

No. **2023-7800**

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

Date: 02/16/2023

Subject Considered:

Texas Department of Insurance
v.
Rem Cin Sung
SOAH Docket No. 454-21-1002.C

General remarks and official action taken:

The subject of this order is Rem Cin Sung's general lines agent license, which she previously surrendered, and her application for a new license. This order revokes Ms. Sung's surrendered license and denies her application for a new 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 Ms. Sung's previously surrendered license be revoked; and that her new license application be denied. A copy of the proposal for decision is attached as Exhibit A.

Findings of Fact

The findings of fact contained in Exhibit A are adopted by TDI and incorporated by reference into this order.

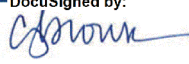
Conclusions of Law

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

COMMISSIONER'S ORDER
TDI v. Rem Cin Sung
SOAH Docket No. 454-21-1002.C
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Order

It is ordered that Rem Cin Sung's surrendered general lines agent license with life, accident, and health and property and casualty qualifications be revoked and her application for a new general lines agent license be denied.

DocuSigned by:

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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

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Allison Eberhart, Deputy General Counsel

DocuSigned by:

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Kara Salmanson, Attorney



SOAH DOCKET NO. 454-21-1002.C

TEXAS DEPARTMENT
OF INSURANCE
Petitioner

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BEFORE THE STATE OFFICE

OF

v.

REM CIN SUNG,
Respondent

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff (Staff) of the Texas Department of Insurance (Department) brought this enforcement action to revoke Rem Cin Sung’s (Respondent) surrendered general lines agent license (License) and deny her License application. Staff alleges that Respondent engaged in fraudulent or dishonest acts in violation of the Texas Insurance Code by rewriting policies in a manner to trick the system into accepting established customers as new customers for the purpose of receiving additional commissions. The Administrative Law Judge (ALJ) finds that Staff established the basis for discipline and recommends that Respondent’s surrendered License be revoked and her application denied.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no disputed issues of notice or jurisdiction in this case. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing on the merits was held via Zoom videoconference on November 15, 2021, before ALJ Meitra Farhadi. Staff appeared and was represented by Staff Attorney Patrick Quigley. Respondent appeared and represented herself. The hearing concluded that day, and the record closed on December 6, 2021, upon the filing of the transcript.

II. DISCUSSION

A. Applicable Law

The Texas Insurance Code authorizes the Department to regulate the business of insurance in this state and to take disciplinary action against agents who violate the law or rules related to insurance.¹ In particular, the Department may take disciplinary action against a license holder for engaging in a fraudulent or dishonest act or practice.² The Department may institute a disciplinary proceeding against a former license holder for conduct committed before the effective date of a voluntary surrender or automatic forfeiture of the license, and the fact that the license holder has surrendered or forfeited the license does not affect the former license holder's culpability for the conduct that is the subject of the proceeding.³

Staff has the burden of proof to establish grounds for revocation of Respondent's surrendered License, and for denying Respondent's application; and Respondent has the burden of presenting evidence that her application for a License should be approved.⁴ The burden of proof is by a preponderance of the evidence.⁵

B. Background Facts

Respondent was granted a License by the Department in 2017. She was first employed by the Malik Hayat Allstate Agency (Malik Agency), followed by the Jose Castro Allstate Insurance Agency (Castro Agency).⁶ On August 31, 2018, Allstate Insurance Company (Allstate) canceled its appointment of Respondent as an agent for cause due to falsification.⁷ On October 25, 2018,

¹ Tex. Ins. Code §§ 31.002(1), (3), 4005.102.

² Tex. Ins. Code § 4005.101(b)(5).

³ Tex. Ins. Code § 4005.107.

⁴ 1 Tex. Admin. Code § 155.427.

⁵ See *Granek v. Texas St. Bd. of Med. Examn'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

⁶ Tr. at 92-93.

⁷ Staff Ex. 3.

Respondent requested cancellation of her License.⁸ On March 28, 2019, Respondent applied for a new License with the Department, which Staff recommended be denied.⁹

C. Evidence

At the hearing, Staff offered 28 exhibits, which were admitted, and presented testimony of Laine R. Sutkay, an Investigator with Allstate Insurance Company; and Lewis Wright, an administrative review liaison for the Department. Respondent testified on her own behalf.

1. Testimony of Ms. Sutkay

Ms. Sutkay works as an investigator for Allstate in its law department and conducted the investigation into the Castro Agency, including Respondent. The investigation began with a complaint from the Malik Agency noticing that some of the policies that had been with the Malik Agency were now with the Castro Agency. Once alerted, Allstate began investigating those policies and discovered that the majority of them had been written by Respondent. Specifically, the investigation revealed that nine existing Allstate customers' homeowners' policies with the Malik Agency had been cancelled and rewritten to the Castro Agency. Eight of those reissued policies were issued by Respondent.¹⁰ Ms. Sutkay explained that Respondent's user I.D., which is an identifier unique to each sales producer,¹¹ was used to terminate the existing Malik Agency policies as well as write the new Castro Agency policies.¹²

Ms. Sutkay noted that on six of the reissued policies the names were slightly changed, and on three of them the addresses were slightly altered as well.¹³ She explained that the significance

⁸ Staff Ex. 6.

⁹ Staff Ex. 7.

¹⁰ One was written by another sales producer at the Castro Agency, Khua Sang. Tr. at 47-48; Staff Ex. 2.

¹¹ Respondent's Allstate user I.D. was STX1CH0A. Respondent also had a personal password to use her Allstate user I.D. Tr. at 36.

¹² Tr. at 27.

¹³ Staff Exs. 2, 9, 10.

of changing a name slightly is that the Allstate system will treat that customer as a new customer, resulting in the agent earning a commission. If the customer was recognized by Allstate as an existing customer, there would not be a commission associated for writing a new policy.¹⁴

Ms. Sutkay testified that she also noticed that four of the policies¹⁵ that Respondent reissued had backdated termination dates for the customers' previous policies with the Malik Agency such that there was more than 120 days between a previous policy and a new policy.¹⁶ She explained that the significance of a 120-day gap is that agents do not receive a commission for rewriting a policy for an existing customer within a time period less than 120 days.¹⁷ Ms. Sutkay noted that backdating a termination date is allowed by Allstate so long as there is a reason to do so. Based on her investigation, she found no reason for Respondent to have done so.¹⁸

The investigation also revealed that the prior insurance information on seven of the reissued policies were incorrect. Because the prior policies were Allstate policies, the prior insurance on the new policies should have been listed as Allstate—they were not.¹⁹ Additionally, Ms. Sutkay noted that there is a place on the application where the sales producer is asked if the customer is an existing Allstate customer. For some of the policies Ms. Sutkay reviewed, Respondent answered that the customers were not existing Allstate customers even though they were.²⁰

Ms. Sutkay explained the proper process for transferring customers from one agency to another is through a web service request. She explained that a web service request is a formal

¹⁴ Tr. at 25.

¹⁵ Ms. Sutkay testified that Respondent had backdated four policies; however, the insurance records offered only demonstrated three instances of backdating. *See* Staff Exs. 9-10.

¹⁶ Staff Exs. 2, 9-10; Tr. at 54.

¹⁷ Tr. at 26-27.

¹⁸ Tr. at 56-57.

¹⁹ Tr. at 28; Staff Exs. 2, 9, 10.

²⁰ Tr. at 41, 46; Staff Exs. 9-10.

request where the sales producer²¹ asks the company to transfer the customer from one agency to another, as opposed to canceling and rewriting the policy.²²

As part of the investigation, Ms. Sutkay interviewed Respondent in June of 2018. In that interview Respondent acknowledged canceling and rewriting policies to gain commissions, despite knowing the proper process of transferring customers through a web service request.²³ Respondent indicated that she did not share her password with anyone, and that she was the only person to use her Allstate user I.D.²⁴ Respondent told Ms. Sutkay that she changed the prior insurance information and the customer names in order to help lower some of the customers' insurance premiums on the new policies. Respondent also stated that she backdated some of the termination dates because the customers were refinancing; however, Ms. Sutkay stated that it was unclear to her why refinancing would cause a customer to need a backdated policy.²⁵ Ms. Sutkay also identified that while the premiums were lower for some of the new policies Respondent wrote, in some instances the new premiums were higher.²⁶

2. Testimony of Mr. Wright

Mr. Wright is employed by the Department as the administrative review liaison for the Agent and Adjuster Licensing Office in the Enforcement Division. His duties include serving as the primary contact for applications that have been flagged for concern. Mr. Wright testified that on August 30, 2018, the Department received notice from Allstate that it had terminated Respondent for cause due to falsification.²⁷ He explained that once the Department receives a notice of cancellation for cause, his process is to request additional information. On February 27, 2019, Mr. Wright received a response to his request for documents containing

²¹ The term "producer" was used interchangeably with "agent" throughout the hearing.

²² Tr. at 29.

²³ Tr. at 28-29; Staff Ex. 2.

²⁴ Tr. at 36.

²⁵ Tr. at 30.

²⁶ Tr. at 61; *See* Staff Ex. 9.

²⁷ Staff Ex. 3.

evidence of the falsification by the two producers at issue from the Castro Agency—Respondent and Khua Tin Sang.²⁸

On March 28, 2019, the Department received an application for a new License from Respondent.²⁹ Mr. Wright testified that Staff proposed to deny the application, as well as revoke the License that Respondent had surrendered, based on the information received by Allstate regarding its termination of Respondent for cause due to falsification.³⁰ Additionally, Mr. Wright stated that Respondent also provided false information on her application for licensure when she answered the following:

Have you or any business in which you were an owner, partner, officer or director, or member or manager of a limited liability company, ever had an insurance agency contract or other business relationship with an insurance company terminated for any alleged misconduct?

Answer: No.³¹

Mr. Wright noted that the conduct demonstrated by Allstate's investigation is particularly troubling because the Department requires its license-holders to be honest, trustworthy, and reliable. He explained that one of the main functions of an agent is to transmit accurate information in an application for insurance to the respective insurance carriers.³²

3. Testimony of Respondent

Respondent admitted that she backdated the termination dates of at least four policies and then rewrote them as new policies with the Castro Agency, and that she knew Allstate terminated her. However, she testified that she did not see her actions as cheating Allstate. Respondent

²⁸ Staff Ex. 10.

²⁹ Staff Ex. 7; Tr. at 77.

³⁰ Tr. at 78-80.

³¹ Staff Ex. 7 at 5-6.

³² Tr. at 80.

explained that the customers were shopping around because their premiums with Allstate were high. Respondent stated that to help the customers, she canceled and rewrote their policies to help them get better premiums.³³ She emphasized that when she provided information regarding name or address changes, she mistakenly entered the wrong information.³⁴ Respondent agreed that she knew the customers had Allstate insurance policies with the Malik Agency, and yet when making changes in the Allstate system, she answered “no” indicating they were not existing customers. Respondent explained that she did not believe it to be a false answer, because in addition to their Allstate policies through the Malik Agency, the customers also had other insurance policies.³⁵ She knew that by terminating the customers’ old policies and rewriting new ones, the new policies would be seen as new business at the Castro Agency and would earn her a commission.³⁶ Respondent agreed that it would look like new business to Allstate even though they were already Allstate customers.

When asked, Respondent stated that she knew the proper way to request a web service transfer of a customer from the Malik Agency to the Castro Agency.³⁷ Respondent also agreed that she had her own Allstate user I.D. and password that she used in Allstate’s system to make applications for the eight homeowners’ insurance policies at issue. She testified that she did not share her password with anyone, and that her user I.D. on Staff’s exhibits meant that she had entered the information into Allstate’s system.³⁸

Respondent explained that she cancelled her License with the Department because she had intended to move to another state. Her plans changed and that is why she re-applied in Texas after cancelling her License. Respondent stated that she had not received Allstate’s termination letter until after she re-applied for a License with the Department, because she had moved and later

³³ Tr. at 87-88.

³⁴ Tr. at 93-94.

³⁵ Tr. 96-98.

³⁶ Tr. at 96-97.

³⁷ Tr. at 93.

³⁸ Tr. at 93.

received the termination letter by email. Respondent stressed that she did not intend to be deceitful and that she would like a second chance.

III. ANALYSIS

Staff seeks to revoke Respondent's canceled License and deny her new License application based on her alleged fraudulent or dishonest acts or practices, namely rewriting insurance policies with the same carrier, Allstate, in a manner that would trick the Allstate system into accepting the customers as new and thereby earning Respondent additional commissions. The ALJ finds that the preponderance of the evidence demonstrates that Respondent intentionally cancelled and rewrote policies for existing Allstate customers, circumventing the web service request process, slightly modified the customer names and addresses and provided incorrect prior insurance information, to earn commissions on those policies. The preponderance of the evidence also established that Respondent backdated multiple policies so that she would receive commissions for rewriting policies for existing customers. In sum, Staff met its burden to establish that Respondent committed fraudulent and dishonest acts.

Despite Respondent's urging that she did not intend to cheat the system, her actions and knowledge of the ramifications of her actions say otherwise. Respondent benefited by providing false information to Allstate. Respondent's fraudulent and dishonest actions were all committed prior to surrendering her License.³⁹ Accordingly, Staff established a basis for revoking Respondent's surrendered License and denying her application for a new License.⁴⁰

The ALJ does not find that Staff established that Respondent provided false information on her application for a new License. Although Allstate had terminated Respondent prior to her new application for Licensure being submitted to the Department, Respondent testified that due to her move, she did not receive the termination notice until after she had applied with the Department.

³⁹ Staff Exs. 2-6.

⁴⁰ Tex. Ins. Code §§ 4005.101(b)(5); .107.

For the reasons stated above, the ALJ recommends that Respondent's surrendered License be revoked, and her application for a new License be denied. The ALJ proposes the following Findings of Fact and Conclusions of Law.

IV. FINDINGS OF FACT

1. On April 24, 2017, the Texas Department of Insurance (Department) issued a general lines agent license with a life, accident and health qualification and a property and casualty qualification (License) to Rem Cin Sung's (Respondent).
2. Respondent was first employed by the Malik Hayat Allstate Agency (Malik Agency), followed by the Jose Castro Allstate Insurance Agency (Castro Agency).
3. Respondent cancelled and rewrote eight Allstate Insurance Company (Allstate) homeowners' insurance policies.
4. Respondent knew the customers had Allstate insurance policies with the Malik Agency, yet when making changes in the Allstate system, for seven of them, she answered that they were not existing customers.
5. Respondent backdated the termination dates of three insurance policies and then rewrote them as new policies with the Castro Agency.
6. On six of the policies Respondent reissued, she slightly changed the customer names; and on three of the policies she also slightly changed the addresses.
7. The significance of changing a name slightly is that the Allstate system will recognize that customer as a new customer, resulting in the agent earning a commission. If the customer was recognized by Allstate as an existing customer, there would not be a commission associated for writing a new policy.
8. Respondent intended for the reissued policies to be seen as new business at the Castro Agency to earn commissions on them.
9. The proper process for transferring customers from one agency to another is through a web service request, as opposed to canceling and rewriting the policy.
10. Respondent knew the proper process of transferring customers was through a web service request, and admitted to cancelling and rewriting the eight Allstate policies.
11. On August 31, 2018, Allstate canceled its appointment of Respondent as an agent for cause due to falsification.

12. On October 25, 2018, Respondent surrendered her License because she intended to move to another state.
13. Respondent's acts of rewriting policies in a manner to trick the system into accepting established customers as new customers were fraudulent and dishonest, and she committed the conduct prior to surrendering her License.
14. On March 28, 2019, Respondent applied for a License with the Department.
15. Respondent received Allstate's termination letter after she re-applied for a License with the Department.
16. On May 21, 2019, Staff (Staff) of the Department proposed to deny Respondent's License application due to her previous misconduct.
17. Respondent timely requested a hearing.
18. On January 12, 2021, Staff mailed a Notice of Hearing to Respondent. 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 a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
19. The hearing on the merits was held via Zoom videoconference on November 15, 2021, before Administrative Law Judge Meitra Farhadi. Staff appeared and was represented by Staff Attorney Patrick Quigley. Respondent appeared and represented herself. The hearing concluded that day, and the record closed on December 6, 2021, upon the filing of the transcript.

V. CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter of this proceeding. Tex. Ins. Code §§ 4001.002, 4005.102.
2. SOAH has jurisdiction over all matters relating to the conduct of the proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052; Tex. Ins. Code § 4005.104(b).
4. Staff had the burden of proof to establish grounds for revocation of Respondent's cancelled License, and for denying Respondent's application. Respondent had the burden of proof that her application for a License should be approved. 1 Tex. Admin Code § 155.427. The

burden of proof is by a preponderance of the evidence. *Granek v. Texas St. Bd. of Med. Examin'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

5. Respondent engaged in fraudulent or dishonest acts or practices in violation of Texas Insurance Code § 4005.101(b)(5).
6. The Department may institute a disciplinary proceeding against a former license holder for conduct committed before the effective date of a voluntary surrender or automatic forfeiture of the license. Tex. Ins. Code §§ 4005.107.
7. The Department is authorized to revoke Respondent's surrendered License and deny her application for licensure. Tex. Ins. Code §§ 4005.101(b)(5), .102(2), .107.
8. Respondent's surrendered License should be revoked and her License application should be denied.

SIGNED January 28, 2022.



MEITRA FARHADI
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS