

No. **2022-7628**

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

Date: 11/21/2022

Subject Considered:

Texas Department of Insurance

v.

Solomon Eric Bowens; BA Public Adjusters, LLC; BAPA, LLC; and Bowens & Associates
PIA Firm

SOAH Docket No. 454-22-08381.C

**Order Denying Motion for Rehearing
and Motion to Set Aside Default and Reopen Record**

General remarks and official action taken:

The subjects of this order are the Motion for Rehearing and Motion to Set Aside Default and Reopen Record filed by Solomon Eric Bowens. This order denies Mr. Bowens' motions.

Background

On August 17, 2022, the Texas Department of Insurance (TDI) filed a notice with the State Office of Administrative Hearings setting a hearing to (1) address a proposed disciplinary action against Mr. Bowens, doing business as BAPA, LLC and Bowens & Associates PIA Firm and (2) deny the license application submitted by BA Public Adjusters, LLC. TDI proposed to take disciplinary action against Mr. Bowens and deny the license application on the basis of allegations that Mr. Bowens:

- (1) committed acts for which a license holder may be disciplined;
- (2) willfully violated an insurance law of Texas;
- (3) obtained licenses from TDI by fraud or misrepresentation;
- (4) misappropriated, converted to his own use, or illegally withheld money belonging to an insured, insurer, or beneficiary;

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- (5) engaged in fraudulent or dishonest acts or practices;
- (6) engaged in acts constituting the business of insurance without a license;
- (7) failed to register an assumed name;
- (8) charged clients a state sales tax of 8.25% for services performed on behalf of an insured by a public insurance adjuster after October 1, 2015, which is prohibited by the Texas Administrative Code;
- (9) entered into written contracts not approved by the Commissioner, failed to execute contracts in duplicate, and failed to submit to TDI's Agent and Adjuster Licensing Office contracts containing modifications or amendments of terms or conditions;
- (10) received commissions for services exceeding 10% of the amount of the insurance settlement on the claim, in violation of the Texas Insurance Code and the Texas Administrative Code;
- (11) engaged in activities that may reasonably be construed as presenting a conflict of interest, or accepting a referral payment, in violation of the Texas Insurance Code and the Texas Administrative Code;
- (12) failed to maintain a place of business accessible to the general public;
- (13) forged the signatures of his clients on numerous checks; and
- (14) violated the public insurance adjuster code of ethics by failing to conduct business fairly with his clients, making misrepresentations, charging noncompliant commissions, lacking appropriate knowledge and expertise for work undertaken, failing to secure competent technical assistance, failing to avoid conflicts of interest, and failing to use contracts approved by the Commissioner.

A copy of the notice of hearing was sent to Mr. Bowens' counsel of record at the time; however, Mr. Bowens failed to file a written response to the notice of hearing.

On September 27, 2022, TDI issued a default order due to Mr. Bowens' failure to file a written response to the notice of hearing. See Commissioner's Order No. 2022-7526. The order revokes any licenses held by Mr. Bowens. It also denies BA Public Adjusters,

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LLC's license application, and it orders that Mr. Bowens cease and desist from engaging in the business of insurance under the name BA Public Adjusters, LLC; BAPA, LLC; Bowens & Associates PIA Firm; or any other unauthorized entity. It further orders that Mr. Bowens pay restitution to multiple parties and provide proof of the payment to TDI within 60 days of the order.

On October 21, 2022, TDI received Mr. Bowens' Motion for Rehearing and Motion to Set Aside Default Order and Reopen the Record. On October 28, 2022, Enforcement staff (Staff) for TDI submitted a reply to Mr. Bowens' motions.

On November 14, 2022, Mr. Bowens supplemented his initial motion with a response to Staff's reply.

Discussion

Under 28 Tex. Admin. Code § 1.89(d), 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(g), a motion for rehearing in a contested case must identify 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 an exhibit attached to both of his motions (identified as "Exhibit 1"), Mr. Bowens provides a copy of an email in which he says that he overlooked the requirement to make a written response within 20 days. He also claims that he has a meritorious defense because the findings and conclusions in Order No. 2022-7526 are not true and correct and that a new hearing will not cause delay or harm the Commissioner or TDI.

Mr. Bowens also includes with his motion for rehearing an exhibit with the heading "Legal Allegations - Responses." This document lists the legal allegations from the notice of hearing and denies the accuracy of and disputes each one. The motion for rehearing refers to this document as "Exhibit 2 - Respondent's Response to the Findings and Conclusions."

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In its reply, Staff notes that the notice of hearing explicitly states the requirement to file a written response on its first page. Staff disputes the credibility of Mr. Bowens' statement that his failure to respond to the notice of hearing was not intentional or the result of conscious indifference, describing multiple instances where Mr. Bowens attempted to delay and failed to cooperate with TDI's investigation.

Staff also notes that Mr. Bowens' assertion that he has a meritorious defense can be summed up as simply a denial of the allegations against him. Staff says this is insufficient because Mr. Bowens fails to assert any evidence to contradict the evidence and findings laid out in the Commissioner's order.

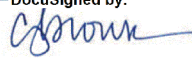
Staff says that resetting the hearing will work an injury to TDI and its mission because Mr. Bowens was properly served and instructed to timely file a written answer but willfully ignored it. Further, this failure to respond follows a clear pattern of delay and obstruction that occurred during the course of TDI's investigation.

Mr. Bowens' motions and his response to Staff's reply do not satisfy the requirements of 28 Tex. Admin. Code § 1.89(d) to set aside the default and have a rehearing granted, so they should be denied.

Mr. Bowens' motions and response to Staff's reply do not establish that his failure to file a written response was neither intentional nor the result of conscious indifference and that the failure was due to a mistake or accident, as required by 28 Tex. Admin. Code § 1.89(d). In Exhibit 1 to his motion for rehearing, Mr. Bowens acknowledges that he received the notice of hearing, but claims that the need to respond within 20 days "was overlooked" and that this "was an oversight."

Order

It is ordered that the Motion for Rehearing and Motion to Set Aside Default and Reopen Record filed by Solomon Eric Bowens are denied.

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Cassie Brown
Commissioner of Insurance

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