

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



Phone: (360) 725-7000
www.insurance.wa.gov

FILED

OFFICE OF
INSURANCE COMMISSIONER
HEARINGS UNIT

Fax: (360) 664-2782

2012 MAY 21 10:27 AM

Patricia D. Petersen
Chief Presiding Officer
(360) 725-7105

Kelly A. Cairns
Paralegal
(360) 725-7002
KellyC@oic.wa.gov

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of)	Docket No. 12-0028
)	
Auturo Roberts,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Nonresident Licensee.)	AND FINAL ORDER
_____)	

TO: Auturo Roberts
13830 Castlegate Drive
Frisco, TX 75035

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Marcia Stickler, Staff Attorney, Legal Affairs Division
Carol Sureau, Deputy Commissioner, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Pursuant to RCW 34.05.434, 34.05.461, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons the above-entitled matter came on regularly for hearing before the Washington State Insurance Commissioner commencing at 10:27a.m. PST on May 21, 2012. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The Insurance Commissioner appeared by and through Marcia Stickler, Esq., Staff Attorney in his Legal Affairs Division. Although notice of the hearing was properly sent to Auturo Roberts to his address and email addresses of record and by telephone, he failed to appear at the hearing.



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NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether disciplinary action should be taken against Auturo Roberts ("Licensee") as proposed by the Insurance Commissioner (OIC) in his Notice of Hearing, No. 12-0028, for alleged violations of the Insurance Code. Specifically, in the Notice of Hearing, the OIC alleges that the Licensee violated RCW 48.17.530(1)(a) by providing incorrect, misleading, incomplete, or materially untrue information on his application by falsely answering "no" to the question regarding criminal history when subsequent results of a criminal background check received by OIC indicate the Licensee had a criminal conviction on his record from twenty years prior.

FINDINGS OF FACT

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The adjudicative proceeding herein was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; Title 34 RCW including, for good cause shown, RCW 34.05.458(8); and regulations pursuant thereto.
2. Auturo Roberts ("Licensee") is an approximately 41 year old individual who is licensed by the Washington State Insurance Commissioner ("OIC") as a Nonresident Independent Insurance Adjuster. His home state is Texas and his address of record is 13830 Castlegate Drive, Frisco, Texas 75035. [Ex. 1, Hearing File; OIC Ex. 1, Washington Nonresident Independent Insurance Adjustor License Application.]
3. The Licensee failed to appear at the adjudicative proceeding held in this matter. The process is detailed in Findings 4 through 7 below.
4. On March 2, 2012 the OIC Legal Affairs Division mailed the subject Notice of Hearing to the Licensee at his address of record, filing a copy with the undersigned. On March 6, to acknowledge receipt of this document, the undersigned mailed a Notice of Receipt of OIC Notice of Hearing to the Licensee at his address of record and delivered a copy to the OIC through normal office mailing custom. In this Notice of Receipt, the undersigned informed the Licensee that he would be contacted to schedule a prehearing conference to discuss the hearing process and answer any questions the parties may have. In an attempt to contact the Licensee to schedule a prehearing conference, the undersigned's Paralegal left various telephone messages and sent emails to Licensee regarding this matter on March 14, March 24 and March 29. [Ex. 1, Hearing File, including notes of Hearings Unit's Paralegal.] The telephone messages were left at the telephone number provided by OIC Staff Attorney Marcia Stickler and which appears on

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communications from the Licensee to the OIC. The email messages were left at the email address provided by OIC Staff Attorney Marcia Stickler and which appear on communications from the Licensee to the OIC. The Licensee did not respond to any of these communications. [Ex. 1, Hearing File, notes of Paralegal.] On April 19, the Paralegal sent a letter to the Licensee, via U.S. mail and email, informing him that she had attempted to contact him by telephone and email on several occasions but had not received any response from him. She also advised him that a prehearing conference had been scheduled for May 1, 2012. [Hearing File, Ex. 1, including notes of Paralegal; OIC Exs. 6, 9, 10.] This letter also advised the Licensee that he may be held in default for failure to attend or participate in the hearing or other stage of the adjudicative proceeding.

5. On May 1, 2012, the undersigned held a prehearing teleconference in this matter. The OIC was represented by OIC Staff Attorney Marcia Stickler. The Licensee failed to appear. Both before and during the prehearing conference, the undersigned's Paralegal twice attempted to call the Licensee at the telephone number on file to notify him and remind him of the prehearing teleconference, and she also left a detailed voice message regarding the same. The Licensee did not respond either before, during, or since the prehearing conference. [Hearing File, Ex. 1, including notes of Paralegal.]

6. The undersigned scheduled the hearing in this matter to commence on May 21, 2012 at 10:00 a.m., and issued a Notice of Hearing on May 11 informing the parties of the date, time, place, issues involved, contact numbers for the undersigned and her Paralegal, and the advice that should a party fail to appear they may be held in default. Said undersigned's May 11 Notice of Hearing was filed and mailed to the Licensee at the address of record on that date. Subsequently, the hearing commenced on May 21 at 10:27 a.m., Pacific Time, being purposely delayed nearly 30 minutes in order to give the Licensee more time to respond to the Paralegal's telephone calls and emails to him. In addition to the undersigned, Marcia Stickler, OIC Staff Attorney, was present representing the OIC. The Licensee failed to appear. The undersigned's Paralegal attempted to reach the Licensee by both email and telephone at the outset of the hearing, but received no response. [Hearing File, Ex. 1, including notes of Paralegal.] The undersigned commenced the hearing and the OIC presented its case in chief against the Licensee. Therefore, the Licensee being in default, the Findings of Fact and Conclusions of Law herein are based upon a consideration of the case in chief presented by the OIC and the hearing file.

7. Subsequent to the hearing, on May 29, 2012, the undersigned's April 19, 2012 letter to the Licensee was returned to the undersigned in its original envelope, stamped "Return to Sender, Attempted, Not Known." Also handwritten on the envelope was a note "Return to sender; does not reside at the address listed." On June 20, 2012, the Notice of Hearing that was mailed to the Licensee on May 11, 2012 was returned to the undersigned in its original envelope, stamped "Return to Sender; not deliverable as addressed." [Ex. 1, Hearing File.]

8. The Licensee applied to the OIC for a Washington Nonresident Insurance Adjuster's License ("License Application") on April 29, 2011. [OIC Ex. 1, License Application.] The

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License Application for this license was completed online not by the Licensee but by a designated person at the Licensee's place of employment, Mike Orm, acting on behalf of the Licensee. In order to provide Mr. Orm with the information necessary to fill out the License Application, the Licensee was asked to complete an Adjuster License Questionnaire ("License Questionnaire"). [OIC Ex. 3, Balboa Insurance Adjuster License Questionnaire.] Accordingly, on or before April 8, 2011, the Licensee sent to Mr. Orm the same License Questionnaire that he had provided to Mr. Orm the year before. One of the questions on the License Questionnaire was *Have you ever been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld?* The Licensee answered "No" to this question. [OIC Ex. 3.]

9. The License Application includes the question *Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?* Based upon the information the Licensee provided in the License Questionnaire, Mr. Orm answered "No" to this question. Mr. Orm submitted the License Application and the OIC issued the adjuster's license to the Licensee on that same day. [OIC Exs. 1, 2, 3.]

10. Several weeks after the OIC issued the adjuster's license to the Licensee, the OIC obtained a criminal record check for the Licensee from the FBI. [OIC Ex. 4, FBI record check dated May 20, 2011.] While the FBI record check showed that on January 26, 1992 the Licensee was arrested and charged with a crime but the disposition was "unknown," upon inquiry from the OIC the Licensee voluntarily provided the OIC with documents showing that on July 1, 1992 he had been convicted of the misdemeanor of "temporary deprivation of a vehicle," arising from an incident which occurred on August 1, 1991 when he was 20 years old. [OIC Ex. 7, November 3, 2011 letter from Licensee to OIC providing what became OIC Ex. 5, documents concerning May 21, 1992 Kansas misdemeanor conviction for temporary deprivation of a vehicle.]

11. On February 3, 2012, in an effort to address the false answer regarding criminal history that had been given on his License Application, the OIC proposed that the Licensee enter into a Consent Order Levying a Fine, wherein the Licensee would agree to pay a fine in the amount of \$250. The cover letter that accompanied the Consent Order stated that if it was not signed and returned to the OIC by February 21, 2012, the offer of settlement was withdrawn and further action would be taken against the Licensee. By email dated February 29, the Licensee declined to enter into the Consent Order, requested disclosure of OIC notes, emails, and memoranda concerning the OIC's decision to take this disciplinary action against him and a list of all similar OIC cases in 2011, and requested a hearing in this matter. [Ex. 1; OIC Ex. 8, proposed Consent Order; OIC Ex. 9, February 29, 2012 email from Licensee to OIC.]

12. The OIC did not provide the Licensee with any of the documents he requested in his February 29, 2012 email. [Statement of Marcia Stickler, OIC Staff Attorney, at hearing.] On March 2, the OIC issued a Notice of Hearing, mailing it to the Licensee and filing it with the undersigned, requesting imposition of a fine against the Licensee for allegedly providing incorrect, misleading, incomplete, or materially untrue information in his License Application, in

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violation of RCW 48.17.530(1)(a), based specifically on the OIC's allegation that the Licensee had one crime on his record, namely the misdemeanor of deprivation of a vehicle. [OIC Ex. 10, March 2, 2012 OIC Notice of Hearing.] Thereafter, on that same date the OIC received new evidence, namely that it was the Licensee who caused Mr. Orm to provide the "no" answer regarding criminal history in his License Application (and not just a mistake). For this reason, on that same date the OIC determined that it would increase the degree of disciplinary action it was requesting in its Notice of Hearing from a fine to revocation of the Licensee's license. While on March 3 the OIC emailed the Licensee and advised him that the OIC intended to seek revocation of his license rather than just a fine: the entire email stated: *Good Morning, Mr. Roberts. I just wanted you to know in advance that because the Consent Order has been withdrawn since you did not agree to it by the deadline of February 21, 2012, the hearing I just notified you of will seek revocation of your license rather than just a fine. I have recently received evidence that you lied to Balboa when you filled out the questionnaire provided by Mr. Orm and lied to Mr. Singer, as well. You can expect to hear from the judge's clerk, Kelly, to schedule a prehearing conference by telephone.* [OIC Ex. 11, March 3, 2012 OIC email to Licensee.] The OIC did not amend its March 2 Notice of Hearing to provide formal notification that it was increasing its request for imposition of a fine to a request for license revocation.

13. Based upon the above Findings of Fact, when the Licensee provided Mr. Orm with a false answer concerning his criminal history on his Adjuster License Questionnaire, the Licensee caused incorrect, misleading, incomplete, or materially untrue information to be given in his Washington License Application. For this reason, it is reasonable that a fine be imposed on the Licensee in the amount of \$1,000.

CONCLUSIONS OF LAW

Based upon the above Findings of Facts,

1. The proceeding herein was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been met. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; Title 34 RCW including, for good cause shown, RCW 34.05.458(8); and regulations pursuant thereto.

2. Reasonable efforts were made to contact the Licensee and notify him of all matters in this proceeding, as well as to advise the Licensee that he may be held in default if he failed to attend or participate in the hearing or other stage of this adjudicative proceeding.

3. By providing a false answer to the question concerning criminal history on the Adjuster License Questionnaire, which he knew would be used as the answer concerning his criminal history in his Washington Nonresident Insurance Adjuster License Application, the Licensee violated RCW 48.17.530(1)(a).

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4. RCW 48.17.530(1)(b) provides that the OIC may suspend, revoke, or refuse to renew the license of an adjuster for violating any insurance laws.

5. RCW 48.17.560 provides that, after a hearing, or upon stipulation by the licensee, and in addition to or in lieu of suspension, revocation, or refusal to renew any such license, the OIC may levy a fine upon the licensee of not more than \$1,000 per violation of the insurance code.

6. In the OIC's March 2 Notice of Hearing which commenced this action, the OIC specifically requests imposition of a fine, specifically based upon the Licensee's failure to disclose that on July 1, 1992 he was convicted of Deprivation of a Vehicle. While it could have done, the OIC's March 2 Notice of Hearing does not even suggest that there may be other bases or that any penalties higher than a fine are at issue, and this OIC's March 2 Notice of Hearing was not amended to include other bases or any penalties higher than a fine. Therefore, while in its Memorandum filed on May 2 and in its argument at hearing the OIC 1) mentions another basis for its request which it seems to indicate results in another violation, and 2) requests revocation, a much higher penalty than the fine which it specifically requested in its March 2 Notice of Hearing, it is the OIC's March 2 Notice of Hearing which commenced this proceeding and sets forth the issues to be considered and decided by the undersigned at hearing. The issues set forth in the OIC's March 2 Notice of Hearing, which the undersigned has considered, are 1) whether or not the Licensee failed to disclose his prior conviction for Deprivation of a Vehicle on his Washington License Application; and 2) if so, whether or not the Licensee should be fined for that activity.

7. Based upon the above Findings of Facts which have found that the Licensee did fail to disclose the fact that on July 1, 1992 he was convicted of Deprivation of a Vehicle, it is hereby concluded that, pursuant to RCW 48.17.530(1)(b) and RCW 48.17.560, as a condition of retaining his Washington Nonresident Insurance Adjuster's License, WAOIC No. 785594, the Licensee should pay a fine in the amount of \$1,000 within 15 working days of the date of this Order. Should the OIC not receive the \$1,000 fine from the Licensee by the end of the fifteenth day after the date of this Order, his Washington Nonresident Insurance Adjuster's License, WAOIC No. 785594, should be automatically revoked effective on that date, pursuant to RCW 48.17.530(1)(b), with no right of appeal.

ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law,

IT IS HEREBY ORDERED that, pursuant to RCW 48.17.560, a fine of \$1,000 is hereby imposed upon the Licensee, Arturo Roberts, for one violation of RCW 48.17.530(1)(a).

IT IS FURTHER ORDERED that said fine shall be received by the Office of the Insurance Commissioner, 5000 Capitol Boulevard, Tumwater, WA 98501, mailing address P.O. Box

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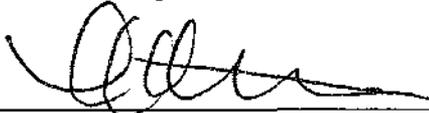
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40255, Olympia, WA 98504-0255, within fifteen business days following the date of entry of this Order.

IT IS FURTHER ORDERED that should said \$1,000 fine not be received in the Office of the Insurance Commissioner, 5000 Capitol Boulevard, Tumwater, WA 98501, mailing address P.O. Box 40255, Olympia, WA 98504-0255, by the end of the fifteenth day following the date of entry of this Order, the Washington Nonresident Insurance Adjuster's License of Arturo Roberts, WAOIC No. 785594, is automatically revoked, pursuant to RCW 48.17.530(1)(b), effective on that date and Arturo Roberts shall have no further right of appeal.

ENTERED AT TUMWATER, WASHINGTON, this 30th day of August, 2012, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN
Chief Presiding Officer

Arturo Roberts is advised that, pursuant to RCW 34.05.440(3), he may seek vacation (i.e., rescission) of this Order, because it was entered as a default order, by filing a written Motion to Vacate with the undersigned within 7 days of the date of service (date of mailing) of this Order. Pursuant to RCW 34.05.461(3), the parties are also advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General.

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Arturo Roberts, Mike Kreidler, Michael G. Watson, John F. Hamje, Esq., Marcia Stickler, Esq., and Carol Sureau, Esq.,

DATED this 30th day of August, 2012.


KELLY A. CAIRNS