

No. 4627

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

Date: **AUG 15 2016**

Subject Considered:

Texas Department of Insurance

v.

Morris James Montgomery

SOAH Docket No. 454-15-1030C

General remarks and official action taken:

The commissioner of insurance considers the application of Morris James Montgomery (Montgomery) for an adjuster all lines insurance license. Following a hearing before the State Office of Administrative Hearings, the administrative law judge submitted a proposal for decision containing findings of fact and conclusions of law, recommending that the Texas Department of Insurance (TDI) grant Montgomery a license.

TDI staff filed exceptions to the administrative law judge's proposal for decision. The administrative law judge responded by correcting some technical errors, but maintained the overall proposed findings, conclusions, and recommendation.

The commissioner accepts the corrected proposed findings of fact, conclusions of law, and recommendation of the ALJ, with non-substantive formatting and style changes, and with the change described in the following paragraphs.

As demonstrated in prior administrative decisions issued by TDI, the commissioner frequently requires that TDI monitor the activities of individuals granted licenses in situations where the applicant has a criminal background and, absent a finding of sufficient mitigating factors, information in the individual's application might otherwise warrant denial of the license. The purpose of such monitoring is to ensure that the licensee demonstrates the ability, capability, and fitness required to perform and discharge the responsibilities of one who holds the license.

In this case, the findings of facts show that Montgomery previously held a license issued by the department, but that license was revoked because Montgomery engaged in conversion and misappropriated to his own use or withheld moneys belonging to an insurer and committed fraudulent or dishonest acts in violation of the

Texas Insurance Code. Therefore, this order includes terms and conditions with which Montgomery must comply to provide TDI with information necessary to monitor his activities.

FINDINGS OF FACT

1. On April 29, 2014, TDI proposed to deny the application of Morris James Montgomery. Montgomery requested a hearing to challenge the denial.
2. On July 16, 2015, TDI issued an amended notice of hearing on the contested denial of the application.
3. The amended 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 a short, plain statement of the matters asserted.
4. The hearing on this case was convened on September 30, 2015, at the offices of the State Office of Administrative Hearings (SOAH) in Austin, Texas, before Administrative Law Judge Joanne Summerhays. Staff was represented by staff attorney Erin Dinsmore. Montgomery represented himself. The record closed on December 16, 2015, to allow the parties to submit written closing arguments.
5. TDI issued an Adjuster Workers' Compensation License to Montgomery on March 14, 2001. From February 1999 to June 2002, Montgomery served as a Claims Case Manager with Liberty Mutual Insurance Company (Liberty Mutual), in Irving, Texas.
6. On May 21, 2004, in Default Order No. 04-0519 (the order), the commissioner of insurance (commissioner) revoked Montgomery's license. The commissioner concluded that, while employed with Liberty Mutual, Montgomery engaged in conversion and misappropriated to his own use or withheld moneys belonging to an insurer and committed fraudulent or dishonest acts in violation of the Texas Insurance Code.

7. On September 27, 2005, the 204th Judicial District Court of Dallas County, Texas issued an order of deferred adjudication, ordering Montgomery to pay court costs and to remain on community supervision for 2 years for misapplication of fiduciary property in excess of \$1,500 but less than \$10,000. The court entered an order discharging Montgomery from community supervision without adjudication of guilt on September 27, 2007.
8. On February 22, 2013, Montgomery was issued a non-disclosure order which authorized him to refrain from disclosing the criminal proceeding on "any application for employment, information, or licensing." The non-disclosure order also prohibited criminal justice agencies from disclosing criminal history record information except to certain entities.
9. The conduct underlying Montgomery's deferred adjudication involved a scheme to file fraudulent mileage reimbursement claims between January 15, 2002, and May 29, 2002. Through this scheme, Montgomery obtained 16 fraudulent reimbursement checks totaling \$17,747.29.
10. Montgomery has engaged in no other known criminal conduct since he was involved in the scheme to misappropriate money from Liberty Mutual.
11. At the time of his criminal misconduct, Montgomery was 27 years old.
12. Montgomery's last known criminal activity was 13 years ago.
13. The deferred adjudication imposed by the court and the subsequent discharge without adjudication does not reflect that the court considered Montgomery a threat to the public.
14. Montgomery graduated from college in 1998 with a degree in Business Administration. He began working for Liberty Mutual in 1999. He obtained his insurance license in 2001.
15. In 2002, Liberty Mutual began an investigation of Montgomery's files and discovered the fraudulent mileage reimbursement claims. Montgomery was subsequently terminated.
16. Montgomery then went to work at Chubb Insurance Company (Chubb). When his license was revoked in 2004, he lost his job at Chubb.
17. Montgomery paid full restitution to Liberty Mutual before he was placed on deferred adjudication.

18. After his license revocation, Montgomery worked at six other jobs. Seven job applications were rejected because of his criminal history.
19. In July 2013, Montgomery began working at National Teachers Association Life Insurance (NTA) as a customer service representative. He was hired there even though NTA was aware of his criminal history. In the two and a half years he has been employed at NTA, NTA has trusted him with sensitive customer information, given him access to financial transactions, commended him multiple times for excellent customer service, and rated his performance highly on an evaluation.
20. Montgomery married and had a child in the years since his license was revoked. He began going to church and has had leadership roles there. He has mentored others and used his experience to teach others, including his child, the importance of honesty. He volunteers in the community.
21. Montgomery submitted four letters of recommendation. The letters were from people who knew him at work, in the community, and through his church. Two of the letters expressly indicated that Montgomery had talked to the writers about his criminal history and the basis for his license revocation, which gave the letters more weight in terms of evaluating rehabilitation.
22. Along with his application, Montgomery provided TDI with information regarding his criminal history.
23. Montgomery did not reveal his license revocation on his application because he thought the non-disclosure order did not require him to and because he believed TDI was aware of its previous administrative proceeding resulting in his license revocation.
24. Montgomery demonstrated his rehabilitation through evidence of his contriteness, his payment of restitution, his fulfillment of the terms of his deferred adjudication, the discharge by the court of his deferred adjudication, avoiding further misconduct for over 10 years, his support of his dependents, his service to his community and church, and his work history.
25. The preponderance of the evidence established Montgomery's current fitness to hold a license and good cause for why the prior revocation of his license should not be a bar to granting his license application.

CONCLUSIONS OF LAW

1. TDI has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, 4001.105, 4005.101.
2. SOAH has authority to hear this matter and issue a proposal for decision with findings of fact and conclusion of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Montgomery was sent timely and sufficient notice of hearing. Tex. Gov't Code ch. 2001; Tex. Ins. Code § 4005.104(b).
4. In 2002, Montgomery committed fraudulent or dishonest acts that directly related to the duties and responsibilities of an insurance agent and misappropriated money belonging to an insurer. Tex. Ins. Code § 4005.101(b)(4) and (5); 28 Tex. Admin. Code § 1.502(d) and (f).
5. TDI may not consider Montgomery's deferred adjudication a conviction or as grounds to deny his license application. Tex. Occ. Code § 53.021(d).
6. Montgomery had the burden of proof to show good cause why the prior revocation of his license should not be a bar to licensure. Tex. Ins. Code § 4005.105(c); 1 Tex. Admin Code § 155.427.
7. Montgomery's efforts at rehabilitation; his payment of restitution; his fulfillment of the terms of his deferred adjudication and his discharge; his acknowledgement of his wrong doing; his support of his dependents; his lack of subsequent criminal history; his work history; his service to his church and community; his youth at the time of the conduct; and the length of time since his last known criminal misconduct constitute good cause as to why the prior revocation should not be a bar to licensure. Tex. Ins. Code § 4005.105; 28 Tex. Admin. Code § 1.502(h).
8. TDI should approve Montgomery's application for a license.

The commissioner of insurance orders that Morris James Montgomery's application for an adjuster all lines insurance license be approved.

The commissioner further orders that Montgomery's all lines insurance license is suspended for two years. The suspension is probated, and during the period of probation, Montgomery must comply with the following terms and conditions:

Montgomery must file quarterly reports during the probated suspension with the Texas Department of Insurance, Attn: Catherine Bell, Enforcement Section, Mail Code II 0-IA, P.O. Box 149104, Austin, Texas 78714-9104, or her successor. Ms. Bell will provide the appropriate form for reporting.

- a. The first report is due 30 days from the date of this order. Subsequent reports must be filed by the 15th day of each quarter.
- b. Each report will cover activities that occurred during the previous quarter. The initial report must provide all of the information below. Subsequent reports must include information which was not previously provided or has changed.
 - i. Montgomery's current business and mailing addresses, business telephone numbers, and hours of operation,
 - ii. a copy of any written complaint made against Montgomery concerning his performance as an insurance adjuster, and a description of the action taken to resolve the complaint, and
 - iii. a written description of any verbal complaint made against Montgomery concerning his performance as an insurance adjuster, and a written explanation detailing the steps taken to resolve the complaint.
- c. Montgomery must provide immediate notification to TDI of the following:
 - i. any order modifying, discharging, terminating, or revoking criminal probation;
 - ii. any information, indictment, or other instrument charging or indicting him for any misdemeanor or felony offense, excluding traffic offenses and Class C misdemeanors;
 - iii. any administrative actions taken against him by a financial or insurance regulator of the state of Texas, another state, or by the federal government;
 - iv. any change in his employment; and
 - v. any change of his resident address.

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David C. Mattax
Commissioner of Insurance