No. **2020-6493**

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

Date: 09/30/2020

Subject Considered:

Texas Department of Insurance
v.
Laura Correa Laguna

SOAH Docket No. 454-20-3205.C

General remarks and official action taken:

The subject of this order is the application of Laura Correa Laguna for a general lines agent license with a property and casualty qualification.

Background

After proper notice was given, the above styled case was heard by an administrative law judge for the State Office of Administrative Hearings. The administrative law judge made and filed a proposal for decision containing a recommendation that the department deny Ms. Laguna's application for a general lines agent license with a property and casualty qualification. 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.

2020-6493

Conclusions of Law

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

Order

It is ordered that Ms. Laguna's application for a general lines agent license with a property and casualty qualification is denied.

Kent C. Sullivan
Commissioner of Insurance

By: _Doug Slape_
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Doug Slape
Chief Deputy Commissioner
Commissioner's Order No. 2018-5528

Recommended and reviewed by:

James Person
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James Person, General Counsel

Justin Beam
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Justin Beam, Assistant General Counsel

2020-6493

Exhibit A

SOAH DOCKET NO. 454-20-3205.C

TEXAS DEPARTMENT §	**BEFORE THE STATE OFFICE**	
OF INSURANCE, §		
Petitioner §		
§	**OF**	
v. §		
§		
LAURA CORREA LAGUNA, §		
Applicant §	**ADMINISTRATIVE HEARINGS**	

PROPOSAL FOR DECISION

Laura Correa Laguna applied to the Texas Department of Insurance (Department) for a general lines agent license with a property and casualty qualification. The Department's staff (Staff) seeks to deny the application based upon Ms. Laguna's criminal history and an alleged failure to disclose that history. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department deny Ms. Laguna's license application.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

ALJ Jeffrey J. Huhn convened the hearing on the merits by telephone conference on May 5, 2020, at the State Office of Administrative Hearings (SOAH) in San Antonio, Texas. Attorney Patrick Quigley represented Staff. Ms. Laguna appeared and represented herself. The record closed on May 11, 2020, when the hearing transcript was delivered to SOAH. Notice and jurisdiction were not disputed by the parties and are set out in the Findings of Fact and Conclusions of Law.

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II. DISCUSSION

A.   Background

On February 14, 2008, in Cause No. F42223, in the 249th District Court of Johnson County, Texas, Ms. Laguna pled guilty to theft, over $1,500 and less than $20,000, a state jail felony. Ms. Laguna was sentenced to two years' incarceration in the state jail division – Texas Department of Corrections, but the sentence was suspended and she was placed on probation for five years. Ms. Laguna was ordered to pay $292 in court costs and $5,898.60 in restitution.[1]

On February 10, 2009, in Cause No. F43080, in the 249th District Court of Johnson County, Texas, Ms. Laguna pled guilty to fraudulent use/possession of identifying information, a state jail felony. Ms. Laguna was sentenced to six months' incarceration in the state jail division – Texas Department of Corrections.[2]

On February 8, 2011, Ms. Laguna's five-year probation was revoked and she was adjudged to be guilty of the offense of theft, $1,500 and less than $20,000, a state jail felony, in the 249th District Court of Johnson County, Texas. Ms. Laguna was sentenced to be confined and imprisoned in the state jail for a period of fourteen months.[3]

On September 21, 2018, Ms. Laguna filed an application for a general lines agent license with a property and casualty qualification with the Department.[4] On her application, she answered "no" to the question of whether she had "ever been convicted of a felony."[5]

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[1] Staff Ex. 9.

[2] *See id.*

[3] *See id.*

[4] *See id.*

[5] Ex 2, p. 3-4.

B.   Applicable Law

The Department may deny a license application if the Department determines the applicant:

- intentionally made a material misstatement in a license application;

- attempted to obtain a license by fraud or misrepresentation;

- based on prior criminal history, has engaged in fraudulent or dishonest acts or practices; or

- has been convicted of a felony.[6]

When examining whether to grant, deny, suspend, or revoke any license under its jurisdiction based on a criminal conviction, the Department is to consider the factors set out in Texas Occupations Code §§ 53.022 and 53.023. Those factors include:

1.   the nature and seriousness of the crime;

2.   the relationship of the crime to the purposes for requiring a license to engage in the occupation;

3.   the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

4.   the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.[7]

In determining the fitness to perform the duties and responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority must also consider the following factors:

1.   the extent and nature of the person's past criminal activity;

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[6] Tex. Ins. Code § 4005.101(b)(2), (3), (5), (8).

[7] Tex. Occ. Code § 53.022. Ms. Laguna filed her application on September 18, 2018. The version of the statutes and rules in effect on that date apply and are cited in this Proposal for Decision.

2.   the age of the person when the crime was committed;

3.   the amount of time that has elapsed since the person's last criminal activity;

4.   the conduct and work activity of the person before and after the criminal activity;

5.   evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;

6.   other evidence of the person's present fitness, including letters of recommendation from:

        a.   prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

        b.   the sheriff or chief of police in the community where the person resides; and

        c.   any other persons in contact with the convicted person; and

7.   proof furnished by the applicant that the applicant has:

        a.   maintained a record of steady employment;

        b.   supported the applicant's dependents;

        c.   maintained a record of good conduct; and

        d.   paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant or holder has been convicted.[8]

The Department has developed guidelines relating to matters it will consider in determining whether to grant a license if the applicant has been convicted of a crime. The crimes that the Department considers to be of such a serious nature that they are of prime importance in determining fitness for licensure include any offense with the essential elements of fraud, dishonesty, or deceit.[9]

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[8] Tex. Occ. Code § 53.023. The Department has adopted these factors in its rules. 28 Tex. Admin. Code § 1.502(h).

[9] 28 Tex. Admin. Code § 1.502(e)(1).

Additionally, federal law requires that, to engage in the business of insurance, a person who has been convicted of any criminal felony involving dishonesty or breach of trust needs the written consent of any insurance regulatory official authorized to regulate that person.[10]

C.   Evidence

The parties offered eleven exhibits, which were admitted into evidence. Staff called as a witness Lewis Weldon Wright IV. Ms. Laguna testified on her own.

1.   Mr. Wright's Testimony

Mr. Wright is the liaison between the Agent and Adjuster Licensing Office and the Enforcement Division of the Department and has been with the Department for 13 years. He reviews nonstandard license applications and makes recommendations to deny or issue a license. Mr. Wright testified that after a review of Ms. Laguna's application, the decision was made to issue a proposal to deny licensure. Mr. Wright stated the decision was based on two main factors, Ms. Laguna's criminal history and Ms. Laguna's failure to disclose her criminal history on the application.[11] He noted that while the positive letters of reference, Ms. Laguna's work history, and her academic accomplishments were evidence in favor of Ms. Laguna's licensure, the seriousness of her convictions and the failure to disclose the convictions to the Department, outweighed the evidence in favor.

Mr. Wright testified that the Department conducted a background check on Ms. Laguna using her fingerprints she provided as part of her application. The background check revealed to the Department that Ms. Laguna had previous felony convictions and that she failed to disclose the convictions on her application.[12] He noted that Ms. Laguna had a February 14, 2008 state jail felony conviction for theft. Ms. Laguna, at age 27, was sentenced to two years' incarceration, and

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[10] 18 U.S.C. § 1003(e)(1).

[11] Tr. at 29.

[12] Tr. at 18-19.

the sentence was probated for five years.[13] Ms. Laguna was ordered to pay $5,898.60 in restitution to Barrons Auto, her previous employer. Mr. Wright also testified about the second state jail felony conviction dated February 10, 2009. Ms. Laguna, at age 29, pled guilty to fraudulent use and possession of identifying information and was sentenced to six months' incarceration.[14] He noted that Ms. Laguna did not complete the probation for her 2008 theft conviction successfully, and that in February 2011, her probation was revoked and she was sentenced to fourteen months' incarceration.[15] Mr. Wright acknowledged evidence of Ms. Laguna's rehabilitation during and after her incarceration, including completion of several courses and earning an associate's degree in Applied Science from Hill College on May 20, 2018. He also testified that Ms. Laguna's work history showed she had been gainfully employed, including working as an Accounts Manager at Harmon's insurance.

Mr. Wright testified that under 28 Tex. Admin. Code § 1.502(c), the Department considers it to be very important that a licensed individual is honest, trustworthy, and reliable.[16] He stated that consistent with Texas Occupations Code § 53.025 and 28 Tex. Admin. Code § 1.502, in determining an individual's fitness for licensure, certain crimes are considered to be of a more serious nature. He testified that under 28 Tex. Admin. Code § 1.502(e)(1), any offense for which fraud, dishonesty or deceit is an essential element is considered to be a serious offense.[17] He stated that Ms. Laguna's theft conviction also fell within 28 Tex. Admin. Code § 1.502(e)(3), crimes of moral turpitude.[18] He noted that an individual with an insurance license has increased opportunities to commit a financial crime because the individual has access to money received from applicants, from insured individuals, and also from the insurance carriers and intermediary agencies.[19]

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[13] Tr. at 18.

[14] Tr. at 21.

[15] Tr. at 27-28.

[16] Tr. at 22.

[17] Tr. at 22-23.

[18] Tr. at 23.

[19] Tr. at 25.

Mr. Wright testified that Ms. Laguna's fraudulent use or possession of identifying information conviction also raised concerns with her application. Similar to her theft conviction, the fraudulent use conviction falls within the category of a crime that includes fraud, dishonesty or deceit as an essential element.[20] Additionally, it is considered a crime involving moral turpitude or breach of fiduciary duty. He noted that agents are given confidential information from applicants, such as date of birth, Social Security number, driver's license number, address, and credit card or bank information.[21]

2. Ms. Laguna's Testimony

Ms. Laguna testified that she has not been in any legal trouble over the past ten to eleven years and that she completed all the requirements of her probation, including fees, fines, and restitution.[22] She stated that she entered the insurance profession knowing little about the insurance industry but now hopes to pursue a career in the field. She stated she would be dedicated to helping out customers if she is granted a license.[23]

Ms. Laguna admitted that in addition to her two felony convictions, she also had been arrested in 1999 for a misdemeanor theft charge. At the time she was 19 years old, pled guilty, and was placed on deferred probation.[24] She acknowledged that she also failed to disclose this conviction on her application. With respect to the felony theft conviction in 2008, Ms. Laguna stated she was convicted[25] because she was the last person in possession of the money that went missing.[26] She also acknowledged that while on probation for the theft conviction, she was arrested for the fraudulent use or possession of identifying information charge.[27] Her probation was

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[20] Tr. at 23.

[21] Tr. at 26.

[22] Tr. at 48.

[23] Tr. at 48-49.

[24] Tr. at 32.

[25] Ms. Laguna denied pleading guilty to the theft charge but stated she was convicted.

[26] Tr. at 33.

[27] Tr. at 33-34.

revoked and she was sentenced to 14 months' incarceration.[28] Ms. Laguna said her probation was revoked because she was not paying her probation fees and was not performing community service.[29] She also admitted to failing a drug test while on probation.[30] Finally, Ms. Laguna admitted she incorrectly answered the two questions on her application regarding a felony conviction or a misdemeanor conviction. She acknowledged that there is no language that limits the conviction to the past 7 years.[31]

D.   Analysis

Staff's proposal to deny Ms. Laguna's application is based on two primary factors: her felony convictions and her alleged misrepresentation of the scope of her criminal history.

1.   Convictions

The Department may deny Ms. Laguna's license application because she was convicted of two felonies: theft, $1,500 and less than $20,000, a state jail felony; and fraudulent use/possession of identifying information, a state jail felony. The underlying criminal conduct involved fraudulent or dishonest acts or practices, for which the Department may also deny her license application. Pursuant to 28 Texas Administrative Code § 1.502, the Department will consider the factors listed in Texas Occupations Code §§ 53.022 and 53.023, set out above, in determining whether to grant Ms. Laguna's license application.

Several factors weigh in Ms. Laguna's favor. Ms. Laguna has no criminal convictions since the felony convictions at issue in this case. It has been 12 years since the theft conviction, 11 years since the fraudulent possession of identifying information conviction, and 9 years since her probation was revoked. Ms. Laguna submitted three letters of recommendation, including one

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[28] Tr. at 34.

[29] Tr. at 39.

[30] Tr. at 40.

[31] In Exhibit 7, Ms. Laguna suggested she did not answer in the affirmative to the felony question because over seven years had passed since the conviction.

from a previous employer, Greg Harmon, owner of Harmon Insurance Agency.[32] Additionally, Ms. Laguna has successfully completed two associates' degrees and is currently pursuing a business degree from Texas Tech University.

Despite these positive factors, the weight of the evidence is against licensure for Ms. Laguna. Ms. Laguna was 27 and 29 years old when she committed the felonies, so the criminal acts were not the result of youthful indiscretion. She was placed on probation, but her probation was revoked because she failed to comply with the conditions of her probation. Both of Ms. Laguna's felony convictions directly relate to the duties and responsibilities of an insurance agent and indicate a lack of honesty and trustworthiness.   If licensed, Ms. Laguna would have a greater opportunity to commit the same crimes for which she was convicted because she would have access to clients' sensitive, private information. Ms. Laguna has the burden of proving fitness to be licensed. The letters of recommendation lack specificity as to how Ms. Laguna has manifested the trustworthiness discussed in the letters. Additionally, none of the letters are from prosecutors, law enforcement or correctional officers. While Mr. Harmon is a licensed insurance professional, his letter only states that Ms. Laguna should be given a second chance to prove her character and that she is trustworthy. Similar to the other letters of recommendation, Mr. Harmon's letter lacks specific details as to Ms. Laguna's current character and trustworthiness.

2. Misrepresentation

The Commission may also revoke a person's license if it was obtained by a false representation or if the applicant intentionally made a material misstatement in the application. Staff established that Ms. Laguna intentionally misled the Department about the extent of her criminal history. Ms. Laguna provided no plausible explanation as to why she answered "No" to the question of whether she had been convicted of a felony.

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[32] Ex 5 at 9.

3.   **Conclusion**

The ALJ finds that Staff did establish that Ms. Laguna intentionally made a material misstatement in a license application and attempted to obtain a license by fraud or misrepresentation. Further, there is no dispute that Ms. Laguna has been convicted for two felony offenses involving fraudulent or dishonest acts or practices. The ALJ concludes that Ms. Laguna's application for a general lines agent license with a property and casualty qualification be denied on these grounds because she has failed to show that she is nevertheless fit to be licensed.

III. FINDINGS OF FACT

1.   On September 21, 2018, Ms. Laguna filed an application for a general lines agent license with a property and casualty qualification with the Texas Department of Insurance (Department).

2.   On her application, Ms. Laguna answered "no" to the question of whether she had "ever been convicted of a felony."

3.   The Department proposed to deny Ms. Laguna's application.

4.   Ms. Laguna requested a hearing to challenge the denial.

5.   On April 1, 2020, Staff issued a notice of hearing. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.

6.   The telephonic hearing in this case was held on May 5, 2020, before Administrative Law Judge Jeffrey J. Huhn at the State Office of Administrative Hearings (SOAH) in San Antonio, Texas. The staff (Staff) of the Department was represented by staff attorneys Patrick Quigley. Ms. Laguna represented herself. The hearing concluded and the record closed on May 11, 2020.

7.   On February 14, 2008, in Cause No. F42223, in the 249th District Court of Johnson County, Texas, Ms. Laguna pled guilty to theft, over $1,500 and less than $20,000, a state jail felony. Ms. Laguna was sentenced to two years' incarceration in the state jail division – Texas Department of Corrections, but the sentence was suspended and she was placed on probation for five years. Ms. Laguna was ordered to pay $292 in court costs and $5,898.60 in restitution.

8.   On February 10, 2009, in Cause No. F43080, in the 249th District Court of Johnson County, Texas, Ms. Laguna pled guilty to fraudulent use/possession of identifying information, a state jail felony. Ms. Laguna was sentenced to six months' incarceration in the state jail division – Texas Department of Corrections.

9.   On February 8, 2011, Ms. Laguna's five-year probation was revoked and she was adjudged to be guilty of the offense of theft, $1,500 and less than $20,000, a state jail felony, in the 249th District Court of Johnson County, Texas. Ms. Laguna was sentenced to be confined and imprisoned in the state jail for a period of fourteen months.

10.   Ms. Laguna received an Associate's degree in Applied Science from Hill College on May 10, 2018.

11.   Since being released from incarceration, Ms. Laguna has been gainfully employed, including working as an Accounts Manager at Harmon's insurance.

12.   Ms. Laguna has no other criminal history.

13.   Staff established that Ms. Laguna intentionally made a material misstatement in a license application.

14.   Ms. Laguna has two criminal convictions that involve fraudulent or dishonest acts.

15.   Ms. Laguna was in her late-twenties when she committed the crimes.

16.   The preponderance of the evidence shows Ms. Laguna is not fit to hold a license.

IV. CONCLUSIONS OF LAW

1.   The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, .105, 4005.101.

2.   SOAH has authority to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.

3.   Ms. Laguna received timely and sufficient notice of hearing. Tex. Gov't Code ch. 2001; Tex. Ins. Code § 4005.104(b).

4.   The Department may deny a license application if the applicant has intentionally made a material misstatement in the license application. Tex. Ins. Code § 4005.101(b)(2).

5.   The Department may deny a license application if the applicant has obtained or attempted to obtain a license by fraud or misrepresentation. Tex. Ins. Code § 4005.101(b)(3).

6.   The Department may deny a license application if the applicant has engaged in fraudulent or dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(5).

7.   The Department may deny a license application on an applicant's conviction of a felony offense. Tex. Ins. Code § 4005.101(b)(8).

8.   In determining whether to grant or deny the application based on the applicant's criminal history, the Department will consider the factors in Texas Occupations Code §§ 53.022 and 53.023. 28 Tex. Admin. Code § 1.502(h).

9.   The Department should deny Ms. Laguna's application for a license because a preponderance of the evidence fails to establish her fitness to be licensed in light of her felony convictions.

10.   The Department should deny Ms. Laguna's application for a license because a preponderance of the evidence establishes she attempted to obtain it by fraud or misrepresentation and intentionally made a material misrepresentation in her application.

Signed: July 1, 2020.

JEFFREY J. HUHN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS