

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	
)	Division Case No. 108127
K. SIMON CONSTRUCTION, LLC,)	
)	CONSENT TO CEASE
)	AND DESIST ORDER
)	
Respondent.)	

NOW THEREFORE, upon motion of the Iowa Insurance Division (“Division”) and by the consent of the Respondent K. Simon Construction, LLC, pursuant to the provisions of Iowa Code chapter 522C—Licensing of Public Adjusters and Iowa Administrative Code chapter 191—55, Licensing of Public Adjusters, the Commissioner enters the following Consent to Cease and Desist Order (“Consent Order”):

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Douglas M. Ommen, directly and through his designees, administers and enforces Iowa Code chapter 522C—Licensing of Public Adjusters and Iowa Administrative Code chapter 191—55, Licensing of Public Adjusters.
2. K. Simon Construction, LLC, (“K Simon”) is a foreign Limited Liability Company that was incorporated in Nevada and authorized to do business in Iowa by the Iowa Secretary of State. Its home office is located at 699 Walnut Street #400, Des Moines, Iowa 50309.
3. Pursuant to Iowa Code § 505.28, Respondent has consented to the jurisdiction of the Commissioner of Insurance by committing acts governed by Iowa Code chapter 522C.
4. From on or about August 1, 2020 to present, Respondent has engaged in acts and practices within the state of Iowa constituting cause for a cease and desist order from engaging in such acts or practices and any other corrective action the Commissioner deems necessary and appropriate

pursuant to Iowa Code § 505.8(10), Iowa Code chapter 522C, and rules adopted pursuant to this chapter.

5. A Summary Cease and Desist Order was issued by the Commissioner on April 9, 2021.

6. K Simon denies the findings of fact found or the conclusions of law found herein, but is willing to consent to entry of the Cease and Desist Order. K Simon's consent to enter into the foregoing Cease and Desist Order does not constitute an admission of liability or guilt on K Simon's behalf, or an admission that K Simon engaged in any of the acts or violations of law set forth therein, for any purpose that does not relate to the entry of this Order or the jurisdiction of Division to issue it, nor shall it. K Simon represents that the actions of its agents were contrary to its internal practices and/or policies and not representative of K Simon's business practices.

II. FINDINGS OF FACT

7. K Simon is a nationwide construction company maintaining an office in Cedar Rapids, Iowa.

8. K Simon is not licensed in the state of Iowa as a public adjuster.

9. Andrew Mauro ("Mauro") is engaged as an agent of K Simon and represented himself as a lead project supervisor at its Cedar Rapids office located at 600 Oakland Road NE, Suite A, Cedar Rapids, Iowa 52401.

10. Mauro is not licensed in the state of Iowa as a public adjuster.

11. Mauro's K Simon email represents he is located at 600 Oakland Road NE, Suite A, Cedar Rapids, Iowa as a lead project supervisor.

12. Mauro's LinkedIn represents he is an agent of K Simon and he represents himself to be a project development manager in Naples, Florida.

13. The Division believes that Mauro resides at 1295 Mainsail Drive Unit 905, Naples, Florida 34114-8836.

14. Kris Villalobos (“Villalobos”) is engaged as an agent of K Simon and represented himself as a project manager at its Cedar Rapids office located at 600 Oakland Road NE, Cedar Rapids, Iowa 52401.

15. Villalobos is not licensed in the state of Iowa as a public adjuster.

16. Villalobos’ K Simon email represents he is located at 600 Oakland Road NE, Cedar Rapids, Iowa as a project manager.

17. Villalobos represented to Iowa consumers that he is from Texas.

18. The Division believes Villalobos resides at 6423 Lily Hollow Ct, Spring, Texas 77379.

Consumer Mr. H

19. On August 10, 2020, the state of Iowa was hit by a catastrophic Derecho (“2020 Derecho”). The 2020 Derecho caused historic property damage throughout the state of Iowa.

20. On August 10, 2020, Mr. H’s home in Marion, Iowa was damaged in the 2020 Derecho.

21. On August 11, 2020, Mr. H reported a claim to his insurance company, Western National Insurance (“Western”).

22. On August 13, 2020, Western inspected the damaged property and found damage caused by wind.

23. On August 20, 2020, after accounting for his deductible, Western issued payment to Mr. H for his property damage in the amount of \$6,849.39.

24. On September 15, 2020, K Simon submitted a supplemental request to Western in the amount of \$38,000.00.

25. Western reviewed K Simon’s supplemental request and agreed to replace Mr. H’s entire roof, but would not pay for rain gutters and covers that were not damaged in the 2020 Derecho. Western also declined to pay K Simon’s overhead and profit.

26. On September 18, 2020, Western spoke with Mr. H and reviewed the revised estimate it prepared related to his property. Mr. H was “surprised” at the amount of his contractor’s estimate. He is a builder and did not believe the estimate should be that much.

27. Mr. H told Western that he had not seen the estimate break down from his contractor and had not specifically hired the contractor to do the work. He was “fine” with Western’s revised estimate.

28. On September 19, 2020, Western agreed to supplement Mr. H’s claim in the amount of \$6,282.44.

29. Villalobos told Mr. H that in order to get his home fixed properly the homeowner would need to file a complaint with the Division.

30. On September 25, 2020, Villalobos provided Mr. H by email a copy and paste format complaint for Mr. H to file with the Division,

Subject: IOWA DEPARTMENT OF INSURANCE - copy and paste format

There should be two email addresses for the Iowa Department of Insurance. Google them.

Send this letter to both of them, and CC K Simon Construction email address with your email. Make sure that you include the K.Simon PDF Supplement estimate with your email as an attachment. Once we get the email ccd to us, we can also follow up with them without Any legal issue since the home owner has included us and made the initial contact with the Department.

ATTN: CLAIMS DISPUTE AND SUPPLEMENT RESOLVE

Hello,

I am requesting assistance from the Department of Insurance to help me resolve my supplement claim with my insurance carrier.

I would like to file a complaint against for improperly handling my claim with negligence, and not adjusting my claim fairly.

My contractor K.Simon Construction have done a very thorough, detailed line by line materials and labor estimate which was submitted to my insurance. The K.Simon estimate comprised of multiple missing line items that are required to complete all of my repairs, with a correction of region prices on materials and labor which have increased significantly within the last couple of weeks to reflect current market prices.

Currently my claim supplement has been unfairly and incorrectly denied. And the initial adjuster who was sent out to inspect and assess All of my property damages, has overlooked many damages, has denied apparent visible damages, and has now denied my contractors supplement which Is delaying my repairs.

I would greatly appreciate if a supervisor at the Department of Insurance could step in and assist us so that we can get the supplemental damages Approved, and the required missing line items included into my claim so that we can move forward with our repairs before winter and prevent additional damages to our home.

31. On September 30, 2020, Mr. H filed a complaint with the Division regarding Western's handling of his complaint. His complaint had a suspicious paragraph in it that stated, "According to our contractor the insurance company has *shorted them* on many items on their estimate. You would need to contact Kris Villalobos at K. Simon Construction to discuss the details of what *shortages he needs made whole.*" (Emphasis added).

32. The Division found that Western followed the terms and conditions of the policy contract.

33. Mr. H also noted that K Simon initially represented at the time of sale that it would be doing all the work with its own vetted employees, when in fact the work was done by a "horrific" subcontractor who had poor workmanship.

34. Mr. H described dealing with K Simon as "it wasn't a good experience at all."

Consumer Mr. and Mrs. M

35. On August 10, 2020, Mr. and Mrs. M's home in Cedar Rapids, Iowa was damaged in the 2020 Derecho.

36. Mr. and Mrs. M submitted a claim to their insurance company, Pekin Insurance (“Pekin”).

37. On September 15, 2020, Pekin provided Mr. and Mrs. M a total estimate of \$17,002.63, if depreciation was recovered, for the damage to their home and issued an initial payment based on this estimate.

38. On September 23, 2020, Mr. and Mrs. M entered a Work Order Authorization and Agreement with K Simon for “emergency repairs.” The “TOTAL CONTRACT AMOUNT” was left blank at the time of signing.

39. On October 5, 2020, Pekin received an estimate from K Simon on behalf of Consumers Mr. and Mrs. M in the amount of \$43,839.14. Pekin received the Work Order and Authorization and Agreement document from K Simon which contained \$43,839.14 in the “TOTAL CONTRACT AMOUNT.” This figure was inserted into the document in a computer typed blue font, the remainder of the document was in handwritten ink.

40. On October 5, 2020, Mauro emailed Pekin this estimate and stated “[p]lease have the adjuster on this file or supervisor contact K.Simon Construction at their soonest availability to *discuss and resolve This claim.*” (Emphasis added).

41. On October 8, 2020, Mr. and Mrs. M filed a complaint with the Division. The complaint had a suspicious sentence in it, “I expect a fair and knowledgable adjuster who will work fairly with my Preferred contractor K.Simon Construction –who are A+ Rated in the BB to get my claim resolved expediently and correctly.”

42. On October 19, 2020, Pekin revised its initial estimate due to some issues identified by K Simon. The revised total estimate was \$26,230.52.

43. In its response to Mr. and Mrs. M’s complaint, Pekin noted that the major issue with the K Simon estimate was “the price being charged.”

44. The insured signed a contract with K Simon without a figure or seeing the contractor's estimate.

45. On October 27, 2020, Mauro contacted a Division Complaint Analyst with the following in an email:

K.Simon Construction have been notified by the homeowners on this claim that they have contacted You in regards to assistance for the supplement needed to complete this project.

We have been attempting numerous times to make cooperation and progress with [claim adjuster] but Have had very little progress. We are on a very tight time crunch due to the pending cold weather and snow. K.Simon Construction have provided Pekin Insurance and [claim adjuster] with the documents That she requested pertaining to our supplement which supports our requests.

Can you please assist in getting this resolved for everyone. Thank you kindly.

46. On November 4, 2020, the Division closed the complaint finding that Pekin followed the terms and conditions of the policy contract.

Consumers Mr. and Mrs. S

47. On August 10, 2020, Mr. and Mrs. S's home in Cedar Rapids, Iowa was damaged in the 2020 Derecho.

48. On August 10, 2020, Mrs. S contacted American Family Mutual Insurance Company ("AMFAM") to advise that there was a roof leak due to wind damage.

49. Mr. and Mrs. S's property coverage for the dwelling was in the amount of \$67,600.00.

50. On August 24, 2020, AMFAM inspected the property damage at Mr. and Mrs. S' home.

51. On August 27, 2020, AMFAM finalized its inspection and went over the damage with Mrs. S.

52. AMFAM estimated the damage in the actual cash value amount of \$6,617.14. AMFAM advised that additional recoverable depreciation could also be received by Mr. and Mrs. S once repairs were completed.

53. On September 21, 2020, Mr. S entered a Work Order Authorization and Agreement with K Simon. The "TOTAL CONTRACT AMOUNT" was left blank at the date of signing.

54. On September 24, 2020, AMFAM received an estimate from K Simon on Mr. and Mrs. S's behalf. K Simon's estimate was \$61,667.29 which was substantially more than AMFAM's initial estimate and almost as much as the entire dwelling insured amount.

55. On October 10, 2020, Mrs. S filed a complaint with the Division. Mrs. S's complaint had a suspiciously similar sentence as Mr. and Mrs. M's complaint, "I request a re inspection with a fair and knowledgeable adjuster who will work cooperatively with my Preferred contractor K.Simon Construction –who are A+ Rated in the BBB to get my claim supplement resolved expediently and correctly so that I can get My home repaired asap and back to pre-storm condition."

56. On October 20, 2020, AMFAM re-inspected the property with a K Simon employee present.

57. On October 26, 2020, AMFAM issued a supplemental payment of \$9,344.63 and partially denied some of the items requested by K Simon.

58. On November 9, 2020, the Division closed the complaint finding AMFAM followed the terms and conditions of the policy contract.

Consumer Ms. B

59. On October 12, 2020, the Division received an email complaint from Ms. B regarding her home damage and AMFAM's handling of her claim. Mauro was carbon copied on this communication to the Division.

60. Ms. B's complaint had similar language to other complaints the Division received involving K Simon that were riddled with spelling and punctuation errors,

I request a re inspection with a fair and knowledgeable adjuster who will work cooperatively with my Preferred contractor K. Simon Construction -who are A+ Rated in the BBB to get my claim supplement resolved expediently and correctly so that I can get My home repaired asap and back to pre-storm condition.

I would greatly appreciate if a supervisor at the Department of Insurance could step in and assist us so that we can get the supplemental damages Approved, the required missing line items included in my claim so that we can move forward with or repairs before winter and prevent additional damages to our home including additional mold remediation.

Thank you kindly for your time and assistance.

Sincerely, [Ms. B]

61. On October 4, 2020, Ms. B entered a Work Order Authorization and Agreement with K Simon.

62. Under the Insurance Contingency Agreement section, there is "Insurance Authorization" handwritten in black in and initialed by "RB."

63. Ms. B told the Division that her understanding was she initialed here to give the contractor authorization to speak with the carrier and negotiate on her behalf.

64. Ms. B told the Division that K Simon assisted her in making her complaint to the Division.

65. On November 6, 2020, the Division closed the complaint finding AMFAM followed the terms and conditions of the policy contract.

III. CONCLUSIONS OF LAW

COUNT ONE Unlicensed Public Adjuster

66. Iowa Code § 522C.4 states a “person shall not operate as or represent that the person is a public adjuster in this state unless the person is licensed by the commissioner in accordance with this chapter.” (See also Iowa Administrative Code rule 191—55.3).

67. Iowa Code § 522C.2(7) provides that:

“Public adjuster” means any person who for compensation or any other thing of value acts on behalf of an insured by doing any of the following:

a. Acting for or aiding an insured in negotiating for or effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured.

b. Advertising for employment as a public adjuster of first-party insurance claims or otherwise soliciting business or representing to the public that the person is a public adjuster of first-party insurance claims for loss or damage to real or personal property of an insured.

c. Directly or indirectly soliciting business investigating or adjusting losses, or advising an insured about first-party claims for loss or damage to real or personal property of the insured.

68. K Simon and its agents acted for or aided an insured in negotiating for or effecting the settlement of a first-party claim when it submitted estimates to insurance companies without explaining the amount sought to consumers, being present during re-inspections, and having its employees contact insurance company adjusters to “discuss and resolve this claim.”

69. K Simon and its agent Villalobos acted for or aided the insured, Mr. H, in providing him a “cut and paste format” complaint to cut and paste into a complaint Mr. H electronically filed with the Division on September 30, 2020. In this complaint Mr. H noted, “According to our contractor the insurance company has *shorted them* on many items on their estimate. You would need to contact Kris Villalobos at K. Simon Construction to discuss the details of what *shortages he needs made whole.*” (Emphasis added).

70. K Simon and its agent Mauro acted for or aided an insured in negotiating for or effecting the settlement of a first-party claim by assisting Mrs. S in filing her complaint with the Division and by providing an excessive estimate to AMFAM.

71. K Simon and its agent Mauro acted for or aided an insurance in negotiating for or effecting the settlement of a first-party claim, when, after a complaint was filed by Mr. and Mrs. M, K Simon and Mauro contacted the Division to check on the status of Mr. and Mrs. M's complaint and asking the Division to "assist in getting this resolved for everyone."

72. K Simon and its agent Mauro acted for and aided an insured by effecting the settlement of a first-party claim, when they assisted Ms. B in filing her complaint with the Division and had her sign a contract authorizing K Simon to negotiate her insurance claim for her.

73. Most of the consumer complaints herein had a very similar paragraph that appears to have been provided by K Simon to the consumers to file with the Division, "I expect a fair and knowledgable adjuster who will work fairly with my Preferred contractor K.Simon Construction – who are A+ Rated in the BB to get my claim resolved expediently and correctly."

IV. ORDER

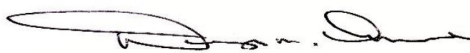
WHEREFORE, IT IS ORDERED pursuant to the powers granted to the Commissioner of Insurance by Iowa Code chapters 505 and 522C:

- A. Respondent and any unlicensed person or entity acting on or purporting to act on Respondent's behalf, pursuant to Iowa Code § 522C.6, shall immediately cease and desist from acting for or aiding any insureds in negotiating for, or effecting the settlement of, first-party claims of loss; from directly or indirectly soliciting business, investigating or adjusting losses, or advising any insureds about first-party claims for loss or damage to real or personal property in the state of Iowa;

- B. Respondent and any unlicensed person or entity acting on or purporting to act on Respondent's behalf pursuant to Iowa Code §522C.6, shall immediately cease and desist from any and all acts or practices in the state of Iowa that require licensure as a public adjuster;
- C. Pursuant to Iowa Code § 522C.6, Respondent, is assessed a civil penalty in the amount of \$5,000.00 due within 30 days of this order, payable to the Iowa Insurance Division, to be credited to the Iowa Enforcement Fund, to provide funds for insurance enforcement and education pursuant to Iowa Code §§505.8 and 507A.

IT IS FURTHER ORDERED that the Summary Order to Cease and Desist issued on April 9, 2021 is vacated.

SO ORDERED on the 10th day of May, 2021.



DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Copies to:

Zach Hyman
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Scott Zibull
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Andrew Mauro
Drew.ksimonconstruction@gmail.com

Kris Villalobos
Krisv.ksimon@gmail.com

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, or their attorney, at their respective addresses disclosed on the pleadings on May 10, 2021.

By: First Class Mail Personal Service
 Restricted certified mail, return receipt Email, by consent
 Certified mail, return receipt _____

Signature: /s/ Hilary Foster
Hilary Foster

NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER

YOU ARE ALSO NOTIFIED that if you violate this Order, you may be subject to administrative and civil penalties pursuant to Iowa Code § 507A. The Commissioner may petition the district court to hold a hearing to enforce the order as certified by the Commissioner. The district court may assess a civil penalty against you in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation, and may issue further orders as it deems appropriate.

NOTICE OF FINAL ORDER IMPACT

A final order of a cease and desist order may adversely affect other existing business or professional licenses and may result in license revocation or disciplinary action.

A final order in an administrative action does not resolve any potential criminal or civil violations or causes of action that might arise from the same or similar conduct that is the subject of this this order. It may result in criminal law enforcement authorities, including the fraud bureau of the Iowa Insurance Division, pursuing a criminal investigation or prosecution of potential criminal law violations.

CONSENT TO ORDER AND AGREEMENT

I, Scott Zibull, of K. Simon Construction, LLC, Respondent in this matter, have read, understood, and do knowingly consent to this Order in its entirety. By executing this Consent, I understand that I am waiving my rights to a hearing, to confront and cross-examine witnesses, to produce evidence, and to judicial review.

I further understand this Order is considered a final administrative action that will be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. I also understand this Order is a public record under Iowa Code chapter 22 and information may be shared with other regulatory authorities or governmental agencies, pursuant to Iowa Code § 505.8(8)(d). I also understand this Order will be posted to the Division's website and a notation will be made to the publicly available website record that administrative action has been taken against me.

Dated: MAY 4, 2021

Scott Zibull
K. Simon Construction, LLC, Respondent
Scott Zibull

LLC MANAGER
Title

699 WALNUT ST #400, DES MOINES, IOWA 50309
Address of Signatory

Subscribed and sworn before me by Scott Zibull on this 4th day of
May, 2021.

Christina Polovich
Notary Public for the State of Florida

