he hit a curb during the vandalism, Mr. Asoluka testified that he moved his vehicle off the roadway and "I have to climb on top of the curb to a walkway." Mr. Asoluka testified "that didn't cause any damage on my car," and that the vandalism concluded when he hit the curb and that all the damage was caused by the pedestrian.
40. At the hearing, Mr. Asoluka testified that "I couldn't really tell if [the pedestrian] had something in his hand. I don't really feel like he had a phone or something."
41. Mr. Asoluka was paid twice for the same damage to the left rear quarter panel of his wife's vehicle (duplicate payment).
42. In an October 8, 2016, statement to the department, Mr. Asoluka said, "A staff of Foremost County Mutual called me in 2015 to tell me that they made a mistake in issuing a second check without subtracting the earlier \$700, and requested that I return \$700 to them."
43. At the hearing, Mr. Asoluka denied ever being specifically asked by a Foremost representative to repay the duplicate payment, and instead stated that he only agreed to confirm whether he had been overpaid.
44. Mr. Asoluka blamed the adjuster for the duplicate payment.
45. Mr. Asoluka testified that "if this is what he paid for, then probably he overpay," but still denied receiving the duplicate payment.
46. Mr. Asoluka stated that he is owed money for the deductibles he had to pay, and the body shop is responsible for accepting the duplicate payment.
47. The duplicate payment is apparent from a review of the estimates for the first and second claims.
48. Mr. Asoluka was aware of the duplicate payment before it was brought to his attention.
49. The value of the duplicate payment is \$2,518.57.
50. Mr. Asoluka has never returned, nor sought to return, the duplicate payment.

51. At the hearing, after specific lines in the estimates were pointed out to Mr. Asoluka by department staff, Mr. Asoluka refused to admit to the existence of the duplicate payment.
52. Mr. Asoluka testified that he was never informed about his rights as an insured.
53. Mr. Asoluka's wife, as the insured, received information from Foremost by mail with copies of applicable Insurance Code sections.
54. Mr. Asoluka testified that he was never informed of what was covered by each payment.
55. Mr. Asoluka received an email from Mr. Crumpton stating the damage to the front of his wife's vehicle would be denied and that the damage to the rear of the vehicle was the only damage consistent with vandalism, and Mr. Crumpton provided Mr. Asoluka a copy of the estimate.
56. Mr. Lynch called Mr. Asoluka and explained which estimate he was working from.
57. Mr. Asoluka received a letter accompanying the second payment that identified which estimate was being paid.
58. Mr. Asoluka was not credible.
59. During the claims process, Mr. Moreno's investigation, the department's investigation, and at hearing, Mr. Asoluka exhibited a lack of trustworthiness the department expects from licensees.

#### **CONCLUSIONS OF LAW**

1. The department has jurisdiction over the subject matter of this proceeding. Tex. Ins. Code §§ 4005.101, 4001.002, 4005.104.
2. SOAH has jurisdiction over all matters relating to the conduct of the proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051, 2001.052; Tex. Ins. Code § 4005.104(b).
4. Staff had the burden of proof to establish grounds for revocation of Mr. Asoluka's license. 1 Tex. Admin Code § 155.427.

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5. Mr. Asoluka misappropriated, converted for his own use, or illegally withheld money belonging to an insurer in violation of Texas Insurance Code § 4005.101(b)(4).
6. Mr. Asoluka engaged in fraudulent or dishonest acts or practices in violation of Texas Insurance Code § 4005.101(b)(5).
7. Mr. Asoluka violated Texas Insurance Code § 4005.101(b)(1), by willfully violating Texas Insurance Code §§ 4005.101(b)(4)(A) and (b)(5).
8. The department is authorized to revoke Mr. Asoluka's license. Tex. Ins. Code § 4005.101.
9. Mr. Asoluka's license should be revoked.

### ORDER

It is ordered that the adjuster all lines license held by Vitalis O. Asoluka is revoked.

A copy of this order will be provided to law enforcement and other appropriate administrative agencies for further investigation as may be warranted.



Kent C. Sullivan  
Commissioner of Insurance