

No. 2023-8030

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

Date: 6/20/2023

Subject Considered:

Texas Department of Insurance v.
Joseph Anthony Borino, Jr.

SOAH Docket No. 454-23-07200.C

General Remarks and Official Action Taken:

The subject of this order is Joseph Anthony Borino, Jr.'s general lines agent license with a life, accident, health, and HMO qualification. This order revokes Mr. Borino's license.

Background

After proper notice was given, a hearing was scheduled for the above-styled case. Prior to the hearing, the Texas Department of Insurance (TDI) filed a motion for summary disposition. Mr. Borino did not respond to the motion.

An administrative law judge for the State Office of Administrative Hearings granted the motion for summary disposition and canceled the hearing.

The administrative law judge made and filed a proposal for decision concluding that TDI is required by law to revoke Mr. Borino's license. A copy of the proposal for decision is attached as Exhibit A.

Findings of Fact

The findings of fact contained in Exhibit A are adopted by the commissioner and incorporated by reference into this order.

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Conclusions of Law

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

Order

It is ordered that Joseph Anthony Borino, Jr.'s general lines agent license with a life, accident, health, and HMO qualification is revoked.

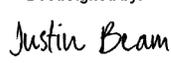
DocuSigned by:

FC5D7EDDFB4F8... _____
Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

5DAC5618BBC74D4... _____
Jessica Barta, General Counsel

DocuSigned by:

27ADF3DA5BAF4B7... _____
Justin Beam, Assistant General Counsel

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS DEPARTMENT OF INSURANCE,
PETITIONER
v.
JOSEPH ANTHONY BORINO, JR.,
RESPONDENT**

PROPOSAL FOR DECISION ON SUMMARY DISPOSITION

Staff of the Texas Department of Insurance (Department) filed a timely Motion for Summary Disposition contending that Respondent Joseph Anthony Borino, Jr.'s general lines agent license has been revoked by operation of law based on his imprisonment for a felony. Staff's Motion is GRANTED; the hearing on the merits scheduled for June 13, 2023, is CANCELLED; and, based on the undisputed evidence, the Department is required to revoke Mr. Borino's license.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Issues of jurisdiction and notice were undisputed. Therefore, those matters are set out in the Findings of Fact and Conclusions of Law.

The case was set for a hearing on June 13, 2023. On March 7, 2023, Staff timely filed its Motion and supporting evidence. Mr. Borino was served with the Motion at his residential (and mailing) address of record with the Department, via email, via fax, and at his current address at the FMC Fort Worth. Mr. Borino did not file a response.¹

II. SUMMARY DISPOSITION EVIDENCE

The summary disposition evidence establishes the following relevant facts:

1. Joseph Anthony Borino, Jr., individual identification number 385301, holds a general lines agent license with a life, accident, and HMO qualification issued by the Department on November 27, 1984.²
2. Mr. Borino’s license does not expire until December 31, 2024.³
3. Mr. Borino pleaded guilty to a federal felony (Misprision of a Felony) in case number 2:19-cr-00237-WBV-MBN, in the United States

¹ Mr. Borino filed an answer with SOAH on January 18, 2023. In his answer, he explained that in the past two years, he had a stroke and his wife passed away. He also attached an August 1, 2020 letter (which states it is a notification in writing of his indictment “as requested when [he] went to renew [his] license,” a June 2021 e-mail string between himself and Staff, a November 7, 2022 letter from attorney Dylan Utley including an explanation of Mr. Borino’s misprison conviction, the results of an October 2, 2020 polygraph examination, and a November 27, 2022 email from Mr. Bornio to Judge Vitter detailing his explanation of relevant events.

² Staff Ex. 1.

³ Staff Ex. 1.

District Court, Eastern District of Louisiana. On November 1, 2022, the court adjudicated his guilt and sentenced him to twelve months and one day of imprisonment, followed by one year of supervised release.⁴

4. On November 1, 2022, the United States District Court, Eastern District of Louisiana, ordered Mr. Borino to surrender for service of his sentence with the Bureau of Prisons before February 13, 2023.⁵
5. Mr. Borino is an inmate currently incarcerated following his felony conviction at FMC Fort Worth within the federal bureau of prisons.⁶

III. APPLICABLE LAW

Summary disposition of a contested case may be granted, in full or in part, without the necessity of a hearing on the merits if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion.⁷

Texas Occupations Code section 53.021(b) states that “[a] license holder’s license shall be revoked on the license holder’s imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or

⁴ Staff Exs. 2, 3.

⁵ Staff Ex. 4.

⁶ Staff Exs. 5, 6.

⁷ 1 Tex. Admin. Code § 155.505(a).

revocation of mandatory supervision.” Staff has the burden of proving Mr. Borino’s license should be revoked.⁸

IV. ANALYSIS

Texas Occupations Code section 53.021(b) requires the licensing agency to revoke a license under the circumstances at bar. The undisputed summary disposition evidence conclusively shows that Mr. Borino has been imprisoned following a felony conviction. Therefore, the Department is required by law to revoke Mr. Borino’s license. There are no genuine issue of material fact in this matter, and the Department is entitled to a decision in its favor as a matter of law. Accordingly, Staff’s Motion for Summary Disposition is **GRANTED**.

V. FINDINGS OF FACT

1. Joseph Anthony Borino, Jr., individual identification number 385301, holds a general lines agent license with a life, accident, and HMO qualification issued by the Texas Department of Insurance (Department) on November 27, 1984.
2. Mr. Borino’s license does not expire until December 31, 2024.
3. Mr. Borino pleaded guilty to a federal felony (Misprision of a Felony) in case number 2:19-cr-00237-WBV-MBN in the United States District Court, Eastern District of Louisiana. On November 1, 2022, the court adjudicated his guilt and sentenced him to twelve months and one day of imprisonment, followed by one year of supervised release.
4. On November 1, 2022, the United States District Court, Eastern District of Louisiana, ordered Mr. Borino to surrender for service of his sentence with the Bureau of Prisons before February 13, 2023.

⁸ 1 Tex. Admin. Code § 155.427.

5. Mr. Borino is an inmate currently incarcerated at FMC Fort Worth.
6. On December 14, 2022, Staff for the Department (Staff) filed a notice of hearing at the State Office of Administrative Hearings (SOAH) to revoke Mr. Borino's license. The notice 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.
7. On March 7, 2023, Staff filed a motion for summary disposition (Motion). The Motion was filed more than thirty days before the scheduled hearing date and contained the information required by 1 Texas Administrative Code section 155.505.
8. The Motion was served on Mr. Borino at his residential (and mailing) address of record with the Department, via email, via fax, and at his current address at the FMC Fort Worth.
9. Mr. Borino did not respond to the Motion.

VI. CONCLUSIONS OF LAW

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to Texas Insurance Code sections 82.051-.055, 4001.002, 4005.101-.102, and 4054.051.
2. The State Office of Administrative Hearings has jurisdiction to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Staff's Motion was timely, complete, and properly served on Mr. Borino pursuant to 1 Texas Administrative Code section 155.505.
4. Summary disposition shall be granted if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled

to a decision in its favor as a matter of law on the issues expressly set out in the motion. 1 Tex. Admin. Code § 155.505(a).

5. Because there is no genuine issue of material fact, summary disposition is appropriate. 1 Tex. Admin. Code § 155.505.
6. The Department is required to revoke Mr. Borino's license pursuant to Texas Occupations Code section 53.021(b).

Signed April 18, 2023.

ALJ Signature:

A handwritten signature in blue ink, appearing to read "Megan Johnson", is written over a horizontal line.

Megan Johnson

Presiding Administrative Law Judge

2023-8030

Automated Certificate of eService

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Filing Code Description: Proposal for Decision on Summary Disposition

Filing Description: PROPOSAL FOR DECISION ON SUMMARY DISPOSITION

Status as of 4/18/2023 4:23 PM CST

Associated Case Party: Texas Department of Insurance

Name	BarNumber	Email	TimestampSubmitted	Status
Rachel Cloyd		Rachel.Cloyd@tdi.texas.gov	4/18/2023 3:47:05 PM	SENT
Anna Kalapach		Anna.Kalapach@tdi.texas.gov	4/18/2023 3:47:05 PM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	4/18/2023 3:47:05 PM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	4/18/2023 3:47:05 PM	SENT

Associated Case Party: JOSEPH ANTHONYBORINO, JR.

Name	BarNumber	Email	TimestampSubmitted	Status
Joseph AnthonyBorino, Jr		[REDACTED]	4/18/2023 3:47:05 PM	SENT
JOSEPH ANTHONY BORINO, JR.		[REDACTED]	4/18/2023 3:47:05 PM	ERROR