

No. **2021-6818**

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

Date: 05/10/2021

Subject Considered:

Texas Department of Insurance

v.

Andrea D. Beller

SOAH Docket No. 454-20-3308.C

General remarks and official action taken:

The subject of this order is Andrea D. Beller's application for a general lines property and casualty license. The Texas Department of Insurance (TDI) grants Ms. Beller's license application, but with a two-year probated suspension.

Background

After proper notice was given, the above styled case was heard by an administrative law judge (ALJ) for the State Office of Administrative Hearings. The ALJ made and filed a proposal for decision containing findings of fact and conclusions of law. A copy of the proposal for decision is attached as Exhibit A.

Staff for TDI filed exceptions to the administrative law judge's proposal for decision. Ms. Beller did not file a reply to the exceptions.

In response to TDI's exceptions, the ALJ agreed to revise Finding of Fact No. 6 and delete Conclusion of Law No. 7, but otherwise made no revisions to the proposal for decision. A copy of the ALJ's response to exceptions is attached as Exhibit B.

TDI adopts the ALJ's proposed findings of fact and conclusions of law, as modified by Exhibit B, but with changes to Finding of Fact No. 17 as described in this order.

Legal Authority for Changes to Findings of Fact

The legal authority for the changes to the proposal for decision made in this order is TEX. GOV'T CODE § 2001.058(e)(1), which provides that "A state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines... that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies [of the agency], or prior administrative decisions...."

Analysis

Texas Occupations Code §§ 53.022 – 53.023 and 28 TAC § 1.502

The circumstances of Ms. Beller's criminal conduct are described in detail in the proposal for decision, and they will not be repeated in full here. But on June 17, 2010, she pleaded guilty to a felony charge of burglary of a habitation and received deferred adjudication. And on October 20, 2010, she was convicted of fraudulent use or possession of identifying information, a state jail felony.

Due to Ms. Beller's criminal history, TDI may not issue her a license unless the factors specified in TEX. OCC. CODE §§ 53.022-53.023 and 28 TAC § 1.502(h) outweigh the serious nature of her offenses when viewed in light of the occupation being licensed. *See* 28 TAC § 1.502(f). State law and TDI rules require that all applicable factors must be weighed in determining an applicant's fitness for licensure. *See* TEX. OCC. CODE §§ 53.022-53.023(a) (stating that "the licensing authority shall consider" enumerated factors); 28 TAC § 1.502(h)(1)-(2) (stating that "the department shall consider" enumerated factors). Thus, a failure to properly weigh all applicable factors is a misapplication of law and agency rules that could warrant changes to the proposal for decision under TEX. GOV'T CODE § 2001.058(e)(1).

In its exceptions to the proposal for decision, TDI staff argue that the ALJ's findings of fact should acknowledge the serious nature of Ms. Beller's offenses referenced above. Without such a finding, they argue, the ALJ could not have properly weighed the applicable factors. *See* TEX. OCC. CODE § 53.022(1) (TDI shall consider "the nature and seriousness of the crime"); 28 TAC § 1.502(h)(1)(A) (same). The ALJ failed to address this point in his response to staff's exceptions, but a review of the Analysis portion of the

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proposal for decision reveals that he acknowledges Ms. Beller's crimes are serious.¹ See Proposal for Decision, pg. 9. However, TDI staff's point is well taken, and the seriousness of Ms. Beller's offenses should have been included in the findings of fact to ensure all applicable factors are properly weighed.

The same is true for another factor: the extent to which a license might offer an opportunity to engage in further criminal activity of the same type. See TEX. OCC. CODE § 53.022(3); 28 TAC § 1.502(h)(1)(C). The ALJ acknowledged that granting Ms. Beller a license would offer her an opportunity to engage in similar criminal activity, but he failed to include that in a finding of fact. See Proposal for Decision, pg. 9.

The ALJ's proposal for decision is changed as described below to address the seriousness of Ms. Beller's offenses and the extent to which a license would offer her an opportunity to engage in similar criminal activity.

The ALJ's proposed Finding of Fact No. 17 states:

Ms. Beller has no other criminal history and has maintained a good record of conduct.

Based on the analysis above, the ALJ's proposed Finding of Fact No. 17 is changed to state:

Ms. Beller has no other criminal history and has maintained a good record of conduct. However, Ms. Beller's crimes are serious, and a license would offer an opportunity to engage in similar criminal activity.

TDI has reviewed the record and weighed all applicable factors, and even with the modified finding of fact, TDI still agrees with the ALJ's recommendation to grant Ms. Beller a license. However, while the factors overall weigh in favor of granting a license, the serious nature of Ms. Beller's crimes and the fact that a license would offer her an opportunity to engage in similar criminal activity warrant additional monitoring by TDI. Therefore, TDI finds that her license should be placed on probated suspension for two

¹ TDI rules are clear that burglary of a habitation and fraudulent use or possession of identifying information are crimes of such serious nature that they are of prime importance in determining fitness for licensure. 28 TAC § 1.502(e).

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years with reporting requirements, to allow TDI to observe how she performs as a licensee.

18 U.S.C. § 1033(e)(2)

Because Ms. Beller has been convicted of a criminal felony involving dishonesty or a breach of trust, it is necessary that she have written consent to engage or participate in the business of insurance.² This order includes such written consent.

Findings of Fact

1. Findings of Fact Nos. 1 through 16, and 18 through 21 contained in Exhibit A as revised consistent with Exhibit B are adopted by TDI and incorporated by reference into this order.
2. In place of Finding of Fact No. 17 as proposed in Exhibit A, TDI adopts the following finding of fact:

Ms. Beller has no other criminal history and has maintained a good record of conduct. However, Ms. Beller's crimes are serious, and a license would offer an opportunity to engage in similar criminal activity.

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.

² Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both. 18 U.S.C. § 1033(e)(1)(A).

A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection. 18 U.S.C. § 1033(e)(2).

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Order

It is ordered that Andrea D. Beller's application for a general lines property and casualty license is approved.

Additionally, Ms. Beller is granted written consent, as contemplated by 18 U.S.C. § 1033(e)(2), to engage in the business of insurance, subject to the following requirements:

1. Ms. Beller must continuously maintain the license or other authorization issued by the Texas Department of Insurance to which this written consent applies.
2. This written consent is strictly limited to performing acts which constitute the business of insurance, as defined in TEX. INS. CODE § 101.051.
3. This written consent is limited to acts performed by Ms. Beller in the State of Texas for persons that are domiciled in Texas and risks and subjects of insurance that are resident, located, or to be performed in Texas.

If Ms. Beller is subsequently convicted of another felony offense or if additional information concerning her activities within the business of insurance becomes available, the department reserves its rights to withdraw this written consent under 18 U.S.C. § 1033(e)(2).

This determination does not authorize Ms. Beller to engage in the business of insurance, except as specifically stated in this order, and does not preclude the department from proposing denial of any other license, authority, registration, or application Ms. Beller submits at a later date.

It is further ordered that Ms. Beller's license is suspended for two years. The suspension is probated, and during the period of probation, Ms. Beller must comply with the following terms and conditions:

If, during the probation period imposed by this order, the department issues any additional licenses or authorizations to Ms. Beller, those additional licenses or authorizations will be suspended until the probation period imposed by this order has ended. The suspension will 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, Ms. Beller must provide written notice of his criminal record to any appointing

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company, agency, employer, sponsor, or other entity on behalf of which she performs the acts of an agent. Ms. Beller must provide the department with a copy of the notification within 30 days of the appointment, employment, or sponsorship by emailing it to TDI at EnforcementReports@tdi.texas.gov.

Beginning from the date of this order and continuing through the probation period, Ms. Beller must file a written report, on or before the 15th day of the month on a quarterly basis for the months of May, August, November, and February, with TDI by emailing it to EnforcementReports@tdi.texas.gov.

The reports must include the following information:

- a. Ms. Beller's current mailing address and telephone number;
- b. the name, mailing address, and telephone number of Ms. Beller's employer, and if Ms. Beller 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 which has appointed Ms. Beller as an agent;
- d. the name and address of any insurer which has cancelled Ms. Beller's appointment as an agent; and
- e. a copy of any and all contracts Ms. Beller has entered into with an insurer, broker, agent, agency, managing general agent, or any other person or entity in the business of insurance.

Ms. Beller must notify TDI 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

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- d. any complaint made against Ms. Beller concerning his performance as an agent, as well as a written explanation detailing the steps taken to resolve it.

Commissioner of Insurance

DocuSigned by:

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:


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James Person, General Counsel

DocuSigned by:


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Justin Beam, Assistant General Counsel