

No. 2022-7553

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

Date: 10/11/2022

Subject Considered:

Texas Department of Insurance

v.

Jon Mark Anweiler

SOAH Docket No. 454-22-0099.C

General remarks and official action taken:

The subject of this order is Jon Mark Anweiler's application for an adjuster—all lines license. This order denies Mr. Anweiler's application.

Background

After proper notice was given, the above-styled case was heard by an administrative law judge for the State Office of Administrative Hearings. The administrative law judge made and filed a proposal for decision containing a recommendation that the Texas Department of Insurance (TDI) deny Mr. Anweiler's application. A copy of the proposal for decision is attached as Exhibit A.

TDI adopts the administrative law judge's proposed findings of fact and conclusions of law with changes to Finding of Fact No. 8.

Legal Authority for Changes to the Proposal for Decision

The legal authority for the changes to the proposal for decision made in this order is TEX. GOV'T. CODE § 2001.058(e)(3), which provides that "[a] state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines . . . that a technical error in a finding of fact should be changed."

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Finding of Fact No. 8

In Finding of Fact No. 8, the administrative law judge incorrectly stated that the Texas Appraiser Licensing and Certification Board's Final Order against the Respondent was issued on February 28, 2020. However, the Final Order was issued on March 2, 2020. Finding of Fact No. 8 is amended to correct that technical error.

Findings of Fact

1. Except for Finding of Fact No. 8, the findings of fact contained in Exhibit A are adopted by TDI and incorporated by reference into this order.
2. In place of Finding of Fact No. 8 as contained in Exhibit A, the following finding of fact is adopted:

On March 2, 2020, the TALCB issued a Final Order revoking Respondent's Certification and imposing an administrative penalty. This action was based on Respondent's acceptance of advance payments from five individuals for appraisals, and his subsequent failure to produce an appraisal report or issue a refund of the prepaid fees.


Conclusions of Law

The conclusions of law contained in Exhibit A are adopted by TDI and incorporated by reference into this order.

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Order

It is ordered that Jon Mark Anweiler's application for an adjuster-all lines license is denied.

DocuSigned by:

FC5D7EDDFFB84F8... _____
Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

75578E954EFC48A... _____
James Person, General Counsel

DocuSigned by:

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Justin Beam, Assistant General Counsel



SOAH DOCKET NO. 454-22-0099.C

**TEXAS DEPARTMENT OF
INSURANCE**

Petitioner

v.

JON MARK ANWEILER

Respondent

§
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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny Jon Mark Anweiler’s (Respondent) application for an Adjuster—All Lines License (License) because Staff alleges that he has engaged in fraudulent or dishonest acts or practices and that he is not trustworthy. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department deny Respondent’s license application.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this case was held by telephone on November 8, 2021, before ALJ Meitra Farhadi with the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff was represented by staff attorney Casey Seeboth. Respondent represented himself. The hearing concluded that day, and the record closed on November 23, 2021, upon the filing of the transcript. Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below.

II. DISCUSSION

A. Applicable Law and Allegations

To qualify for a License, an individual must, among other requirements, present evidence satisfactory to the Department that the applicant is trustworthy.¹ The Department may deny a License application if the Department determines that the applicant has engaged in fraudulent or dishonest acts or practices.²

Respondent has the burden of showing by a preponderance of the evidence that his application for a License should be approved.³

B. Background Facts

Respondent previously held a general real estate appraiser certification (Certification) issued by the Texas Appraiser Licensing and Certification Board (TALCB). On February 28, 2020, the TALCB issued a Final Order revoking Respondent's Certification and imposing an administrative penalty. This action was based on Respondent's acceptance of advance payments from five individuals for appraisals, and his subsequent failure to produce an appraisal report or issue a refund of the prepaid fees.⁴

Earlier, in May 2017, Respondent entered into an Agreed Final Order with the TALCB, concerning Respondent's acceptance of an advance fee for an appraisal from a client to whom he did not deliver an appraisal report.⁵

¹ Tex. Ins. Code § 4101.053(a)(2)(D).

² Tex. Ins. Code § 4005.101(b)(5).

³ 1 Tex. Admin. Code § 155.427.

⁴ Staff Ex. 2.

⁵ Staff Ex. 2.

On March 4, 2020, Respondent applied for a License with the Department.⁶ On March 27, 2020, Staff recommended denial of Respondent's application based on the same actions for which the TALCB revoked his Certification—engaging in false or misleading conduct.⁷

C. Evidence

At the hearing, Staff offered three exhibits, which were admitted, and presented testimony of Respondent and Lewis Weldon Wright, IV, an administrative review liaison for the Department. Respondent testified on his own behalf, but did not offer any exhibits.

1. Testimony of Mr. Wright

Mr. Wright is currently the administrative review liaison for the Agent and Adjuster Licensing Office in the Enforcement Division. His duties include serving as the primary contact for applications that have been flagged for concern. Mr. Wright explained that the license application asks questions concerning occupational license proceedings because they can be a good indicator as to the applicant's adherence to rules and laws. In this case, he stated that Respondent truthfully answered the question on his application concerning his previous occupational license proceeding at the TALCB and provided information related to that disciplinary action.

Mr. Wright reviewed the 2020 Final Order of the TALCB concerning Respondent and noted that the TALCB concluded that Respondent had engaged in conduct that is dishonest in nature; specifically, that Respondent engaged knowingly and willfully in false or misleading conduct.⁸ After receiving this information, Staff requested and reviewed information provided by Respondent concerning the incident, Respondent's work history, and letters of recommendation.

⁶ Staff Ex. 1.

⁷ Staff Ex. 1.

⁸ See Staff Ex. 2 at 129.

Mr. Wright explained that in addition to appraising the value of real assets, insurance adjusters must adhere to numerous rules and regulations related to claim settlement in the insurance industry, including deadlines. He noted that the insurance industry presents various opportunities for fraudulent behavior and for financial loss to many different parties. For these reasons, he stated, the Department does everything it can to prevent those opportunities from arising. Mr. Wright stressed that a having a License issued by the Department would grant Respondent access to money that does not belong to him.

In this case, the underlying activity that formed the basis of the TALCB revoking Respondent's Certification also formed the basis for Staff's proposal to deny Respondent's application for License.⁹ Mr. Wright explained that in his opinion, the fact that Respondent held his Certification for a long time, and very recently engaged in conduct directly related to his occupation resulting in revocation of his Certification, coupled with the fact that he had been disciplined for similar behavior only a few years earlier, leads him to believe Respondent has demonstrated a willingness not to adhere to rules and regulations related to the protection of consumers.¹⁰

2. Testimony of Respondent

Respondent was a real estate appraiser for 20 years. He testified that in the Spring of 2019, he decided to pursue commercial business. In his opinion, a typical commercial appraiser can do two appraisals a week. Respondent explained that he did not expect to win every job that he bid on; so when he won them all he had too much work. He stated that he is not a liar or a cheater, and that he realizes now that he should have either hired help or declined the jobs.

Respondent did not dispute the underlying conduct that was the subject of the TALCB's 2020 Final Order. He admitted that he did not do the appraisals for the five complainants and that he did not return the fee they paid in advance at that time. In Respondent's opinion however, he

⁹ Staff Ex. 1 at 42.

¹⁰ Tr. at 43.

violated business practices, not the bylaws that govern appraisers, and those clients should have taken him to small claims court.

After Respondent lost his Certification, he took jobs at Buc-ee's and then as a truck driver in order to pay the five complainants back for the work he did not perform. Respondent testified that he feels he has acknowledged his mistakes and he believes he could be an outstanding insurance adjuster because he excels at research. He would like to work for a company at first to learn the business; and if he were to open his own business, he would hire people to make sure he does not make the same mistakes again. The letters of recommendation Respondent submitted to the Department generally recommend Respondent as an honest, hard-working person.¹¹

D. Analysis

Pursuant to Texas Insurance Code § 4001.101(b)(5), the Department may deny a license application if the Department determines that the applicant has engaged in fraudulent or dishonest acts or practices. It was undisputed that between June 2018 and February 2019, Respondent accepted advance payments from five individuals for appraisals, and failed to either produce an appraisal report or issue a refund of the prepaid fees.¹²

Although Respondent testified that he would act differently today, the preponderance of the evidence does not establish that he is trustworthy. Specifically, the evidence that Respondent was previously disciplined by the TALCB in 2017 for accepting an advance fee without delivering an appraisal report; as well as Respondent's assertion that the individuals should have taken him to small claims court, indicates a lack of respect for the regulations in place to protect consumers and a willingness to engage in dishonest behavior.

Within the last five years, Respondent has had two disciplinary actions at the TALCB for accepting advance payments from individuals without delivering appraisal reports or refunding

¹¹ Staff Ex. 2 at 63-65.

¹² See Staff Ex. 2.

their payments. These actions are fraudulent and dishonest, and indicate he is not trustworthy. Accordingly, based on the preponderance of the evidence, the ALJ concludes that Respondent has failed to demonstrate his trustworthiness, and the Department should deny his application for licensure. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. On March 4, 2020, Jon Mark Anweiler (Respondent) applied for an Adjuster—All Lines License (License) with the Texas Department of Insurance (Department).
2. On March 27, 2020, staff (Staff) of the Department recommended denial of Respondent's application for lack of trustworthiness and engaging in fraudulent or dishonest acts or practices.
3. Respondent requested a hearing to challenge the proposed denial.
4. On September 10, 2021, Staff issued a notice of hearing on the proposed denial of Respondent's application.
5. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
6. The hearing in this case was held by telephone on November 8, 2021, before Administrative Law Judge Meitra Farhadi with the State Office of Administrative Hearings (SOAH). Staff was represented by staff attorney Casey Seeboth. Respondent represented himself. The hearing concluded that day, and the record closed on November 23, 2021, upon the filing of the transcript.
7. Respondent previously held a general real estate appraiser certification (Certification) issued by the Texas Appraiser Licensing and Certification Board (TALCB).
8. On February 28, 2020, the TALCB issued a Final Order revoking Respondent's Certification and imposing an administrative penalty. This action was based on Respondent's acceptance of advance payments from five individuals for appraisals, and his subsequent failure to produce an appraisal report or issue a refund of the prepaid fees.

9. Previously, in May 2017, Respondent entered into an Agreed Final Order with the TALCB, concerning Respondent's acceptance of an advance fee for an appraisal from a client to whom he did not deliver an appraisal report.
10. Respondent has engaged in fraudulent or dishonest acts or practices.
11. The insurance industry presents various opportunities for fraudulent behavior and for financial loss to different parties.
12. The preponderance of the evidence fails to demonstrate Respondent's trustworthiness to hold a License.

IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.101, 4005.101, 4051.051, 4054.051.
2. SOAH has authority to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Respondent received timely and sufficient notice of hearing. Tex. Gov't Code §§ 2001.051-.052.; Tex. Ins. Code § 4005.104(b).
4. To qualify for a License, an individual must, among other requirements, present evidence satisfactory to the Department that the applicant is trustworthy. Tex. Ins. Code § 4101.053(a)(2)(D).
5. The Department may deny a license application if the Department determines that the applicant has engaged in fraudulent or dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(5).
6. Respondent has the burden of showing by a preponderance of the evidence that his application for a License should be approved. 1 Tex. Admin. Code § 155.427.
7. By accepting advance payments from individuals for appraisals and failing to produce either an appraisal report or issue a refund of the prepaid fees, Respondent engaged in fraudulent or dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(5).
8. The Department should deny Respondent's application for License.

SIGNED January 14, 2022.



METRA FARHADI
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS