

No. **2020-6506**

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

Date: 10/15/2020

Subject Considered:

Texas Department of Insurance

v.

Stephany Abello

SOAH Docket No. 454-19-5459.C

General remarks and official action taken:

The subject of this order is the application of Stephany Abello for a general lines agent property and casualty license.

Background

After proper notice was given, the above-styled case was heard by an administrative law judge for the State Office of Administrative Hearings. The administrative law judge made and filed a proposal for decision containing a recommendation that the department grant Ms. Abello's application for a general lines agent property and casualty license. A copy of the proposal for decision is attached as Exhibit A.

The Texas Department of Insurance (TDI) filed exceptions to the administrative law judge's proposal for decision. Ms. Abello did not file a reply to the exceptions.

In response to the exceptions, the administrative law judge recommended revising the findings of fact and conclusions of law contained in his proposal for decision. The administrative law judge did not change his recommendation that TDI grant Ms. Abello's application for a license. A copy of the administrative law judge's response to exceptions is attached as Exhibit B.

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Changes to Conclusions of Law

The legal authority for changes to the proposal for decision made in this order is TEX. GOV'T CODE § 2001.058(e)(3), which permits a state agency to change a conclusion of law made by an administrative law judge if the agency determines that a technical error should be changed.

Change to Conclusion of Law No. 9A

In Exhibit B, the administrative law judge determines that Conclusion of Law no. 9A should be added to the proposal for decision. However, Conclusion of Law no. 9A contains two technical errors – the words "regulatory" and "insurer" are misspelled as "regulatory" and "unsurer." These misspelled words are technical errors that are corrected by this order.

As submitted in Exhibit B, proposed Conclusion of Law no. 9A states:

Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust may engage in the business of insurance or participate in such business if such person has the written consent of any insurance reguatory official authorized to regulate the unsurer. 18 U.S.C. § 1033(e).

In this order, Conclusion of Law no. 9A is changed to state:

Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust 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. 18 U.S.C. § 1033(e).

Change to Conclusion of Law No. 10

In Exhibits A and B, the administrative law judge recommends that the department give consent for Ms. Abello to engage in the business of insurance under 18 U.S.C. § 1033(e), and this recommendation is addressed in Conclusion of Law no. 10. However, the

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administrative law judge cites paragraph (1) of 18 U.S.C. § 1033(e) in Conclusion of Law no. 10 instead of paragraph (2).

It is paragraph (2) of 18 U.S.C. § 1033(e) that addresses authorization to practice the business of insurance. Paragraph (2) states:

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.

It is apparent that the administrative law judge intended to cite paragraph (2) in Conclusion of Law no. 10, because he quotes the applicable language from paragraph (2) in Conclusion of Law no. 9A. Therefore, this error is corrected by this order.

As submitted in Exhibit A, proposed Conclusion of Law no. 10 states:

The Department should consent for Ms. Abello to engage in the business of insurance under 18 U.S.C. § 1033(e)(1).

In this order, Conclusion of Law no. 10 is changed to state:

The Department should consent for Ms. Abello to engage in the business of insurance under 18 U.S.C. § 1033(e)(2).

Findings of Fact

The findings of fact contained in Exhibit A as revised consistent with Exhibit B are adopted by TDI and incorporated by reference into this order.

Conclusions of Law

1. 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, with the exception of Conclusion of Law nos. 9A and 10.

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2. In place of Conclusion of Law no. 9A as proposed in Exhibit B, TDI adopts the following Conclusion of Law:

Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust 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. 18 U.S.C. § 1033(e).

3. In place of Conclusion of Law no. 10 as proposed in Exhibit A, TDI adopts the following Conclusion of Law:

The Department should consent for Ms. Abello to engage in the business of insurance under 18 U.S.C. § 1033(e)(2).

Order

It is ordered that Stephany Abello's application for a general lines agent property and casualty license be granted.

Stephany Abello 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. Stephany Abello 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 Stephany Abello 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 Stephany Abello is subsequently convicted of another felony offense or if additional information concerning Stephany Abello's activities within the business of insurance

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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 Stephany Abello 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 Stephany Abello submits at a later date.

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

SOAH DOCKET NO. 454-19-5459.C

TEXAS DEPARTMENT OF INSURANCE,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
STEPHANY ABELLO,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny the application of Stephany Abello for a General Lines Agent Property and Casualty License based on her criminal history. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department grant Ms. Abello’s license application.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this case was held on December 18, 2019, before ALJ Christiaan Siano at the State Office of Administrative Hearings in Austin, Texas. Staff was represented by Amanda Cagle. Ms. Abello was represented by Anthony Icenogle. The hearing concluded that same day; the record closed on January 17, 2019, with the submission of post-hearing briefing. Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below.

II. DISCUSSION

A. Background

The material facts are not in dispute. Stephany Abello committed four criminal offenses, two misdemeanors and two federal felonies, when she was between 21 and 23 years old.¹ Ms. Abello served all her sentences, completed all conditions of parole and probation, and paid all restitution.

On April 7, 2010, Ms. Abello pleaded guilty to a class B misdemeanor in the County Criminal Court at Law No. 12, Harris County, Texas, Cause No. 165049801010 for failing to identify herself to a peace officer on December 27, 2009. She served three days in Harris County Jail.² Ms. Abello described the offense as follows:

I failed to put on my left turn signal and was pulled over by the police. I was asked for my driver's license and realized I had left it at home. I explained this to the officer but he insisted on arresting me.³

On February 3, 2011, Ms. Abello pleaded guilty to a class B misdemeanor in the same criminal court, Cause No. 169632701010, for theft committed on July 26, 2010. She served twelve days in Harris County Jail.⁴ Ms. Abello described the offense as follows:

On July 26, 2010, I was at Macy's with my roommate and her 2 year old toddler. She stole a \$65.00 bottle of perfume and put it in the diaper bag. I was aware she had done so. When Macy's security approached us, they were uncertain who had put the perfume in the diaper bag. Since I was concerned that she would get in trouble with CPS or the father of the child for having committed a crime in the presence of her child, I told the security office it was me. If I had understood the

¹ Exs. 2, 4-5.

² Ex. 5.

³ Ex. 6 at 102. This explanation is consistent with Ms. Abello's August 1, 2018 supplemental response, where she adds that she was afraid when the police officer stopped her. See Ex. 6 at 129.

⁴ Ex. 4.

gravity of admitting to a Class B misdemeanor at the time, I would not have made this decision.⁵

On March 22, 2011, Ms. Abello was arrested when law enforcement, executing a drug-related search warrant, found her among four individuals residing at a North Carolina house containing credit card counterfeiting paraphernalia, including an inventory of blank and coded counterfeit credit cards.⁶ Ms Abello described these offenses as follows:

I was hired by an individual to make fraudulent purchases at stores with credit cards that were purchased on a black website where hackers sell debit/credit card numbers. An individual that I was living with at the time took delivery through the mail of marijuana. The house was raided and though I was not part of the marijuana issue, during the search the machine was found and credit/debit cards belonging to other persons were found. As a consequence I was charged with 2 felonies: possession of the machine and identity theft.⁷

On July 3, 2012, Ms. Abello pleaded guilty to two felony charges – possessing a device for making credit cards and aggravated identity theft, both with aiding and abetting – in the United States District Court, Eastern District of North Carolina, Cause No. 5:11-CR-331-2FL. Ms. Abello was sentenced to 27 months in federal prison, followed by three years of supervised release, and joint and several liability for restitution of \$20,207.16 with her three co-defendants. Ms. Abello was released from prison on June 10, 2013, released from community supervision on October 20, 2016, and satisfied her restitution judgment on October 31, 2017. Ms. Abello has had no further criminal activity since her release from prison in 2013.

In June 2013, she interviewed for a job at AAIGOT with the owner, William C. Hernandez, who hired her to give her a second chance. They married in 2016 and have a son together. Ms. Abello has worked with AAIGOT for the past six years as the office manager, and now wants to be a licensed insurance agent. She is now 32 years old.

⁵ Ex. 6 at 101, 129.

⁶ Ex. 3 at 88-89.

⁷ Ex. 6 at 101, see also Ex. 6 at 129, adding that, although the search warrant was premised on drugs, the enforcement officers “couldn’t find drugs because no one was a drug dealer[;] [a co-defendant] had just order[ed] that for her personal self.”

On May 1, 2018, Ms. Abello applied for a General Lines Property and Casualty License and, in her application, disclosed her criminal offenses. On October 25, 2018, the Department proposed to deny her application, and Ms. Abello requested a hearing.

B. Applicable Law

The Department may deny a license to an applicant who has engaged in fraudulent or dishonest acts, been convicted of a felony, or has engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation.⁸ In determining whether a conviction directly relates to the occupation, the Department must consider the following factors:

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 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.⁹

The Department shall not issue a license or authorization if an applicant has committed a felony or misdemeanor, or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation unless the Department finds that the mitigating factors outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.¹⁰ In determining the fitness to perform the duties and responsibilities

⁸ Tex. Ins. Code § 4005.101(b)(5), (8); 28 Tex. Admin. Code § 1.502(d).

⁹ Tex. Occ. Code § 53.022.

¹⁰ Tex. Occ. Code §§ 53.022 and 53.023 as incorporated in 28 Tex. Admin. Code § 1.502(f), (h).

of the licensed occupation of a person who has been convicted of a crime, the Department must consider the following mitigating factors:

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;
6. evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
7. other evidence of the person's fitness, including letters of recommendation.¹¹

Under federal law, “[a]ny individual who has been convicted of any criminal felony involving dishonesty or a breach of trust” [. . .] “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.”¹²

C. Evidence

Staff offered eight exhibits, which were admitted. These exhibits included Ms. Abello's application, information she provided about her offense, and letters of recommendation. Staff called one witness, Lewis Weldon Wright IV, an insurance regulator with the Department. Ms. Abello testified on her own behalf and called one witness, William Hernandez, her husband. She did not offer any exhibits.

¹¹ Tex. Occ. Code § 53.023. The Department has adopted these factors in its guidelines. 28 Tex. Admin. Code § 1.502(h). The Administrative Law Judge notes that the Department rules include criteria in 1.502(h)(2)(F) that were specifically removed by the legislature in 2019. Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 8, eff. September 1, 2019.

¹² 18 U.S.C. 1033(e)(1)(A)-(2).

1. Testimony of Lewis Weldon Wright IV

Mr. Wright works for the Texas Department of Insurance performing administrative review of applications with a “yes” response to any criminal history questions in the application.¹³ Mr. Wright explained that upon reviewing such an application, the Department embarks on a balancing act in determining how to proceed with the application on a case-by-case basis.¹⁴ He testified that the issuance of a license is a representation that the Department has found the individual to be honest, trustworthy and reliable.¹⁵ Mr. Wright reviewed Ms. Abello’s application against the applicable law and determined that her mitigating factors did not outweigh the serious nature of her crimes. Accordingly, he recommended denial of her application.

Mr. Wright testified that many of the mitigating factors¹⁶ weighed in Ms. Abello’s favor. Ms. Abello was youthful at the time of her criminal activity¹⁷ and the difference between someone in her early 20s and now is significant.¹⁸ Mr. Wright was not aware of any additional criminal activity since Ms. Abello’s arrest in 2011, over eight years ago.¹⁹ Ms. Abello maintained steady employment, through high school, before the criminal activity and after her criminal activity in positions of responsibility.²⁰ Ms. Abello is currently employed in a family business.²¹ She complied with the terms of her community supervision and paid all her restitution.²² Mr. Wright considered all of these positive. Mr. Wright found her letters of recommendation, though all credible, of less value in that many are from her friends and some do not indicate an awareness of her criminal background.²³

¹³ Tr. at 18.

¹⁴ Tr. at 19-20.

¹⁵ Tr. at 20.

¹⁶ *See* Tex. Occ. Code § 53.023(a).

¹⁷ Tr. at 49-50.

¹⁸ Tr. at 77.

¹⁹ Tr. at 75.

²⁰ Ex. 1 at 22; Tr. at 57-58.

²¹ Tr. at 99.

²² Tr. at 52-53.

²³ Tr. at 54-56, 58-59; Ex. 1 at 58-62; Ex. 6 at 120-124.

Overall, however, Mr. Wright found that there was not enough mitigating evidence to outweigh the extent and nature of the crimes.²⁴ Ms. Abello has more than one felony-level, 18 U.S.C. § 1033 related crimes.²⁵ Mr. Wright testified that felony convictions must be considered very serious and hers were not a single act, but a part of an ongoing enterprise that affected ten different financial institutions.²⁶ Moreover, but for the drug investigation, she would not have been arrested.²⁷ And although she was young at the time, Mr. Wright testified that the Department does not consider fraud to be a youthful indiscretion.²⁸

Mr. Wright testified that Ms. Abello's two misdemeanors, standing alone, would be sufficient bases for denying her application.²⁹ He testified that they are offenses for which fraud, dishonesty, or deceit is an essential element, and are therefore considered of prime importance under 28 TAC § 1.502(e)(1)³⁰ and that engaging in fraudulent or dishonest acts are grounds for denial under the Insurance Code § 4005.101(b)(5).³¹ Mr. Wright admitted that a 21 year-old would respond differently than a 31 year-old to being pulled over by a police officer and that he did consider her age at the time in making his determination.³² However, Ms. Abello's convictions show a pattern of behavior in that they all involved theft and deception.³³

Mr. Wright also testified that Ms. Abello's offenses directly relate to the duties and responsibilities of the occupational license for which she applied because the occupation involves

²⁴ Tr. at 60.

²⁵ Tr. at 59-60.

²⁶ Ex. 2 at 73; Tr. at 60, 105.

²⁷ Tr. at 45.

²⁸ Tr. at 106.

²⁹ Tr. at 83-84, 88.

³⁰ Tr. at 46.

³¹ Tr. at 46; Mr. Wright also argued that Ms. Abello's two misdemeanors and two felonies are "violations of the Texas Insurance Code" under 28 TAC § 1.502(e)(2) because Insurance Code § 4005.101(b)(5) lists engaging in fraudulent or dishonest acts and (8) lists felony conviction as grounds for denying an application. Tr. at 71. The ALJ concludes that bases for denial of an application under Insurance Code § 4005.101(b) are not "violations of the Texas Insurance Code" for purposes of § 1.502(e)(2).

³² Tr. at 78, 80; Ex. 6 at 129.

³³ Tr. at 42.

handling confidential personal and financial information.³⁴ The duties of a general lines agent is to facilitate transactions between consumers and financial institutions in an honest, forthright, and trustworthy way.³⁵ Therefore, there is a close relationship between the nature of her crimes and the license.³⁶ Moreover, because Ms. Abello's previous offenses involved fraud, a license would increase her opportunity to re-offend in the fashion she has in the past because she would be authorized to contract with insurance carriers to provide products to the Texas market. This would increase her exposure to personal information of Texas consumers over a non-license holder.³⁷ Mr. Wright explained that behind a non-licensed employee is a licensed agent who has responsibility, currently, William Hernandez, her husband.³⁸ Given a license, she would become individually responsible for her acts.³⁹

Mr. Wright admitted that Ms. Abello's current employment as an office manager at an insurance agency, whose duties include data entry, and which do not require a license, potentially gives her access to this same sensitive information.⁴⁰ Mr. Wright also admitted that this is the type of information involved in Ms. Abello's two felony convictions and is the type of information she has had access to over the past six years through her employment.⁴¹ Mr. Wright could not identify any information a license-holder would have access to that Ms. Abello's current employment does not already give her access to,⁴² but stated that it is not clear her job duties actually give her access to confidential information.⁴³ Mr. Wright admitted that after six years, someone is unlikely to

³⁴ Tr. at 35, 47; see Tex. Occ. Code §§ 53.021(a)(1) and 53.022.

³⁵ Tr. at 47-48.

³⁶ Tr. at 48.

³⁷ Tr. at 92-95.

³⁸ Tr. at 104-105.

³⁹ Tr. at 104.

⁴⁰ Tr. at 89-90. Mr. Wright testified that data entry typically includes entering personal information, including driver license numbers, residence address, social security numbers, and credit card information.

⁴¹ Tr. at 91.

⁴² Tr. at 99.

⁴³ Tr. at 103.

suddenly change behavior upon acquisition of a license,⁴⁴ but stated that the license is the state's certification that she is honest, trustworthy, and reliable.⁴⁵

In considering evidence of rehabilitation,⁴⁶ Mr. Wright considers employment since incarceration, letters of reference, specific volunteer activities, and educational pursuits.⁴⁷ He testified that he believes that Ms. Abello's resolution of her judgments is too recent to show rehabilitation: she submitted her application on May 1, 2018,⁴⁸ approximately one and a half years from her release from community supervision on October 20, 2016,⁴⁹ and approximately eight months from satisfying her restitution on October 31, 2017.⁵⁰ Mr. Wright testified that the Department wants to see a longer period of time to evidence meaningful rehabilitation.⁵¹ He stated that although the rules do not specify a period of time to show rehabilitation, the Department considers the 5-year time period after a licensee has had their license revoked or an application denial.⁵² Mr. Wright admitted that the relevant time period to consider is the time elapsed since the last criminal activity, and not when probation or restitution were satisfied.⁵³

Finally, Mr. Wright took issue with Ms. Abello's description of her crimes. By answering yes to the criminal background questions of the application, Ms. Abello was required to "submit a statement describing the circumstances leading to the offense(s)" and her "age at the time(s) of the offense(s)."⁵⁴ Pursuant to this requirement, Ms. Abello included a statement dated April 23, 2018, in which she admits to her criminal history, expresses remorse, but does not provide details of her

⁴⁴ Tr. at 91.

⁴⁵ Tr. at 91-92.

⁴⁶ Tex. Occ. Code § 53.023(a)(5).

⁴⁷ Tr. at 76.

⁴⁸ Ex. 1 at 3.

⁴⁹ Ex. 6 at 124.

⁵⁰ Ex. 1 at 41; Ex. 2 at 79; Tr. at 52-53.

⁵¹ Tr. at 39-40, 52.

⁵² Tr. at 50.

⁵³ Tr. at 61.

⁵⁴ Ex. 1 at 4, Question 7; Tr. at 63, 101-102.

crimes or her age at the time.⁵⁵ The Department then requested additional information, namely, “a narrative of the arrests [she] disclosed” and her resume.⁵⁶ In response, Ms. Abello submitted a second statement, dated August 1, 2018, in which she explained her offenses in more detail.⁵⁷ However, Mr. Wright finds her statement inconsistent with the court documents. For the first misdemeanor, the judgment states that Ms. Abello gave “a false and fictitious name to a peace officer,”⁵⁸ while her description states only that she forgot her driver license.⁵⁹ Mr. Wright noted that she could have honestly stated that instead of giving a false identity, had she merely forgotten her driver license.⁶⁰ For the second, the judgment states that she did “unlawfully appropriate, by acquiring and otherwise exercising control over property,”⁶¹ while her description states that she did not steal the perfume, but only took the blame for a friend.⁶² This discrepancy shows that she was not totally honest and forthright in her descriptions⁶³ and indicates a present state of evidence regarding the honesty, trustworthy, and reliability and forthrightness of the applicant’s fitness.⁶⁴

Mr. Wright also admitted that all of the records the Department has concerning Ms. Abello’s criminal history were provided by Ms. Abello,⁶⁵ and that in the very August 1 letter with which he finds fault, she states that she is attaching them, so she did not attempt to conceal it from the Department.⁶⁶

⁵⁵ Ex. 1 at 39; Tr. at 43.

⁵⁶ Ex. 1 at 37.

⁵⁷ Ms. Abello’s August 1, 2018 descriptions are set in section II.A above.

⁵⁸ Ex. 5 at 97; Tr. at 82-83.

⁵⁹ Tr. at 44.

⁶⁰ Tr. at 106.

⁶¹ Ex. 4 at 93.

⁶² Tr. at 44, 86-87.

⁶³ Tr. at 46.

⁶⁴ Tr. at 45.

⁶⁵ Tr. at 88.

⁶⁶ Tr. at 85.

2. Testimony of Stephany Abello

In her application, Ms. Abello explains that she grew up in a dysfunctional home after her father passed away when she was nine, which lead directly to her living between two different homes, until the age of 17, when she left home, dropped out of high school, and fell in with the wrong crowd.⁶⁷

Ms. Abello testified that she went to North Carolina because she was hired by a co-defendant, who rented a home to which she could travel with the purpose of committing the credit card fraud and was there for about two months.⁶⁸ Of her decision to get involved in the credit card scheme, Ms. Abello stated that she was desperate for the money to provide for herself and go back to college.⁶⁹ She described this as a time in her life when she was making very bad decisions, using drugs, and completely lost.⁷⁰ She denied that she would have continued the criminal activity if the drugs had not been shipped to her house.⁷¹ She stated that even before the arrest she had already realized that it was not what she wanted for her life.⁷² She stated that she had initially declined to participate in the criminal endeavor, but then agreed to.⁷³ She stated that she is aware that what she did was wrong, paid the price, and learned from her mistakes.⁷⁴

Ms. Abello testified that while in prison she took classes and got a degree through Texas A&M as a horticulture technician, she also took other preparation classes, such as drug-free counseling.⁷⁵

⁶⁷ Ex. 1 at 39.

⁶⁸ Tr. at 110.

⁶⁹ Tr. at 136; Ex. 6 at 129.

⁷⁰ Tr. at 135.

⁷¹ Tr. at 136.

⁷² Tr. at 136.

⁷³ Tr. at 136.

⁷⁴ Tr. at 127-128.

⁷⁵ Tr. 126.

She was released from prison on June 10, 2013, to a half-way house, and shortly thereafter met her husband at a job interview.⁷⁶ She testified that she informed Mr. Hernandez of her criminal history right away because she was starting a fresh life.⁷⁷ She began working in her current job shortly after June 2013, where her duties include data entry, which gives her access to the types of sensitive information of concern to Mr. Wright.⁷⁸ She stated that AAIGOT has seven employees, five of whom are licensed,⁷⁹ none of whom has ever expressed concern regarding her criminal background and how it relates to the insurance agency.⁸⁰

Ms. Abello testified that she is seeking a license because she wants to grow in the insurance industry and extend the type of work she does for the office.⁸¹ The General Lines license would allow her to sell the range of products AAIGOT offers.⁸² With a license she would be able to quote, process policies, and make sales – interacting directly with clients.⁸³ She stated that she married Mr. Hernandez in 2016,⁸⁴ is currently working, and has a child.⁸⁵

Ms. Abello testified that she completed all the conditions of her probation.⁸⁶ After her release from prison, she paid her restitution in small monthly payments and occasional large lump sum payments.⁸⁷ She stated that although the co-defendants all made payments, she paid the largest amount, around \$13,000, because her other defendants were in jail longer.⁸⁸

⁷⁶ Tr. at 110.

⁷⁷ Tr. at 115-116.

⁷⁸ Tr. at 115.

⁷⁹ Tr. at 116.

⁸⁰ Tr. at 122.

⁸¹ Tr. at 116.

⁸² Tr. at 127.

⁸³ Tr. at 130.

⁸⁴ Tr. at 109-110.

⁸⁵ Tr. at 119.

⁸⁶ Tr. at 126.

⁸⁷ Tr. at 130-131.

⁸⁸ Tr. at 112, 131-132.

She explained that she maintained employment from 2004 until 2007, when she graduated high school, and from 2007-2008, when she stopped working to attend Houston Community College from 2007 until 2011.⁸⁹

3. Testimony of William C. Hernandez

Mr. Hernandez testified that he is 61 years old and has been in the insurance industry for approximately 30 years.⁹⁰ He owns an insurance company, AAIGOT, together with his father and mother.⁹¹ He testified that he has a successful business, with seven employees.⁹²

Mr. Hernandez stated that in 2013 he agreed to interview Ms. Abello on the recommendation of a friend.⁹³ His friend told him all about her criminal history in advance, but he believes in second chances and so decided to hire her with the warning that he would be watching her.⁹⁴ Her initial job duties included retention, marketing, and verifying payment.⁹⁵ Within a year, he gained confidence in her. He stated that in the six years she has worked under his supervision, he has never seen anything about her conduct to cause him any concern, nor have any of her co-workers or company representatives.⁹⁶

Mr. Hernandez stated that he supports her licensure because, in addition to just working in the agency, if something were to happen to him, she could take over.⁹⁷ Although her current duties do not require a license, he wants everyone in his office to have a license.⁹⁸ He believes she is

⁸⁹ Tr. at 113-114; Ex. 1 at 22-23.

⁹⁰ Tr. at 154, 164.

⁹¹ Tr. at 138, 153.

⁹² Tr. at 139.

⁹³ Tr. at 139-140.

⁹⁴ Tr. at 141.

⁹⁵ Tr. at 141.

⁹⁶ Tr. at 144-145.

⁹⁷ Tr. at 143, 164.

⁹⁸ Tr. at 151-152.

mature, responsible and a person of high character.⁹⁹ He believes that she is the perfect fit for his life, his business, and his son.¹⁰⁰ He stated that, after years of working alone, Ms. Abello changed everything, and helped him with everything.¹⁰¹

4. Letters of Recommendation

Ms. Abello submitted the following letters of reference in support of her application:

1. a letter from an attorney and real estate broker, Shawn Baksh, stating that they are close friends and he has known her for years.¹⁰² The letter states that Ms. Abello is hardworking, motivated, and dedicated, with a strong and honest work ethic, detail oriented and extremely competent. The letter indicates an awareness of Ms. Abello's criminal history and states that she "has proven to be serious about putting that mistake behind her and moving on with her life in a positive, law abiding, honest way."¹⁰³ Mr. Baksh states that he is confident that Ms. Abello will be an honest, hardworking insurance agent.
2. two letters from her brother, Oscar Abello, stating that he has full knowledge of his sister's criminal background and can attest that she is reliable, trustworthy and of good moral character.¹⁰⁴
3. a letter of recommendation from Lynette Sanchez, a best friend of ten years. Ms. Sanchez states that Ms. Abello is a great friend, a reliable person with a strong

⁹⁹ Tr. at 148, 150. Staff introduced two Commission disciplinary orders against Mr. Hernandez from 1996 showing 44 separate violations of the insurance code for failure to pay premiums to insurance companies. Exs. 9-10. The ALJ finds these orders of such antique vintage as to be of no value in assessing Mr. Hernandez's character. Moreover, Mr. Hernandez credibly explained that these involved as series of checks that bounced while he was abroad and remedied on his return. Tr. at 161.

¹⁰⁰ Tr. at 151.

¹⁰¹ Tr. at 153.

¹⁰² Ex. 1 at 58.

¹⁰³ *Id.*

¹⁰⁴ Ex. 1 at 59, 123.

work ethic.¹⁰⁵ This letter does not indicate any awareness of Ms. Abello's criminal history.

4. a letter from Mauricio Arzayus, the owner of a car dealership to which Ms. Abello has referred clients. The letter states that he has known Ms. Abello for ten years and describes her as determined and hardworking who has surpassed her "difficult times."¹⁰⁶ Ms. Abello explained that Mr. Arzayus is Lynette Sanchez's husband and a close friend.¹⁰⁷
5. a letter from Cynthia Suarez, a close friend of 17 years, that indicates an awareness of her criminal background and describes Ms. Abello as dedicated and conscientious.¹⁰⁸
6. a letter from Elena Rosales Izaguirre, an insurance agent at AAIGOT, who has worked with Ms. Abello for the past six years and attests to her moral values and work ethic.¹⁰⁹ The letter states that Ms. Abello is a hardworking woman of integrity and with a passion for serving clients. This letter does not indicate any awareness of Ms. Abello's criminal background, although Ms. Abello testified that she informed Ms. Izaguirre of her criminal background.¹¹⁰
7. a letter from Bob Clark, CPCU, stating that he has worked with Ms. Abello at AAIGOT for the past six years; she has a great work ethic and has done a great job as an office manager. He states that he would support Ms. Abello's appointment

¹⁰⁵ Ex. 1 at 60.

¹⁰⁶ Ex. 1 at 61.

¹⁰⁷ Tr. at 121.

¹⁰⁸ Ex. 1 at 62.

¹⁰⁹ Ex. 6 at 120.

¹¹⁰ Tr. at 123.

with his carriers. Ms. Abello testified that Rob Clark is aware of her criminal background.¹¹¹

8. a letter from Charles Portales, an auto insurance representative with United Automobile Insurance Services, states that he has associated with Ms. Abello for six years, as office manager and liaison to CSR staff. Mr. Portales describes Ms. Abello as conscientious, placing the client's interests first.¹¹²
9. a letter from Pam Cavazos, U.S. probation officer, states that Ms. Abello successfully completed her probation on October 20, 2016. Ms. Abello testified that Ms. Cavazos wrote the letter because her probation officer, Arnold Carnales, was away on vacation at the time she asked him for a letter of recommendation.¹¹³

D. Analysis and Recommendation

Ms. Abello has engaged in fraudulent and dishonest acts and has been convicted of two felonies.¹¹⁴ Ms. Abello does not dispute that her felony convictions directly relate to the occupation of an insurance agent.¹¹⁵ Ms. Abello argues, however, that the mitigating factors outweigh the seriousness of her crime. The Department's witness, Mr. Wright, admitted that all the factors except the first weighed in Ms. Abello's favor. Mr. Wright also did not believe there was sufficient evidence of rehabilitation given the time since her release from parole. Accordingly, the extent and nature of Ms. Abello's criminal activity and the evidence of her rehabilitation are at issue.

Ms. Abello has four convictions stemming from three criminal episodes, all within three years of each other. Though her first two misdemeanors involved deceit, they can be characterized

¹¹¹ Tr. at 123-124.

¹¹² Ex. 6 at 122.

¹¹³ Tr. at 125, 133.

¹¹⁴ Tex. Ins. Code § 4005.101(b)(5), (8).

¹¹⁵ Respondent's Closing Argument at 2 (January 17, 2010).

as the product of youthful whimsy, and should not be regarded as serious.¹¹⁶ The felonies, however, are not so easily explained. To effect, they required planning, preparation, and commitment. Ms. Abello accepted employment, crossed state lines from Texas to North Carolina, and took up residence with her co-defendants for an indefinite period. Moreover, the nature of the crimes required continued and repeated activities, at each time renewing the offense. Ten financial institutions, and an unknown number of victims whose credit card numbers were stolen, were affected by this scheme. Although Ms. Abello testified that she wanted to get out of it, and at times declined work, she did not end her criminal career on her own. These felonies are serious crimes and rightly caused the Department concern about her fitness to act as an insurance agent.

However, all of Ms. Abello's offenses occurred nine years ago or more, when she was between 21-23 years old. Though legally an adult, she was indisputably youthful. Ms. Abello credibly testified that, living on her own since age 17, she went through a difficult period of making poor choices, learned from her mistakes, and paid the price. She nevertheless maintained steady employment before and after her criminal activity. Significantly, the evidence shows that the underlying driver towards her most serious crimes – financial desperation – is no longer present. Ms. Abello now faces a very different set of choices than she did in her early 20s. She stands to continue a family business to provide for her family through honest means. She is no longer alone, without responsibility: she is married to a man with an established business and has a child to provide for. Since 2013, Ms. Abello has held positions giving her access to customer and company finances, and there has never been any question of her character, honesty, or integrity. Ms. Abello completed all requirements of her community service, parole, and restitution. Since the time of her offense, Ms. Abello has rehabilitated herself, taking classes in prison, becoming gainfully employed immediately upon release from prison; and established a record of good conduct, which she has maintained for the past six years. She expressed remorse for her criminal conduct, taken responsibility for her actions, and has not been charged with any further crimes.

The evidence does not show that the license will offer any added opportunity for

¹¹⁶ The discrepancy between Ms. Abello's August 1 explanation and the judgment language is frustrating; however, the ALJ is not persuaded that this was a deliberate intention to deceive. Ms. Abello provided all the judgments and offense-related documentation with her application and there is no indication she attempted to conceal her offenses.

Ms. Abello to engage in criminal activity of the same type as her previous involvement. The evidence shows she has worked in an insurance agency for the past six years with access to sensitive personal and financial information. The evidence shows that her access to this information would be no different as an insurance agent, and is the same type of information used in her felonious criminal conduct. Accordingly, the ALJ concludes that the license would offer no added opportunity to engage in the same type of criminal activity.

Moreover, the Department's concern with the freshness of Ms. Abello's release from parole is misplaced. The Department argues that "the date of release from probation is crucial—since that is when a person is free to act as they wish without the court supervising their actions."¹¹⁷ In support of its position, the Department cites several distinguishable administrative orders. However, the ALJ can find no legal support for the position that evidence of rehabilitation turns on considering only "when a person is free to act as they wish." The statute specifically directs the Department to consider "evidence of the person's rehabilitation or rehabilitative effort *while incarcerated* or after release."¹¹⁸ Thus, considering only that time when a person is free to act as they wish, though relevant, reads the statute too narrowly.¹¹⁹

The preponderance of the evidence shows that in the nine years since her last criminal activity, Ms. Abello has turned her life around. She has become a successful and valuable member of her profession. The ALJ finds Ms. Abello is currently fit to perform the duties and responsibilities of an insurance agent. Therefore, the ALJ concludes the Department should grant her application for a General Lines Agent – Property and Casualty License. The ALJ further recommends that the Commissioner grant Ms. Abello an 18 U.S.C. § 1033 consent letter.¹²⁰

III. FINDINGS OF FACT

1. On May 1, 2018, Stephany Abello applied for a General Lines – Property and Casualty

¹¹⁷ TDI's Post-Hearing Closing Brief at 8 (January 17, 2020).

¹¹⁸ Tex. Occ. Code § 53.023(5).

¹¹⁹ Tex. Occ. Code § 53.023(5).

¹²⁰ 18 U.S.C. § 1033(e)(1)(A)-(2).

- license from the Texas Department of Insurance (Department).
2. On October 25, 2018, the Department proposed to deny Ms. Abello's application. On November 23, 2018, Ms. Abello timely requested a hearing.
 3. On June 11, 2019, the Department issued to Ms. Abello a notice of hearing. The 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 either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
 4. The hearing was held on December 18, 2019, before Administrative Law Judge (ALJ) Christiaan Siano at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff was represented by attorney Amanda Cagle. Ms. Abello was represented by Anthony Icenogle. The hearing concluded and the record was closed on January 17, 2019, with the submission of post-hearing briefs.
 5. On April 7, 2010, Ms. Abello pleaded guilty to failure to identify oneself to a police officer, by giving a false and fictitious name, a misdemeanor, in Cause No. 165049801010 in the County Court at Law No. 12 of Harris County, Texas. The offense occurred on December 27, 2009.
 6. Ms. Abello was sentenced to three days in jail.
 7. Ms. Abello was 21 years old at the time of the offense.
 8. On February 3, 2011, Ms. Abello was convicted of Theft of Property, a misdemeanor, in County Court of Law No. 12, Harris County, Texas, Cause No. 169632701010. The offense occurred on July 26, 2010.
 9. Ms. Abello was sentenced to 12 days in jail.
 10. Ms. Abello was 22 years old at the time of the offense.
 11. On July 3, 2012, Ms. Abello was convicted of two felonies in the United States District Court of Eastern District of North Carolina, Cause No. 5:11-CR-331-2FL, for possession of device-making equipment and aiding and abetting and aggravated identity theft and aiding and abetting. Ms. Abello was arrested on March 22, 2011.
 12. Both felonies related to a criminal enterprise to obtain stolen credit card numbers from others and counterfeit credit cards.
 13. Ms. Abello was 23 years old at the time.
 14. Ms. Abello was sentenced to 27 months in jail, followed by 3 years of supervised release,

and the payment of \$20,207.16 in restitution, for which she was jointly and severally liable with three other co-defendants.

15. On October 20, 2016, Ms. Abello completed her parole.
16. On October 31, 2017, Ms. Abello satisfied the requirements of that judgment, and the court entered a Satisfaction of Judgement and Certificate of Release of Lien.
17. At the time Ms. Abello entered the counterfeit credit card scheme, she was desperate for money.
18. Since her arrest on March 22, 2011, Ms. Abello has committed no other criminal activity.
19. It has been nine years since Ms. Abello's last criminal activity.
20. Before and after the offense, Ms. Abello has maintained a record of steady employment.
21. Since 2013, Ms. Abello has held positions giving her access to sensitive personal and financial information, very similar to the access of an insurance agent.
22. During and after her incarceration, Ms. Abello rehabilitated herself and established a record of good conduct.
23. Ms. Abello has not been charged with any further crimes.
24. Ms. Abello is married and has a child.
25. Ms. Abello has paid all outstanding court costs and fines related to her offense.
26. Ms. Abello expressed remorse for her past offense and accepted full responsibility.
27. The likelihood of Ms. Abello reoffending is very low.
28. The letters of recommendation submitted on behalf of Ms. Abello, all from friends, family, and people with whom she works closely, consistently praise her dedication, honesty, and work ethic.

IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, .105, 4005.101.
2. SOAH has authority to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.

3. Ms. Abello received timely and sufficient notice of hearing. Tex. Gov't Code ch. 2001; Tex. Ins. Code § 4005.104(b).
4. The Department may deny a license application if the Department determines that the applicant has engaged in fraudulent or dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(5).
5. The Department may deny a license application if the Department determines that the applicant has been convicted of a felony. Tex. Ins. Code § 4005.101(b)(8).
6. The Department has the burden to prove by a preponderance of the evidence that grounds exist to deny the Applicant's license. The Department met its burden of proof. 1 Tex. Admin. Code § 155.427.
7. Ms. Abello has the burden to prove by a preponderance of the evidence that she is fit to perform the duties and discharge the responsibilities of an insurance agent, notwithstanding her criminal history. Tex. Occ. Code § 53.023. Ms. Abello has met her burden of proof.
8. Despite her criminal convictions, Ms. Abello has shown the fitness required to perform the duties and discharge the responsibilities of a licensed insurance agent. Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(h)(2).
9. The Department should approve Ms. Abello's application.
10. The Department should consent for Ms. Abello to engage in the business of insurance under 18 U.S.C. § 1033(e)(1).

SIGNED February 11, 2020.



CHRISTIAAN SIANO
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

2020-6506

ACCEPTED
454-19-5459
04/30/2020 10:16 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jodi Brown, CLERK



FILED
454-19-5459
4/30/2020 10:13 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jodi Brown, CLERK

Exhibit B

State Office of Administrative Hearings

Kristofer Monson
Chief Administrative Law Judge

April 30, 2020

Kent Sullivan
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe, Tower 1, 13th Floor, Mail Code 113-2A
Austin, Texas 78714

VIA EFILE TEXAS

RE: Docket No. 454-19-5459.C; *Texas Department of Insurance v. Stephany Abello*

Dear Commissioner Sullivan:

On March 11, 2020, I issued the Proposal for Decision (PFD) in this case. The staff of the Texas Department of Insurance (Staff) timely filed exceptions on March 26, 2019. Stephany Abello (Applicant) did not file any exceptions and did not respond to Staff's exceptions.

Staff's exceptions mostly set forth arguments that were fully presented at the hearing and post-hearing briefing and which I carefully considered in preparation of the PFD. Staff does make several arguments that warrant a response, as set out below:

Applicable Law

Staff notes that the PFD implies that the current version of Texas Occupation Code § 53.023 governs this case, whereas the prior version, which was in effect at the time Applicant filed her application, controls. I agree and therefore recommend that the following changes to page 5 of the PFD:

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;
- ~~6. evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and~~
- ~~7. other evidence of the person's fitness, including letters of recommendation.~~
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.

For clarity, I also recommend the following change to footnote 11:

¹¹. Tex. Occ. Code § 53.023. The Department has adopted these factors in its guidelines. 28 Tex. Admin. Code § 1.502(h). ~~The Administrative Law Judge notes that the Department rules include criteria in 1.502(h)(2)(F) that were specifically removed by the legislature in 2019. Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 8, eff. September 1, 2019.~~

These changes do not affect my proposed decision, as the weight given to the reference letters provided by the Applicant does not change.

Findings of Fact/Conclusions of Law

Staff also recommends numerous additional findings of fact and conclusions of law. Of those recommended, I agree that the following findings of fact are supported by the record and should be added:

12A. Ms. Abello used the credit cards with stolen information to make fraudulent purchases at stores.

19A. Ms. Abello was released from prison on June 10, 2013 and released from community supervision on October 20, 2016.

Moreover, the following conclusions of law should be added:

- 5A. The Department shall not issue a license or authorization if an applicant has committed a felony or misdemeanor, or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation unless the commissioner finds that the matters set out in subsection (h) of this section outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed. 28 Tex. Admin. Code § 1.502(f).
- 8A. The matters set out in 28 Texas Administrative Code § 1.502(h) outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.
- 9A. Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust 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. 18 U.S.C. § 1033(e).

Evidence of rehabilitation

Staff again argues that the date of Ms. Abello's release from prison is the relevant date from which to evaluate rehabilitation under 28 Tex. Admin. Code § 1.502(h)(2) and requests a finding on Ms. Abello's release date. Section 1.502(h)(2) provides, in relevant part, that the commission shall evaluate the person's fitness considering:

- (B) the age of the person when the crime was committed;
- (C) the amount of time that has elapsed since the person's last criminal activity;
- (D) the conduct and work activity of the person prior to and following the criminal activity;
- (E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

As discussed on page 18 of the PFD, the Department rules and Mr. Wright's testimony make clear that the relevant time period is evaluated from the time of the applicant's last criminal activity. Although the person's rehabilitative effort since the time of release is relevant under subsection 1.502(h)(2)(E), it is not dispositive and it is considered as an alternative to that those efforts made while incarcerated. If the Department wanted to emphasize the importance of the time since release from incarceration, it could have done so. *See e.g.*, 22 Tex. Admin. Code §


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Exceptions Letter
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363.15(d)(4) (“the amount of time that has elapsed since the applicant’s release from incarceration”).

I do not recommend any additional changes to the PFD as filed.

Sincerely,



Christiaan Siano
Administrative Law Judge

cc: All Parties of Record