

No. 2018- 5492

**OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE**

Date: MAY 0 4 2018

Subject Considered:

ANSELL VAN SIMS
7506 Hunter Point Drive
Sugarland, Texas 77479

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 13388

General remarks and official action taken:

The subject of this order is whether a general lines agent license with a life, accident, and health qualification should be issued to Ansell Van Sims (Sims).

WAIVER

Sims acknowledges that the Texas Insurance Code and other applicable laws provide certain rights. Sims waives all of these rights in consideration of the entry of this consent order.

FINDINGS OF FACT

License Application

1. Sims submitted an application for a general lines agent license with a life, accident and health qualification to be issued by the Texas Department of Insurance. The department proposed to deny Sims' license application based on his criminal history, and Sims made a written request for a hearing.

Criminal History

2. In 1993, Sims began working at Century Premier Associates (Century), a telemarketing company that sold promotional items over the phone. As a telemarketer, Sims was hired to call individuals and make sales over the phone, reading from a script provided to him by his employer. The script required Sims to promote items of great monetary value, but in actuality, the customers received inexpensive cleaning products.
3. Century was investigated by the Federal Bureau of Investigation (FBI) and shut down.

4. Sims was charged with mail fraud involving four checks, totaling \$2,550.36. The four checks were sent from consumers to Century, as a result of the telemarketing scheme.
5. Sims cooperated with the FBI, and in exchange for his testimony against the owner of the company, Sims was offered a plea deal for probation and restitution.
6. On March 7, 1994, Sims was convicted of felony mail fraud in cause no. M0-93-CR-077, in the United States District Court, Western District of Texas, Midland/Odessa Division. Sims was sentenced to five years of probation and ordered to pay \$2,550.36 in restitution.
7. Sims complied with the terms of his probation and paid his restitution in full.
8. Sims' probation was terminated satisfactorily on June 30, 1998.
9. Sims failed to disclose his criminal history on his license application. Sims asserts that he failed to disclose his criminal history because he believed it had been removed from his record and that he did not intend to defraud the department.

Evidence of Rehabilitation

10. Sims cooperated extensively and timely with the department in its investigation of his criminal background. Sims provided evidence of his rehabilitation to support his fitness for licensure.
11. In accordance with the requirements of TEX. OCC. CODE § 53.025, the department 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, as described in 28 TEX. ADMIN. CODE §§ 1.502(e)-1.502(k).
12. Pursuant to 28 TEX. ADMIN. CODE § 1.502(e)(1), among the crimes the department considers to be of such a serious nature that they are of prime importance in determining fitness for licensure are crimes for which fraud, dishonesty, or deceit is an essential element.
13. Sims' 1994 conviction for mail fraud is included in the crimes the department considers to be of such a serious nature that they are of prime importance in determining fitness for licensure pursuant to 28 TEX. ADMIN. CODE § 1.502(e)(1).
14. Pursuant to 28 TEX. ADMIN. CODE § 1.502(f), the department may issue a license if the applicant has engaged in criminal activity described in 28 TEX. ADMIN. CODE § 1.502(e)(1) if the commissioner determines that the serious nature of the criminal activity is outweighed by the rehabilitative factors described in 28 TEX. ADMIN. CODE § 1.502(h).

15. 28 TEX. ADMIN. CODE § 1.502(h) specifically tracks the rehabilitative factors listed in TEX. OCC. CODE §§ 53.022 and 53.023 that the department must consider in determining whether those factors outweigh the serious nature of the applicant's criminal history.
16. TEX. OCC. CODE § 53.022 and 28 TEX. ADMIN. CODE § 1.502(h)(1) describe the initial factors the department must consider in determining whether issuance of the license is appropriate:

FACTORS IN DETERMINING WHETHER CONVICTION RELATES TO OCCUPATION. In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

- (1) the nature and seriousness of the crime;
 - (2) the relationship of the crime to the purposes for requiring a license to engage in the licensed occupation;
 - (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
 - (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.
17. Considering the factors outlined in TEX. OCC. CODE ANN. § 53.022 and 28 TEX. ADMIN. CODE § 1.502(h)(1), Sims' 1994 conviction for mail fraud directly relates to the occupation of an insurance agent because "the special nature of the relationship between licensees...and the public with respect to insurance and related businesses regulated by the department requires that the public place trust in and reliance upon such persons due to the complex and varied nature of insurance and insurance-related products." 28 TEX. ADMIN. CODE §§ 1.502(a), 1.502(e)(1), and 1.502(e)(4)(F).
 18. TEX. OCC. CODE ANN. § 53.023 and 28 TEX. ADMIN. CODE § 1.502(h)(2) describe additional factors the department must consider in determining whether issuance of the license is appropriate:

ADDITIONAL FACTORS FOR LICENSING AUTHORITY TO CONSIDER.

- (a) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in Section 53.022:
 - (1) the extent and nature of the person's past criminal activity;
 - (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 before and after the criminal activity;

- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
 - (6) other evidence of the person's fitness, including letters of recommendation from:
 - (A) prosecutors and 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 person in contact with the convicted person.
 - (b) The applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by Subsection (a)(6).
 - (c) In addition to fulfilling the requirements of Subsection (b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has:
 - (1) maintained a record of steady employment;
 - (2) supported the applicant's dependents;
 - (3) maintained a record of good conduct; and
 - (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.
19. In consideration of TEX. OCC. CODE § 53.023(a)(1) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(A), Sims has only one conviction, which was very limited in nature and was the result of a telemarketing scheme constructed by his employer.
 20. In consideration of TEX. OCC. CODE § 53.023(a)(2) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(B), Sims' only conviction occurred in 1994 when he was 26 years old.
 21. In consideration of TEX. OCC. CODE § 53.023(a)(3) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(C), it has been 24 years since Sims' only conviction.
 22. In consideration of TEX. OCC. CODE §§ 53.023(a)(4)-(5) and 53.023(c)(1), and 28 TEX. ADMIN. CODE §§ 1.502(h)(2)(D), 1.502(h)(2)(E), and 1.502(h)(2)(G)(i), Sims has provided the department with evidence demonstrating his commitment to rehabilitation while on probation and after probation. Sims has provided the department with a detailed resume and explanation of his education and employment history. He has been steadily employed before, during, and after his single conviction. He has been employed at Grundfos CBS, a full-range pump supplier, in Brookshire, Texas, since September 1, 2016, where he is the Director of Customer Service. At his current job, Sims manages a department budget of over five million dollars annually. Sims also has a \$650 per month car allowance and a company issued credit card, for which he has reported there have been no problems.

23. In consideration of TEX. OCC. CODE § 53.023(a)(6) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(F), the department received three letters of recommendation, including letters from his current and former employers, who are aware of Sims' criminal history and consistently refer to him as honest, trustworthy, and of high integrity.
24. In consideration of TEX. OCC. CODE § 53.023(c)(2) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(G)(ii), Sims has supported and currently supports his two children, who are both in college.
25. In consideration of TEX. OCC. CODE § 53.023(c)(3) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(G)(iii), Sims has maintained a record of good conduct without any criminal convictions since his single conviction in 1994 - 24 years ago. Sims' probation ended on June 30, 1998.
26. In consideration of TEX. OCC. CODE § 53.023(c)(4) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(G)(iv), Sims has provided the department with evidence that he has paid all court costs and restitution in full.
27. The factors described in 28 TEX. ADMIN. CODE § 1.502(h) and TEX. OCC. CODE §§ 53.022 and 53.023 outweigh the serious nature of Sims' 1994 conviction.
28. Due to Sims' criminal background, the department needs the opportunity to monitor his insurance activities to ensure he demonstrates the ability, capacity, and fitness required to perform and discharge the responsibilities of a licensed insurance agent.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051-82.055, 4005.101, 4005.102, and 4054.051; TEX. GOV'T CODE §§ 2001.051-2001.178; 28 TEX. ADMIN. CODE § 1.502; and TEX. OCC. CODE §§ 53.021-53.023.
2. The commissioner has the authority to dispose of this case informally pursuant to the provisions of TEX. GOV'T CODE § 2001.056, 28 TEX. ADMIN. CODE § 1.47, and TEX. INS. CODE § 82.055.
3. Sims has knowingly and voluntarily waived all procedural rights to which he may have been entitled regarding the entry of this order, including, but not limited to, issuance and services of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. Sims committed an act for which the department may deny a license under TEX. INS. CODE §§ 4001.105 and 4005.101(b)(8).

5. Pursuant to 28 TEX. ADMIN. CODE § 1.502(f), the commissioner has determined that the factors in TEX. OCC. CODE §§ 53.022-53.023 outweigh the serious nature of Sims' criminal conviction.
6. The commissioner is an insurance regulatory official authorized to regulate Sims' activities in the business of insurance. The commissioner has primary jurisdiction to grant Sims written consent to engage or participate in the business of insurance, pursuant to 18 U.S.C. § 1033.

It is ordered that a general lines agent license with a life, accident and health qualification is granted to Ansell Van Sims. It is further ordered that the general lines agent license with a life, accident and health qualification is suspended for two years, probated.

If during the probation period imposed by this order, the department issues any additional licenses or authorizations to Sims, those additional licenses or authorizations will be suspended until the probation period imposed by this order has ended. The suspension shall be probated, and the same terms and conditions stated in this order will apply.

Beginning from the date of this order and continuing through the probation period, Sims must provide written notice of his criminal record to any appointing company, agency, or sponsor. Sims must provide the department with a copy of the notification within 30 days of the appointment of sponsorship by sending it to the Texas Department of Insurance, Attn: Catherine Bell or her successor, Enforcement Section, Mail Code 110-1A, P.O. Box 149104, Austin, Texas 78717-9104.

Beginning from the date of this order and continuing through the probation period, Sims must file a written report, on or before the 15th day of each month on a quarterly basis for the months of March, June, September, and December; with the Texas Department of Insurance, Attn: Catherine Bell or her successor, Enforcement Section, Mail Code 110-1A, P.O. Box 149104, Austin, Texas 78714-9104. The reports must include the following information:

- a. Sims' current mailing address and telephone number;
- b. the name, mailing address, and telephone number of Sims' employer, and if Sims is self-employed, a statement that he is self-employed and the name, mailing address, and telephone number of his business;
- c. the name and address of any insurer which has appointed Sims as a general lines agent;
- d. the name and address of any insurer which has canceled Sims' appointment as a general lines agent; and
- e. a copy of any and all contracts Sims has entered into with an insurer, broker, managing general agent, managing general agency, or any person or entity in the business of insurance.

Sims must notify the department immediately of the following:

- a. any charges or indictments filed against him for a misdemeanor or felony during

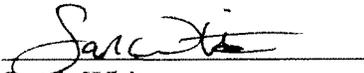
- the period he is required to file reports, excluding traffic offenses and Class C misdemeanors;
- b. any state or regulatory actions taken against him including formal and informal actions;
 - c. any change in his employment or his residence; and
 - d. any complaint made against Sims concerning his performance as a general lines agent, as well as a written explanation detailing the steps taken to resolve it.

Written consent, as contemplated by 18 U.S.C. § 1033(e)(2), is granted for Sims to engage or participate in the business of insurance with respect to persons who are domiciled in and risks and subjects of insurance that are resident, located, or to be performed in Texas. This written consent will remain in effect as long as Sims renews his general lines license with a life, accident and health qualification. This written consent terminates immediately if any insurance license or authorization held by Sims is suspended or revoked.



Kent C. Sullivan
Commissioner of Insurance

APPROVED AS TO FORM AND CONTENT:



Sarah White
Staff Attorney, Enforcement Section
Texas Department of Insurance

