STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL SERVICES,

Petitioner,

vs. Case No. 22-0984PL

SCOTT DAVID THOMAS,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a final administrative hearing in the above styled cause was conducted before Robert S. Cohen, Administrative Law Judge ("ALJ") with the Division of Administrative Hearings ("DOAH"), on August 25 and October 21, 2022, in Miami, Florida.

APPEARANCES

For Petitioner: Marshawn Michael Griffin, Esquire
Greg Caracci, Esquire
Department of Financial Services
Room 612, Larson Building
200 East Gaines Street
Tallahassee, Florida 32399

For Respondent: Matthew E. Ladd, Esquire
Law Offices of Matthew E. Ladd, P.A.
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Coral Gables, Florida 33146

STATEMENT OF THE ISSUES

The issues arising in this matter are whether the disputed facts alleged in the ten-count Amended Administrative Complaint ("Complaint") filed against Scott David Thomas ("Mr. Thomas" or "Respondent") by the Department of Financial Services ("Department") prove that Respondent violated the

statutes charged in the Complaint, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

On March 2, 2022, the Department filed an eight-count Administrative Complaint against Respondent seeking to impose discipline against Respondent's public adjuster's license. On March 25, 2022, Respondent timely submitted a petition for hearing alleging that there were disputed issues of material fact and requesting a hearing pursuant to section 120.57(1), Florida Statutes. On March 30, 2022, the Department referred this matter to DOAH. This matter was initially set for final hearing on June 1, 2022. On April 27, 2022, the Department requested leave to amend the Administrative Complaint to add two additional counts. On May 9, 2022, the undersigned granted the Department's Motion for Leave to Amend. On May 13, 2022, Respondent timely submitted a response to the two additional counts. On May 24, 2022, the parties filed a Joint Motion to Continue. On May 24, 2022, the undersigned granted the Joint Motion to Continue and rescheduled this matter for an in-person hearing on August 25, 2022. On August 19, 2022, the parties submitted a Pre-hearing Stipulation wherein the Department voluntarily dismissed Count II of the Complaint. The final hearing began on August 25, 2022, and continued to a second day. On October 21, 2022, both sides rested their cases-in-chief.

The Department called the following witnesses during the hearing: Joaquim Medeiros, Jim Reichle, Linda Berns, Mark Boknecht, Maria Quintana, Glenn Chapter, Ray Wenger, Liron Nicole Stav Roach, and Jason Bamburg. The Department offered 28 exhibits, identified as Department Exhibits 1, 3 through 14, 18, 20 through 27, and 29 through 36, all of which were admitted into evidence. Two Motions for Official Recognition were filed by the Department on August 17 and 19, 2022, respectively, and the matters

therein will be officially recognized by the undersigned to the extent relevant to this Recommended Order.

Respondent testified on his own behalf and called Warren Diener and Keith Lambdin as witnesses. Respondent's Exhibits 1 through 8 were admitted into evidence.

The four-volume Transcript of the proceedings was filed by the court reporter in two parts: volumes 1 and 2 were filed on September 14, 2022, and volumes 3 and 4 were filed on November 10, 2022. The Department timely filed its Proposed Written Report and Recommended Order and Respondent timely filed his Proposed Recommended Order on December 16, 2022. The parties' post-hearing submittals were considered, along with any stipulations contained in the Pre-hearing Stipulation, in issuing this Recommended Order.

All references to the Florida Statutes are to the 2019 codification, which was in effect at the time of the incidents alleged in the Complaint.

FINDINGS OF FACT

1. The chief financial officer and the Department are vested with the authority to administer the Florida Insurance Code. The Department is the state agency with the authority to regulate and license public adjusters in the state of Florida pursuant to the Florida Insurance Code. The Department has jurisdiction over Respondent's license and appointments.

2. Respondent is licensed as a public adjuster and holds license number E138926. He also has a history of serving as a Lance Corporal in the United States Marine Corps, having seen many years of active duty overseas, primarily in the Middle East.

3. At all relevant times, Respondent was the owner of, and was employed by, Indemnity Public Adjusters ("IPA"), a public adjusting firm. He has worked in the insurance field for 24 years, only the last five of which have been as a public adjuster.

4. At all relevant times, Asma Qureshi ("Qureshi") was employed by IPA as a public adjuster.

5. Citizens Property Insurance Corporation ("Citizens") maintains standard business hours Monday through Friday, 8:00 a.m. through 5:00 p.m.

6. Citizens prefers to schedule home inspections during its standard business hours because Citizens has found "that outside vendors, outside parties are most available" and that "it's easier to communicate with management, staff, [and] vendors because it's during business hours and things are open."

Count I

7. In Count I of the Complaint, the Department alleged Respondent violated the Florida Insurance Code by preventing Citizens from having access to necessary information to investigate and respond to a claim, denying reasonable access to a property that was the subject of an insurance claim, unreasonably delaying the claim, failing to exercise due diligence, and demonstrating a lack of fitness and trustworthiness.

8. On September 10, 2017, consumer V.L.'s home was damaged during Hurricane Irma. V.L. retained IPA to assist her in filing a claim with her insurer, Citizens. IPA filed a letter of representation with Citizens on May 9, 2019.

9. Liron Nicole Stav Roach ("Stav Roach") was the assigned adjuster for Citizens and was supervised by Jason Bamburg ("Bamburg").

10. Stav Roach and Bamburg conducted an initial inspection of V.L.'s property on June 1, 2019. V.L. was represented at the inspection by Qureshi. Qureshi was present at the inspection on behalf of IPA and filmed the inspection. When Stav Roach and Bamburg arrived at the property, the roof

was covered with a tarp that needed to be removed for the inspection to be completed. Respondent failed to notify Citizens prior to the inspection that there was a tarp on the roof.

11. Had Respondent informed Citizens that there was a tarp on the roof, Citizens could have taken the necessary steps to proceed with the inspection, including obtaining a written estimate from the vendor about the cost to remove the tarp. Bamburg discussed a request for a quote with Qureshi while the inspection was recorded and after the recording of the inspection was completed.

12. Qureshi refused at the inspection on June 1, 2019, to provide an estimate or a quote to remove the tarp, directing Bamburg to speak to V.L.'s attorney. Stav Roach was later provided an expensive quote of $7,500 to remove the tarp. Bamburg and Stav Roach attempted to negotiate a price for the tarp removal with a representative of the tarp removal company. The representative advised that any negotiation of the price needed to be discussed with his office, but he was unable speak with his office because it was a Saturday. Stav Roach was later able to negotiate a price of $2,000 to remove the tarp, a price that was more in line with the industry standard for the services rendered.

13. On June 21, 2019, Bamburg emailed Respondent, confirming an inspection on Saturday, June 29, 2019.

14. Respondent replied to Bamburg's email, demanding the following information: (1) the names of all parties that would attend the inspection; (2) the areas of the home that would be inspected along with an explanation of the "necessity of inspecting those areas as it relates to the reported claim for damages"; (3) copies of criminal background checks for all of Citizens' experts; (4) the experts' Department-issued license numbers; (5) the four experts' curricula vitae; (6) the experts' liability and errors and omissions insurance; (7) proof of the experts' workers' compensation insurance; and (8) the disclosure of "not only the name of the engineering firm but also any

conflicts your expert might have with regards to any other open claim files, consulting or appraisal work with the insurance carrier."

15. Respondent never indicated that the aforementioned demands were made by V.L. nor did Respondent provide written notice to Citizens that the June 29, 2019, inspection would not occur if he was not provided with the requested documentation.

16. Citizens retained an engineer, Medhi Ashraf ("Ashraf"), to conduct the June 29, 2019, roof inspection. On that Saturday, just hours before the scheduled inspection, Respondent informed Citizens that he would not permit Ashraf or Ashraf's roofing assistant to get on the roof to complete the inspection unless Respondent received the documentation that he demanded.

17. On June 29, 2019, Stav Roach, Bamburg, Ashraf, and Ashraf's roofing assistant arrived at V.L.'s property to conduct the inspection. They did not have the proof of liability insurance and workers' compensation insurance. Respondent demanded that Bamburg contact his manager to find out if Citizens would assume liability for Ashraf and his roofing assistant. Bamburg attempted to contact his manager whom he was unable to reach because it was Saturday.

18. Citizens was prepared to conduct an inspection of the property on June 29, 2019, but Respondent refused to allow Citizens to complete its inspection of the roof.

19. On July 11, 2019, Stav Roach emailed Respondent, requesting to reschedule the inspection for July 20, 2019. Respondent replied on July 17, 2019, calling Bamburg "incompetent" and using language that was, according to Stav Roach, "disrespectful, condescending, passive-aggressive, and borderline libel[ous]."

20. On July 20, 2019, Respondent, Stav Roach, Bamburg, and Citizens' contractors from Infinity EMS ("Infinity") met at V.L.'s property to conduct an inspection of the roof. It was storming when the parties arrived at V.L.'s property. Bamberg and Respondent had a discussion regarding proceeding

with the inspection based on Respondent's demand to film the inspection. The inspection could not proceed because the contractors from Infinity advised all present that they would not climb onto the roof due to the weather.

21. Over the next four months, Stav Roach attempted to schedule another inspection of the property. Respondent never responded to any of Stav Roach's requests.

22. Thereafter, on January 6, 2020, Citizens denied V.L.'s claim, citing V.L.'s failure to allow Citizens to conduct a complete inspection of the property.

23. V.L. is a law enforcement officer. Respondent repeatedly asserted that because of V.L.'s profession, the only day of the week she was able to be present for an inspection was Saturday.

24. However, in her statement to Citizens, V.L. stated that, during June and July of 2019, V.L. worked a Tuesday through Saturday schedule. V.L. was off on Sundays and Mondays. Mondays were the best day for her to be present during an inspection, but Respondent never notified V.L. about the possibility of scheduling the inspection on a Monday.

25. Respondent was aggressive with Stav Roach and did not treat her with respect during their interactions.

Count II

26. Count II was withdrawn from consideration by the Department in the Pre-hearing Stipulation and is, therefore, dismissed.

Count III

27. In Count III of the Complaint, the Department alleged Respondent violated the Florida Insurance Code by denying reasonable access to a property that was the subject of an insurance claim, unreasonably delaying the claim, failing to exercise due diligence, and demonstrating a lack of fitness and trustworthiness.

28. On February 4, 2019, consumer J.L. suffered a fire-related loss to her home. On February 6, 2019, J.L. executed a contract with IPA to represent her in a claim with her insurer, Citizens.

29. Citizens assigned a claims adjuster, Mark Boknecht ("Boknecht"), to J.L.'s claim. Boknecht contacted J.L.'s counsel about scheduling an inspection of J.L.'s property and was advised to schedule the inspection through Respondent.

30. On May 10, 2019, Boknecht called Respondent to schedule an inspection of J.L.'s residence. Respondent advised Boknecht to send his request via email. On May 13, 2019, Boknecht emailed Respondent to schedule an inspection of J.L.'s property.

31. Respondent did not reply to the May 13, 2019, email.

32. On May 15, 2019, Boknecht called Respondent a second time to try to schedule an inspection. Boknecht requested to schedule the inspection on Monday through Friday at a time between 8:00 a.m. and 5:00 p.m. Respondent demanded that the inspection occur on a Saturday, claiming it was the only day of the week that J.L. was available for inspections.

33. On May 16, 2019, Boknecht sent Respondent another email to schedule an inspection of J.L.'s property on "Monday through Friday, from 8am to 5pm."

34. On May 23, 2019, Boknecht called Respondent again to attempt to schedule an inspection of J.L.'s property; however, he was unsuccessful.

35. On June 5, 2019, Boknecht emailed Respondent again to schedule an inspection of J.L.'s property.

36. On Wednesday, June 19, 2019, J.L. was scheduled to provide a recorded statement to Citizens. On June 10, 2019, Boknecht emailed Respondent yet again to attempt to schedule the inspection of J.L.'s property immediately after her recorded statement. Respondent still demanded to schedule the inspection of J.L.'s property on a Saturday.

37. On June 10, 2019, Respondent emailed the assigned Citizens SIU (Special Investigations Unit) investigator, Maria Quintana ("Quintana"), regarding the J.L. claim.

38. Respondent's email to Quintana discussed matters unrelated to the J.L. claim, such as Quintana's prior employment. Furthermore, Respondent brought up insignificant matters, going as far as to try to instruct Quintana on what he believed her job responsibilities were. Respondent continued to ask for a Saturday inspection date in the email he sent to Quintana.

39. On June 14, 2019, Boknecht emailed Respondent, advising Respondent that Citizens would not agree to a Saturday inspection and again suggesting scheduling the inspection on the same day as J.L.'s recorded statement.

40. J.L.'s recorded statement occurred on June 19, 2019. Boknecht was present for the recorded statement; Respondent was not. J.L. advised that she did not need to be present during the inspection of the property and that the inspection could occur during a weekday. J.L. further advised that she did not know that Respondent was only offering a Saturday inspection.

41. On June 24, 2019, Boknecht emailed Respondent, attempting to schedule an inspection of J.L.'s property on Monday through Friday, between 8:00 a.m. and 5:00 p.m.

42. On July 9, 2019, a Tuesday, Citizens inspected J.L.'s property. Citizens approved J.L.'s claim a week later.

43. It took approximately 50 days for Citizens to schedule an inspection of J.L.'s property due to Respondent's refusal to cooperate with scheduling weekday inspection dates. Citizens would have been able to approve J.L.'s claim far earlier but for Respondent's refusal to cooperate with Citizens regarding inspection dates.

44. According to Boknecht, Respondent was aggressive, condescending, and unprofessional in his correspondence.

45. Respondent testified during the hearing that he never refused to schedule an inspection of J.L.'s property on a date other than Saturday. However, the more credible evidence is that Respondent's claim is directly refuted by his email correspondence to Quintana as well as Boknecht's testimony. Respondent also testified that J.L. had to take work off on a Tuesday to attend her inspection. This claim is also not credible because Boknecht testified that J.L. was not even present for the inspection.

Count IV

46. In Count IV of the Complaint, the Department alleged Respondent violated the Florida Insurance Code by preventing Citizens from having reasonable access to a property that was the subject of an insurance claim, unreasonably delaying the claim, and demonstrating a lack of fitness and trustworthiness.

47. Rimkus Consulting Group ("Rimkus") was retained by Citizens to conduct an inspection on a property belonging to consumer G.T. Rimkus assigned Joaquim Medeiros ("Medeiros"), a licensed professional engineer with 15 years of experience, to conduct the inspection.

48. Engineering is a specialized knowledge set which requires knowledge obtained through "academic training, experience and education." Engineering requires special knowledge and education, such that "[n]o layperson can overrule a professional engineer" and that "no other person not an engineer in the state of Florida can supervise another engineer's work."

49. Because Medeiros is a senior engineer with Rimkus, Rimkus does not require him to have supervision when conducting inspections.

50. Edward Ingram ("Ingram") was the adjuster assigned by Citizens for G.T.'s claim. Ingram is not an engineer.

51. Respondent was difficult and aggressive during Medeiros's attempts to schedule an inspection of G.T.'s home. An inspection of the G.T. residence was finally scheduled for June 25, 2019. Medeiros arrived at the property

wearing a Rimkus company shirt and hat and prepared to conduct his inspection.

52. Respondent demanded Medeiros provide Respondent with proof of liability insurance and workers' compensation insurance. Medeiros contacted staff at Rimkus and had Rimkus email the requested documentation to Respondent. While Medeiros was attempting to contact Rimkus, he testified that Respondent aggressively approached him.

53. Despite receiving proof of Medeiros's liability insurance and workers' compensation insurance, Respondent advised that he would not permit the inspection to occur because the claims adjuster from Citizens was not present at the scene to supervise Medeiros.

54. During the June 25, 2019, inspection, Respondent unilaterally terminated Medeiros's inspection of G.T.'s property, despite Medeiros's willingness to perform the inspection. Respondent was hostile and combative with Medeiros during the entirety of the attempted inspection on June 25, 2019. Some of this was captured on video, while some of the aggressive behavior may have occurred while Respondent's body camera was turned off. Medeiros's testimony that, during the visit to G.T.'s home, Respondent's behavior was less than professional is credited. Respondent's termination of the June 25, 2019, inspection unnecessarily delayed the resolution of G.T.'s claim.

55. Respondent testified that he never prevented Citizens or Medeiros from conducting an inspection of the G.T. property and that "[t]he adjuster never showed up." Respondent's testimony is directly contradicted by Department Exhibit 18, in which Respondent clearly terminates the inspection.

Count V

56. In Count V of the Complaint, the Department alleged Respondent violated the Florida Insurance Code by preventing Tower Hill Insurance Group ("Tower Hill") from having access to necessary information to

investigate and respond to a claim, unreasonably delaying the claim, and demonstrating a lack of fitness and trustworthiness.

57. Consumer L.P.'s home reportedly suffered damage from Hurricane Irma. L.P. retained IPA to serve as his public adjuster in his claim with Tower Hill. L.P. was represented by attorney Randy Shochet ("Shochet"). Tower Hill retained the law firm of Bressler, Amery and Ross, PC ("Bressler"). Bressler assigned Linda Berns ("Berns") to L.P.'s claim.

58. On January 18, 2019, Berns sent Respondent and Shochet an email explaining that Bressler was representing Tower Hill and requesting that an inspection be held during normal business hours. Respondent replied to Berns's email and demanded that Berns provide "the name of your firm or affiliation, your title, your firm or affiliations address, your firm's affiliation or contact number, [and] a letter or communication from the carrier listing what your authority or role in this claim is." Respondent further stated that "[a]s a matter of professionalism, when sending an email to someone it would be helpful and proactive to provide numbers one through five."

59. While Respondent could have easily obtained most of the requested information from the Florida Bar's website, the request was not unreasonable and Berns promptly replied to Respondent's email and provided all of Respondent's requested information, except for the letter or communication from Tower Hill stating Bressler's authority or role in the claim.

60. On January 18, 2019, Respondent emailed Berns and thanked her for her quick reply and "most of the information I requested." Respondent did not give any dates for an inspection of consumer L.P.'s property in his email. Instead, Respondent unreasonably requested "a retainer from Tower Hill in this matter or would it be possible for the carrier to provide something in writing that you are representing them and in what capacity? Once I am provided that, I would be happy discussing the matter with you."

61. Berns's supervisor, Hope Zelinger ("Zelinger"), emailed Respondent, stating that they would not be providing Respondent with a letter of

representation. Zelinger then emailed Respondent stating that, as an officer of the court, Bressler had been retained to represent Tower Hill. No reason was given for the refusal to provide a letter of representation other than, as officers of the court, their assertion of representation should be enough to satisfy Respondent.

62. Respondent replied to Zelinger's email by calling Zelinger unreasonable and recommending that Zelinger and Berns "engage the FL bar for further clarification of this matter." In the evening of January 18, 2019, Respondent sent Berns an email alleging that Tower Hill, Berns, and Bressler were engaging in "shenanigans" with regards to the L.P. claim.

63. Respondent is not licensed as an attorney nor has he claimed to be. However, Respondent maintained a challenging, aggressive, and confrontational tone in his emails with Berns and Zelinger.

64. On June 10, 2019, Tower Hill took an Examination Under Oath ("EUO") of Respondent. The EUO was recorded by a videographer. Tower Hill needed Respondent's EUO to gather information in order to determine coverage on the L.P. claim. After its review of the pertinent information, Tower Hill believed there were inconsistencies in the information provided by L.P., and L.P. claimed he "continuously deferred" to Respondent as to the facts and knowledge of the claim.

65. Respondent was provided with a schedule of documents to bring to the EUO. The schedule included a request for all photographs that Respondent had taken of L.P.'s property. At the EUO, Respondent failed to provide all the photographs, either in digital or hard copy, that he had taken of L.P.'s property. Respondent also failed to provide an executed version of IPA's contract with L.P.

66. During the EUO, Berns repeatedly asked Respondent to provide any photographs he had. Also, during the EUO, Respondent was provided with an exhibit for examination that was printed double sided. One side contained information germane to the EUO, and the other side had a copy of a driver's

license. Respondent was provided with the exhibit but failed to return the exhibit to the court reporter. Respondent advised Berns that he had some of the photographs that he had taken on his phone. However, he also claimed that many of the photos he had taken were lost due to a hard drive failure.

67. The EUO was the first time that Respondent provided Tower Hill with any photographs he had taken of the L.P. claim. According to Berns, Respondent was confrontational, aggressive, and obstructive during the EUO. He refused to answer specific questions about the claim, was evasive, repeatedly accused Berns of making mistakes during the EUO, and refused to wear a microphone provided by the videographer.

68. Respondent threatened to terminate the EUO when asked a question about his ownership of public adjusting companies.

69. During a break, the assigned court reporter was so uncomfortable with Respondent's behavior during the EUO that a new court reporter had to be assigned for the remainder of the EUO.

70. During the break, Berns discovered the exhibit referred to in paragraph 66 was missing. Respondent retained counsel during the break. When the EUO restarted, Respondent claimed Berns accused him of stealing the document. Berns testified that she advised Respondent that she did not accuse him of stealing the document. However, Respondent cut her off mid-sentence. Berns asked Respondent if he misplaced the document and reiterated that she did not accuse Respondent of stealing the document.

71. Respondent then unilaterally terminated the EUO. Respondent never advised Berns that he was terminating the EUO under advice from counsel. The EUO took approximately two hours and 41 minutes. Despite that length of time, Berns and Tower Hill were unable to get to the heart of the matter regarding the claim due to Respondent's behavior and failure to provide his photographs.

72. On or about August 8, 2019, Tower Hill denied L.P.'s claim. Respondent's behavior during L.P.'s claim process was a contributing factor

in the denial of the claim, including Respondent's failure to provide necessary documentation, his failure to assist in the investigation of the claim, and his termination of the EUO.

Count VI

73. In Count VI of the Complaint, the Department alleged Respondent violated the Florida Insurance Code by preventing Lloyds of London from having access to necessary information to investigate and respond to a claim, preventing reasonable access to a property that was the subject of an insurance claim, unreasonably delaying the claim, and demonstrating a lack of fitness and trustworthiness.

74. Jim Reichle ("Reichle") was hired by an insurer to act as an appraiser for a claim involving the named insured, M.K. Respondent was retained as M.K.'s appraiser.

75. An inspection of M.K.'s property was scheduled for August 10, 2018. Reichle spoke with the property manager to obtain access to M.K.'s property for the inspection. Respondent was not present for the conversation with the property manager. The property manager volunteered information about M.K.'s property during his conversation with Reichle. Reichle did not interrogate or ask the property manager any questions about the claim.

76. On August 10, 2018, Reichle and Respondent met to conduct the inspection of M.K.'s property. Respondent advised that he would be filming the inspection with video and audio. During the inspection, Reichle and Respondent encountered each other on the second floor of the M.K. property. Reichle then advised Respondent of the information volunteered by the property manager.

77. Respondent accused Reichle of interviewing the property manager and engaged in a strong exchange regarding how he believed Reichle had violated Respondent's right to interview the property manager. Respondent aggressively stated to Reichle, "I was in the Marine Corps in Iraq for 12 years

and I love to fight." Respondent started filming after threatening Reichle, not during the heated (on Respondent's part) exchange with Reichle.

78. Respondent then terminated the inspection, ostensibly because Reichle had interviewed the property manager. Respondent then demanded that Reichle vacate the property. Oddly, for someone who testified as to how important it was for him to record as much of an inspection as possible so there is no misunderstanding later as to what transpired, Respondent recorded only two minutes of his interaction with Reichle when they were together for about 30 minutes.

79. In an almost humorous exchange, captured on Respondent's body camera at the end of the uncompleted inspection, Respondent tells Reichle to "have a nice day" as Reichle is quickly making his exit through the front door of the home.

80. Respondent's termination of the inspection caused unnecessary delay in the resolution of M.K.'s claim. However, the M.K. claim was settled after Reichle and Respondent conducted their inspections.

81. Respondent testified that he only terminated the appraisal inspection after Reichle walked away from him. Respondent's testimony of how the inspection was terminated is refuted by his limited video recording of the event and the credible testimony of Reichle that he feared Respondent would physically harm him.

Counts VII and VIII

82. In Counts VII and VIII of the Complaint, the Department alleged that Respondent failed to include his permanent business address on contracts with consumers A.B. and J.A.

83. On March 12, 2019, IPA, by and through Respondent, executed a contract for adjusting services with A.B. A.B.'s contract lists IPA's and Respondent's address as Post Office Box 268064, Weston, Florida 33326 ("P.O. Box Address").

84. J.A.'s contract also lists IPA's and Respondent's address as the P.O. Box Address.

85. Respondent never notified either the Department or the Department of State, Division of Corporations ("Division of Corporations"), that the P.O. Box Address was IPA's business address.

86. On January 28, 2011, Respondent notified the Department, on the Automated Licensing Information System ("ALIS"), that his home, business, and mailing address was 1025 Briar Ridge Road, Weston, Florida 33327. Since January 28, 2011, Respondent has not notified the Department about any changes in his addresses.

87. According to IPA's annual reports filed with the Division of Corporations, IPA's mailing address and principal place of business on March 12, 2019, was 13575 58th Street North, Suite 339, Clearwater, Florida 33760.

88. Respondent testified that, based on his communications with his attorney and the Department's help desk, he believed using the P.O. Box Address as his permanent business address was not a violation. According to Respondent, neither his attorneys nor the helpline advised there was a prohibition on using a post office box as a business address. Respondent did not identify which attorneys he consulted with or whom he may have spoken with on the Department help line. Even if these hearsay statements had been corroborated, if the statute or rules of the Department concerning licensure of public adjusters requires a physical address, and does not provide the option of a post office box address as a substitute, the undersigned is bound to follow the law.

Count IX

89. In Count IX of the Complaint, the Department alleged Respondent violated the Florida Insurance Code by preventing QBE Specialty Insurance ("QBE") from having access to necessary information to investigate and

respond to a claim, unreasonably delaying the claim, and demonstrating a lack of fitness and trustworthiness.

90. Respondent was retained by the plaintiff as an expert witness in the case of *Douglas v. QBE Specialty Insurance*, in the Circuit Court in and for Broward County, Florida, case number CACE19013591. The scope of Respondent's testimony was to provide information "regarding the repairs necessary to return the property to its pre-loss condition."

91. Respondent emailed defense counsel for QBE a series of personally insulting and unprofessional emails. In the emails, Respondent took issue with counsel's legal ability, threatened to file a complaint to the Florida Bar, and generally disrespected the attorney. Respondent copied all of the partners of defense counsel's law firm on the series of emails, as well as the senior leadership of QBE.

92. Respondent was hostile toward the process server attempting to subpoena him for a deposition, as Respondent's behavior was "very confrontational." Furthermore, Respondent followed the process server and attempted to video record him and his license plate. Because of Respondent's hostile behavior toward the process server, Professional Process Services refused to engage in further attempts to serve process on Respondent.

93. On September 23, 2021, a deposition in the QBE case had to be terminated due to Respondent's behavior.

94. On December 1, 2021, the court issued an order compelling Respondent's appearance at a deposition. The order advised that if Respondent failed to provide answers for the deposition questions, conducted himself in an unprofessional manner, or unilaterally terminated the deposition, he would be removed as an expert witness in the case.

95. On January 3, 2022, a videotaped deposition of Respondent was scheduled for January 27, 2022. Respondent was on the service list for the deposition notice and, therefore, received notice of the deposition on

January 3, 2022. Respondent was also formally served with a subpoena for the videotaped deposition on January 25, 2022.

96. At the videotaped deposition, Respondent refused to proceed with the deposition if recorded by a videographer, refused to be placed under oath if the deposition was videotaped, claimed he was improperly noticed for the deposition, and accused counsel for QBE of violating the Florida Rules of Civil Procedure.

97. Thereafter, QBE filed a motion to strike Respondent as an expert witness.

98. At a hearing on QBE's motion to strike, Respondent admitted to not being familiar with the Florida Rules of Civil Procedure, despite his prior representations.

99. On March 16, 2022, the court issued an Order on Defendant's Motion to Strike Plaintiff's Expert, Scott David Thomas ("Order"), striking Respondent as an expert witness in the case and specifically finding:

> Mr. Thomas has: (1) been aggressive and hostile with process servers, court reporters, counsel for Defendant, and Broward Sheriff's Officers; (2) improperly threatened to contact the Florida Bar regarding counsel for Defendant; (3) improperly refused to answer deposition questions; (4) improperly refused to be placed under oath during his second deposition without proper justification; (5) improperly contacted unrelated members of Keller Landsberg, PA and employees of Defendant; (6) sent insulting, disparaging and aggressive e-mails to counsel for Defendant; and (7) violated the December 1, 2021, Court Order by failing to conduct himself in a professional manner.

100. Respondent's conduct while designated as an expert witness in *Douglas v. QBE* caused a six-month delay in the proceedings.

101. Respondent testified that he did not cite the Florida Rules of Civil Procedure as being violated by counsel during his deposition scheduled for

January 27, 2022. This testimony is refuted by credible evidence in the record. Additionally, Respondent testified that he was not struck as an expert witness in *Douglas v. QBE*. This testimony is also credibly refuted by the record.

Count X

102. In Count X of the Complaint, the Department alleged Respondent violated the Florida Insurance Code by preventing Citizens from having access to necessary information to investigate and respond to a claim, by preventing Citizens from having reasonable access to a property that was the subject of an insurance claim, unreasonably delaying the claim, and demonstrating a lack of fitness and trustworthiness.

103. Consumers Mr. L.M. and Mrs. L.M. (collectively referred to as "L.M.") filed a claim with Citizens for property damage that occurred during Hurricane Irma. L.M. retained Respondent as their appraiser in their claim with Citizens. Jared Holbrook ("Holbrook") was assigned as Citizens' appraiser.

104. On March 14, 2019, Respondent sent Holbrook an email confirming an inspection for March 22, 2019, at 1:00 p.m. and indicating his expectation that Holbrook be on time for the inspection.

105. On March 22, 2019, Holbrook arrived at L.M.'s property at 12:45 p.m. Respondent did not arrive at L.M.'s property by 1:00 p.m., the scheduled appointment time. As a result, Holbrook knocked on the door of the property. Mrs. L.M. came to the window, and Holbrook introduced himself. Holbrook advised Mrs. L.M. that he was at the property to meet Respondent for an appraisal inspection. Holbrook then went back to his truck and continued to wait for Respondent. At 1:10 p.m., Respondent still had not arrived at L.M.'s property. Thus, Holbrook knocked on the front door and asked Mrs. L.M. if she had spoken to Respondent. Holbrook asked whether he could start the inspection on the outside of the property and roof, and Mrs. L.M. agreed that Holbrook could start the inspection.

106. When Respondent arrived at the L.M. property at approximately 1:15 p.m., he berated Holbrook for starting the inspection without him. Holbrook was inspecting L.M.'s roof when Respondent arrived. Respondent ordered Holbrook to get off L.M.'s roof. Holbrook informed Respondent that Mrs. L.M. had given him permission to inspect the property. Respondent was hostile and verbally aggressive to Holbrook and told him that he did not have Mrs. L.M.'s permission to begin the inspection. Holbrook suggested that he and Respondent complete the inspection of L.M.'s property. Respondent refused to allow the inspection to go forward and ordered Holbrook to leave the property.

107. Despite having alleged several times during the March 22, 2019, encounter with Holbrook that he did not have permission from the insured to begin the inspection, Respondent later admitted that Holbrook had permission from Mrs. L.M. to begin the inspection.

108. A second inspection of the L.M. property was scheduled for May 15, 2019. At the inspection, Respondent was accusatory and made efforts to prevent a free and open inspection of the property. The inspection was completed despite Respondent interfering with Holbrook's inspection.

109. Following the inspection, Citizens and L.M. were unable to reach an agreement regarding the value of damages to L.M.'s property. Therefore, on July 8, 2019, in case number 2018-033816-CA, in the Circuit Court in and for Miami-Dade County, Florida, an order was entered appointing Saul Cimbler ("Cimbler") as the umpire in L.M.'s claim.

110. An umpire panel meeting was scheduled for September 18, 2019. During the meeting, Respondent was rude and acted unprofessionally.

111. After the meeting with the umpire, on September 25, 2019, Respondent emailed L.M.'s attorney, Hunter Patterson. Respondent copied multiple individuals on the email, including the corporate officers of Citizens, the inspector general of Citizens, the Department, the Office of Insurance Regulation, and Lozano Insurance Adjusters ("Lozano").

112. In this email, Respondent stated that he intended to have his personal attorney file a complaint with the United States Department of Justice based on injustices he perceived as occurring during the L.M. claim. Respondent also stated that he would be sending documentation to the Federal Bureau of Investigation.

113. On that same date, Respondent sent an email to Cimbler. Respondent again copied the corporate officers of Citizens, the inspector general of Citizens, the Department, the Office of Insurance Regulation, and Lozano. In the email, Respondent made disparaging remarks, claiming that Cimbler was unethical.

114. Respondent had been warned several times by Cimbler to refrain from including third parties in emails related to the appraisal of the L.M. claim.

115. Respondent's behavior of scheduling and then canceling inspections and generating insulting, often irrelevant, and unnecessary email correspondence unnecessarily delayed the resolution of the L.M. claim.

116. Respondent testified during the hearing that he never berated Holbrook during the attempted appraisal inspection. Respondent further testified that Mrs. L.M. was distraught that Holbrook was at her residence performing his inspection. This testimony is not corroborated by other witnesses or by evidence admitted into the record. It is even contradicted by Respondent's own video recording of his interactions with Holbrook.

Findings of Fact Related to Respondent's Testimony in Mitigation of the Charges

117. Counts I, IV, and V of the Complaint included, in part, claims that Respondent was wrong to seek proof of insurance (liability and workers' compensation) prior to engineers or inspectors commencing their inspections. In defense of his actions regarding engineer Ashraf, Respondent testified that, in Ashraf's deposition, he admitted that he did not have insurance

coverage at the time he went to inspect V.L.'s property, but that he "went out the next day and got it." This testimony is credited.

118. Respondent also testified that he should not be found in violation of the Florida Insurance Code by scheduling inspections on Saturdays. There is nothing, he argues, that requires home inspections to be performed on Monday through Friday during normal business hours. While this is true, as discussed in the Conclusions of Law below, misrepresentations were made concerning J.L.'s availability, as a law enforcement officer, only on Saturdays. She was generally available on at least one weekday that she was not on duty.

119. Respondent believed that the termination of his giving evidence under oath was the result of his not agreeing to put up with being accused by counsel of stealing a document that went missing during the EUO. The evidence discussed above supports a finding that Respondent was not directly accused of stealing anything. His being the victim of a false allegation is not supported by competent evidence.

120. Finally, Respondent testified that he believes his P.O. Box Address satisfies the requirement of his permanent business address. He further testified that the Department never advised him that his permanent business address could not be his P.O. Box Address.

CONCLUSIONS OF LAW

121. DOAH has jurisdiction over the subject matter of this proceeding and over the parties hereto pursuant to sections 120.569 and 120.57(1), Florida Statutes (2022).

122. This is a proceeding whereby the Department seeks to revoke Respondent's license as a public adjuster. Petitioner has the burden to prove the allegations in its Complaint by clear and convincing evidence. *Reich v. Dep't of Health, Bd. of Med.*, 973 So. 2d 1233, 1235 (Fla. 4th DCA 2008) (citing *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla.

1996)); and *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987). As stated by the Supreme Court of Florida:

> [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts at issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). This burden of proof may be met where the evidence is in conflict; however, "it seems to preclude evidence that is ambiguous." *Westinghouse Elec. Corp. v. Shuler Bros., Inc.*, 590 So. 2d 986, 988 (Fla. 1st DCA 1991).

123. A hearing involving disputed issues of material fact under section 120.57(1) is a de novo hearing, and Petitioner's initial action carries no presumption of correctness. § 120.57(1)(k), Fla. Stat.; *Moore v. Dep't of HRS*, 596 So. 2d 759 (Fla. 1st DCA 1992).

124. Disciplinary statutes and rules "must be construed strictly, in favor of the one against whom the penalty would be imposed." *Munch v. Dep't of Pro. Regul., Div. of Real Estate*, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992); *see Camejo v. Dep't of Bus. & Pro. Regul.*, 812 So. 2d 583, 583-84 (Fla. 3d DCA 2002); *McClung v. Crim. Just. Stds. & Training Comm'n*, 458 So. 2d 887, 888 (Fla. 5th DCA 1984) ("[W]here a statute provides for revocation of a license the grounds must be strictly construed because the statute is penal in nature. No conduct is to be regarded as included within a penal statute that is not reasonably proscribed by it; if there are any ambiguities included, they must be construed in favor of the licensee." (citing *State v. Pattishall*, 126 So. 147 (Fla. 1930)).

125. The grounds proving the Department's assertion that Respondent's license should be disciplined must be those specifically alleged in the Complaint. *See, e.g., Trevisani v. Dep't of Health*, 908 So. 2d 1108 (Fla. 1st DCA 2005); *Kinney v. Dep't of State*, 501 So. 2d 129 (Fla. 5th DCA 1987); and *Hunter v. Dep't of Pro. Regul.*, 458 So. 2d 842 (Fla. 2d DCA 1984).

126. Due process prohibits the Department from taking disciplinary action against a licensee based on matters not specifically alleged in the charging instrument, unless those matters have been tried by consent. *See Shore Vill. Prop. Owners' Ass'n v. Dep't of Env't Prot.*, 824 So. 2d 208, 210 (Fla. 4th DCA 2002); and *Delk v. Dep't of Pro. Regul.*, 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

127. In this case, the Department has charged Respondent, in Counts I, III through VI, IX, and X, with violating Florida Administrative Code Rule 69B-220.201(3)(f), which contains the Adjuster's Code of Ethics, and requires that public adjusters act with dispatch and due diligence in achieving a proper disposition of a claim.

128. As to those specific counts, a violation of sections 626.611(1)(g) and 626.854(14), (14)(b), or (14)(c), Florida Statutes, or rule 69B-220.201(3)(f), establishes a violation of section 626.621(2).

Respondent failed to comply with the "permanent business address" requirement.

129. Section 626.875 provides as follows:

> (1) Each appointed independent adjuster and licensed public adjuster must maintain a place of business in this state which is accessible to the public and keep therein the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of such an office in the home of the licensee.
>
> (2) The records of the adjuster relating to a particular claim or loss shall be so retained in the adjuster's place of business for a period of not less

> than 5 years after completion of the adjustment. This provision shall not be deemed to prohibit return or delivery to the insurer or insured of documents furnished to or prepared by the adjuster and required by the insurer or insured to be returned or delivered thereto.

130. Further, section 626.8796 provides, in pertinent part, as follows:

> (2) A public adjuster contract relating to a property and casualty claim must contain the full name, *permanent business address*, and license number of the public adjuster; the full name of the public adjusting firm; and the insured's full name and street address, together with a brief description of the loss. (emphasis supplied)

131. Respondent argues that "permanent business address" must include either a physical address or a post office box because the statutes and rules governing public adjusters do not specifically define "permanent business address." Since a post office box is a "physical address," that is, there is a tangible box set in a wall within the post office, it becomes a permanent business address. The undersigned cannot reach this conclusion when reading sections 626.875 and 626.8796 together.

132. As cited by Respondent, the Florida Supreme Court in *Gaulden v. State*, 195 So. 3d 1123, 1125-26 (2016), articulated that, "The cardinal rule of statutory construction is 'that a statute should be construed so as to ascertain and give effect to the intention of the Legislature as expressed in the statute.'" *City of Tampa v. Thatcher Glass Corp.*, 445 So. 2d 578, 579 (Fla., 1984) (quoting *Deltona Corp. v. Fla. Pub. Serv. Comm'n*, 220 So. 2d 905, 907 (Fla. 1969)). Thus, "[w]hen the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent." *Borden v. East– Eur. Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006) (quoting *Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64 (Fla. 2005)). But "if the statute is ambiguous on its face, the Court can only then rely upon the rules of statutory construction in order to

discern legislative intent." *Koile v. State*, 934 So. 2d 1226, 1233 (Fla. 2006). *Id*. at 1126.

133. When section 626.8796 is read alone, the term "permanent business address," being undefined, could mean an address that has been kept over time by a public adjuster. That narrow reading would allow the undersigned to conclude that the P.O. Box Address discussed throughout this Recommended Order is, in fact, a physical address that could be considered a permanent business address. However, when section 626.8796 is read together with (*in pari materia*) section 626.875, it is clear that there is more to the term "permanent business address" than a box where mail can accumulate. The latter statute refers to a "place of business" where the adjuster's usual and customary records of claims are kept and are available for inspection by the public for at least five years. This means the public adjuster's place of business or home. The undersigned is not aware of any post office boxes that are designed as repositories for records and provides a location for the public to visit and inspect their records, or in the absurd sense, could serve as a home for a public adjuster. Moreover, even if the post office box could serve as a physical address, Respondent failed to register it as such with the Department or with the Division of Corporations. Accordingly, Respondent has violated the counts of the Complaint regarding having a permanent physical address and is subject to discipline therefor.

134. Therefore, the Department has proven by clear and convincing evidence that Respondent violated section 626.8796(2), as charged in Counts VII and VIII of the Complaint, by listing the P.O. Box Address as his business address in the A.B. and J.A. contracts.

Respondent has violated Department statutes and rules regarding making the subject properties, in Counts I, III through VI, IX, and X, available for inspectors.

135. The Department has proven by clear and convincing evidence that Respondent violated section 626.854(14), (14)(b), and (14)(c) and rule 69B-220.201(3)(f) as charged in Count I of the Complaint, by preventing Citizens

from having reasonable access to V.L.'s property when Respondent refused to permit Citizens to conduct an inspection of the property on June 29, 2019, and thereafter refused Citizens access to the property from July 2019 through November 2019, an unreasonable length of time.

136. Specifically, the testimony of Bamburg and Stav Roach established that Respondent failed to notify them prior to the June 29, 2019, inspection that he would refuse to permit Ashraf or his contractor to inspect the roof without providing proof of workers' compensation and liability insurance, which, the evidence showed, he did not have on the date of the first inspection, but was secured a day later. Respondent, Bamburg, and Stav Roach communicated several times prior to the June 29, 2019, inspection, and yet Respondent waited until the last minute to state he would not permit an inspection without proof of insurance. Even when Ashraf secured the appropriate coverage, the inspection process suffered numerous delays. Therefore, Respondent failed to act with dispatch in resolution of the claim.

137. Further, by restricting Citizens' access to V.L.'s property to Saturdays only, a day V.L. said she was not generally available, Respondent prevented Citizens from having reasonable access to V.L.'s property. Respondent claimed that this was due to V.L.'s schedule. However, the record evidence establishes that V.L. was also available for Monday inspections. Respondent refused to inform V.L. of the potential of a Monday inspection, Respondent failed to adequately inquire about V.L.'s schedule, or Respondent knew about V.L.'s schedule and misrepresented that information to Citizens. Any of the three options demonstrate Respondent's lack of dispatch and due diligence in resolving V.L.'s claim.

138. Respondent maintains that he did not obstruct reasonable access to V.L.'s property because the property was available for inspection on June 1 and July 20, 2019. This argument ignores the fact that: (1) Respondent failed to notify Citizens about the tarp covering the roof prior to the June 1, 2019, inspection; and (2) the July 20, 2019, inspection could not have occurred

because Infinity refused to go on the roof due to the weather. This behavior does not evidence a cooperative spirit towards resolving a claim on Respondent's part.

139. Respondent's precondition of proof of workers' compensation and liability insurance, in and of itself, was reasonable. A homeowner should not be held responsible for an injury to an adjuster, inspector, engineer, or other person hired to help adjust a claim. Requiring proof of personal liability and workers' compensation insurance, if applicable, is a reasonable request by a public adjuster who is acting in the best interests of his or her client. However, Respondent still denied Citizens reasonable access to the property for the four months following July 20, 2019, when he failed to respond to Stav Roach's multiple requests for additional inspection dates. The denial of V.L.'s claim is directly attributable to Respondent's failure to cooperate with Citizens' right to inspect the property.

140. Chapter 626 does not define the term "fitness." When terms are not defined in a statute, the "plain and ordinary meaning of those terms applies." *Nat'l Fed'n of Ret. Persons v. Dep't of Ins.*, 553 So. 2d 1289, 1290 (Fla. 1st DCA 1989). In *Norkin v. Department of Financial Services*, Case No. 16-1996, 2016 WL 4584611, RO at ¶ 40 (Fla. DOAH Aug. 30, 2016; Fla. DFS Dec. 5, 2016), the ALJ and the Department found that the Webster's Dictionary definition of "fit" was applicable in the licensure context and meant "proper or acceptable," "morally or socially correct," and "suitable for a specified purpose."

141. Additionally, the Department has previously found that a disregard for regulatory authority and a failure to conform with basic ethical principles are demonstrative of a licensee's lack of fitness and trustworthiness. *Dep't of Fin. Servs. v. Cephas*, Case No. 03-0798PL, 2003 WL 21510765, RO at ¶ 45 (Fla. DOAH July 1, 2003; Fla. DFS July 25, 2003).

142. The Adjuster's Code of Ethics, as contained in rule 69B-220.201, constitutes the basic ethical principles for all adjusters licensed under the

Florida Insurance Code. Respondent's conduct in the inspections giving rise to this matter violated section 626.611(1)(g) because Respondent's behavior was not morally or socially correct and because his conduct failed to conform with basic ethical principles. The Department has proven Respondent's lack of fitness and trustworthiness in Count I because the record evidence establishes that Respondent failed to adhere to basic ethical principles and engaged in harassing, unprofessional, and disparaging treatment of Bamburg and Stav Roach. Furthermore, Respondent misrepresented V.L.'s schedule to Citizens, which demonstrates a lack of fitness and trustworthiness.

143. The Department has proven by clear and convincing evidence that Respondent violated section 626.854(14), (14)(b), and (14)(c) and rule 69B-220.201(3)(f), as charged in Count III of the Complaint, by obstructing and preventing Citizens from having reasonable access to J.L.'s property. Despite Citizens' multiple attempts (three telephone calls and six emails), Respondent refused to schedule an inspection of J.L.'s property for the 50 days between May 10 and July 9, 2019. Respondent's defense to the delay based upon his representations that J.L. could only be present for an inspection on a Saturday was refuted by competent substantial evidence that J.L. could be available on other days and that she did not even have to be present for the inspection if her public adjuster were present to represent her. In fact, J.L. gave her recorded statement to Citizens on a Wednesday, June 19, 2019. Further, Respondent's conduct toward Citizens' employees during the J.L. claim, including using aggressive, condescending, and unprofessional correspondence with Boknecht, and sending unnecessary and harassing email correspondence to Quintana, all demonstrate Respondent's lack of fitness and trustworthiness.

144. The Department has proven by clear and convincing evidence that Respondent has violated section 626.854(14), (14)(b), and (14)(c) and rule 69B-220.201(3)(f), as charged in Count IV of the Complaint, by obstructing and preventing Citizens from having reasonable access to G.T.'s property

through Respondent's termination of Medeiros's attempted inspection of G.T.'s property.

145. The evidence clearly establishes that Medeiros arrived at G.T.'s property prepared to conduct his inspection. Medeiros provided Respondent with his requested workers' compensation and liability insurance, but Respondent refused to allow Medeiros to complete his inspection. The evidence clearly establishes that Medeiros's inspection of G.T.'s property on June 25, 2019, could have occurred but for Respondent's unreasonable unilateral termination of the inspection. Respondent's termination of Medeiros's inspection unnecessarily delayed the resolution of G.T.'s claim and, thus, demonstrates Respondent's failure to act with proper dispatch during the claim. Moreover, the Department has proven by clear and convincing evidence that Respondent violated section 626.611(1)(g), as charged in Count IV of the Complaint, by demonstrating a lack of fitness and trustworthiness to engage in the business of insurance during the G.T. claim. Respondent's failure to adhere to basic ethical principles by violating the Adjuster's Code of Ethics and his behavior during his interactions with Mr. Medeiros, including being aggressive and difficult during attempts to schedule the inspection and harassing Medeiros by engaging in hostile and aggressive behavior during the June 25, 2019, attempted inspection, all demonstrated a lack of fitness and trustworthiness.

146. The Department has proven by clear and convincing evidence that Respondent violated section 626.854(14), (14)(b), and (14)(c) and rule 69B-220.201(3)(f), as charged in Count V of the Complaint, by preventing and obstructing Tower Hill from having reasonable access to necessary information to investigate and respond to the L.P. claim. As set forth above, his behavior in the EUO was inexcusable and terminating the EUO was totally uncalled for. His actions demonstrated a lack of due diligence in handling L.P.'s claim and, pursuant to section 626.611(1)(g), a lack of fitness

and trustworthiness to engage in the business of insurance during his involvement in the L.P. claim.

147. Regarding Counts VI and X, much was made at hearing as to whether Respondent was acting as a public adjuster or an appraiser with respect to the two claims related to those counts. Regardless of whether Respondent performed some appraisal duties in connection with the claims addressed in Counts VI and X, the testimony elicited at hearing clearly establishes that Respondent's specific work on those claims involved conducting an inspection or investigation of the claim and that his work involved effecting a potential settlement or resolution of the claim. His involvement in the two claims fell within the scope of his role as a public adjuster. Moreover, as discussed at length above, Respondent's behavior in those two incidents evidenced violations of his obligation to demonstrate his fitness and trustworthiness to maintain his license to engage in the business of insurance. Whether his role crossed into the arena of appraising versus that of public adjusting is irrelevant. The clear and convincing evidence in this case was that, except for the carve out above for requiring proof of insurance, Respondent's overall actions fell far below the ethical and professional standards required of public adjusters.

148. The Department has proven by clear and convincing evidence that Respondent has violated section 626.854(14), (14)(b), and (14)(c) and rule 69B-220.201(3)(f), as charged in Count VI of the Complaint, by obstructing and preventing Lloyds of London from having reasonable access to M.K.'s property. The facts establish that Respondent unilaterally terminated the inspection of M.K.'s property by Reichle; that Reichle never talked directly to the property manager as he was accused of doing by Respondent; and that the appraisal inspection by Reichle would have timely occurred but for the actions of Respondent.

149. The Department has proven by clear and convincing evidence that Respondent has violated section 626.611(1)(g), as charged in Count VI of the

Complaint, by demonstrating a lack of fitness and trustworthiness to engage in the business of insurance during his involvement in the M.K. claim by his threatening and abusive behavior of Reichle.

150. The Department has proven by clear and convincing evidence that Respondent has violated section 626.854(14), (14)(b), and (14)(c) and rule 69B-220.201(3)(f), as charged in Count IX of the Complaint, by obstructing and preventing QBE from having reasonable access to necessary information to respond to a claim. In short, the court's order in *Douglas v. QBE*, as discussed above, established Respondent's improper behavior concerning this claim. Further, the Department has proven by clear and convincing evidence that Respondent has violated section 626.611(1)(g), as charged in Count IX of the Complaint, by demonstrating a lack of fitness and trustworthiness to engage in the business of insurance during his involvement in *Douglas v. QBE*. The totality of his actions towards process servers, court reporters, and counsel for QBE in that case show a complete lack of ethical and professional behavior on his part.

151. The Department has proven by clear and convincing evidence that Respondent has violated section 626.854(14), (14)(b), and (14)(c) and rule 69B-220.201(3)(f), as charged in Count X of the Complaint, by obstructing and preventing Citizens from having reasonable access to L.M.'s property. Respondent unilaterally terminated the inspection of the subject property by Holbrook and further violated section 626.611(1)(g), as charged in Count X of the Complaint, by demonstrating a lack of fitness and trustworthiness to engage in the business of insurance during his involvement in the L.M. claim.

Penalty Recommendation

152. Respondent testified at hearing that "[a] public adjuster advocates on the part of the homeowner – advocates on the part of a homeowner, sir for an insurance company. The job of a public adjuster is not to be evasive or not to be disruptive or not to be contentious. The job of a public adjuster is to assist

the insured with their claim, but also make sure that you follow Florida Statutes, make sure that you look out for the insured's best interest." The undersigned finds this to be an excellent statement of how a public adjuster is supposed to conduct his professional business. However, throughout the course of Respondent's involvement with his clients and the numerous other professionals with whom he came in contact for purposes of the subject of these proceedings, one thing is clear: Respondent did not practice what he preached.

153. In every case comprising the substance of the charges here against Respondent, he obstructed the ability of the ancillary personnel–appraisers, contractors, engineers, inspectors, lawyers, Citizens adjusters, etc., with whom he necessarily had to work–in so many detrimental ways. Whether he was terminating an inspection, intimidating an engineer, requiring inspections on a Saturday when the homeowner was available on at least one weekday, or even when he was engaged in the legal process before court reporters, process servers, and a circuit court judge, Respondent failed to demonstrate he possessed the fitness and trustworthiness required by the ethical standards for public adjusters. While a handful of excellent attorneys testified on his behalf, noting that Respondent is an excellent public adjuster who gets top results for his clients, such excellence was not demonstrated in the cases represented by the ten counts in the Complaint giving rise to these proceedings. What happened in each of these cases evidenced a pattern of angry, aggressive behavior that, in some settings, amounted to bullying of the people hired to help bring property insurance claims to a reasonable settlement.

154. Even Respondent's refusal to accept that a post office box cannot serve as a permanent place of business shows a stubbornness to accept anyone's professional interpretations of the law as perhaps being reasonable. Only Respondent's behavior, in his eyes, is appropriate. Only he can be right, whether dealing with professional peers, lawyers, court personnel, and even

judges. His behavior cannot be excused and merits a penalty here that is as serious as his behaviors giving rise to these proceedings.

155. Section 626.611(1) provides, in pertinent part:

> The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent, and it *shall suspend or revoke* the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist:
>
> * * *
>
> (g) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance.
>
> * * *
>
> (m) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this code.

(Emphasis added).

156. The plain language of section 626.611(1) shows a clear legislative intent that violations of section 626.611 must be disciplined with a more severe sanction than an issuance of a notice of noncompliance or even a fine.

157. Section 626.8698(6) provides that "[t]he department *may* deny, *suspend, or revoke the license* of a public adjuster or public adjuster apprentice, and administer a fine not to exceed $5,000 per act, for any of the following: [v]iolating any ethical rule of the department." (Emphasis added).

158. By permitting the Department to impose suspension, revocation, or a fine for a violation of the Adjusters Code of Ethics, the Legislature has evidenced a clear directive that violations of the Adjuster's Code of Ethics

cannot be minor violations for which the issuance of a notice of noncompliance would be appropriate.

159. The undersigned has concluded that Respondent violated each of the nine counts (Count II was withdrawn from consideration) of the amended Complaint, but that the alleged violations of the Department's statutes and rules concerning Respondent's demand of proof of liability and workers' compensation insurance were, in fact, not statutory or rule violations.

160. Moreover, Respondent's ability to achieve a favorable outcome for his clients has no bearing on whether a violation of the Florida Insurance Code has occurred. The fact that competent witnesses testified that Respondent was an excellent public adjuster, based upon his dealings with them and their clients, does not excuse his behavior with respect to the homeowners' claims that became the subject of these proceedings.

161. The Department argues that the maximum penalty per count should be imposed here. This would lead to a penalty of six months per the highest violation in each count for a total of 54 months. Pursuant to Florida Administrative Code Rule 69B-231.040, if the total amount of penalty to be imposed exceeds 24 months, then the penalty is revocation.

162. The undersigned believes that Respondent has committed, over a relatively short period of time, a significant number of violations that have been proven by clear and convincing evidence. Further, the undersigned determines here that, not only does Respondent show no remorse, but he believes he has done no wrong and all of the charges brought against him should be dismissed without penalty. The undersigned disagrees with this assessment by Respondent. However, in light of Respondent's long history of being a licensed professional bound by the Florida Insurance Code, he has been an effective public adjuster and, before that, appraiser. He clearly has some issues that need to be addressed, especially in how he treats the people a public adjuster must work closely with when performing their statutory

duties, generally in the aftermath of a major storm, flood, fire, or other natural disaster.

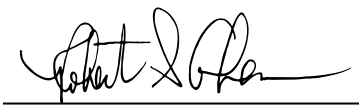
163. A significant suspension of his public adjuster's license for his violations of the matters referred to in Counts I, III through VI, IX, and X, as well as a fine for the violations of the permanent business address requirement set forth in Counts VII and VIII, should give Respondent time to contemplate his actions, take available courses on public adjusting and, perhaps, anger management, and call upon his inner resolve and strength as a Marine to do better once his license has been reinstated.

164. The undersigned hereby recommends that the following penalties be imposed on Respondent's license: a three-month suspension for each of Counts I, III, IV, V, VI, and X; a six-month suspension for Count IX (due to the fact that Respondent's improper behavior escalated from a homesite into the judicial system); and a $2,500 fine for each of Counts VII and VIII.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Department of Financial Services suspending Scott David Thomas's license as a public adjuster for 24 months and imposing a fine in the amount of $5,000, as more fully explained in paragraph 164 above.

DONE AND ENTERED this 30th day of January, 2023, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of January, 2023.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.