

No. **2022-7413**

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

Date: 07/29/2022

Subject Considered:

Texas Department of Insurance

v.

Xavier Ruben Silva

SOAH Docket No. 454-22-2476.C

**ORDER DENYING REQUEST FOR REHEARING AND MOTION TO SET ASIDE
DEFAULT JUDGMENT**

General remarks and official action taken:

The subject of this order is the request for a rehearing and motion to set aside default judgment (collectively "motion") filed by Xavier Ruben Silva. This order denies Mr. Silva's motion.

Background

On April 21, 2022, the Texas Department of Insurance (TDI) filed a notice of hearing with the State Office of Administrative Hearings seeking disciplinary action against Mr. Silva. A copy of the notice of hearing was mailed to Mr. Silva's last known address via certified mail. On April 25, 2022, additional copies of the notice of hearing were sent to two other addresses and two email addresses associated with Mr. Silva. However, Mr. Silva failed to file a written response to the notice of hearing.

On June 8, 2022, Commissioner's Order No. 2022-7337 was issued. The default order revokes any licenses held by Mr. Silva. The order was issued following Mr. Silva's failure to respond to the notice of hearing issued by TDI.

On June 10, 2022, Mr. Silva submitted his motion, and on June 16, 2022, Enforcement staff (Staff) for TDI submitted a reply to Mr. Silva's motion.

Discussion

Under 28 Tex. Admin. Code § 1.89, after informal disposition of a contested case by default, a motion by the respondent to set aside the default order and reopen the record will be granted if the respondent establishes that the failure to file a written response or to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to a mistake or accident.

Under Tex. Gov't Code § 2001.146, a motion for rehearing in a contested case may be granted if the motion identifies with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error. In addition, a motion to set aside a default order and reopen the record is not a motion for rehearing and is not to be considered a substitute for a motion for rehearing. See 28 Tex. Admin. Code § 1.89(d)(2).

Mr. Silva uses a template form with both pre-printed and handwritten information for his motion. Mr. Silva checks boxes in the template form asserting "Lack of Notice" and that he "was not properly served with citation," but the only specific information he provides in support is the written statement "This shows files going to Datapoint Dr address that I have [not] been associated with for 4 years now."

In response to these points in Mr. Silva's motion, Staff notes that in addition to mailing the notice of hearing to the address on Data Point Drive, which is the last address for Mr. Silva on file with TDI, Staff mailed the notice of hearing to two other addresses and emailed it to Mr. Silva. One of the alternative addresses and an email address Staff sent the notice of hearing to were listed by Mr. Silva in his motion. Further, Staff asserts that postal records show the notice was delivered to and left with an individual at the alternative mailing address listed in Mr. Silva's motion.

In the template form, Mr. Silva also checks boxes asserting that his failure to answer was an "Accident or Mistake" and he "did not file an answer because of accident or mistake rather than intentional or conscious indifference." But Mr. Silva provides no information to support these checked boxes, even though there is an area where he could provide such information.

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In response to these points in Mr. Silva's motion, Staff notes that Mr. Silva does not offer any support or explanation as to why he failed to file a response, and he does not provide any evidence that his failure to respond was due to an accident or mistake.

Mr. Silva does not establish that his failure to file a written response was neither intentional nor the result of conscious indifference or that his failure to respond was an accident or mistake. He also does not identify with particularity findings of fact or conclusions of law or any evidentiary or legal ruling that is alleged to be erroneous or provide a legal and factual basis for a claimed error. As such, Mr. Silva fails to satisfy the requirements for a motion to set aside a default order and reopen the record and he fails to satisfy the requirements for a motion for rehearing. Thus, his motion is denied.

Order

It is ordered that Xavier Ruben Silva's request for a rehearing and motion to set aside default judgment is denied.

DocuSigned by:

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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

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James Person, General Counsel

DocuSigned by:

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Justin Beam, Assistant General Counsel