

No. 2022-7658

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

Date: 12/06/2022

Subject Considered:

Benjamin James Kueng
7261 Wild Wing Dr
Fort Worth, Texas 76120-1633

Consent Order
TDI Enforcement File No. 29292

General remarks and official action taken:

This is a consent order with Benjamin James Kueng (Kueng). The department alleges that Kueng entered into written contracts not approved by the commissioner and received commissions for services exceeding 10 percent of the amount of the settlement on the claims. Kueng has agreed to pay an administrative penalty of \$4,000 and pay restitution to each insured that paid more than 10 percent commissions for services.

Waiver

Kueng acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Kueng waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

Findings of Fact

1. Kueng, individual identification number 1272323, holds a public insurance adjuster (PIA) license issued by the department on September 23, 2014.

2. Kueng indicated to the department that he would utilize the standard FIN535 contract provided by the department which explicitly states the fee is not to exceed 10 percent of the amount collected or adjusted.
3. The department received a complaint from J.O., a PIA client of Kueng's whose roof needed repair. The complaint alleged that Kueng had told J.O. that he would not take any commission on the funds already received from the insurance company. The complaint further alleged that Kueng was charging J.O. 15 percent of the full amount of the settlement claim.
4. After an investigation, the department determined that Kueng had charged 3 clients a fee of 15 percent of the amount collected or adjusted in violation of the maximum 10 percent.
5. Kueng inserted additional language into the FIN535 contract provided by the department when working with these three clients. The altered contract stated that his fee would be "15% of new money" in violation of the statute and deviating from the approved contract.
6. The addition of the language "15% of new money" resulted in Kueng receiving approximately \$2,865 in excessive commissions from 3 consumers.

Conclusions of Law

1. The commissioner has jurisdiction over this matter under TEX. INS. CODE §§ 82.051–82.055, 84.021–84.044, 4005.101, 4005.102, 4102.051, and 4102.204; and Tex. Gov't Code §§ 2001.051–2001.178.
2. The commissioner has the authority to informally dispose of this matter as set forth in TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47.
3. Kueng has knowingly and voluntarily waived all procedural rights to which he may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.

4. Kueng violated TEX. INS. CODE § 4102.103 by using a contract that was not approved by the commissioner.
5. Kueng violated 28 TEX. ADMIN. CODE § 19.713(b)(1) by modifying the terms of the standard contract provided by the department.
6. Kueng received commissions for services that exceeded 10 percent of the amount of the insurance settlement on the claim in violation of TEX. INS. CODE § 4102.104.
7. Kueng engaged in fraudulent and dishonest acts or practices in violation of TEX. INS. CODE § 4005.101(b)(5).

Order

It is ordered that Benjamin James Kueng pay an administrative penalty of \$4,000 within 30 days from the date of this order. The administrative penalty must be paid as instructed in the invoice, which the department will send after entry of this order.

It is further ordered that Benjamin James Kueng must make restitution to each insured that received more than 10 percent of the amount he collected or adjusted and comply with the following:

- a. Benjamin James Kueng must complete payment of restitution, to the extent that he has not already done so, with interest in the form of a company check or account credit to each insured who was overcharged and received a modified contract. The restitution check must include the amount overcharged plus simple interest on that overcharge. The rate of interest is five percent per annum.
- b. To the extent that he has not already done so, Benjamin James Kueng must mail the restitution checks to the insureds on or before 30 days from the date the order is signed.
- c. Any restitution checks that are returned to Benjamin James Kueng with an address correction must be promptly resent to the correct address. Funds from any restitution checks that are returned thereafter for incorrect addresses and from checks that are not negotiated must be reported and delivered to the comptroller pursuant to the procedures and deadlines set for in TEX. PROP. CODE §§ 72.001 *et. seq.*, 73.001 *et. seq.*, and 74.001 *et. seq.*

d. On or before 60 days from the date the order is signed, Benjamin James Kueng must report all restitution paid by submitting a complete and sortable electronic spreadsheet to TDI. The spreadsheet must contain the following information:

- i. policy number,
- ii. policyholder name,
- iii. policyholder address,
- iv. effective date of the policy,
- v. expiration date of the policy,
- vi. amount overcharged,
- vii. dollar amount of simple interest,
- viii. total of amount overcharged plus interest,
- ix. date(s) of mailing of restitution check,
- x. the total sum of all overcharges,
- xi. the total sum of all simple interest, and
- xii. the total sum of all restitution paid (total overcharges plus the total of the simple interest).

e. Benjamin James Kueng must send all submissions required under the terms of this order by email to: EnforcementReports@tdi.texas.gov.

It is further ordered that Benjamin James Kueng must cease and desist from using any contracts not approved by the department.

DocuSigned by:

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Cassie Brown
Commissioner of Insurance

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Recommended and reviewed by:



Leah Gillum, Deputy Commissioner
Fraud and Enforcement Division



Sydney Moore, Staff Attorney
Enforcement

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Affidavit

STATE OF Texas **s**

s

COUNTY OF Tarrant **s**

Before me, the undersigned authority, personally appeared Benjamin Kueng, who being by me duly sworn, deposed as follows:

"My name is Benjamin Kueng. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

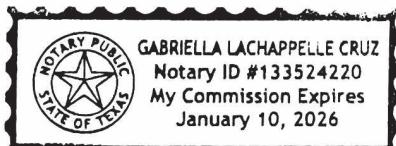
I have knowingly and voluntarily entered into the foregoing consent order and agree with and consent to the issuance and service of the same by the commissioner of insurance of the state of Texas."



Affiant

SWORN TO AND SUBSCRIBED before me on November 18th 2022 2022.

(NOTARY SEAL)



Signature of Notary Public



Printed Name of Notary Public