

No. **2023-7841**

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

Date: 03/08/2023

Subject Considered:

Texas Department of Insurance

v.

Benjamin Roth Robertson

SOAH Docket No. 454-23-07807.C

Order on Motion to Set Aside Default Judgment

General remarks and official action taken:

The subject of this order is the request by Benjamin Roth Robertson that the Texas Department of Insurance (TDI) set aside a default order previously issued in this matter and grant a motion for rehearing.

Background

On January 24, 2023, TDI issued Commissioner's Order No. 2023-7751. The order revokes any licenses held by Mr. Robertson.

Commissioner's Order No. 2023-7751 was issued because Mr. Robertson failed to file a written response within 20 days to a notice of hearing setting a hearing to consider allegations raised in an original petition filed in the State Office of Administrative Hearings (SOAH) by TDI Enforcement staff (Enforcement). Because Mr. Robertson failed to respond, Enforcement's factual and legal allegations in the original petition were deemed admitted as true under 28 TAC § 1.89.

On January 30, 2023, TDI received Mr. Robertson's Motion to Set Aside Default Order, and on February 13, 2023, TDI received Mr. Robertson's Motion for Rehearing.

On February 16, 2023, Enforcement submitted a response to Mr. Robertson's motions. Enforcement affirmed in its response that it does not oppose Mr. Robertson's request to set aside the default order. In the response, Enforcement also notes that the case is

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set for a hearing on the merits for May 2, 2023, and that Enforcement has not requested for SOAH to dismiss the setting.

Discussion


Motions to set aside a default order and reopen the record are addressed in TDI's rules at 28 TAC § 1.89. Section 1.89(d) provides that such a motion will be granted if the respondent's "failure to file a written response . . . was neither intentional nor the result of conscious indifference, and that such a mistake was due to a mistake or accident."

In this case, Mr. Robertson, through his attorney, contacted Enforcement immediately after the default order was issued. Mr. Robertson explained the basis for his failure to respond.

Based on Enforcement's response that Mr. Robertson's motions are not opposed and a hearing is still scheduled, the default order will be set aside. Because the original hearing date is still set, it is not necessary to consider or make a ruling on Mr. Robertson's motion for rehearing.

Order

The default judgment ordered by Commissioner's Order No. 2023-7751 is set aside, and a hearing for SOAH Docket No. 454-23-07807.C may proceed.

DocuSigned by:

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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

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Jessica Barta, General Counsel

DocuSigned by:

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Kara Salmanson, Attorney