

No. 2019-6079

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

Date: SEP 09 2019

Subject Considered:

Rosie Hardway Thomas
8809 Tuscan Hills Dr.
Garden Ridge, Texas 78266-2211

Consent Order
TDI Enforcement File No. 16145

General remarks and official action taken:

The subject of this consent order is whether a general lines agent license with a life, accident, and health qualification should be issued to Rosie Hardway Thomas (Thomas). The Texas Department of Insurance proposed to deny the license due to Thomas's criminal history. Thomas has provided rehabilitative evidence that outweighs the serious nature of her criminal history. This order grants a general lines agent license with a life, accident, and health qualification to Thomas subject to the terms of the four-year probated suspension detailed in this order.

Waiver

Thomas acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Thomas waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

Findings of Fact

License Application

1. On May 10, 2017, Thomas applied for a general lines agent license with a life, accident, and health qualification to be issued by the Texas Department of Insurance.

2. On April 24, 2018, the department proposed to deny Thomas's application based on her criminal history. Thomas timely submitted a written request for a hearing, but this matter was ultimately resolved without a hearing as set forth below.

Criminal History

3. On December 11, 1991, Thomas pleaded guilty to the offense of larceny, a misdemeanor, in case no. 29094-2, in the County Court at Law No. 2 of Williamson County, Texas. Thomas was placed on deferred adjudication for 18 months. On August 30, 1993, Thomas's deferred adjudication was revoked and she was sentenced to 150 days confinement.
4. On August 6, 1991, Thomas pleaded guilty to the offense of insufficient funds check, a class B misdemeanor, in case no. 19384, in the County Court of Milam County, Texas. Thomas was ordered to pay a \$100 fine.
5. On July 13, 1994, Thomas pleaded guilty to the offense unauthorized use of a motor vehicle, a third degree felony, in case no. 18725, in the 20th Judicial District Court of Milam County, Texas. Thomas was placed on deferred adjudication for seven years. On May 5, 1997, Thomas's deferred adjudication was revoked and Thomas was sentenced to seven years confinement. On March 4, 1999, Thomas was released on mandatory supervision. On January 10, 2002, Thomas was discharged from mandatory supervision.
6. On August 10, 1994, Thomas pleaded guilty to the offense of theft in the amount of \$200 but less than \$750, a misdemeanor, in case no. 13336, in the Burleson County Court. Thomas was sentenced to 90 days confinement followed by one year of probation.
7. On March 31, 1995, Thomas pleaded guilty to the offense of forgery, a third degree felony, in case no. 18259, in the 20th Judicial District Court of Milam County, Texas. Thomas was sentenced to three years confinement and ordered to pay restitution. Thomas's sentence was suspended and she was placed on probation for 10 years. On May 5, 1997, Thomas's probation was revoked and she was sentenced to three years confinement to run concurrently with the unauthorized use of a motor vehicle conviction in case no. 18725. On March 4, 1999, Thomas was released on mandatory supervision. On January 10, 2002, Thomas was discharged from mandatory supervision.

8. On March 31, 1995, Thomas pleaded guilty to the offense of burglary of a building, a state jail felony, in case no. 18840, in the 20th Judicial District Court of Milam County, Texas. Thomas was sentenced to two years confinement. Thomas's sentence was suspended and she was placed on probation for three years. On May 5, 1997, Thomas's probation was revoked and she was sentenced to two years confinement.

9. On February 1, 1996, Thomas pleaded guilty to the offense of false report to a police officer, a class B misdemeanor, in case no. 22401, in the County Court of Milam County, Texas. Thomas was sentenced to six days confinement.

Evidence of Rehabilitation

10. Thomas has cooperated extensively and timely with the department in its investigation of her criminal background. Thomas provided evidence of her rehabilitation to support her 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) and 1.502(e)(4)(F), 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 and theft offenses as described by Penal Code, Chapter 31.
13. Thomas's convictions for forgery, burglary of a building, and unauthorized use of a motor vehicle are 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) and 1.502(e)(4)(E).
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) and 1.502(e)(4)(E) 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:
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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), Thomas's convictions for forgery, burglary of a building, and unauthorized use of a motor vehicle, directly relate to the occupation of a general lines 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), Thomas has a forgery, burglary of a building, and an unauthorized use of a motor vehicle conviction which she attributes in part to a misunderstanding between a family member who owned the building where the burglary took place and a misunderstanding with a friend who lent her the vehicle she was in associated with the unauthorized use of a motor vehicle conviction. Thomas has accepted responsibility and expressed remorse for her criminal conduct.
20. In consideration of TEX. OCC. CODE § 53.023(a)(1) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(A), Thomas has theft-related misdemeanor convictions that she attributes to coming out of an unhealthy marriage and trying to support her children. Thomas has accepted responsibility and expressed remorse for her criminal conduct.
21. In consideration of TEX. OCC. CODE § 53.023(a)(2) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(B), Thomas's criminal activity occurred between 1989 and 1996 when she was the ages of 29 years old and 36 years old respectively.
22. In consideration of TEX. OCC. CODE § 53.023(a)(3) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(C), it has been over 23 years since Thomas's last criminal activity occurred, and approximately 25 years since her last felony convictions directly related to the business of insurance.
23. 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) and 1.502(h)(2)(G)(i), Thomas has provided the department with evidence demonstrating her commitment to rehabilitation while incarcerated and after incarceration. Thomas provided the department with a detailed resume and explanation of her employment history. She has been steadily employed since her convictions. Thomas has worked for Hertz, Dollar, and Thrifty Car Rentals at the San Antonio Airport since 1999. She is currently a lead sales agent with the company. She has also been a licensed realtor with the Texas Real Estate Commission since 2009. She works for Premier Realty in the afternoons after she completes her shift at the airport.
24. In consideration of TEX. OCC. CODE § 53.023(a)(6) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(F), the department received letters of recommendation from Thomas's family, friends, and colleagues who describe Thomas both professionally and personally as hard-working, reliable, and trustworthy.

25. In consideration of TEX. OCC. CODE § 53.023(c)(2) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(G)(ii), Thomas has children for whom she provides support.
26. In consideration of TEX. OCC. CODE § 53.023(c)(3) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(G)(iii), Thomas has maintained a record of good conduct without any criminal activity for 23 years.
27. In consideration of TEX. OCC. CODE § 53.023(c)(4) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(G)(iv), Thomas has provided the department with evidence that she has paid all court fines and fees in full.
28. 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 Thomas's convictions.
29. Due to Thomas's criminal background, the department needs the opportunity to monitor her insurance activities to ensure she demonstrates the ability, capacity, and fitness required to perform and discharge the responsibilities of a general lines agent with a life, accident, and health qualification.

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, TEX. INS. CODE § 82.055, and 28 TEX. ADMIN. CODE § 1.47.
3. Thomas has knowingly and voluntarily waived all procedural rights to which she may have been entitled regarding the entry of this order, including, but not limited to, issuance and service 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. Thomas committed an act for which the department may deny a license under TEX. INS. CODE §§ 4001.105 and 4005.101.

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 Thomas's criminal convictions.
6. The commissioner is an insurance regulatory official authorized to regulate Thomas's activities in the business of insurance. The commissioner has primary jurisdiction to grant Thomas written consent to engage or participate in the business of insurance, pursuant to 18 U.S.C. § 1033.

Order

It is ordered that general lines agent license with a life, accident, and health qualification is granted to Rosie Hardway Thomas. It is further ordered that the general lines agent license with a life, accident, and health qualification is suspended for four years, probated.

If, during the probation period imposed by this order, the department issues any additional licenses or authorizations to Thomas, 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, Thomas must provide written notice of her criminal record to any employer, company, or other entity on behalf of which she performs the acts of a general lines agent. Thomas must provide the department with a copy of the notification within 30 days of the appointment, employment, or sponsorship by emailing it to the Texas Department of Insurance at EnforcementReports@tdi.texas.gov.

Beginning from the date of this order and continuing through the probation period, Thomas must file a written report, on or before the 15th day of the month on a quarterly basis for the months of March, June, September, and December, with the Texas Department of Insurance by emailing it to EnforcementReports@tdi.texas.gov. The reports must include the following information:

- a. Thomas's current mailing address and telephone number;
- b. the name, mailing address, and telephone number of Thomas's employer, and if Thomas is self-employed, a statement that she is self-employed and the name, mailing address, and telephone number of her business;

- c. the name and address of any insurer or entity which has appointed Thomas as a general lines agent;
- d. the name and address of any insurer or entity which has terminated Thomas's appointment as a general lines agent; and
- e. a copy of any and all contracts Thomas has entered into with an insurer, broker, managing general agent, managing general agency, or any person or entity in the business of insurance.

Thomas must notify the department immediately of the following by emailing EnforcementReports@tdi.texas.gov:

- a. any charges or indictments filed against her for a misdemeanor or felony during the period she is required to file reports, excluding traffic offenses and class C misdemeanors;
- b. any state or regulatory actions taken against her including formal and informal actions;
- c. any change in her employment or her residence; and
- d. any complaint made against Thomas concerning her 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 Thomas 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 Thomas maintains a license or authorization issued by the department. This written consent terminates immediately if any insurance license or authorization held by Thomas is suspended or revoked.

Kent C. Sullivan
Commissioner of Insurance

By: 

Doug Slape
Chief Deputy Commissioner
Commissioner's Order No. 2018-5528

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Recommended and reviewed by:



Leah Gillum, Associate Commissioner
Enforcement Section



Cassie Tigue, Staff Attorney
Enforcement Section

Affidavit

STATE OF Texas §

COUNTY OF Guadalupe §

Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed of the following:

"My name is Rosie Hardway Thomas. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

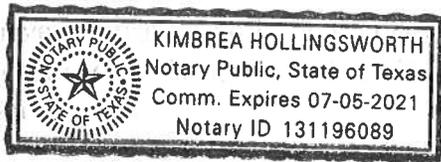
I waive rights provided by the Texas Insurance Code and other applicable law and acknowledge the jurisdiction of the commissioner.

I have knowingly and voluntarily entered into this consent order and agree with and consent to the issuance and service of the same by the commissioner of insurance of the State of Texas."

Rosie Hardway Thomas
Affiant

SWORN TO AND SUBSCRIBED before me on this 11 day of JUNE, 2019.

(NOTARY STAMP)



[Signature]
Signature of Notary of Public

(NOTARY SIGNATURE)