

payments were successfully auto-drafted and paid directly to the insurers, and there is no evidence that any payment from Mr. Santiago was attempted and failed for insufficient funds. Each time he inquired about the late payments, Ms. Chavez assured Mr. Santiago that the insurer had made an error, not her, and promised she would resolve the issue. None of these statements were true. Rather, the preponderance of the evidence shows that, contrary to Ms. Chavez's representations to Mr. Santiago, Respondents simply failed to make the payments when they were due, despite promising to do so, and Ms. Chavez allowed Mr. Santiago's auto policies to be cancelled rather than correcting her errors.

In addition, during this time L K Insurance also drafted two payments from Mr. Santiago's accounts—a \$253.71 payment on September 29, 2017, and a \$231.71 payment on December 22, 2017—both paid directly to L K Insurance rather than any of Mr. Santiago's insurers. Mr. Santiago testified that Ms. Chavez never clearly explained what these payments were for, and to this day he does not know if Respondents relayed those payments to any of his carriers or retained the funds in L K Insurance's account.

Mr. Santiago also claimed that Ms. Chavez told him he was insured by Mercury Insurance, and provided him with insurance identification cards reflecting that his coverage had begun on May 12, 2018. In her testimony, Ms. Chavez denied any involvement with a Mercury policy, claiming that L K Insurance could not have procured a policy or provided insurance cards because it does not have an appointment with Mercury. She contended that Mr. Santiago must have obtained a policy online by himself, without her involvement. However, Mercury's

representative (Mr. Lewis) testified unequivocally that Mr. Santiago was never covered by any Mercury policy, so it is not possible, as Ms. Chavez asserted, that the insurance cards were for a policy he independently purchased online.

The question, then, is how Mr. Santiago came to possess identification cards for a Mercury policy that listed his name and vehicles, but had a policy number that, in reality, had been issued to an entirely different insured. The evidence strongly suggests that someone with Respondents fabricated these documents, and Ms. Chavez offered no credible, alternative explanation.

Further, Mr. Santiago testified credibly that he believed he was covered by a Mercury policy from May 12, 2018 (when his identification cards said the policy incepted) until sometime in March 2019, when his bank statement suddenly reflected a payment to Gainsco, a different insurer. He said Ms. Chavez had told him to pay L K Insurance for the premiums and that she would ensure they were paid to Mercury. Consistent with this testimony, Mr. Santiago's bank records show that he made ten consecutive payments to L K Insurance at approximately the same time every month, beginning in May 2018.

Ms. Chavez denied all of this, but her contrary explanation—that Mr. Santiago was paying L K Insurance a monthly fee for the privilege of having been referred to someone who could help him build credit to buy a home—made little sense and was not credible. The only plausible explanation supported by the evidence for Mr. Santiago's monthly payments to L K Insurance is that he thought

the insurance agency was providing him with insurance, consistent with the identification cards Ms. Chavez had given him.

Finally, the preponderance of the evidence shows that Respondents misappropriated \$182.29 from Mr. Santiago when it had Gainsco draft that amount from his checking account on March 26, 2019. It is undisputed that Mr. Santiago never held a policy with Gainsco and never initiated or approved any payment to that insurer. He claimed that Ms. Chavez told him that Gainsco was going to be the administrator for his (nonexistent) Mercury policy, an allegation she did not address in her own testimony. Gainsco's representative (Mr. Williams) testified that this payment was posted to the account of another L K Insurance client with a similar name (Santiago Pineda, rather than Rafael Santiago). Though this charge was ultimately reversed by Mr. Santiago's bank, the evidence nonetheless shows that Ms. Chavez misused her access to Mr. Santiago's account to make a payment for the benefit of another L K Insurance customer. This action also constituted misappropriation.

In sum, Staff has proven that Ms. Chavez and her insurance agency, L K Insurance, made numerous representations to Mr. Santiago over approximately a ten-month period beginning in August 2017, about who was providing his auto insurance, why his premium payments were not being made, and why his policies were being cancelled. Then, beginning in May 2018, Respondents falsified insurance cards they provided to Mr. Santiago and lied to him about having auto coverage with Mercury for ten months. Pursuant to Texas Insurance Code section 4005.101(b)(5),

Respondents are subject to disciplinary action by the Commissioner for engaging in these fraudulent and dishonest acts.

In addition, Staff has shown that Ms. Chavez and L K Insurance misappropriated \$182.29 from Mr. Santiago by making a payment from his account for the benefit of a different client on March 26, 2019.¹⁶⁹ This misappropriation is further grounds for disciplinary action against Respondents, pursuant to Texas Insurance Code section 4005.101(b)(4)(A) and (C).

2. Violations against Mr. Ramos

Mr. Ramos's trucking business had a commercial liability policy with Progressive but, when the policy was up for renewal in April 2019, he and his wife retained Ms. Chavez to look for a less-expensive policy that could replace it.

The evidence clearly shows that that Mr. Ramos and Ms. Isaac paid a total of \$4,500 to L K Insurance for what they were told was an insurance policy from Apollo Insurance. Ms. Chavez also admitted that she provided Mr. Ramos certificates of insurance showing that the Apollo policy was in place beginning April 15, 2019, with additional coverage added on May 29, 2019, though she denied his and his wife's testimony that they had to ask her repeatedly for the proof of insurance. However, the evidence is undisputed that Mr. Ramos was never insured by Apollo at all. Thus, Staff has proven that Ms. Chavez and L K Insurance misrepresented that

¹⁶⁹ The evidence does not establish whether Respondents misappropriated or converted to their own use the \$253.71 drafted on September 29, 2017, or the \$231.71 drafted on December 22, 2017. Both payments were drawn from Mr. Santiago's checking account and paid directly to L K Insurance without explanation, but might have been paid to any of the insurers Ms. Chavez paid on his behalf during that time.

TX Transport was covered when, in fact, no policy had been purchased; and that Ms. Chavez and L K Insurance provided falsified certificates in furtherance of this misrepresentation. Ms. Chavez's claim that the certificates of insurance were issued by mistake and were supposed to reflect a different insurer (Pelican) was not credible, particularly because she acknowledged that Pelican ultimately did not agree to insure Mr. Ramos, either. In any case, whether the certificates were issued by reckless mistake or as a deliberate fraud, they constituted a misrepresentation to Mr. Ramos that his trucking company had auto liability coverage when it did not.

Mr. Ramos and Ms. Isaac also allege that Ms. Chavez meddled with the online FMCSA account for TX Transport, misrepresenting to the federal regulators that the business was covered by Progressive after that policy had lapsed, during the period they believed they were covered by Apollo. The evidence was insufficient to substantiate this allegation, as it is unclear from the testimony who updated the online account, let alone when or how.

Still, there is persuasive evidence that Ms. Chavez, through L K Insurance, at least tried to renew the Progressive policy that Mr. Ramos directed her to replace. Progressive's representative (Mr. Hale) confirmed that Mr. Ramos's policy was renewed effective May 29, 2019, before it was cancelled several days later, on June 4, 2019. During that six-day window, a \$2,441.00 payment was made from Mr. Ramos's business account to Progressive, and was either dishonored by his bank or returned by Progressive. Ms. Isaac and Mr. Ramos testified credibly that they were surprised by this charge and never authorized it, and had no reason to pay anything to Progressive after having already paid several thousand dollars to

L K Insurance for a different policy from Apollo. Ms. Chavez offered no alternative explanation, and the ALJ concludes from the evidence that she fraudulently tried to renew the Progressive policy against her clients' wishes after failing to secure the policy she had promised them from Apollo.

This evidence further shows that Ms. Chavez and L K Insurance misappropriated \$4,500 from Mr. Ramos, based on Ms. Chavez's false representations that the money would go to Apollo to secure a policy to replace their expiring Progressive policy. After misrepresenting that Mr. Ramos was covered by Apollo—and providing him with falsified certificates of insurance to support her lie—Ms. Chavez then misappropriated more funds when she tried to draw another \$2,441 from his account to pay to renew the Progressive policy—a renewal Mr. Ramos did not want, did not authorize, and did not know about. These misrepresentations and misappropriations are further grounds for disciplinary action against Ms. Chavez and L K Insurance pursuant to Texas Insurance Code section 4005.101(b)(4) and (5).

B. SANCTIONS

As a sanction for the violations found above, Staff seeks revocation of both Respondents' licenses, restitution for Mr. Santiago, and imposition of administrative penalties.

1. Revocation

The Department's rules specify that it is "very important that license and authorization holders . . . and any other persons who have the right to control a

license or authorization holder . . . be honest, trustworthy, and reliable.”¹⁷⁰ The public must be able to place trust in and rely upon licensees,¹⁷¹ and the Department may revoke a person’s license if they have engaged in fraudulent or dishonest activity or have misappropriated funds belonging to an insurer or an insured.¹⁷² Here, Staff contends that Ms. Chavez should have her general lines agent license revoked, and L K Insurance should have its general lines agency license revoked, based on their misconduct towards Mr. Santiago and Mr. Ramos. The ALJ agrees.

The record shows repeated instances where Ms. Chavez and her agency violated the trust of these customers. Respondents let at least three insurance policies of Mr. Santiago’s lapse because Ms. Chavez failed to arrange his premium payments as promised, and she repeatedly and untruthfully told him the insurers had erred, not her. During transitions between carriers, L K Insurance paid itself from Mr. Santiago’s account without accounting for or explaining those payments. Then, Ms. Chavez falsely told Mr. Santiago that he had insurance with Mercury, and provided false documents in furtherance of this lie. L K Insurance collected premiums from Mr. Santiago for ten months, between May 2018 and February 2019, never remitting those premiums to Mercury or any other carrier or informing Mr. Santiago that he was, in fact, uninsured. Respondents’ fraud was revealed only in March 2019, when Mr. Santiago saw payment had been made from his account to

¹⁷⁰ 28 Tex. Admin. Code § 1.502(c). Though this subchapter is titled “Effect of Criminal Conduct,” it also addresses, in addition to criminal offenses, licensees who have engaged in fraudulent or dishonest activity. *See* 28 Tex. Admin. Code § 1.501(a); *see also* Tex. Gov’t Code § 311.024 (heading of a title, subtitle, chapter, subchapter, or section does not limit its meaning).

¹⁷¹ 28 Tex. Admin. Code § 1.502(a).

¹⁷² Tex. Ins. Code §§ 82.051, 4005.101(b)(4)-(5), .102(2); 28 Tex. Admin. Code § 1.502(d).

an unfamiliar insurer; the evidence shows this charge occurred because Ms. Chavez had used Mr. Santiago's charge card without permission to make a payment for a different, similarly-named customer.

Much of this misconduct was repeated in Respondents' dealings with Mr. Ramos. Again, Ms. Chavez collected funds for insurance that was never actually provided, falsified coverage documents so her customer would not discover he was uninsured, and used the customer's charge card to make an unauthorized charge against his account.

Both Mr. Santiago and Mr. Ramos testified convincingly that they suffered actual economic harm as a result of Respondents' misconduct. Mr. Santiago had to pay higher insurance premiums because Ms. Chavez caused him to be uninsured for almost a year, and Mr. Ramos and his wife had to close their family business.

In addition to the violations against Mr. Santiago and Mr. Ramos, other evidence strongly suggests that Respondents engage in dishonest or illegal business practices. Ms. Chavez has equivocated on whether or not she owns L K Insurance and she offered implausible and baseless explanations for why her customers received documents purporting to show they were covered by policies that she never actually obtained. The ALJ is also concerned by the dubious legality of the "credit building" services Ms. Chavez claimed L K Insurance provided for Mr. Santiago, as well as her professed ignorance of that service despite her position as 100% record owner of the agency. Further, Representatives of Infinity and Hallmark both testified

that those insurers will no longer do business with Respondents due to their questionable business practices.

This evidence clearly shows that Ms. Chavez and L K Insurance are not trustworthy, honest, or reliable, and a lesser sanction (such as suspension or probation) would not correct these deficiencies. The ALJ therefore recommends that Respondents' licenses be revoked as a sanction for their violations in this case.

2. Restitution

Pursuant to Texas Insurance Code section 82.053, the Department may order a license-holder to make restitution to a person who resides or holds insurance in Texas, or an entity that operates in this state, if the person or entity is harmed by a violation of Texas insurance laws.¹⁷³ This sanction may be imposed in addition to revocation of the licenses.¹⁷⁴

Here, Staff has not sought restitution for Mr. Ramos because the evidence shows that Ms. Chavez eventually repaid the \$4,500 Mr. Ramos had paid L K Insurance for the Apollo policy (after first writing a check that was rejected for insufficient funds, she paid him in cash), and that the \$2441.00 renewal payment to Progressive was returned to his bank account. However, Staff does seek an order of

¹⁷³ Tex. Ins. Code § 82.053.

¹⁷⁴ Tex. Ins. Code § 82.052(4)-(5).

restitution for Mr. Santiago for premium payments he made to L K Insurance for the non-existent Mercury policy.¹⁷⁵

Staff's evidence shows that Mr. Santiago made a total of ten payments to L K Insurance for the Mercury policy:

- A payment of \$286.65, paid in May 2018;
- Payments of \$208.19, \$208.00, and \$208.11, paid in June, July, and August 2018, respectively; and
- Six payments of \$162.11, paid in September, October, November and December 2018, and January and February 2019.

These payments totaled \$1,883.61 that Mr. Santiago paid for insurance coverage he never received, and the ALJ recommends that restitution be made to him by Respondents in this amount.

3. Administrative Penalty

Finally, Staff requested that Respondents be fined for each violation they committed. Administrative penalties may be imposed in addition to and in combination with license revocation and restitution sanctions.¹⁷⁶ Penalties can be as

¹⁷⁵ Staff did not request restitution for the other unauthorized or improper charges made to Mr. Santiago's account. For the payments L K Insurance Services drafted on September 29, 2017 (\$253.71) and December 22, 2017 (\$231.71), the evidence does not establish whether it kept the payments or relayed them to one of the several insurers who briefly covered Mr. Santiago during those months. The charge from Mr. Santiago's account to Gainsco was refunded after Mr. Santiago disputed the charge with his bank. Therefore, the ALJ finds the evidence does not support restitution of these sums.

¹⁷⁶ Tex. Ins. Code §§ 82.052(3), (5), 84.021, 4005.102(4).

high as \$25,000 per violation, based on certain factors the Department must consider in determining the appropriate amount.¹⁷⁷

However, the Texas Insurance Code sets forth certain procedural requirements that must be met before an administrative penalty can be imposed. The Department has to give the affected person written notice containing a brief summary of the alleged violation(s) and “a statement of the amount of the recommended penalty,” and informing the person that they have a right to a hearing to contest the violation, penalty amount, or both.¹⁷⁸ The affected person can then request a hearing at SOAH to contest the penalty.¹⁷⁹

Staff presented no evidence that Respondents have ever been provided a statement of the amount of penalties the Department seeks to impose. Nor has such a statement been included with Staff’s pleadings or arguments in this case. Staff’s Original Petition (filed April 1, 2021) sought revocation, restitution, and “any other just and appropriate relief to which the [D]epartment may be entitled,” without specific reference to any administrative penalties.¹⁸⁰ Its Amended Petition (filed September 21, 2021) included a request for “an administrative penalty of up to \$25,000 per violation,”¹⁸¹ but did not specify how many violations Staff believed had been committed. In argument at the hearing, Staff reiterated its request for “an

¹⁷⁷ Tex. Ins. Code § 84.022.

¹⁷⁸ Tex. Ins. Code § 84.041.

¹⁷⁹ Tex. Ins. Code §§ 84.042-.43.

¹⁸⁰ TDI Ex. 1 at 3016.

¹⁸¹ TDI Ex. 4 at 3037.

administrative penalty of up to \$25,000 per violation” and asked that Respondents be “fined per violation.”¹⁸² None of these pleadings or arguments provided Respondents notice of the specific penalty amount associated with any violation, or the total amount sought, as required by the Insurance Code.

Further, while Staff’s evidence broadly showed that Respondents engaged in misappropriation and other fraudulent or dishonest conduct, Staff never specified a particular number of violations it contended had been committed, nor did it present evidence supporting a particular penalty amount for any particular violation. Therefore, the ALJ concludes that the record evidence is insufficient to support imposition of any administrative penalties in this case.

V. CONCLUSION

As detailed above, the ALJ concludes that Staff met its burden of proving that Ms. Chavez and her insurance agency, L K Insurance, engaged in fraudulent or dishonest practices in her dealings with two customers, Mr. Santiago and Mr. Ramos, and also misappropriated funds from those customers. This misconduct makes Respondents subject to disciplinary action, and the ALJ recommends that L K Insurance’s general lines agency license be revoked, and Ms. Chavez’s general lines agent license also be revoked. The ALJ further recommends that Respondents be ordered to make restitution to Mr. Santiago. In support of these recommendations, the ALJ makes the following findings of fact and conclusions of law.

¹⁸² Tr. Vol. 1 at 21; Tr. Vol. 2 at 177.

VI. FINDINGS OF FACT

1. Respondent L K Insurance Services, L.L.C. (L K Insurance) holds a general lines agency license issued by the Texas Department of Insurance (Department).
2. Respondent Nelci Chavez holds a general lines agent license issued by the Department.
3. Ms. Chavez is the 100% owner of L K Insurance.

Violations against Rafael Santiago

4. Rafael Santiago met Ms. Chavez at church in or around 2015, and eventually began using her and L K Insurance as his agents to obtain auto insurance for his three personal vehicles.
5. Ms. Chavez and L K Insurance (jointly, Respondents) obtained four successive auto insurance policies for Mr. Santiago from three different insurers between August 2017 and May 2018. Each of those policies was cancelled for nonpayment.
6. Mr. Santiago's policies were cancelled even though Mr. Santiago had given Ms. Chavez his account number; authorized her to have premium payments automatically paid from his bank account to the insurers, which she assured him she would arrange; and had the funds to pay the premiums.
7. Each time Mr. Santiago inquired about the payment problems, Ms. Chavez untruthfully told him that the insurer had made an error, not her, and promised she would resolve the issue.
8. Respondents repeatedly failed to make premium payments when they were due, despite promising to do so, and Ms. Chavez allowed Mr. Santiago's auto policies to be cancelled rather than correcting her errors.
9. L K Insurance also drafted two payments from Mr. Santiago's account—a \$253.71 payment on September 29, 2017, and a \$231.71 payment on December 22, 2017—both paid directly to L K Insurance rather than any of

Mr. Santiago's insurers. Respondents never explained to Mr. Santiago what these payments were for.

10. In May 2018, Ms. Chavez informed Mr. Santiago that he had a new insurance policy with Mercury Insurance Group (Mercury), and she provided him insurance identification cards reflecting that his three vehicles were covered by Mercury for a policy period beginning May 12, 2018.
11. Ms. Chavez told Mr. Santiago to pay his premiums to L K Insurance and she would make each month's payment to Mercury.
12. L K Insurance drafted \$286.65 from Mr. Santiago's checking account on May 21, 2018. Additional payments were drafted by L K Insurance on June 21, 2018 (\$208.19), July 23, 2018 (\$208.00), August 21, 2018 (\$208.11), September 21, 2018 (\$162.11), October 22, 2018 (\$162.11), November 21, 2018 (\$162.11), December 21, 2018 (\$162.11), January 22, 2019 (\$162.11), and February 21, 2019 (\$162.11). Mr. Santiago understood and believed each of those payments was made for payment on his Mercury auto insurance policy.
13. Ms. Chavez never procured a policy with Mercury for Mr. Santiago, and the insurance identification cards she gave him were falsified.
14. Though Ms. Chavez had told him he was covered, Mr. Chavez held no auto insurance at all from May 2018 through March 2019.
15. Respondents misappropriated \$1,883.61 from Mr. Santiago, the premium payments they charged him for ten months for a Mercury policy that did not exist.
16. In March 2019, Mr. Santiago saw a \$182.29 charge on his bank statement, drafted on March 26, 2019, and paid to Gainsco Automobile. Mr. Santiago was never insured by Gainsco.
17. When he asked Ms. Chavez about the Gainsco charge, Ms. Chavez untruthfully told Mr. Santiago that Gainsco was a new administrator for his Mercury policy.

18. The payment to Gainsco was posted to the account of another L K Insurance client with a similar name (Santiago Pineda, rather than Rafael Santiago), who did hold insurance with Gainsco.
19. Ms. Chavez misused her access to Mr. Santiago's account to make a payment for the benefit of another L K Insurance customer.
20. Mr. Santiago challenged the Gainsco charge with his bank, and it was refunded.
21. Mr. Santiago subsequently had to pay higher insurance premiums because Respondents caused him to be uninsured for almost a year.
22. Mr. Santiago filed a complaint against Respondents with the Department in April 2019.

Violations against Okell Ramos

23. Okell Ramos owned a small trucking company, TX Transport, that had a \$1 million liability policy with Progressive Insurance Company (Progressive) set to expire in April or May 2019, and he hired Ms. Chavez to look for a less-expensive policy that could replace it. A friend referred Mr. Ramos to Ms. Chavez.
24. Ms. Chavez provided Mr. Ramos with a quote for a new, less-expensive policy with Apollo Insurance.
25. TX Transport paid L K Insurance \$4,500 for the down-payment and first month's premium for the Apollo policy. Ms. Chavez told Mr. Ramos that L K Insurance would remit the premiums to Apollo.
26. Ms. Chavez provided Mr. Ramos with a certificate of insurance, dated April 15, 2019, indicating that Mr. Ramos and TX Transport had \$1 million in commercial general liability coverage from Apollo Insurance, with L K Insurance listed as the agent. A second Certificate of Liability Coverage was provided dated May 29, 2019, indicating that automobile liability coverage was also included with the Apollo policy.

27. Ms. Chavez never procured a liability policy for Mr. Ramos or TX Transport and the certificates of insurance she gave Mr. Ramos were falsified.
28. Ms. Chavez misrepresented to Mr. Ramos that his trucking company had liability coverage when it did not.
29. Ms. Chavez, through L K Insurance, attempted to renew the Progressive policy that Mr. Ramos had directed her to replace, and arranged for Progressive to charge \$2,441.00 from Mr. Ramos's business account without his authorization on May 29, 2019.
30. Ms. Chavez fraudulently tried to renew the Progressive policy against her clients' wishes after failing to secure the policy she had promised from Apollo.
31. The Progressive policy was renewed effective May 29, 2019, before it was cancelled several days later, on June 4, 2019. The \$2,441.00 payment was either dishonored by Mr. Ramos's bank or returned by Progressive.
32. When confronted by Mr. Ramos and his wife, Ms. Chavez agreed to refund them the \$4,500 they had paid for the Apollo policy. She first tried to pay them by check on L K Insurance's account, but the check was rejected for insufficient funds. She ultimately refunded them in cash.
33. Mr. Ramos had to close TX Transport because he was unable to get coverage with any insurance company after relying on the fraudulent Apollo certificate Ms. Chavez had provided, and after becoming uninsured. He had to start over in a different job and has lost income.
34. Mr. Ramos filed a complaint against Respondents with the Department in June 2019.

Sanctions Considerations

35. Respondents have engaged in dishonest or illegal business practices.
36. Both Mr. Santiago and Mr. Ramos suffered actual economic harm as a result of Respondents' misconduct.

37. Ms. Chavez has equivocated on whether or not she owns L K Insurance and she offered implausible and baseless explanations for why her customers received documents purporting to show they were covered by policies that she never actually obtained.
38. Infinity and Hallmark will no do business with Respondents due to their questionable business practices.
39. Ms. Chavez and L K Insurance are not trustworthy, honest, or reliable.
40. Respondents have not been provided with a statement of the amount of penalties the Department proposes to impose against them in this proceeding, or for which specific violations.
41. There is no pleading or evidence to support a determination of how much penalty should be imposed for any violation.

Procedural Matters

42. On September 21, 2022, Staff of the Department mailed a notice of hearing to Respondents. 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 either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
43. The hearing in this case was held via Zoom videoconference on December 13-14, 2022, before Administrative Law Judge Sarah Starnes with the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff attorney Kaycee Crisp represented Staff. Ms. Chavez represented herself and L K Insurance.
44. The hearing concluded on December 14, 2022, and the record closed on January 3, 2023, when the court reporter's transcript was filed with SOAH.

VII. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, 4005.101-.102, 4051.051, 4054.051.
2. The Commissioner of Insurance is the chief executive and administrative officer of the Department. Tex. Ins. Code § 31.021.
3. SOAH has authority to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
4. Respondents received timely and sufficient notice of hearing. Tex. Gov't Code §§ 2001.051-.052.; Tex. Ins. Code § 4005.104(b).
5. Staff had the burden of proof to establish grounds for disciplinary action against Respondents. 1 Tex. Admin. Code § 155.427.
6. The standard of proof is by a preponderance of the evidence. *Granek v. Texas St. Bd. of Med. Examn'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
7. Respondents misappropriated, converted, or illegally withheld money belonging to an insurer or insured in violation of Texas Insurance Code section 4005.101(b)(4).
8. Respondents engaged in fraudulent or dishonest acts or practices in violation of Texas Insurance Code section 4005.101(b)(5).
9. The Commissioner is authorized to revoke the licenses held by Ms. Chavez and L K Insurance Services, L.L.C. Tex. Ins. Code §§ 82.051, 4005.101(b)(4)-(5), .102(2).
10. Ms. Chavez's general lines agent license should be revoked.
11. L K Insurance's general lines agency license should be revoked.

12. The Commissioner is authorized to order Respondents to make complete restitution to a Texas resident or insured that has been harmed by their violation of Texas insurance laws. Tex. Ins. Code § 82.053.
13. Respondents should be ordered to pay restitution to Rafael Santiago in the amount of \$1,883.61.
14. The Commissioner is authorized to assess administrative penalties against persons who have violated insurance laws but must first give the affected person written notice with a brief summary of each alleged violation and a statement of the amount of the recommended penalty, and the notice must inform the person that they have a right to a hearing to contest the violation, penalty amount, or both. Tex. Ins. Code §§ 82.052(3), 84.021-.022, 84.041, 4005.102(4).
15. No administrative penalties should be imposed against Respondents.

Signed February 13, 2023

ALJ Signature:



Sarah Starnes

Presiding Administrative Law Judge

2023-8114

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Associated Case Party: Texas Department of Insurance

Name	BarNumber	Email	TimestampSubmitted	Status
Rachel Cloyd		Rachel.Cloyd@tdi.texas.gov	2/13/2023 11:21:15 AM	SENT
Anna Kalapach		Anna.Kalapach@tdi.texas.gov	2/13/2023 11:21:15 AM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	2/13/2023 11:21:15 AM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	2/13/2023 11:21:15 AM	SENT

Associated Case Party: NelciChavez

Name	BarNumber	Email	TimestampSubmitted	Status
Nelci Chavez		info@lkinsuranceservices.com	2/13/2023 11:21:15 AM	SENT

FILED **2023-8114**
454-21-1868
3/17/2023 9:32 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

ACCEPTED
454-21-1868
3/17/2023 9:33:44 am
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

Exhibit B

March 17, 2023

Anna Kalapach, attorney for Petitioner
Texas Department of Insurance

VIA EFILE TEXAS

Nelci Chavez and L K Insurance Services, L.L.C.
5504 Tara Oaks Ct.
Rosharon, TX 77583

VIA REGULAR MAIL

**RE: Docket Number 454-21-1868.C; Texas Department of Insurance
No. 22573, 25169; *Texas Department of Insurance v. Nelci Chavez
and L K Insurance Services, L.L.C.***

Dear Parties:

On February 13, 2023, I issued the Proposal for Decision (PFD) in this case. Staff of the Texas Department of Insurance filed timely exceptions on February 23, 2023. Nelci Chavez and L K Insurance Services, L.L.C. (Respondents) did not file exceptions, nor did they respond to Staff's exceptions. Their deadlines to do so have now passed.¹

In the PFD, I recommended that the general lines agency license held by L K Insurance Services and the general lines agent license held by Ms. Chavez both be revoked as a sanction for their fraudulent and dishonest acts with respect to two complainants. I also recommended that they be ordered to pay restitution to one of the complainants.

¹ 1 Tex. Admin. Code § 155.507(b).

Staff also requested imposition of an administrative penalty, but in the PFD I determined that no penalty could be awarded because Staff did not give required notice to Respondents of whether, or how much, penalty they were seeking, nor did Staff present any evidence or argument at the hearing from which the ALJ could determine how much Staff was seeking, or for which violations.

In its exceptions, Staff Excepted to Conclusion of Law 14, which held that Respondents had not been given the written notice required before administrative penalties can be assessed. Staff argues that Respondent was not entitled to such notice because Insurance Code section 84.041(a) says only that the Department “may” prepare a report with information about penalties, and that this language should be construed as discretionary and not a prerequisite to seeking administrative penalties. Staff also argues, for the first time, that there were “at least 14 violations by both the individual Respondent Chavez and Respondent L K Services, L.L.C.”²

While it is generally true that “may” is a term that confers discretion, not a requirement,³ the words and phrases in a statute must be read in context and as a whole, not in isolation.⁴ Here, Insurance Code section 84.041 begins by stating that:

If the department determines that a violation has occurred, *the department may issue to the commissioner* a report that states the facts on which the determination is based and the department’s recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.⁵

However, the Code goes on to *require* (“the department shall...”) that written notice of the report recommending penalties be given to the affected person.⁶

² Staff also conceded that its evidence addressed some, but not all, of the statutory factors to be considered in assessing a penalty, and therefore did not ask to change Conclusion of Law 15, which concluded no penalties should be imposed in this case.

³ Tex. Gov’t Code § 311.016(1).

⁴ *Brazos Elec. Power Coop., Inc. v. Tex. Comm’n on Env’tl. Quality*, 576 S.W.3d 374, 384 (Tex. 2019).

⁵ Tex. Ins. Code § 84.041(a) (emphasis added).

⁶ Tex. Ins. Code § 84.041(b).

Receipt of that written notice is what triggers the person’s obligation to pay the recommended penalty or request a hearing to contest it, and sets up the Department’s requirement to refer the case to SOAH for a hearing.⁷ When read in context, the discretionary *may* in section 84.041(a) applies only to the Department’s determination of whether to or not recommend to the Commissioner that an administrative penalty be sought. If the Department does elect to pursue a penalty, then section 84.041(b) requires that written notice of that determination be given to the affected persons so that they can decide whether to pursue a hearing.

The evidence is undisputed that Staff did not give Respondents prior notice of the amount of penalties it would seek at the hearing. In fact, Staff did not give the Administrative Law Judge notice, either. Staff’s response to exceptions marks the first time that Staff specified how many violations it contends were committed, and at no time has Staff advised Respondents or the ALJ of a particular dollar amount of penalties it contends should be imposed. For these reasons, and as further discussed in the PFD, Staff has not met the statutory prerequisites for requesting a penalty, nor has Staff proven by a preponderance of the evidence that any particular amount should be assessed, or for which violations.

Therefore, the ALJ finds no reason to modify Conclusion of Law 14 as requested in Staff’s exceptions. The ALJ recommends no changes to the PFD, and it is ready for your consideration.

ALJ Signature:



Sarah Starnes

Presiding Administrative Law Judge

CC: Service List

⁷ Tex. Ins. Code §§ 84.042-.043.

2023-8114

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Associated Case Party: Texas Department of Insurance

Name	BarNumber	Email	TimestampSubmitted	Status
Rachel Cloyd		Rachel.Cloyd@tdi.texas.gov	3/17/2023 9:32:52 AM	SENT
Anna Kalapach		Anna.Kalapach@tdi.texas.gov	3/17/2023 9:32:52 AM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	3/17/2023 9:32:52 AM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	3/17/2023 9:32:52 AM	SENT

Associated Case Party: NelciChavez

Name	BarNumber	Email	TimestampSubmitted	Status
Nelci Chavez		info@lkinsuranceservices.com	3/17/2023 9:32:52 AM	SENT