

No. 09 - 0222

OFFICIAL ORDER
of the
COMMISSIONER OF INSURANCE
of the
STATE OF TEXAS
AUSTIN, TEXAS

Date: APR 03 2009

Subjects Considered:

BENTON R. BARBER
CODY MILLER
JILL MOODY
AND
GREGORY A. BEATTY

EMERGENCY CEASE AND DESIST ORDER

TDI ENFORCEMENT FILE No. 55445

General remarks and official action taken:

On this day the Texas Department of Insurance ("TDI/Department"), through staff counsel for TDI, presented to the Commissioner of Insurance a verified application for an ex parte Emergency Cease and Desist Order. The Department alleges that Benton R. Barber (a/k/a Randy Barber) individually and doing business as Texas Department of Insurance Agency, Texas Department of Insurance Agencies, Green Star Roofing, Roofteam, Roof Teams, Roof All Texas, 1 Day Roof, Jill Moody individually and doing business as Texas Department of Insurance Agency, Cody Miller individually and doing business as Green Star Roofing, and Gregory A. Beatty (collectively, "Respondents") have engaged in activities within this State for which Respondents are not licensed or do not hold an authorization and otherwise engaged in the unauthorized business of insurance in Texas and committed an unfair or deceptive act or practice in violation of TEX. INS. CODE ANN. §§ 101.001-101.156, 4001.002, 4005.101-4005.107 and Chapters 541 and 4102 and 28 TEX. ADMIN. CODE §§ 19.704, 19.902, 21.3, 21.104, 21.107 and 21.112.

Under TEX. INS. CODE ANN. § 83.051 the Commissioner of Insurance may issue an emergency cease and desist order if an unauthorized person engaging in the business of insurance is committing an unfair act or is in a hazardous condition and/or is engaging in acts or practices in violation of TEX. INS. CODE ANN. §§ 4101.051 and

4102.051. The Commissioner may also issue an emergency cease and desist order if an unauthorized person: is engaging in acts or practices in violation of TEX. INS. CODE ANN. §§ 4101.051 and 4102.051 and/or is engaging in the business of insurance in violation of TEX. INS. CODE ANN. Ch. 101, 4101 and 4102, or is engaging in the business of insurance in violation of TEX. INS. CODE ANN. Ch. 101 and is committing an unfair act; and the conduct is fraudulent; hazardous or creates an immediate danger to public safety; or is causing or can be reasonably expected to cause public injury that is likely to occur at any moment, is incapable of being repaired or rectified, and has or is likely to have influence or effect.

The Commissioner believes that Staff's Application meets the requirements of TEX. INS. CODE ANN. §§ 83.051 and 4102.208 for the issuance of an emergency cease and desist order. Accordingly, the Commissioner finds as follows:

1. Respondents Benton R. Barber (a/k/a Randy Barber) individually and doing business as Texas Department of Insurance Agency, Texas Department of Insurance Agencies, Green Star Roofing, Roofteams, Roof Teams, Roof All Texas, 1 Day Roof, Jill Moody individually and doing business as Texas Department of Insurance Agency, Cody Miller individually and doing business as Green Star Roofing, and Gregory A. Beatty do not hold a license or certificate of authority to perform the acts of a public adjuster or a public insurance adjuster and/or do the business of insurance in Texas. None of these Respondents have filed any notice with the Commissioner of any claim for exemption from TEX. INS. CODE ANN. § 101.102 with documents supporting such claim prior to commencing operations, as required by TEX. INS. CODE ANN. § 101.004.
2. Respondents are using the State Seal of Texas in violation of § 17.08 of the TEX. BUS. & COMM. CODE ANN. and are violating TEX. BUS. & COMM. CODE ANN. § 17.46 (b)(2),(3),(4),(5),(7),(12), and (24) and TEX. INS. CODE ANN. Ch. 541 and the Rules promulgated there under.
3. TEX. INS. CODE ANN. § 4102.001 details acts which constitute the acts of a public insurance adjuster. These acts include negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property; on behalf of any other public insurance adjuster, investigating, settling, or adjusting or advising or assisting an insured with a claim or claims for loss or damage under any policy of insurance covering real or personal property; or advertising, soliciting business, or holding himself or herself out to the public as an adjuster of claims for loss or damage under any policy of insurance covering real or personal property.
4. TEX. INS. CODE ANN. § 4102.054 and 4102.056 and 28 TEX. ADMIN. CODE §§ 19.704, 19.709 and 19.710 set forth the public insurance adjuster license requirements for nonresident individuals and business entities not organized in Texas.

5. Pursuant to 28 TEX. ADMIN. CODE §§ 19.704(b) and 19.902(a), corporations and partnerships must obtain a separate public insurance adjuster license.
6. Under TEX. INS. CODE ANN. § 4102.051, a person may not act as a public insurance adjuster license in this state or hold himself or herself out to be a public insurance adjuster in this state unless the person holds a license or certificate.
7. Respondents are unauthorized persons performing the acts of a public insurance adjuster as defined in TEX. INS. CODE ANN. § 4102.001 in Texas.
8. Because these Respondents are not authorized to perform the acts of a public insurance adjuster and/or do the business of insurance in this State, Texas citizens who have contracted with and/or conducted business through these Respondents face serious risk of loss.
9. Respondents' activities as public insurance adjusters in the State of Texas without holding appropriate licenses issued by the Department constitute unfair and deceptive acts or practices in the business of insurance as contemplated in TEX. INS. CODE ANN. Ch. 541 and 28 TEX. ADMIN. CODE §§ 21.3, 21.4, 21.101-21.102, and 21.112.
10. Respondents are engaging in the business of insurance, as defined in TEX. INS. CODE ANN. § 101.051, and performing the acts of a public insurance adjuster, as defined in TEX. INS. CODE ANN. § 4102.001(3). Such conduct by Respondents is fraudulent, illegal, hazardous, creates an immediate danger to public safety, and is causing or can be reasonably expected to cause public injury that is likely to occur at any moment, is incapable of being repaired or rectified, and has or is likely to have influence or effect.
11. Respondents are aiding, assisting, furthering and/or promoting, directly and/or indirectly, unauthorized persons in performing the acts of a public insurance adjuster and conducting the business of insurance and/or directly and/or indirectly, participating in the business of insurance with unauthorized persons. This conduct constitutes unfair acts in violation of TEX. INS. CODE ANN. Ch. 541 and 28 TEX. ADMIN. CODE §§ 21.3 and 21.112. Further, such conduct is designed to evade the insurance laws of the State of Texas.
12. Respondents are committing unfair acts in violation of TEX. INS. CODE ANN. Ch. 541 and 28 TEX. ADMIN. CODE §§ 21.3 and 21.112. Such conduct by Respondents is fraudulent, illegal, hazardous, creates an immediate danger to public safety, and is causing or can be reasonably expected to cause public injury that is likely to occur at any moment, is incapable of being repaired or rectified, and has or is likely to have influence or effect. Further, such conduct, designed to evade the insurance laws of the State of Texas, should immediately be stopped and enjoined.

13. Unless Respondents are immediately ordered to cease and desist, Respondents will continue to engage in the business of insurance in Texas in an unauthorized, illegal, and hazardous manner.
14. The Commissioner has authority and jurisdiction over this matter pursuant to TEX. INS. CODE ANN. §§ 83.051-83.055, 101.001-101.156, 4001.002, 4005.101-4005.107 and Chapters 541 and 4102, 28 TEX. ADMIN. CODE §§ 1.901 *et seq.*, 19.701 *et seq.* and 21.1-21.122 and TEX. GOV'T CODE ANN. §§ 2001.051 - 2001.178.

IT IS THEREFORE ORDERED that Respondents, their agents, employees, or other representatives, shall immediately cease and desist from doing the following:

1. Using any letterhead, advertisement, or other printed matter, or using any other means, that contains the state seal or a representation of the state seal to represent that the individual is an instrumentality of the state government, of a state or the Department of Insurance for a State.
2. Using the following names "Texas Department of Insurance Agency" or "Texas Department of Insurance Agencies" in any letterhead, advertisement, internet site, or other printed matter.
3. Using a proposed name that may mislead the public, including names that are the same as, closely resemble or imply affiliation with a federal governmental authority or program.
4. Using any letterhead, advertisement, or other printed matter, or using any other means, to represent that the individual is an instrumentality of the federal government, of a state, or of a political subdivision of a state.
5. Using words, symbols or physical materials which have the capacity or tendency to confuse or mislead prospective insureds into believing the advertisement or solicitation is connected with a municipal, state or federal agency or government.
6. Using materials that state, imply or create the impression that a person is recommended or endorsed by any division or agency of this state or the United States government.
7. Doing any acts which constitute the acts of a public insurance adjuster, as defined in TEX. INS. CODE ANN. § 4102.001(3), without first obtaining the proper license issued by the Department.
8. Aiding, assisting, furthering and/or promoting, directly and/or indirectly, unauthorized persons in performing the acts of a public insurance adjuster and conducting the business of insurance and/or participating, directly and/or indirectly, in the business of insurance with unauthorized persons in this State.

9. Directly or indirectly, for direct, indirect, or any other compensation, acting on behalf of an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property, without first obtaining the proper license issued by the Department.
10. Directly or indirectly, for direct, indirect, or any other compensation, on behalf of any other insurance adjuster or public insurance adjuster, investigating, settling, or adjusting or advising or assisting an insured with a claim or claims for loss or damage under any policy of insurance covering real or personal property, without first obtaining the proper license issued by the Department.
11. Directly or indirectly, advertising, soliciting business, or holding himself or herself out to the public as an adjuster of claims for loss or damage under any policy of insurance covering real or personal property, without first obtaining the proper license issued by the Department.
12. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance and/or public insurance adjuster activities or with respect to any person in the conduct of his insurance business and/or public insurance adjuster activities, which is untrue, deceptive, or misleading.

IT IS FURTHER ORDERED that this Order is effective immediately and shall continue in force and effect until further order of the Commissioner of Insurance. This Order is binding on Respondents, their agents, employees, or other representatives.

PURSUANT TO TEX. INS. CODE ANN. § 83.053, ANY PERSON AFFECTED BY THIS ORDER AND WHO SEEKS TO CONTEST IT HAS THE RIGHT TO REQUEST A HEARING BEFORE THE COMMISSIONER, OR HIS DULY APPOINTED REPRESENTATIVE, TO SHOW CAUSE WHY THIS ORDER SHOULD NOT BE AFFIRMED. THE PERSON AFFECTED MUST MAKE THE REQUEST NOT LATER THAN THE 30TH DAY AFTER THE DATE ON WHICH THE PERSON RECEIVES THIS ORDER. THE REQUEST MUST BE IN WRITING DIRECTED TO THE COMMISSIONER AND MUST STATE THE GROUNDS FOR THE REQUEST TO SET ASIDE OR MODIFY THE ORDER.

Pending a hearing, this Order shall continue in full force and effect unless stayed by the Commissioner. Any such hearing shall be conducted according to the procedures for contested cases under TEX. GOV'T CODE ANN. §§ 2001.051- 2001.062.

IN THE EVENT THIS ORDER IS VIOLATED, THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY OF \$25,000 FOR EACH ACT OF VIOLATION, OR DIRECT THE PERSON AGAINST WHOM THE ORDER IS ISSUED TO MAKE COMPLETE RESTITUTION, IN THE FORM AND AMOUNT AND WITHIN THE PERIOD DETERMINED BY THE COMMISSIONER, TO ALL TEXAS RESIDENTS, TEXAS INSURERS, AND ENTITIES OPERATING IN TEXAS HARMED BY THE VIOLATION OR FAILURE TO COMPLY, OR THE COMMISSIONER MAY IMPOSE BOTH THE PENALTY AND ORDER RESTITUTION.



 MIKE GEESLIN
COMMISSIONER OF INSURANCE