No. 2023-7886

Official Order
of the
Texas Commissioner of Insurance

Date: 04/06/2023

Subject Considered:

Texas Department of Insurance
v.
Mohammad Afzal Abbasi

SOAH Docket No. 454-21-0729.C

General Remarks and Official Action Taken:

The subject of this order is Mohammad Afzal Abbasi's application for a general lines agent license with a property and casualty qualification. This order denies Mr. Abbasi's application.

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 Mr. Abbasi's application be denied. A copy of the proposal for decision is attached as Exhibit A.

Texas Department of Insurance Enforcement staff filed exceptions to the administrative law judge's proposal for decision. Mr. Abbasi did not file a reply to the exceptions or exceptions of his own. Enforcement staff requested corrections of clerical errors and in the proposal for decision and a revision to proposed Finding of Fact No. 30.

In response to the exceptions, the administrative law judge accepted the requested correction of clerical errors and change to proposed Finding of Fact of No. 30. The administrative law judge also recommended a change for an additional typographical error in the proposal for decision. The administrative law judge did not change his recommendation that Mr. Abbasi's application for a license be denied. A copy of the administrative law judge's response to exceptions is attached as Exhibit B.

Error in Proposal for Decision

Mr. Abbasi's name is misspelled in the first paragraph of the proposal for decision as "Mohammed"; the correct spelling is "Mohammad." This error is not repeated in the proposed findings of fact or conclusions of law, so no changes to the findings or conclusions are necessary.

Findings of Fact

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

Conclusions of Law

The conclusions of law contained in Exhibit A, are adopted by the commissioner and incorporated by reference into this order.

Order

It is ordered that Mr. Mohammad Afzal Abbasi's application for a general lines agent license with a property and casualty qualification is denied.

DocuSigned by:
C Brown
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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:
Jessica Barta
5DAC5618BBC74D4...

Jessica Barta, General Counsel

DocuSigned by:
Justin Beam
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Justin Beam, Assistant General Counsel

2023-7886

Exhibit A

SOAH DOCKET NO. 454-21-0729.C

TEXAS DEPARTMENT OF INSURANCE, **Petitioner**	§	**BEFORE THE STATE OFFICE**
v.	§	**OF**
MOHAMMAD AFZAL ABBASI, **Respondent**	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) proposes to deny an April 2019 application of Mohammed Afzal Abbasi (Respondent) for a general-lines-agent license with a property and casualty qualification.[1] Respondent previously held a general-lines-agent license but voluntarily surrendered it in 2012, pursuant to a settlement of a Department enforcement action in which Respondent also waived his right to reapply for five years thereafter. In advocating denial, Staff relies on (1) the misconduct of which it had accused Respondent in the enforcement action, which included allegedly misappropriating premium payments and operating an insurance agency without proper licensing or assumed-name filing; (2) an attempt by Respondent to reapply for licensing in 2015, before the agreed-upon five-year waiver period had expired; and (3) what Staff terms "fraudulent" and "dishonest" statements by Respondent in his current application regarding the 2010-12 events. Based on the evidence presented, the Administrative Law Judge (ALJ) must recommend that the Insurance Commissioner deny Respondent's current license application.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing on the merits was held via Zoom videoconferencing before ALJ Robert Pemberton. Staff was represented by Department attorneys Stephanie Daniels and Allison Anglin, while Respondent was represented by attorney (and son) Danial Abbasi. The

[1] The ALJ has used the somewhat impersonal "Respondent" identifier to avoid potential confusion with other members of Mr. Abbasi's family who, as explained below, also participated in the hearing or were involved in the underlying events and shared common names.

hearing convened initially on June 1, 2021 but was recessed after approximately one hour and twenty minutes due to a loss of power at Respondent's location. The hearing reconvened on June 21, 2021 and concluded that same day. Kimberlee Schroeder, CSR, RPR, CCRR, prepared a transcript, which is the official record of the hearing.[2] The record was held open pending the filing of the complete transcript and then written closing arguments, and ultimately closed on August 20, 2021.

Notice and jurisdiction were not disputed and are thus addressed solely in the Findings of Fact and Conclusions of Law, below.

II. APPLICABLE LAW

As legal authority for denying licensure, Staff has pleaded grounds under Section 4005.101 of the Insurance Code, which authorizes the Department to deny a license application if it determines that the applicant has (as pertinent here) "misappropriated, converted to the applicant's . . . own use, or illegally withheld money belonging to . . . an insurer . . . or . . . an insured"; "engaged in fraudulent or dishonest acts or practices"; "willfully violated an insurance law of this state"; "intentionally made a material misstatement in the license application"; or "obtained or attempted to obtain a license by fraud or misrepresentation."[3] Staff also relies on 28 Texas Administrative Code § 1.502 (Rule 1.502), which authorizes the Department to deny a license application if the applicant "has engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed profession" and prohibits the Department from issuing a license in those circumstances "unless the [C]ommissioner finds that the matters set out in [S]ubsection (h) of this section outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed."[4] Subsection (h) of Rule 1.502, in turn, states that "[t]he [D]epartment will considers the factors specified in Texas Occupations Code §§ 53.022 and 53.023 in determining whether to grant [or] deny . . . any license or authorization under its jurisdiction"

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[2] Ms. Schroeder transcribed the hearing into two volumes, the first volume recording the proceedings on June 1, the second recording the proceedings on June 21. Because the two volumes are paginated consecutively, citations are simply to "Tr. at ___."

[3] Tex. Ins. Code §§ 4005.101(b)(1)-(5), .102(1)(A); *see* Staff Ex. 3 (Amended Petition) at TDI 18.

[4] 28 Tex. Admin. Code § 1.502(d), (f); *see* Staff Ex. 3 at TDI 1, 18-19; Staff Closing Arguments at 3.

and incorporates, in substantially identical wording, the version of those statutes that would apply to Respondent's April 2019 application.[5] Namely, Subsection (h) provides:

> (1) In determining whether a criminal offense directly relates to the duties and responsibilities of the licensed occupation, the [D]epartment shall consider the following factors:
>
> (A) the nature and seriousness of the crime;
>
> (B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
>
> (C) 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
>
> (D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.
>
> (2) In addition to the factors listed in paragraph (1) . . . the [D]epartment shall consider the following evidence in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has committed a crime:
>
> (A) the extent and nature of the person's past criminal activity;
>
> (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;
>
> (F) other evidence of the person's present fitness, including letters of recommendation . . . .

[5] 28 Tex. Admin. Code § 1.502(h); *cf.* Acts 2019, 86th Leg., R.S., ch. 765 (H.B. 1342), §§ 6-8, 12, 14-15 (eff. September 1, 2019).

> (G) . . . proof that the applicant . . . has:
>
> (i) maintained a record of steady employment;
> (ii) supported . . . dependents where applicable;
> (iii) otherwise maintained a record of good conduct; and
> (iv) paid all outstanding court costs, supervision fees, fines, and restitution.
>
> (3) It shall be the responsibility of the applicant . . . to the extent possible to secure and provide to the [C]ommissioner the information required by paragraph (2) of this subsection.[6]

Although Subsection (h) refers to crimes and convictions, the upshot, according to Staff, is that the Department applies the same analysis also to non-criminal grounds for denying licensure, engaging in a broader analysis of the person's fitness for licensure that weighs favorable indicia against the conduct establishing grounds for denial and other unfavorable indicia.[7] In this weighing analysis, Staff also places great emphasis on Subsection (c) of Rule 1.502, which states that "[t]he [D]epartment considers it very important that license and authorization holders and applicants . . . be honest, trustworthy, and reliable."[8]

Staff bears the burden of proving its asserted grounds for denying Respondent's license application, while Respondent has the burden of bringing forward any favorable evidence of this fitness for licensure despite any such grounds.[9] The standard of proof is by a preponderance of the evidence.[10]

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[6] 28 Tex. Admin. Code § 1.502(h).

[7] Staff Closing Arguments at 2-3, 13-14.

[8] 28 Tex. Admin. Code § 1.502(c); *see* Staff Ex. 3 at TDI 18; Staff Closing Arguments at 5, 10, 11-12.

[9] *See* 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 1.502(h).

[10] *See Granek v. Texas St. Bd. of Med. Examn'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.) (in rejecting application of higher proof standard, observing that "agency license-revocation proceedings are civil in nature [and] that in civil cases, no doctrine is more firmly established than that issues of fact are resolved by a preponderance of the evidence" (internal citations and quotations omitted)).

III. EVIDENCE

Staff offered sixteen exhibits and Respondent thirteen exhibits, each of which was admitted into evidence.[11] In its direct case, Staff presented the testimony of Department representative Lewis Wright and elicited brief testimony from Respondent. In his case, Respondent testified at greater length and also presented testimony from his brother, Mohammed Arif (Arif) Abbasi.[12] In rebuttal, Staff presented further testimony from Mr. Wright.

A. Prior Proceedings

Staff's exhibits include numerous documents from the previous enforcement action against Respondent, including pleadings filed by both sides at SOAH, and Respondent presented documents relating to the eventual settlement. Because these earlier proceedings provide the context for the issues presently in dispute and also prove to be critical in their resolution, it is helpful to begin with an explanation of that history.

Since 2004, Respondent had held a Department-issued general-lines-agent license with both a property and casualty qualification and a life, accident, health and HMO qualification.[13] A daughter of Respondent, Madiha Abbasi, had also obtained a general-lines-agent license,[14] and both would become respondents in the Department's enforcement action.[15] Staff alleged that the two had retained for their own personal use a total of $15,000 in premium payments made by

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[11] Staff's exhibits are identified by 1 through 4, then by 4a through 4l, with exhibits bearing the number 4 representing components of the Department's licensing file regarding Respondent. Respondent's exhibits are identified by letters A through M.

The ALJ also took official notice of the SOAH case file, including Order No. 3 (specifying the Zoom login information) and No. 4 (addressing the resumption of the hearing on June 21, 2021).

[12] Respondent and his brother share both the Abbasi surname and the first name of Mohammad. Respondent explained that their respective middle names serve as the "real names" by which each is identified and distinguished. Tr. at 125-26.

[13] Staff Ex. 4b at TDI 83-89; Staff Ex. 4h at TDI 214, 216.

[14] Staff Ex. 4b at TDI 91-92; Staff Ex. 4h at TDI 215, 217.

[15] Staff Ex. 4d at TDI 113-16, 124-27, 131-34.

Copperwood Condominium Association, Inc.[16] More specifically, Staff alleged the following series of events:

- "On May 3, 2010, the Abbasis provided Copperwood . . . a quote for a property and general liability insurance policy."
- "On May 13, 2010, the Abbasis collected $10,000 from Copperwood as a partial premium payment for the policy."
- "On June 4, 2010, the Abbasis generated an invoice to Copperwood showing a $10,000 payment applied to the policy premium."
- "On June 7, 2010, producer Turner General Agency, Inc. issued a Certificate of Insurance to Copperwood, with an effective date of May 18, 2010."
- "On June 10, 2010, the Abbasis collected $5,000 in additional premium from Copperwood for the policy."
- "On June 18, 2010, the insurer issued a cancellation notice for the policy to be effective July 3, 2010, due to nonpayment of premium."
- "On June 25, 2010, the Abbasis mailed checks totaling $13,312.20 to Turner as payment toward the Copperwood policy: a check dated July 15, 2010, for $9,894.42 and a check dated July 16, 2010, for $3,417.78."
- "On June 29, 2010, the Abbasis generated another invoice to Copperwood showing an additional $5,000 payment applied to the policy premium."
- "On June 29, 2010, both checks from the Abbasis were dishonored by Turner's bank due to insufficient funds."
- "The Abbasis retained the $15,000 for their own personal use, failing to apply the funds to Copperwood's insurance policy or refunding the money to the insured."[17]
- The Abbasis declared Chapter 7 bankruptcy in September 2010 and claimed economic inability to make a payment regarding the funds it held for Copperwood.[18]

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[16] Staff Ex 4d at TDI 132-33.

[17] Staff Ex. 4d at TDI 132-33.

[18] Staff Ex. 4d at TDI 133.

Staff further alleged that the Abbasis were operating through "Madiha Insurance Agency" and "Paragon Insurance Agency," which had not been registered as assumed names, as was required, nor were licensed as separate entities.[19]

Through both discovery responses made *pro se* and pleadings or correspondence prepared on their behalf by counsel, the Abbasis acknowledged several aspects of the underlying transactions and events referenced in Staff's allegations, although they insisted that only Respondent and not Ms. Abbasi had been involved.[20] Respondent agreed that:

- He had provided Copperwood a quote for a property and general-liability policy on May 3, 2010, adding that the policy "was written through Madiha Insurance Agency";
- He had collected a $10,000 check from Copperwood on May 13;
- He had generated an invoice to Copperwood on June 4 reflecting the $10,000 payment;
- Turner had issued a certificate of insurance to Copperwood on June 7 and then a June 18 cancellation notice, effective July 3, for nonpayment of premiums;
- Respondent had collected another $5,000 payment from Copperwood on June 10;
- On June 25, Respondent had mailed two post-dated checks to Turner—the check for $9,894.42 dated July 15 and the check for $3,417.78 dated July 16—adding that they were drawn on the account of Paragon Insurance Agency;
- On July 19, both checks had been dishonored by Turner's bank due to insufficient funds;
- Respondent had declared Chapter 7 bankruptcy in September 2010;
- Respondent had retained the $15,000 in funds paid by Copperwood.[21]

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[19] Staff Ex. 4d at TDI 132-33.

[20] Staff Ex. 4c at TDI 104-12; Staff Ex. 4e at 141-44; Staff Ex. 4g at TDI 158-60, 172-76, 188-91.

[21] Staff Ex. 4e at TDI 141-43; *see also* Staff Ex. 4c at TDI 104-112; Staff Ex. 4g at TDI 158-61, 172-76, 188-91.

Moreover, as will be discussed below in connection with Mr. Wright's testimony, these various transactions and events were also reflected to some degree in contemporaneous documentation generated by the participants, including Respondent.

However, Respondent asserted additional facts in the nature of defense or explanation for these events. His side of the story evolved somewhat over the course of the proceedings. In a brief response to a Department investigatory inquiry, dated September 20, 2010, Respondent wrote that after "my agency had bound the commercial policy for [Copperwood]," "we were unable to make a payment" "due to the current economic condition and unforeseen circumstances."[22] "Despite all of our efforts to make the payment (including the fact that we gave Turner General Agency post dated checks for the policy)," he added, "our circumstances were such that we were forced to file for Chapter 7 bankruptcy on September 7, 2010."[23]

Subsequently, by letter of January 26, 2012, responding to the Department's notice of intent to institute a disciplinary action, an attorney writing on Respondent's behalf denied "any wrongdoing on [Respondent's] part that would give reason for disciplinary action against him," and described Respondent as "a good, honest man who found himself in a precarious financial environment, dealing with those who were not so honest."[24] The letter elaborated that Respondent had assisted Copperwood, through its managing agent Allen Abouekde, in obtaining coverage, asserting that Copperwood had been dropped by its prior carrier and was experiencing difficulty in finding replacement coverage.[25] "After several months' effort," the letter continued, Respondent "was able to obtain a quote of $27,632.42 as a policy premium for Copperwood," provided through Turner.[26] Attached was a copy of the quote, bearing what was represented to be Mr. Abouekde's signature.[27] This document is printed on a letterhead or form for Madiha Insurance Agency, is dated May 3, 2010, and quotes a "Total" cost of $27,632.42, itemized as consisting of a "Total

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[22] Staff Ex. 4i at TDI 256.

[23] Staff Ex. 4i at TDI 256.

[24] Staff Ex. 4c at TDI 104-05.

[25] Staff Ex. 4c at TDI 104.

[26] Staff Ex. 4c at TDI 104.

[27] Staff Ex. 4c at TDI 104, 107

Premium" of $3,958.00 for general-liability coverage, a "Total Premium" of $22,590.00 for property coverage—and thus a total of $26,548.00 in premiums—plus a $275 "policy fee," a $300 "inspection fee," and about $510 in taxes.[28]

The letter further asserted that "Copperwood refused to pay in full or finance the premium amount," so it had "eventually agreed" to a "payment plan" with Respondent's agency—an initial payment of $10,000 and $5,000 each month until the total balance was paid off.[29] After making the $10,000 payment and one payment of $5,000, the letter continued, Copperwood "failed to make further payments, and the remaining balance of the policy premium was never paid."[30] It added that on or about June 21, 2010, Respondent had "mailed post-dated checks to Turner for the $15,000 Copperwood paid to [Respondent] for part of the policy premium . . . with the trust and expectation that Copperwood would continue to make its payments."[31] When Copperwood had ceased to make its payments as agreed, the "failure . . . hindered [Respondent's] ability to clear the post-dated checks and the policy was cancelled."[32]

The letter insisted that Respondent "had every intention to honor his agreement with Copperwood," and had tried by sending Turner the post-dated checks, but failed due to Copperwood's failure to remit its agreed-upon installment payment and because Respondent "was forced by financial strains" to file for bankruptcy in September 2010.[33] In Respondent's bankruptcy filings, the letter emphasized, Respondent had listed Copperwood as a creditor, and urged that he did so "with the intent that Copperwood would be refunded the $15,000 it paid in premiums."[34]

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[28] Staff Ex. 4c at TDI 107. There is a one-hundred-dollar discrepancy between the stated total amount of $27,632.42 and the sum of the itemized costs, which would total $27,732.42, but neither party has suggested that the difference is material.

[29] Staff Ex. 4c at TDI 104.

[30] Staff Ex. 4c at TDI 104.

[31] Staff Ex. 4c at TDI 104-05.

[32] Staff Ex. 4c at TDI 105.

[33] Staff Ex. 4c at TDI 105.

[34] Staff Ex. 4c at TDI 105, 111.

The attorney who authored this letter subsequently withdrew, and Respondent, as well as Madiha Abbasi, were unrepresented for a period of time after the Department pursued its enforcement action against them. They responded to a round of discovery from Staff *pro se* in June 2010 before retaining new counsel who would represent them through the case's conclusion.[35] During these phases of the case, Respondent continued to maintain that Copperwood had agreed to the payment plan described in prior counsel's letter and had breached the agreement by ceasing payment, causing or contributing to Respondent's inability to cover the checks to Turner.[36] Respondent also produced in discovery what purported to be the "contract . . . between Madiha Insurance Agency and Allen Abouekde," Copperwood's managing agent.[37] The document is dated May 13, 2010 (ten days after the quote but the same date as the initial check for $10,000), contains signatures at the bottom, and states that Madiha Insurance Agency and Copperwood had agreed to the following terms:

> 1) PAYMENT PLAN
> a) Total balance due by Client [previously identified as Copperwood]: $27,632.47 for Copperwood Condominium Association Inc. commercial property and general liability insurance policy.
> b) Client shall put a deposit of $10,000 which will be deducted from total balance on the day this agreement is signed.
> c) Remaining balance shall be paid in the minimum amount of $5000.00 monthly until total balance is paid off.
> d) Minimum amount of $5000.00 monthly will be due before the 10th of every month starting from the month of June 2010.[38]

Yet Respondent made the additional assertion that the first $15,000 in payments made under the payment plan (*i.e.*, corresponding to the entire amount that Copperwood had paid him) did not represent premiums that he was supposed to remit to Turner, but instead were for (1) a "service fee" or "commission" that Copperwood, through Mr. Abouekde, had agreed to pay him

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[35] Staff Exs. 4f, 4g, 4h. Both attorneys were persons other than Respondent's current representative, son Danial Abbasi, whom it appears would have been a child or teenager at the time of these events.

[36] Staff Ex. 4e at TDI 142-43; Staff Ex. 4g at TDI 191.

[37] Tr. at 29; Staff Ex. 4h at TDI 205-07.

[38] Staff Ex. 4h at TDI 207. Although the "payment plan" heading is numbered 1, there are no other sets of terms in the document.

The total of $27,632.47 stated in the payment plan is five cents more than the $27,632.42 total stated on the May 3 quote, but otherwise the two documents would correspond.

for the considerable effort and difficulty required in finding the coverage for Copperwood[39]; and (2) a fee for arranging financing with Turner.[40] Consequently, Respondent insisted, he was entirely within his rights to retain the $15,000 in payments for his own use,[41] and that it was Copperwood, not he, that owed the other party money, the more than $12,600 for insurance premiums that remained unpaid under their agreement.[42]

However, in an August 2012 response to Staff discovery seeking "all documents relating to service fees, finance fees, or other fees imposed by the Abbasis on their customers," and "all documents relating to the notification, discussion, or consent by the parties regarding all service fees, finance fees, or other fees imposed by the Abbasis on Copperwood for the insurance policy that is the substance of this suit," Respondent (now with aid of his new counsel) admitted that he had no documents responsive to either request.[43] Respondent sought to explain their absence by claiming that Mr. Abouekde had been a trusted friend with whom he had transacted business for more than twenty years, initially through a travel agency Respondent had operated and later with his insurance businesses, and that many of their business dealings, agreements, or terms of agreements were made only verbally.[44]

On the eve of an October 16, 2012 hearing date,[45] the parties reached a settlement whereby Respondent and Ms. Abbasi, in lieu of proceeding to hearing, each voluntarily surrendered their insurance license effective November 16, 2012; waived their right to reapply for licensure for five years thereafter (thereby replicating a legal effect of a license revocation through an order of the Department or Commissioner[46]); and agreed to pay $15,000 in "restitution" to Copperwood; but

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[39] Respondent now alleged that Copperwood had been dropped by its previous carrier after filing a fire claim "of questionable origin." Staff Ex. 4e at 142; Staff Ex. 4g at TDI 190-91.

[40] Staff Ex. 4e at TDI 142-43; Staff Ex. 4g at TDI 190-91.

[41] Staff Ex. 4e at TDI 142-44; Staff Ex. 4g at TDI 161.

[42] Staff Ex. 4 at TDI 52.

[43] Staff Ex. 4f at TDI 151.

[44] Staff Ex. 4e at TDI 142; Staff Ex. 4g at TDI 191.

[45] Staff Ex. 4e at TDI 131.

[46] *See* Tex. Ins. Code § 4005.105(b) (where license is revoked or license application is denied, barring reapplication until after the fifth anniversary of the date the order became effective).

with no admissions or adverse findings.[47] The $15,000 payment was made,[48] whereupon Staff moved for and obtained dismissal of the SOAH proceeding.[49] The dismissal order does not address the merits, noting instead that Staff's motion had advised that the enforcement action was moot because the Abbasis had voluntarily surrendered their licenses.[50]

B. Mr. Wright's Direct Testimony

After eliciting prefatory testimony about Mr. Wright's experience in the insurance industry, his role with the Department, and the Department's abiding concern that insurance agents be "honest, trustworthy, and reliable,"[51] Staff asked the witness to discuss certain documents in its exhibits that reflected the transactions involving Respondent and Copperwood. These included the May 3, 2010 quote that Respondent had obtained for Copperwood, referenced in and attached to his initial counsel's letter.[52] Mr. Wright noted that the document was on the letterhead of Madiha Insurance Agency and, while itemizing costs that chiefly included premiums plus a few hundred dollars in fees and taxes, included no line item for a "financing fee" or "commission."[53]

On the other hand, tacitly agreeing with one of Respondent's contentions in the prior case, Mr. Wright opined that, in his experience, the amount of the premium Respondent quoted would

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[47] Staff Ex. 4l at TDI 281-84; Resp. Ex. I at Bates 15-16. A collateral settlement agreement between Copperwood and the Abbasis included a mutual release of any civil claims and Copperwood's agreement not to pursue criminal charges. Resp. Ex. B.

[48] Resp. Ex. L at Bates 24-26; *see also* Resp. Ex. B at Bates 3-7.

[49] Resp. Ex. C; Resp. Ex. J at Bates 19; Resp. Ex. L at Bates 24.

[50] Resp. Ex. I at Bates 19.

[51] Mr. Wright testified that he has worked in the insurance industry for over three decades, with over thirteen of those years at the Department, where he currently serves as the Department's Agent and Adjustor Division's administrative-review liaison to the Enforcement Division, evaluating cases where agent misconduct may be involved or a license application raises concerns. Tr. at 21-23. He attested that the Department reviews licensing applications carefully as part of its mission to protect Texas consumers amid a "complex" industry, adding that an insurance license "convey[s] trust" that the licensee "is honest, trustworthy, and reliable," "competent," and "that Texas consumers can feel comfortable with transactions initiated by [the] license holder[]." Tr. at 24-25. Mr. Wright explained that Respondent's current application had come to his attention in light of the prior enforcement action and license surrender. Tr. at 26-27.

[52] Tr. at 27-28; Staff Ex. 4h at TDI 213; *see also* Staff Ex. 4c at TDI 104, 107.

[53] Tr. at 28-29.

be sufficiently large that a payment plan might have been implemented.[54] Staff then referred him to the payment plan that Respondent had produced in the 2012 discovery.[55] Noting that the total payment amount under the agreement substantially corresponded to the total stated in the May 3 quote and that the same parties were involved, Mr. Wright deduced that the agreement appeared to refer to the same insurance coverage addressed in the quote.[56] As with the quote, he observed that the payment plan did not contain any explicit reference to a financing fee, commission, or other charge of that nature.[57]

Mr. Wright was next referred to an image of a May 13, 2010 check from Copperwood to Madiha Insurance Agency in the amount of $10,000, which he deduced was Copperwood's initial payment under the agreed-upon payment plan.[58] Referencing other documents in evidence, he testified that Copperwood's bank, Chase, had determined that the check had been deposited into an account under the name of Nuzhat F. Abbasi—Respondent's wife.[59] Noting that Respondent had not mentioned his wife in a 2012 interrogatory response identifying the persons involved in his businesses, Mr. Wright opined that Nuzhat Abbasi had no affiliation with either Madiha Insurance Agency or Paragon Insurance Agency, nor any professional business relationship that would warrant depositing Copperwood's $10,000 check into her account.[60]

Mr. Wright also discussed the second check from Copperwood to Madiha Insurance Agency, dated June 10, 2010 and for $5,000, observing than an image from Chase bank records reflected that it had been processed and cleared the institution.[61] He likewise addressed the two invoices Respondent had issued. A June 4, 2010 invoice on Madiha Insurance Agency letterhead reflected—under a column heading labeled "Premium"—that a $10,000 payment had been applied

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[54] Tr. at 29.

[55] Tr. at 29; Staff Ex. 4h at TDI 205-07.

[56] Tr. at 30. As noted previously, there is a five-cent difference in the totals stated in the quote versus the payment plan, but otherwise the documents correspond.

[57] Tr. at 30-31.

[58] Tr. at 31, 34; Staff Ex. 4i at TDI 251.

[59] Tr. at 32-32, 34-35; Staff Ex. 4i at TDI 249, 253.

[60] Tr. at 32-35; Staff Ex. 4g at TDI 172, 174.

[61] Tr. at 55; Staff Ex. 4i at TDI 250.

against an original amount owing of $27,632.42, leaving $17,632.42 due. A June 29, 2010 invoice—this time on Paragon Insurance Agency letterhead but otherwise in the same format as the earlier one—reflected, again in a column labeled "Premium," that another $5,000 had been applied against the total amount owing, leaving a net of $12,632.42 still due.[62] In Mr. Wright's assessment, nothing on either invoice indicated that the payments were for anything other than premium on the insurance policy.[63]

Mr. Wright also discussed the two checks Respondent had sent to Turner. Images of the two checks were in evidence, with accompanying bank processing information.[64] Each check was drawn on an account under the name of Paragon Insurance Agency, indicated that Turner was the payee, and referenced an invoice relating to Copperwood in the memo or "for" line.[65] Moreover, despite the post-dating of the checks for July 15 and 16, 2010, the bank processing information appears to indicate that they were deposited on June 29 (within a few days after Respondent had mailed them on or about June 25) and were each returned for insufficient funds on July 1.

Mr. Wright deduced that one check had represented payment for the general-liability portion of the policy, the other for the property coverage.[66] As for why the amounts of each check would have differed from the amounts Copperwood had paid to Respondent—a total of approximately $13,300 as compared to $15,000—Mr. Wright explained that it was a "very common" and accepted practice for the retail insurance agent (here, Respondent) to deduct their portion of a commission from premium remittances.[67] But aside from highlighting an inconsistency with Respondent's prior claims of being owed $15,000 of a $27,632.42 total that Copperwood would pay him, Mr. Wright contrasted what he concluded was Respondent's conduct—accepting payments from Copperwood for premium, depositing the checks, and failing

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[62] Tr. at 53-54; Staff Ex. 4h at TDI 208.

[63] Tr. at 55, 74.

[64] Staff Ex. 4i at TDI 259.

[65] Staff Ex. 4i at TDI 259.

[66] Tr. at 60-61. Also, from examining Acord certificates of insurance issued to Copperwood, Mr. Wright had ascertained that the two coverages had been provided by two different insurance carriers, the liability coverage by Underwriters of Lloyds of London, the property coverage by a Chubb entity. Tr. at 48-51; Staff Ex. 4i at TDI 232-33.

[67] Tr. at 61-62.

to transmit the premium on Copperwood's behalf.[68] Mr. Wright observed that misappropriation or conversion of premium is one of the specific grounds for disciplinary action under Texas Insurance Code § 4005.101 and of "prime interest to the Department."[69]

Mr. Wright further testified that Respondent had committed additional violations in 2010 by acting as an insurance agent (as he was licensed to do personally) under the names of Madiha Insurance Agency and Paragon Insurance Agency without properly registering them as assumed names with the Department.[70] Alternatively, Mr. Wright explained, the two business could have been licensed as separate entities with the Department, but he pointed out Department records reflecting that neither business had been licensed in 2010.[71]

Turning to Respondent's more recent conduct, Mr. Wright observed that Respondent had submitted a licensing application in December 2015, just over three years into the five-year reapplication waiver to which Respondent had agreed in the 2012 settlement.[72] The Department had rejected the application, citing the five-year waiver,[73] and Mr. Wright testified that it also weighed against Respondent's current application, as it reflected negatively on Respondent's honesty, trustworthiness, and reliability.[74]

Mr. Wright also faulted Respondent for statements made in his current application. An attorney with the Department's Enforcement division had emailed Respondent requesting additional information that included "[a] written statement detailing the circumstances that le[d] to your previous case with the department."[75] In response, Respondent sent an email on December 15, 2019, that, in pertinent part, attached a copy of the SOAH dismissal order and stated:

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[68] Tr. at 62-63.

[69] Tr. at 63.

[70] Tr. at 69-74, 77, 81-82.

[71] Tr. at 68-69; 81-82; Staff Ex. 4b at TDI 96-97.

[72] Tr. at 63-66; Staff Ex. 4 at TDI 40.

[73] Staff Ex. 4 at TDI 37.

[74] Tr. at 66-67.

[75] Staff Ex. 4a at TDI 73-74.

> In 2012, I was informed a case had been filed against myself and Madiha Insurance Agency with the Texas Department of Insurance. I was not the agent who bound the policy, nor did I share in the commission or agency fee; I simply referred the client to the agent.
>
> We later received an offer from TDI to resolve the dispute in a mutually agreeable fashion. I would surrender my insurance license for a period of time as a settlement with TDI. There is no evidence of wrongdoing on my record; only a case which was resolved amicably and in good faith. I was asked to surrender my license for 5 years; it has now been 7 years since then.[76]

In Mr. Wright's view, Respondent's statements were "not completely forthright, [in] that they appear to minimize the seriousness of the previous incidents that made [Respondent] known to the Department."[77]

In conclusion, Mr. Wright recommended that the Department deny Respondent's current application.[78] He explained that Respondent "is a known commodity," having been licensed previously, and who had ultimately surrendered that license "in response to an action that was being prepared to be taken by the Department of Insurance relating to misappropriation of premium in a significant amount [and] with significant commercial risk."[79] As for any countervailing considerations, Mr. Wright acknowledged that Respondent had submitted some recommendation letters, but downplayed their significance as "appear[ing] to only address knowledge of the past two or three years" based on relationships in "various capacities that were not insurance-related."[80] But more critically, in Mr. Wright's view, neither these letters nor any other information outweighed the seriousness and severity of Respondent's prior conduct or "allay[ed] the Department's concerns with [Respondent] transacting insurance in this state."[81]

Under cross-examination, Mr. Wright acknowledged that when Respondent had submitted his 2015 application, he had disclosed the prior proceedings and cross-referenced an attached copy

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[76] Staff Ex. 4a at TDI 72, 75.

[77] Tr. at 76-77.

[78] Tr. at 78.

[79] Tr. at 78.

[80] Tr. at 79. He returned to the same theme in his rebuttal testimony. Tr. at 137-40.

[81] Tr. at 78-79.

of a settlement agreement between the Abbasis and Copperwood related to the settlement between the Abbasis and Staff.[82]

C. Respondent's Testimony

When called to testify in Staff's case, Respondent denied knowing whether Nuzhat Abbasi (his wife) had ever been an employee of Madiha Insurance Agency.[83] When confronted with his 2012 interrogatory answer in which he had not included her in a list of the employees of his businesses,[84] he again professed, "I don't know," urging that he possessed neither memory nor documents concerning those matters from 11 years earlier.[85] He further decried what he perceived as unfairness in Staff's "retrial" or "relitigation" of a case that it had opted to settle back then.[86]

In the direct testimony presented in his own case, Respondent elaborated that he had trouble remembering the events from 2010 because he had then been preoccupied with addressing "[v]ery serious problems of my life," including grave financial difficulties that he appeared to attribute to the Internet's impact on the travel-agency industry, which had been a primary business occupation of his since the mid-1980s.[87] By 2010, according to Respondent, he was struggling to stave off the foreclosure of his mortgage and homelessness for his family with young children, could not even afford food for those children, had to declare bankruptcy in 2010 and would do so again in 2014, and had bad-credit problems that would take him several years to resolve.[88] Likewise, Respondent added, he did not have "those tens of thousands of dollars to pay to the attorneys to fight for my innocence" in the Department's enforcement case and had opted to settle not out of any sense of guilt, but because he saw it as the "best deal" given his inability to afford counsel and his desire to

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[82] Tr. at 82-84; *see* Staff Ex. 4 at TDI 40-56.

[83] Tr. at 86.

[84] Tr. at 86-87; Staff Ex. 4g at TDI 172, 174.

[85] Tr. at 87-89.

[86] Tr. at 87-88.

[87] Tr. at 93-94, 117-18.

[88] Tr. at 93-94; Resp. Ex. M.

put the matter behind him.[89] Respondent also emphasized that the settlement had entailed no findings or admissions of wrongdoing on his part.[90]

Respondent professed that he had understood the settlement to fully resolve the Department's allegations of misconduct in 2010, through his agreeing to be "punished" by surrendering his license for five years, and that he would thereafter be able to regain his license and "go on from there."[91] Consequently, Respondent "was not even expecting that it would be relitigated after eleven years," and that this was another reason why he had not retained documents or memory concerning the underlying events.[92]

Although Respondent acknowledged that some documentation had survived in Staff's exhibits, Respondent (as he had in 2012) claimed that much of his business dealings with Mr. Abouekde and Copperwood had been conducted verbally in light of their longstanding history and friendship.[93] Consequently, according to Respondent, the documents in evidence did not reflect all of his dealings and agreements with Mr. Abouekde in 2010, although he did not specifically identify any additional purported agreements or terms of this sort.[94] Similarly, Respondent insisted that the invoices emphasized by Staff were form "templates" intended merely as a "formality" to document that a payment had been made, but did not reflect the purposes of the payments to which he and Mr. Abouekde had agreed or other terms unique to their dealings.[95]

While disputing Staff's characterization that he had "take[n] $15,000 in insurance premiums and not appl[ied] it to insurance premiums,"[96] Respondent acknowledged feeling a sense of responsibility with respect to the 2010 events, stating "that . . . there might be some

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[89] Tr. at 95-96, 97.

[90] Tr. at 95-96, 97-98.

[91] Tr. at 96-97.

[92] Tr. at 96-97.

[93] Tr. at 92-93, 117, 124.

[94] Tr. at 92-93, 123-24.

[95] Tr. at 91-92, 124.

[96] Tr. at 123.

mistakes," although he did not elaborate.[97] Accordingly, Respondent professed, he had "tr[ied] to improve myself since then."[98] He also professed a desire to be a good role model for his children and that he was "a God-fearing guy" who believed that "[i]f I did something wrong, I will be responsible in this world and hereafter also."[99] Consequently, according to Respondent, he had "constantly" tried to "improve myself," including "educationally, morally, ethically," urging that "[i]f everybody start[ed] making himself a better person, [the] whole society will change."[100] He added that he had tried to convey these teachings to his children and noted proudly that son Danial had obtained his legal education from Columbia and that another child had gone to Harvard.[101]

Regarding his own educational self-improvement, Respondent testified that he had discontinued his formal schooling at around age 18 or 19 in order to work and take care of his family—including six younger brothers and sisters—following the death of their father.[102] He added that his father had been a presidential candidate in their native Pakistan, had been poisoned and, although surviving for another eight years, had suffered from ailments that exhausted the family's resources and left them in debt.[103] Starting in the spring of 2020, now in his sixties and having lived and worked in the Houston area for around forty years, Respondent had availed himself of adult-education classes provided free-of-charge by the University of Houston, carrying a 4.0 G.P.A. in courses (typically six hours taken per semester) that included history, political science, kinesiology, and algebra.[104]

Respondent further testified that he had also "made myself more available to the community" through a variety of civic and charitable endeavors in which he participated either individually or through CAPSA—Coalition of Americans for Political and Social Awareness—a

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[97] Tr. at 98-99, 123-24.

[98] Tr. at 98-99.

[99] Tr. at 101-02.

[100] Tr. at 102. 105-07.

[101] Tr. at 105.

[102] Tr. at 99.

[103] Tr. at 99.

[104] Tr. at 99, 109, 114-15; Resp. Ex. K.

nonprofit for which he served as finance director.[105] He described fundraising and other efforts to provide groceries and clothing to Houston's homeless, arranging medical services to be provided by volunteer doctors, work to improve understanding that "my religion" (an apparent reference to Islam) opposes terrorism, and *ad hoc* coordination of other assistance (*e.g.*, rent payments, lodging), drawn from fellow members of the Houston-area Pakistani community, for whomever he might be called upon to help.[106] One of these fundraising efforts, according to Respondent, had raised $77,000, adding that "I am able to generate that money," and be entrusted with it, "because I have good trust in the people."[107]

Further, Respondent testified, he had become qualified to serve as a voter registrar and had been active in registering voters, as well as working for individual political candidates (*e.g.*, block-walking, introductions) in building their support among Muslim and other minority communities.[108] Having "been in [the] Houston community [for the] last 40 years," Respondent claimed, "I have very good relations" and "[t]he community trusts me," and that his work had contributed to the successes of candidates who included a Harris County commissioner who "did his [victory] celebration party at my home."[109]

Three of Respondent's five recommendation letters had come from political candidates whose campaigns he had assisted.[110] Two solely emphasized Respondent's attributes as a political advisor and/or volunteer,[111] but Hon. Leticia Plummer, who had since won election to the Houston

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[105] Tr. at 99-100; Resp. Ex. G.

[106] Tr. at 100-05, 113-14.

[107] Tr. at 100, 116-17.

[108] Tr. at 107-12.

[109] Tr. at 108-09.

[110] Tr. at 110-11, 112-13; Resp. Exs. D, E, H.

[111] By letter dated November 20, 2019, Judge Stacey Williams, a Dallas County district judge who was then running for the Texas Supreme Court, praised Respondent's deep understanding of both "general political dynamics" and "the local Houston political scene," his "specialized knowledge" regarding messaging to the Muslim community, and as being "professional yet friendly." Resp. Ex. D. She added that "I feel as though I can raise any issue with him, and he will address the issue honestly"—in context, a reference to candor—and "with tact and a correct analysis." *Id.* Similarly, by letter of November 19, 2019, the volunteer director for the congressional campaign of Tahir Javed lauded Respondent as a "very active, passionate, and hardworking person" who had helped the campaign "in a practical manner" through phone-banking, block-walking, flyer distribution, and serving as a polling-station coordinator. Resp. Ex. E.

City Council, praised Respondent not only as "an exceptional leader and a phenomenal community organizer" who had worked for her 2018 congressional campaign, but also for his "upstanding character."[112] According to Councilmember Plummer, Respondent "was always sincere and straightforward in his dealings"; "does good work for the community, such as helping to fundraise for important causes [and] running awareness campaigns around important community issues"; and is "an honest, upstanding member of the community," "well-respected, genuine, and a family man."[113]

Respondent additionally submitted a recommendation letter from Amir Waseem, the owner of a wholesale travel agency who indicated that he had business dealings and a friendship with Respondent spanning "several years."[114] Mr. Waseem attested that Respondent was "a professional, civic, and . . . dedicated individual" who "possess[ed] great acumen" and "professionalism" in his work, and was also a "trustworthy, hardworking, and dependable agent."[115] The remaining recommendation letter was written by Dr. Humayan Mirza, President of CAPSA.[116] Dr. Mirza indicated that he had known Respondent "for the last several years"; that Respondent "has been instrumental in serving various public interest causes for many years"; that Respondent "is an officer of . . . CAPSA"; and that he "has been at the forefront of social, educational and political activities from this and other platforms," including "encouraging citizens to vote," "informing and educating individuals of their civic duties and rights," and "introduce[ing] of various candidates for public office to the community at large."[117] Dr. Mirza added that Respondent "has worked with many social and political advocacy groups and has a reputation in his community of being an honest, sincere and upright individual."[118]

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[112] Resp. Ex. H.

[113] Resp. Ex. H.

[114] Tr. at 110-11; Resp. Ex. F.

[115] Resp. Ex. F.

[116] Tr. at 112; Resp. Ex. G. The letter is written on CAPSA letterhead.

[117] Resp. Ex. G.

[118] Resp. Ex. G.

Respondent further attested that although "my credit was destroyed because of my bankruptcy, which I had to do because of my home," he had since rebuilt his credit and even been issued the highest-level cards from two credit card companies.[119]

Additionally, while acknowledging that he had reapplied for licensure in 2015 despite knowing that the five-year waiver period had not yet run, Respondent stated that he did so on the advice of counsel who had perceived no problem with his attempt, reasoning that the Department would simply refuse the application if it didn't want to allow it.[120] Responded added that "I did not hide anything," referencing his accompanying disclosure of the prior enforcement proceeding and settlement agreement with Copperwood.[121]

Respondent testified that regaining his insurance license was important to him for two key reasons. The first was financial—although he was eligible to draw Social Security, it provided him less than $800 per month. Moreover, Respondent indicated, his wife was not yet eligible, nor could she work due to disabling medical problems.[122] And his prior business as a travel agency was not a viable fallback career, Responded added, as that industry had been "destroyed" by online booking.[123] The second reason Respondent desired licensure, he professed, was that it would enable him to serve members of his community again, some of whom he had known for fifty years.[124] He professed to treat these customers "just like my friends, my relatives," including making himself available for early-morning phone calls and in-home visits.[125]

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[119] Tr. at 116.

[120] Tr. at 95.

[121] Tr. at 95.

[122] Tr. at 117.

[123] Tr. at 117-18.

[124] Tr. at 118-19.

[125] Tr. at 118-19.

D. Arif Abbasi's Testimony

Brother Arif Abbasi elaborated as to the role Respondent had assumed in their family following the death of their father approximately 45 years earlier. As the oldest child in the family, he recounted, Respondent had taken on, at a young age, the responsibility of single-handedly supporting their widowed mother and his younger siblings, including ensuring that those siblings finished their educations, which the witness seemed to indicate was a perceived duty of the head-of-household in their culture.[126] In these pursuits, according to Mr. Abbasi, Respondent had worked multiple jobs, "many hours, days and nights," and "overnight," and, seeking better income and opportunity, eventually emigrated to the United States, where he had "work[ed] hard" and sent money to support the family back in Pakistan "for many, many years."[127]

The witness testified that he had lived with Respondent in Houston for ten years after emigrating to the U.S. himself.[128] He attested that Respondent had been "extremely engaged with the community from day one," including (in addition to supporting family back in Pakistan and joining various organizations) helping fellow immigrants in finding employment or a place to live, providing them monetary support, and furnishing "moral support" to those who became "homesick."[129] He added that Respondent "has been extremely [well] regarded and very highly spoken of within the community," and "if I go to mosque or . . . social events" with Respondent, "I see[] people surrounding him, and he has many, many, like, hundreds of friends" who are "always . . . talking and appreciating him [for] for what he has done for the community."[130]

E. Mr. Wright's Rebuttal Testimony

On rebuttal, after having heard the evidence about Respondent's community involvement and the recommendation letter from Councilmember Plummer (which had not been submitted to

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[126] Tr. at 127-30.

[127] Tr. at 129-30.

[128] Tr. at 135.

[129] Tr. at 130-33.

[130] Tr. at 133-34.

the Department when it made its licensing determination), Mr. Wright testified that his recommendation to deny licensure remained unchanged.[131] He added that financial hardship was not a consideration in licensure.[132]

In response to questioning from the ALJ as to whether the Department essentially equated the alleged misappropriation of premiums to a lifetime ban on relicensure, Mr. Wright stated that while each situation was evaluated on a case-by-case basis, the breach of an agent's "fiduciary responsibility to handle money responsibly, that a customer not be exposed to millions of dollars of loss exposure as a result of mishandling of funds," was "one of the most severe transgressions related to a license holder that the Department has to consider."[133] On redirect, he added that it was "possible" but "[n]ot likely" than an agent could get relicensed after having misappropriated premiums.[134]

IV. ANALYSIS AND RECOMMENDATION

Respondent has not contested that he willfully violated Texas insurance laws by failing to file assumed-name certificates for Madiha Insurance Agency and Paragon Insurance Agency, further professing that he "regrets the clerical error" and "would carefully fulfill such administrative requirements if he were granted a license."[135] However, Staff acknowledges that the Department would "unlikely" deny licensure based on this omission alone.[136] As for Staff's remaining asserted grounds for denial, each depends, either directly or indirectly, on the merits of its allegation that Respondent misappropriated or converted premium payments he received from Copperwood in 2010.

As a threshold matter, Respondent decries "administrative overreach" in Staff's reliance on alleged events from so long ago. He urges that the passage of years has brought an attendant

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[131] Tr. at 140.

[132] Tr. at 141.

[133] Tr. at 141.

[134] Tr. at 142

[135] Resp. Closing Arg. at 5.

[136] Staff Closing Arg. at 5.

loss of "documentation, witnesses, recollections, or other evidence necessary to rebut these decade-old allegations."[137] He did not elaborate further as to what this evidence would consist of or show.

To the extent Respondent would rely on a purported collateral agreement with Copperwood regarding service or financing fees not reflected in the documents, Respondent lacked documentary proof of same even in 2012, as he acknowledged in discovery back then.[138] Nor does Respondent point to any alleged conduct by the Department or Staff that would have caused or contributed to any intervening loss of evidence. On the contrary, Respondent attributed the purported loss of evidence to his preoccupation with personal struggles circa 2010-12 and to his perceptions that the 2012 settlement had fully resolved the Department's issues with him or his future relicensure. Relatedly, he has complained of Staff's "relitigation" of the prior enforcement action in this proceeding and seeking what he regards as duplicative "punishment" by denying his current license application. Respondent's arguments are premised on misunderstandings about the Department's licensing authority under Chapter 4005 of the Insurance Code.

Chapter 4005 authorizes the Department to deny Respondent's current license application based on any of the grounds listed in Section 4005.101, and there is no statute of limitations or other temporal restriction that would prevent it from relying on Respondent's conduct in 2010 as proof.[139] Other provisions within Chapter 4005 are consistent with this observation. For example, Section 4005.105 bars a person whose insurance license has been denied or revoked (excepting on certain grounds not applicable here) from reapplying for an agent license before the fifth anniversary of either the effective date of the denial or revocation or, if challenged by judicial review, the date of the final court order affirming the denial or revocation.[140] But more importantly, even where the former licensee reapplies after the expiration of the five-year bar, Section 4005.105 affords the Insurance Commissioner discretion to deny the application "if the applicant fails to

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[137] Resp. Closing Arguments at 1, 3.

[138] Staff Ex. 4f at TDI 151.

[139] *See* Tex. Ins. Code § 4005.101.

[140] Tex. Ins. Code § 4005.105(b), (d). The exclusions relate to failure to pass a written explanation, comply with continuing-education requirements, or properly complete a license application.

show good cause why the denial or revocation should not be a bar to the issuance of a new license."[141] Although Section 4005.105 is not directly applicable here (as Respondent's license was surrendered rather than revoked), it belies the notion that the disciplinary effect of past misconduct is limited to a one-time "punishment" of license revocation (or a surrender having the same effect). Instead, the Legislature contemplated that the misconduct remains a potential basis for denying licensure into the future.

While Respondent seems to view the 2012 settlement as having some sort of favorable preclusive effect regarding his current application, that reasoning fails because the settlement concluded the enforcement case with a dismissal without reaching the merits, let alone any adjudication of merits in his favor.[142] And the same is true for Staff—as Respondent has argued forcefully, there were no adverse rulings or findings adjudicated against him. Consequently, all that can be said of the settlement is that it has no preclusive effect for or against either side.

Finally, to the extent that Respondent's threshold complaints should be fairly read as an attempt to invoke the due-process-based limitations on agency disciplinary authority addressed in *Granek v. Texas State Board of Medical Examiners*,[143] such constitutional issues are beyond the powers of this SOAH ALJ to address in this proceeding.[144]

In short, Respondent has not presented any valid legal bar to Staff's reliance on his alleged misappropriation of premiums in 2010 in attempting to prove grounds for denying his current

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[141] Tex. Ins. Code § 4005.105(c).

[142] *See*, *e.g.*, *Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 521 (Tex. 1998) (collateral estoppel requires that, among other elements, the issue must be "actually litigated" in the prior lawsuit and "essential to that lawsuit's judgment").

[143] 172 S.W.3d at 771-77. In *Granek*, the Third Court of Appeals recognized that a loss of exculpatory evidence and witnesses caused by prolonged prosecutorial delay in a regulatory agency's initiation of a disciplinary proceeding against a licensee can potentially rise to the level of constitutionally significant prejudice, and violate due process, based on consideration of "the extent to which agency delay has caused witnesses to become unavailable or the defendant or other witnesses to forget the relevant events," "whether the relevant events were contemporaneously recorded," and "whether the defendant had early notice of the allegations against him." *Id.* at 772-76.

[144] *City of Dallas v. Stewart*, 361 S.W.3d 562, 568, 578-79 (Tex. 2012) (questions of constitutionality are exclusive to the judiciary and "outside the competence of administrative agencies").

licensing application. Accordingly, the ALJ now turns to whether Staff met its burden to prove that misconduct.

It is undisputed that Copperwood made a total of $15,000 in payments to Respondent (or more precisely, to Respondent acting under the names of Madiha Insurance Agency and/or Paragon Insurance Agency) and that Respondent never remitted any of these amounts to Turner in payment for premiums. The preponderant evidence, indeed great weight of the evidence, demonstrates that Copperwood's payments to Respondent included amounts that Respondent was obligated to remit to Turner as premiums—the May 3 quote reflected that $26,548.00 of the $27,632.42 total amount owing was for premiums, Respondent's corresponding payment plan with Copperwood contained no indication that the first two payments (for $10,000 and $5,000) would somehow not include any premiums, and it would have been a mathematical impossibility for either payment not to have included premium, as each was for an amount that far exceeded the comparatively small amounts of non-premium fees and taxes itemized in the quote. Further, as explained by Mr. Wright, Respondent's subsequent attempt to pay Turner with two checks totaling around $13,312.20 was consistent with a remission of premium to Turner for the two coverages under the policy, net of an approximately $1,700 commission for the agent.[145] And Respondent, through his counsel's letter of January 26, 2012, acknowledged (at least initially) that all of these payments or attempted payment had included premiums, which in the context of the foregoing evidence was merely stating the obvious.[146]

Later in the enforcement case, Respondent would insist that the entire $15,000 in payments from Copperwood had represented a "service fee" and "finance fee" owed to him rather than premium owed to Turner, citing the purported collateral agreement that he and Mr. Abouekde had supposedly made only verbally. Conspicuously, Respondent does not appear to press this contention through his pleadings, evidence, and argument in the current case. As the ALJ understands Respondent's present position, he is contending merely that the documents in

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[145] From the images of the checks in evidence, the amount of the larger check appears actually to be for a few cents more than the parties have assumed. $9,896.62. Staff Ex. 4i at TDI 259.

[146] *See* Staff Ex. 4c at TDI 104-05 (describing the quote, Copperwood's two payments, and Respondent's subsequent attempted payment to Turner as being for premiums on the policy).

evidence do not reflect the entirety of his agreements and dealings with Mr. Abouekde and that Respondent "had informed Mr. Abouekde that *a portion of* the amounts payable [under the quote and/or payment plan] would be applied towards agency service and financing fees."[147] That is, Respondent now maintains that the $15,000 from Copperwood did not represent *solely* payments for policy premiums, and as such could not have been misappropriated in that entire amount (an assertion largely consistent with Mr. Wright's testimony that Respondent probably deducted a commission when remitting payment to Turner). Respondent does not take the additional step of contending, as in 2012, that the funds were entirely free of premium payments. In short, there appears to be no present dispute that the payments made by Copperwood to Respondent included some portion or portions representing policy premiums.

The evidence further establishes that Respondent's two post-dated checks to remit premium to Turner were dishonored due to insufficient funds in the Paragon Insurance Agency account on which they were drawn, and that Respondent was unable financially either to make the payments owed to Turner or to refund the payments back to Copperwood. This could have occurred only if the payments from Copperwood, totaling $15,000 in amount, were not held in trust for use in remitting those premiums to Turner, but were diverted to some other use instead. In fact, Staff presented evidence—which remained undisputed—that the $10,000 initial check was deposited into an account held by Respondent's wife, who was not associated with Respondent's businesses. Further, the evidence established a strong motive for Respondent to divert the funds for personal use, namely his dire financial situation and related indebtedness. Lending additional support for the inference of personal use is the evidence reflecting Respondent's continual blurring of the lines between and among himself and his various businesses, practices that could well have carried over into the commingling of funds. And Respondent, at least initially, owned up to his responsibility for the $15,000 in payments, listing Copperwood as a creditor when filing bankruptcy in September 2010, as his counsel pointed out in January 2012.

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[147] Resp. Closing Arg. at 3 (citing Tr. at 124) (emphasis added); *see also* Resp. to Amended Pet'n at ¶¶ 14-15 ("The crux of the allegations . . . are that [Respondent] did not disclose to Copperwood that part of the payments Copperwood would make under their arrangement [was] a service fee, and would not entirely be applied towards policy premiums," and asserting that Respondent "did, in fact, disclose to Abouekde that part of the charges were a service fee").

Collectively, the evidence suggests the picture of a man who, amid desperate financial circumstances, more likely than not made personal use of Copperwood's premium payments, perhaps with the expectation (or hope) that future incoming funds from Copperwood or others would enable him to meet his obligations to Turner and ultimately make up the difference, only to come up short. In any case, Respondent's breach of trust in failing maintaining Copperwood's premium payments for remission to Turner establishes two of Staff's grounds for denying licensure—Respondent misappropriated funds belonging to Copperwood and/or Turner, and thereby also engaged in "dishonest acts or practices."

Turning now to the factors under the Department's Rule 1.502, the ALJ agrees with Staff that Respondent's misappropriation of premiums in 2010 is "directly related" to the duties and responsibilities of an insurance agent. Such an act, by its very nature, infringes core duties and responsibilities with which licensed insurance agents are entrusted and reflects very negatively and seriously on an agent's ability, capacity, or fitness to perform these duties and responsibilities.[148] As Mr. Wright observed, it is a type of agent misconduct that inherently raises grave doubts as to whether the agent should ever be licensed again. Yet Rule 1.502 also requires a further evaluation of Respondent's fitness for licensure in the context of his conduct as a whole.[149] And there is much that favors Respondent in that broader analysis.

Whatever might be said of Respondent's preceding conduct, it should be of some assurance that Respondent ultimately agreed to pay, and did pay, the entire $15,000 back to Copperwood in the 2012 settlement, a sort of making of amends. Further, acknowledging that there might have been "some mistakes" on his part preceding the 2012 settlement, Respondent professed to have dedicated himself thereafter to self-improvement, including morally, ethically, educationally, and in serving his community.[150] In recounting these efforts and the fruit they bore, Respondent struck the ALJ as earnest, sincere, and credible. Respondent's account also finds corroboration in his recommendation letters, particularly those from Councilmember Plummer and CAPSA's Dr. Mirza, who confirmed that Respondent had been performing numerous good works. They also

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[148] 28 Tex. Admin. Code § 1.502(h)(1).

[149] 28 Tex. Admin. Code § 1.502(h)(2).

[150] Tr. at 98-99, 106.

described Respondent as a respected and upstanding leader in his community, high praise from individuals whose positions would imply that same stature for themselves.

In the meantime, the events of 2010-12, and whatever "mistakes" Respondent might have committed back then, have receded farther and farther into the remote temporal distance, and would correspondingly tend to weigh less heavily in comparison to the more recent good acts and behavior.[151] And the balance under Rule 1.502 would be tipped even farther in Respondent's favor when one considers the compelling story of Respondent's hard work, self-sacrifice, and sense of duty in single-handedly supporting his widowed mother and many siblings following his father's death, all beginning while he was still in his late teens.[152]

Staff argues that Respondent's conduct during the intervening years has been clouded by a continued pattern of "dishonest" and "untrustworthy" acts demonstrating, in its view, that little has changed in Respondent since his misdeeds in 2010. Staff characterizes Respondent's 2015 attempt to reapply for licensure, before the agreed-upon five-year waiver period had expired, as Respondent's "refusal to adhere to the terms of his agreement."[153] Against the backdrop of Respondent's 2010 misappropriation of premiums and his registration violations, Staff insists, the 2015 application is "indicative of [Respondent's] continued attitude of contempt and disregard for the [D]epartment [and] its rules, and even his own word."[154] The ALJ is unpersuaded that such damning inferences should reasonably be drawn from the 2015 application. When submitting this application, Respondent alerted the Department to the prior proceedings, even attaching a copy of his settlement agreement with Copperwood, a document describing the prior proceedings and the nature of the allegations made against him.[155] Moreover, Respondent submitted the application after three of the five years had already passed. As such, there was no attempt by Respondent to conceal, circumvent, or otherwise breach the prior agreement, only what in context amounted to a

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[151] 28 Tex. Admin. Code § 1.502(h)(3) (factors include "the amount of time that has elapsed" since the misconduct; and "other evidence of the person's present fitness, including letters of recommendation").

[152] 28 Tex. Admin. Code § 1.502(h)(3) ("the conduct and work activity of the person prior to and following" the misconduct).

[153] Staff Closing Arg. at 11.

[154] Staff Closing Arg. at 11.

[155] Staff Ex. 4 at TDI 41-42, 52-56.

straightforward and innocuous request that the Department excuse the remaining two years and consider the application at that point in time.

Staff also points to Respondent's assertion in his current application, with reference to the circumstances giving rise to the prior case, that "*I was not the agent who bound the policy, nor did I share in the commission or agency fee: I simply referred the client to the agent*." This statement, as Staff observes, is incorrect, and contradicts not only the underlying facts as addressed above but even Respondent's own defensive contentions throughout the prior case. Staff would conclude that these misstatements were also made intentionally and in an attempt to regain his license by that means—two independent grounds under Insurance Code Section 4005.101 for denying licensure[156]—and also represent an ongoing pattern of "lying" that was also evident in the prior case. Staff emphasizes Respondent's eventual insistence in the prior case that the entirety of the $15,000 paid to him by Copperwood represented service or financing fees and was in no part premiums.[157] These aspects of Respondent's conduct are indeed troubling.

As noted, Respondent does not try to assert in the present case, as he did in 2012, that the $15,000 from Copperwood consisted solely of service or finance fees and no premium—and wisely so. Simply put, Respondent did himself more harm than good in ever resorting to that wholly implausible assertion, both in terms of defending the 2012 case and in any future assessments of his credibility.

That being said, Respondent made other "mistakes" during that period of his life, and professed a turn for the better thereafter. Indeed, the intervening years have brought good works that weigh in his favor, as well as the passage of time that can lighten the relative weight of past misdeeds. But then Respondent made those misstatements in his current licensing application. Respondent has offered no explanation for those misstatements, aside from his generalized professions of lost recollections, and their nature and extent of divergence from the truth tend to belie mere mistaken memories.

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[156] Staff Closing Arg. at 11-13.

[157] Staff Closing Arg. at 13.

On the other hand, it is difficult to fathom that Respondent would actually make these misstatements with the intent of misleading the Department about his history or in an attempt to conceal it—the objective possibility of success would be so remote. The Department, after all, had been directly and deeply involved in Respondent's history, and Respondent's own 2015 licensing application had been a more recent reminder of it. Yet it had been similarly incredible for Respondent to contend in 2012 that Copperwood's $15,000 in payments somehow contained no premiums despite documentary evidence, his own prior assertions, and basic math that demonstrated otherwise—yet Respondent tried anyway.

Whether intentional falsifications or not, Respondent's current misstatements, viewed in the context of and combined with his 2012 misstatements and his underlying misappropriation of premiums, raise sufficient doubts about his present honesty, trustworthiness, and reliability as to tip the Rule 1.502 balance against his current fitness to be licensed as an insurance agent. Consequently, the ALJ must recommend that the Commissioner deny Respondent's current license application. In further support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

V. FINDINGS OF FACT

1. On April 1, 2019, Mohammad Afzal Abbasi (Respondent) applied to the Texas Department of Insurance (Department) for a general-lines-agent license with a property and casualty qualification.

2. On June 4, 2019, Department staff (Staff) proposed to deny Respondent's application and notified him of his right to a hearing before the State Office of Administrative Hearings (SOAH).

3. On July 2, 2019, Respondent timely requested a hearing.

4. On December 2, 2020, Staff issued a notice of hearing to Respondent, which attached and incorporated by reference its petition in the case. On March 24, 2021, Staff filed and served an amended petition.

5. After prior continuances, SOAH Order No. 3 set the hearing on the merits to convene at 9 a.m. on June 1, 2021, and provided Zoom access information.

6. The notice of hearing, petition, and Order No. 3 contain 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 particular sections of the statutes and rules involved; and the factual matters asserted.

7. The hearing was held via Zoom videoconferencing before ALJ Robert Pemberton. Staff was represented by Department attorneys Stephanie Daniels and Allison Anglin, while Respondent was represented by attorney (and son) Danial Abbasi. The hearing convened on June 1, 2021, and, pursuant to SOAH Order No. 4, again on June 21, 2021, when it concluded. The record was held open pending the filing of the complete transcript and then written closing arguments, and ultimately closed on August 20, 2021.

8. On May 3, 2010, Respondent, doing business under the name of Madiha Insurance Agency, provided Copperwood Condominium Association, Inc. (Copperwood) a quote for a property and general-liability insurance policy. The quote stated a total amount of $27,632.42 and itemized costs that included a total of $26,548.00 in premiums.

9. Copperwood, through its managing agent, Allen Abouekde, accepted the quote, and the coverage was bound through Turner General Agency (Turner).

10. Mr. Abouekde, for Copperwood, agreed with Respondent to pay the total amount in installments, with an initial payment of $10,000 and then payments of $5,000 per month until the balance was paid off.

11. Mr. Abouekde, for Copperwood, made the initial payment of $10,000 by check dated May 13, 2010, payable to Madiha Insurance Agency.

12. Respondent received this check and deposited it into an account under the name of his wife, Nuzhat Abbasi, who was not employed by or otherwise involved with Respondent's businesses.

13. Mr. Abouekde, for Copperwood, made the first of the $5,000 installment payments in June, by check payable to Madiha Insurance Agency. Respondent received this check, and it was processed and cleared Copperwood's bank.

14. Respondent issued two invoices to Copperwood, one on the letterhead of Madiha Insurance Agency, the other on the letterhead of Paragon Insurance Agency, reflecting that the two payments had been applied against the $27,632.42 originally due, for "Premium."

15. In late June 2010, Respondent, drawing on an account of Paragon Insurance Agency, wrote two post-dated checks to Turner to remit premiums due on Copperwood's policy, one in the amount of $9,896.62, the other for $3,417.78.

16. Both of the Paragon checks were dishonored for insufficient funds.

17. Respondent failed to remit any of Copperwood's premium payments to Turner, and the policy was cancelled for nonpayment of premium.

18. Respondent retained Copperwood's premium payments, and declared bankruptcy in September 2010, listing Copperwood as a creditor.

19. When conducting business under the assumed names of Madiha Insurance Agency and Paragon Insurance Agency, Respondent had not registered either assumed name with the Department, nor obtained licensing for the businesses as separate entities.

20. Respondent has not contested Staff's allegation that he acted willfully in conducting business under the Madiha and Paragon names without required registration or licensing. However, Staff has acknowledged that the Department would be unlikely to deny Respondent licensing on this ground alone.

21. Respondent misappropriated premium payments made by Copperwood and owed to Turner.

22. By misappropriating these premiums, Respondent engaged in dishonest acts or practices.

23. The act of misappropriating premiums is one that inherently infringes core duties and responsibilities with which a licensed insurance agent is entrusted; reflects very negatively on a person's ability, capacity, or fitness to perform those duties and responsibilities; and raises grave doubts as to whether the person should ever be licensed as an insurance agent again.

24. Based on substantially the same allegations of premium misappropriation, the Department previously prosecuted an enforcement action against Respondent in 2012. In that proceeding, Respondent would ultimately assert a defense that none of the $15,000 paid to him by Copperwood represented premiums owed to Turner, but instead consisted entirely of service and financing fees. This assertion was untrue and wholly implausible.

25. Respondent and the Department ultimately settled the 2012 enforcement action, and it was dismissed without admissions or adverse adjudications for either party. Respondent agreed to pay, and did pay, $15,000 to Copperwood, thereby refunding the prior payments; surrendered the general-line-agent license he then held; and agreed to waive his right to reapply for licensure for five years thereafter.

26. Acknowledging "mistakes" on his part that preceded the 2012 settlement, Respondent has striven thereafter to improve himself morally, ethically, educationally, and in serving his community. He has devoted himself to an admirable and impressive array of community-service initiatives and good works, some of which have entailed his raising and being entrusted with funds for use in helping others.

27. Respondent's recommendation letters—whose authors include a Houston City Council representative and the president of the Coalition of Americans for Political and Social Awareness (CAPSA)—confirm his doing of good and meaningful works and describe Respondent as a respected, upstanding leader is his community.

28. Also weighing in favor of Respondent's fitness for licensure is his hard work and self-sacrifice to support family members beginning during his late teens, following the death of his father.

29. Respondent's misappropriation of premiums took place in mid-2010—just under nine years before he submitted his current licensing application, and over eleven years before the hearing in this case.

30. In December 2015, just over three years into the five-year waiver of his right to reapply to which he had agreed in the 2012 settlement, Respondent filed an application for licensure. The Department denied this application, citing the five-year waiver. In submitting this application, Respondent disclosed and alerted the Department to the prior enforcement proceedings and settlement, and the attempt does not weigh materially against his current fitness for licensure.

31. When submitting his current licensing application, Respondent asserted, with reference to the circumstances giving rise to the prior enforcement case, that "I was not the agent who bound the policy, nor did I share in the commission or agency fee; I simply referred the client to the agent."

32. This assertion is false, was never directly addressed or explained by Respondent, and the extent of its deviation from the truth tends to defy attribution to mere mistaken recollection.

33. This misstatement, in the context of and combined with Respondent's prior misstatements during the 2012 proceedings concerning the nature of the $15,000 in payments from Copperwood, weighs materially against Respondent's current fitness for licensure.

34. Taking these misstatements into account along with the seriousness of Respondent's misappropriation of premiums in 2010, Respondent is not currently fit for licensure.

IV. CONCLUSIONS OF LAW

1. The Commissioner of Insurance and the Department have jurisdiction over this matter. Tex. Ins. Code §§ 82.051-.055, 4001.002, 4005.101, .102; Tex. Gov't Code §§ 2001.051-.178; 28 Tex. Admin. Code § 1.502.

2. The State Office of Administrative Hearings 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. Respondent 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, among other grounds, the applicant has

willfully violated an insurance law of this state; misappropriated, converted to his or her own use, or illegally withheld money belonging to an insurer or insured; engaged in "fraudulent or dishonest acts or practices"; intentionally made a material misrepresentation in the license application; or attempted to obtain a license by fraud or misrepresentation. Tex. Ins. Code § 4005.101(b)(1)-(5).

5. The insurance laws of this state require a person who conducts the business of insurance in this state to be licensed by the Department. Tex. Ins. Code §§ 101.051, .102; 4001.051, .101; 4051.051.

6. The insurance laws of this state require a licensed agent who does an insurance business under an assumed name to register the assumed name with the Department by filing a completed Form LDTL and pay a fee. 28 Tex. Admin. Code § 19.902

7. The Department considers the factors specified in 28 Texas Administrative Code § 1.502(h) in deciding whether to grant or deny any license under its jurisdiction, determining whether the underlying acts "directly relate[] to the duties and responsibilities of" a licensed insurance agent and then weighing broader factors that may bear upon the applicant's fitness for licensure. 28 Tex. Adm. Code § 1.502(h); *see also* 28 Tex. Admin. Code § 1.502(c) (Department "considers it very important" that its licenses "be honest, trustworthy, and reliable").

8. Staff has the burden to prove by a preponderance of the evidence its grounds for denying Respondent's license application and that it should be denied, while Respondent has the burden to present any favorable evidence of his fitness for licensure. *See* 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 1.502(h).

9. Respondent has not raised any valid ground that would bar the Department from relying on his conduct dating back to 2010 as underlying facts establishing its grounds for denying his current licensing application.

10. Staff met its burden to prove that Respondent willfully violated the insurance laws of this state. Tex. Ins. Code § 4005.101(b)(1).

11. Staff met its burden to prove that Respondent misappropriated premium payments and engaged in fraudulent or dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(4)-(5).

12. The misappropriation of premiums directly relates to the duties and responsibilities of a licensed insurance agent. 28 Tex. Admin. Code § 1.502(h)(1).

13. The adverse implications of the 2010 premium misappropriation and Respondent's subsequent misstatements about those acts, both during the 2012 proceedings and in his current application, outweigh any favorable evidence of Respondent's current fitness for licensure. 28 Tex. Admin. Code § 1.502(h)(1)-(2).

14. Respondent's current license application should be denied.

SIGNED October 15, 2021.

ROBERT H. PEMBERTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

2023-7886

FILED
454-21-0729
11/15/2021 12:36 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

ACCEPTED
454-21-0729
11/15/2021 12:37:12 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

Exhibit B

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 15, 2021

Cassie Brown
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe, Tower 1, 13th Floor, MC 113-2A
Austin, TX 78714

VIA EFILE TEXAS

RE: Docket No. 454-21-0729.C; Texas Department of Insurance v. Mohammad Afzal Abbasi

Dear Commissioner Brown:

The Proposal for Decision (PFD) in this case was issued on October 15, 2021. On October 29, 2021, Staff of the Texas Department of Insurance (Department) filed exceptions to the PFD. Mr. Abbasi did not file exceptions.

In its exceptions, Staff requests that the Administrative Law Judge (ALJ) revise Finding of Fact No. 30 to clarify the nature of the Department's disposition of the license application submitted by Mr. Abbasi in December 2015. In response, the ALJ would recommend the following changes to that finding:

30. In December 2015, just over three years into the five-year waiver of his right to reapply to which he had agreed in the 2012 settlement, Respondent filed an application for licensure. In response, ~~T~~the Department ~~denied this application,~~ sent Respondent a letter on February 17, 2016, informing Respondent that he was ineligible to apply for an insurance license until November 16, 2017, due to his 2012 voluntary license surrender and ~~citing the~~ five-year waiver. In submitting this application, Respondent disclosed and alerted the Department to the prior enforcement proceedings and settlement, and the attempt does not weigh materially against his current fitness for licensure.

Staff's remaining exceptions point out two "clerical errors" in the PFD. In the second-to-last line of page 2, the ALJ used "considers" when "consider" was intended. The other is on page 16—in the second paragraph of the email being quoted, the third sentence of the original was inadvertently omitted: "Most importantly, there was no finding of fault by the TDI."

In reviewing Staff's exceptions, the ALJ also caught a third typo—"profession" was substituted for "occupation" when quoting from 28 Tex. Admin. Code § 1.502(d) in the second-to-last sentence on page 2.

With these changes, the PFD should be adopted as written.

Because SOAH has concluded its involvement in the matter, the case is being remanded to the Texas Department of Insurance. See Tex. Gov't Code § 2003.051(a).

Sincerely,

Robert H. Pemberton
Administrative Law Judge

RP/tt

cc: Stephanie Daniels, Staff Attorney, Texas Department of Insurance, 333 Guadalupe, Tower 1, 13th Floor, Austin, TX 78701 - **VIA EFILE TEXAS**
Chief Clerk, Texas Department of Insurance, 333 Guadalupe, Tower I, Suite 1300D, Austin, TX 78701 – **VIA EFILE TEXAS**
Danial Abbas [redacted] Sugar Land, TX 77478 - **VIA EFILE TEXAS**