

No. 2020-6585

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

Date: 12/02/2020

Subject Considered:

Texas Department of Insurance
v.
Wilmer Roberto Trujillo Shenberger

SOAH Docket No. 454-20-1529.C

General remarks and official action taken:

The subject of this order is the application of Wilmer Roberto Trujillo Shenberger for a general lines agent license.

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 department grant Mr. Shenberger's application for a general lines agent license. A copy of the proposal for decision is attached as Exhibit A.

TDI filed exceptions to the administrative law judge's proposal for decision. Mr. Shenberger did not file a reply to the exceptions.

In response to the exceptions, the administrative law judge recommended revising the findings of fact and conclusions of law contained in the proposal for decision. The administrative law judge did not change the recommendation that TDI grant Mr. Shenberger's application for a license. A copy of the administrative law judge's response to exceptions is attached as Exhibit B.

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Findings of Fact

The findings of fact contained in Exhibit A as revised consistent with Exhibit B are adopted by TDI and incorporated by reference into this order.

Conclusions of Law

The conclusions of law contained in Exhibit A as revised consistent with Exhibit B are adopted by TDI and incorporated by reference into this order.

Order

It is ordered that Wilmer Roberto Trujillo Shenberger's application for a general lines agent license be granted.

Commissioner of Insurance

DocuSigned by:
Doug Slape
By: _____
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Doug Slape
Chief Deputy Commissioner
Tex. Gov't Code § 601.002
Commissioner's Order No. 2018-5528

Recommended and reviewed by:

DocuSigned by:
James Person
75578E954EFC48A...

James Person, General Counsel

DocuSigned by:
Justin Beam
27ADF3DA5BAF4B7...

Justin Beam, Assistant General Counsel

Exhibit A

SOAH DOCKET NO. 454-20-1529.C

<p>TEXAS DEPARTMENT OF INSURANCE</p> <p>v.</p> <p>WILMER ROBERTO TRUJILLO SHENBERGER, Applicant</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>BEFORE THE STATE OFFICE</p> <p>OF</p> <p>ADMINISTRATIVE HEARINGS</p>
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PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny the application of Wilmer Roberto Trujillo Shenberger for a general lines agent license based on his criminal history. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department approve Mr. Shenberger’s license application.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this case was held on February 4, 2020, before ALJ Meitra Farhadi at the State Office of Administrative Hearings in Austin, Texas. Staff was represented by staff attorney Casey Seeboth. Mr. Shenberger represented himself. The hearing concluded and the record closed the same day. Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below.

II. DISCUSSION

A. Background

On September 25, 2007, Mr. Shenberger pleaded guilty to making a false and fraudulent insurance claim, in Cause No. 48-07-CF-3056-O/A, in the Circuit Court of the Ninth Judicial District in and for Orange County, Florida.¹ Adjudication was deferred, and Mr. Shenberger was placed on probation for 18 months. He was ordered to perform 200 hours of community service,

¹ Staff Ex. 1 at 28.

report to a probation officer monthly, pay costs of \$20 per month, and comply with all conditions of the collections court.² Mr. Shenberger was discharged from his probation early, on December 5, 2008.³

On July 11, 2018, Mr. Shenberger applied for a general lines life, accident, and health license with the Department. On September 18, 2018, the Department proposed to deny his application based on his prior criminal record, and Mr. Shenberger timely requested a hearing.⁴

B. Applicable Law

The Department may deny a license application if the Department determines that the applicant has engaged in fraudulent or dishonest acts or practices.⁵ The Department, in accordance with Texas Occupations Code § 53.025, has developed guidelines relating to the matters which the Department will consider in determining whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction. The Department considers any offense for which fraud, dishonesty, or deceit is an essential element to be of such a serious nature that it is of prime importance in determining an applicant's fitness for licensure.⁶

Unless the Department finds the factors set out in 28 Texas Administrative Code § 1.502(h)(2) outweigh the seriousness of the criminal offense, the Department must deny a license application if the Department determines that the applicant has committed a felony or misdemeanor, or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation.⁷ The factors include:

1. the extent and nature of the person's past criminal activity;

² Staff Ex. 1 at 30-31.

³ Staff Ex. 1 at 33.

⁴ Staff Ex. 1 at 2-7.

⁵ Tex. Ins. Code § 4005.101(b)(5).

⁶ 28 Tex. Admin. Code § 1.502(e).

⁷ 28 Tex. Admin. Code § 1.502(f).

2. the age of the person when the crime was committed;
3. the amount of time that has elapsed since the person's last criminal activity;
4. the conduct and work activity of the person prior to and following the criminal activity;
5. evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and
6. other evidence of the person's present fitness, including letters of recommendation from:
 - a. prosecutor, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - b. the sheriff or chief of police in the community where the person resides; and
 - c. any other persons in contact with the convicted person; and
7. proof furnished by the applicant that the applicant has:
 - a. maintained a record of steady employment;
 - b. supported the applicant's dependents;
 - c. maintained a record of good conduct; and
 - d. paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant or holder has been convicted.⁸

Staff has the burden of producing evidence to show that Mr. Shenberger's application should be denied because he has a criminal history that supports denial of the registration.⁹ Once Staff produces such evidence, the burden shifts to Mr. Shenberger to show that he is fit for registration despite his criminal history.¹⁰

⁸ Tex. Occ. Code § 53.023. The Department has adopted these factors in its guidelines. 28 Tex. Admin. Code § 1.502(h).

⁹ 1 Tex. Admin. Code § 155.427.

¹⁰ 28 Tex. Admin. Code § 1.502(h)(3).

C. Evidence

Staff offered one exhibit, which was admitted, including Mr. Shenberger's application, along with information he provided about his conviction and letters of recommendation. Staff also called Jodie Delgado, the Manager of Administrative Review for the Department. Mr. Shenberger testified on his own behalf.

Mr. Shenberger admitted to making a false and fraudulent insurance claim in 2006 when he was 22 years old. He testified regarding the specifics of the underlying crime: that he was unable to sell his car due to mechanical issues with the car, and that close family members suggested he get rid of the car and make a false insurance claim. Mr. Shenberger stated that he left the keys in the car one night for someone to take it. Although he knew someone was disposing of the car, he did not know that the car was going to be destroyed. Mr. Shenberger testified that he falsely reported his car being stolen and that he knew what he was doing was wrong. He explained that the plan was to pretend his car was stolen, and make the insurance claim so that the insurance company would pay off the outstanding car note of approximately \$11,000-\$12,000.

Mr. Shenberger testified that he has learned a great deal from this mistake that he made over 13 years ago. He explained that it was a formative moment in his life, and that since that time he has taken great strides to better himself. Mr. Shenberger avowed that he completed community service, completed probation, and paid all of the fines. He has gone to school and earned a bachelors degree in business, he is now a husband and father, and he has not had any other criminal violations at all. Mr. Shenberger has been an active volunteer at his church, and has worked consistently while also obtaining his degree. Mr. Shenberger stated that his father-in-law is an insurance agent and that he wants the opportunity to be one as well. He stressed that he would not make the same mistake again, that he is not the same person he was in 2006 and wants to move forward with a second chance.

Mr. Shenberger sent in six letters of recommendation from friends, family members, and coworkers. They generally describe him as dependable and responsible, a person of integrity, a hard worker, and an asset to the community.¹¹

Ms. Delgado testified that Mr. Shenberger disclosed on his application that he had this criminal history, and after reviewing the factors set out in 28 Texas Administrative Code § 1.502, Staff proposed to deny his application. After listening to his testimony, Ms. Delgado explained that she would not change her recommendation to deny Mr. Shenberger's application because his testimony was consistent with the information he previously provided to the Department; thus, no new information was offered for her consideration.

D. Analysis

Under Texas Insurance Code § 4005.101(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 is undisputed that in 2006, Mr. Shenberger engaged in fraudulent or dishonest acts or practices when he made a fraudulent insurance claim. Pursuant to 28 Texas Administrative Code § 1.502(h), the Department will consider the factors listed in Texas Occupations Code §§ 53.022 and 53.023, set out above, in determining whether to grant Mr. Shenberger's license application.

Regarding these factors, the evidence established that Mr. Shenberger pleaded guilty to making a fraudulent insurance claim, a serious offense. Mr. Shenberger was 22 years old when his crime was committed. More than 13 years have elapsed since he committed the offense, and he completed his probation early in December 2008. There is no evidence of any additional criminal activity by Mr. Shenberger. He has established a good record of conduct, and has worked consistently since being released. He also has positive recommendations from members of his community. Mr. Shenberger was forthright in his testimony, accepted responsibility for his past mistake, and expressed remorse. He presented himself as a person with integrity who is committed

¹¹ Staff Ex. 1 at 36-41.

to his career and to his family. Given all the circumstances, at this point, Mr. Shenberger has shown his fitness for licensure.

Accordingly, the ALJ concludes that Mr. Shenberger's application for a general lines agent license should be granted. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. On July 11, 2018, Wilmer Roberto Trujillo Shenberger applied for a general lines life, accident, and health license with the Texas Department of Insurance (Department).
2. On September 18, 2018, the Department proposed to deny his application based on his criminal history
3. Mr. Shenberger requested a hearing to challenge the denial.
4. On December 9, 2019, the Department issued a notice of hearing on the denial of his 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 incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
6. The hearing in this case was held on February 4, 2020, before Administrative Law Judge Meitra Farhadi at the State Office of Administrative Hearings in Austin, Texas. The staff (Staff) of the Department was represented by staff attorney Casey Seeboth. Mr. Shenberger represented himself. The hearing concluded and the record closed the same day.
7. On September 25, 2007, Mr. Shenberger pleaded guilty to making a false and fraudulent insurance claim, in Cause No. 48-07-CF-3056-O/A, in the Circuit Court of the Ninth Judicial District in and for Orange County, Florida. Adjudication was deferred, and Mr. Shenberger was placed on probation for 18 months. He was ordered to perform 200 hours of community service, report to a probation officer monthly, pay costs of \$20 per month, and comply with all conditions of the collections court. Mr. Shenberger completed the terms of his probation and was discharged from his probation early, on December 5, 2008.

8. Mr. Shenberger was 22 years old when he committed the felony offense.
9. Over 13 years have passed since Mr. Shenberger committed the offense. He has not had any other criminal violations since that time.
10. Mr. Shenberger has earned a bachelors degree and had a consistent work history since the commission of his offense.
11. Mr. Shenberger has earned respect and trust from his colleagues and acquaintances.
12. Mr. Shenberger is rehabilitated and is a better person today than when he committed his offense.
13. The preponderance of the evidence demonstrates Mr. Shenberger's current fitness to hold a license.

IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, .105, 4005.101.
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. Mr. Shenberger received timely and sufficient notice of hearing. Tex. Gov't Code §§ 2001.051-.052.; Tex. Ins. Code § 4005.104(b).
4. The Department may deny a license if the Department determines that the applicant has engaged in fraudulent or dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(5).
5. Mr. Shenberger has shown the fitness required to perform the duties and discharge the responsibilities of the licensed occupation. Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(h)(2).
6. The Department should approve Mr. Shenberger's application for a license.

SIGNED April 2, 2020.



MEITRA FARHADI
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



Exhibit B

State Office of Administrative Hearings

Kristofer Monson
Chief Administrative Law Judge

July 20, 2020

Kent Sullivan
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe, Tower 1, 13th Floor, Mail Code 113-2A
Austin, Texas 78714

VIA INTER-AGENCY MAIL

RE: Docket No. 454-20-1529.C; *Texas Department of Insurance v. Wilmer Roberto Trujillo Shenberger*

Dear Commissioner Sullivan:

On April 2, 2020, the Administrative Law Judge (ALJ) issued the Proposal for Decision (PFD) in this case. The staff of the Texas Department of Insurance (Staff) timely filed exceptions on April 16, 2020. Wilmer Roberto Trujillo Shenberger (Applicant) did not file any exceptions and did not respond to Staff's exceptions.

Staff excepts to Conclusions of Law (COL) No. 6, as a legal recommendation and not a legal conclusion. The ALJ agrees and recommends removing COL No. 6.

Staff also excepts to the lack of a Finding of Fact (FOF) about the serious nature of the crime that Respondent committed. While FOF No. 7 states that Respondent pleaded guilty to making a false and fraudulent insurance claim, the ALJ agrees that the addition of the following FOF is supported by the record and should be added:

FOF No. 7a. Making a false and fraudulent insurance claim is a serious offense.

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Exceptions Letter by ALJ

July 20, 2020

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Lastly, Staff excepts to FOF No. 11 as not supported by the evidence. Specifically, Staff argues that the letters of recommendation in Staff Ex. 1 should not have been relied on by the ALJ because they contain hearsay statements. The ALJ disagrees that the evidence does not support FOF No. 11. The letters of recommendation were admitted as part of Staff Ex. 1 and given the appropriate weight by the ALJ when making the finding.

The ALJ does not recommend any other changes to the Proposal for Decision.

Sincerely,



Meitra Farhadi
Administrative Law Judge

MF/lc

cc: Casey Seeboth, Staff Attorney, Texas Department of Insurance, 333 Guadalupe, Tower 1, 13th Floor, Austin, Texas 78701 VIAE-FILE TEXAS
Wilmer Roberto Trujillo Shenberge [REDACTED] El Paso, TX 79912 - VIA E-FILE TEXAS