

No. 2021-7112

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

Date: 12/02/2021

Subject Considered:

Texas Department of Insurance

v.

Rudolph Jovan Stearnes, Jr.

SOAH Docket No. 454-20-3939.C

General remarks and official action taken:

The subject of this order is Rudolph Jovan Stearnes, Jr.'s application for a general lines agent license with a life, accident, and health qualification. This order denies Mr. Stearnes' 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 the Texas Department of Insurance (TDI) deny Mr. Stearnes' application. A copy of the proposal for decision is attached as Exhibit A.

Legal Authority for Change to Proposal for Decision

The legal authority for the change to the proposal for decision made in this order is TEX. GOV'T. CODE § 2001.058(e)(3), which provides that "[a] state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines . . . that a technical error in a finding of fact should be changed."

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Finding of Fact No. 18

In Finding of Fact No. 18, the administrative law judge mistakenly states that Mr. Stearnes applied for a general lines agent license with a property and casualty qualification. However, the record shows that Mr. Stearnes applied for a general lines agent license with a life, accident, and health qualification.¹ This order corrects the technical error in Finding of Fact No. 18 by adopting the following finding in its place:

On July 18, 2018, Mr. Stearnes applied to the Department for a general lines agent license with a life, accident, and health qualification.

Findings of Fact

1. Findings of Fact Nos. 1–17 and 19–35 as contained in Exhibit A are adopted by TDI and incorporated by reference into this order.
2. In place of Finding of Fact No. 18 as proposed in Exhibit A, TDI adopts the following finding of fact:


On July 18, 2018, Mr. Stearnes applied to the Department for a general lines agent license with a life, accident, and health qualification.

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 Rudolph Jovan Stearnes, Jr.'s application for a general lines agent license with a life, accident, and health qualification is denied.

DocuSigned by:

FC5D7EDDFB84F8... _____
Cassie Brown
Commissioner of Insurance


¹ See Proposal for Decision, pg. 8; TDI Exhibit 7, Bates no. 020.

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Recommended and reviewed by:

DocuSigned by:

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James Person, General Counsel

DocuSigned by:

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Justin Beam, Assistant General Counsel



<p>TEXAS DEPARTMENT OF INSURANCE</p> <p>v.</p> <p>RUDOLPH JOVAN STEARNES, JR., Applicant</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>BEFORE THE STATE OFFICE</p> <p>OF</p> <p>ADMINISTRATIVE HEARINGS</p>
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PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny the application of Rudolph Jovan Stearnes for a general lines agent license based on his criminal history and the revocation of a prior insurance license. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department deny Mr. Stearnes’s license application.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this case was held via Zoom videoconference on April 14, 2021, before ALJ Sarah Starnes at the State Office of Administrative Hearings (SOAH). Staff was represented by staff attorney Stephanie Andrews. Mr. Stearnes appeared and represented himself. The hearing concluded that day, and the record closed on April 29, 2021, when the court reporter’s transcript was filed with SOAH.¹ Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below.

II. APPLICABLE LAW

The Department considers it very important that license-holders be honest, trustworthy, and reliable,² and will evaluate an applicant’s criminal history and other conduct to determine whether the applicant possesses those qualities. The Department may deny a license to an applicant who has engaged in fraudulent or dishonest acts or practices that directly relate to the duties and

¹ On May 20, 2021, Mr. Stearnes filed a letter and attachments, and Staff did not object to the filing. The filing generally reurges some of the arguments Mr. Stearnes made at the hearing. The ALJ has treated the filing as a written closing argument but has not reopened the record to admit it into evidence.

² 28 Tex. Admin. Code § 1.502(c).

responsibilities of an insurance agent.³ The Department may also deny a license to an applicant who has been convicted of a felony or any offense that directly relates to the duties and responsibilities of the licensed occupation.⁴

To guide its decision-making when considering an applicant's criminal history, the Department has established guidelines that identify certain crimes it considers to be of such a serious nature that they are of prime importance in determining fitness for licensure; these crimes include offenses involving fraud, dishonesty, or deceit as an essential element.⁵ The Department has determined that the crimes it considers to be of prime importance are also directly related to the occupations it regulates.⁶

In deciding whether to deny a license based on a person's criminal history, the Department will weigh the factors in Texas Occupations Code §§ 53.022 and .023 and determine whether the applicant is fit to perform the duties and discharge the responsibilities of the licensed occupation despite the criminal offense.⁷ The factors in Texas Occupations Code § 53.022 address whether the person's criminal offense directly relates to the occupation, and those factors are:

- (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.

³ Tex. Ins. Code § 4005.101(b)(5); 28 Tex. Admin. Code § 1.502(d).

⁴ Tex. Ins. Code § 4005.101(b)(8); Tex. Occ. Code § 53.021(a)(1). In 2019, the Texas Legislature made several amendments to Texas Occupations Code chapter 53 that impact the licensing implications of a person's criminal history. *See* Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), §§ 1-13, effective Sept. 1, 2019. Although this legislation took effect on September 1, 2019, the changes were applied only prospectively. *See id.* §§ 14-15; *see also* Tex. Gov't Code § 311.022. Mr. Stearnes's application was submitted before September 1, 2019, so the amendments do not apply in this case. Accordingly, all citations to chapter 53 are to those provisions' pre-amendment language.

⁵ 28 Tex. Admin. Code § 1.502(e)(1).

⁶ 28 Tex. Admin. Code § 1.502(e); *see also* Tex. Occ. Code § 53.025.

⁷ 28 Tex. Admin. Code § 1.502(h).

As additional factors for the Department to consider, Texas Occupations Code § 53.023(a) lists:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
- (6) other evidence of the person's fitness, including letters of recommendation from:
 - (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (B) the sheriff or chief of police in the community where the person resides; and
 - (C) any other person in contact with the convicted person.⁸

An applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities discussed above.⁹ Additionally, an applicant may furnish proof to the Department that he has: (1) maintained a record of steady employment; (2) supported his dependents; (3) maintained a record of good conduct; and (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.¹⁰ The Department will not issue a license unless, when viewed in the light of the regulated occupation, those mitigating factors outweigh the serious nature of the applicant's criminal offense or the fraudulent or dishonest conduct.¹¹

⁸ Tex. Occ. Code § 53.023(a)-(b).

⁹ Tex. Occ. Code § 53.023(b).

¹⁰ Tex. Occ. Code § 53.023(c).

¹¹ 28 Tex. Admin. Code § 1.502(g), (h).

Staff bears the burden of proving its grounds for denying Mr. Stearnes's license application but Mr. Stearnes has the burden to prove his fitness to be licensed despite his criminal history or fraudulent or dishonest conduct, and he must show good cause why the revocation of his prior license should not be a bar to the issuance of a new license.¹² The burden of proof is by a preponderance of the evidence.¹³

III. EVIDENCE

At the hearing, Staff had ten exhibits admitted into evidence and presented testimony from Jodie Delgado, a manager in the Department's administrative review and continuing education program for agent and adjuster licensing. Mr. Stearnes testified on his own behalf and did not offer any exhibits.

A. Staff's Evidence

1. Prior License History

Mr. Stearnes previously held a Group I Legal Reserve Life Insurance Agent's license and a Group II Insurance Agent's license, both issued by the Department.¹⁴ Ms. Delgado testified that those license categories have since been renamed and today are referred to as insurance agent licenses for general lines—life, accident and health, and general lines—property and casualty.¹⁵

Following a contested-case hearing at SOAH, Mr. Stearnes's licenses were both revoked by an October 31, 1996 Order of the Commissioner of Insurance.¹⁶ The Order found that:

In August 1994, Dairyland County Mutual Insurance Company [Dairyland] canceled Respondent's insurance agent's contract or appointment due to

¹² Tex. Ins. Code § 4005.105(c); Tex. Occ. Code § 53.023(b)-(c); 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 1.502(g)-(h).

¹³ *Granek v. Texas St. Bd. of Med. Examn'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

¹⁴ Ex. 3 at 013.

¹⁵ Tr. 29-30.

¹⁶ Ex. 3.

Respondent's failure to pay \$14,719.00 in insurance premiums collected from September 1993, to February 1994.¹⁷

The Order further found that Mr. Stearnes had been convicted of felony misappropriation of Dairyland's property and two other felony offenses, discussed below. His licenses were revoked based on the three felony convictions and related misrepresentations.¹⁸

2. Criminal Background

a. Felony Misapplication of Fiduciary Property

In May 1995, a Travis County, Texas grand jury indicted Mr. Stearnes on a felony count of misapplication of fiduciary property, alleging that he had misapplied property in the aggregate amount of more than \$10,000 but less than \$100,000 of property which he held as fiduciary for Dairyland.¹⁹ The indictment listed a number of transactions between September 1993 and February 1994, ranging in amount from \$58.40 to \$1,434, and totaling \$14,719 that had been misappropriated from Dairyland.²⁰

On January 19, 1996, in the 299th Judicial District Court of Travis County, Texas, Mr. Stearnes entered a plea of guilty to the third-degree felony offense of misapplication of fiduciary property.²¹ In a Judgment of Community Supervision dated March 18, 1996, he was convicted and sentenced to ten years' confinement in the Texas Department of Criminal Justice Institutional Division (TDCJID), but the court suspended his sentence and instead placed Mr. Stearnes on community supervision for ten years. Among other terms of community supervision, Mr. Stearnes was ordered to pay a \$2,000 fine, \$11,672.30 in restitution, and certain court fees; and was ordered to complete 200 hours of community service.²²

¹⁷ Ex. 3 at 013.

¹⁸ Ex. 3 at 015-16.

¹⁹ Ex 8 at 065a.

²⁰ Ex. 8 at 065b.

²¹ Ex. 8 at 066.

²² Ex. 8 at 069-74. Though the Judgment of Community Supervision states that the case was called for trial on January 19, 1996, this judgment was not signed and filed until March 18, 1996.

In August 1997, the assistant district attorney filed a motion to revoke Mr. Stearnes's community supervision, citing several violations, and a warrant was issued to secure Mr. Stearnes's appearance.²³ Apparently, that warrant was not executed for over 20 years.²⁴ Mr. Stearnes was then briefly confined in jail until a Travis County judge signed a June 11, 2018 Order Unsatisfactorily Releasing the Defendant from Community Supervision. The order states that "Defendant has not fully completed the terms and conditions of Community Supervision" and cited his failure to report to his probation officer in March, April, or May 1997; failure to pay court costs, fines, and restitution; and failure to complete a required felony theft class. The court wrote that "despite the unsatisfactory nature of [Mr. Stearnes's] Community Supervision, the period of Community Supervision has expired," and he was ordered discharged from community supervision.²⁵

A Nunc Pro Tunc Order Unsatisfactorily Releasing the Defendant from Community Supervision was subsequently entered on April 26, 2019, to correct the amount of restitution that Mr. Stearnes still owed.²⁶ Where the original order incorrectly stated "Failed to pay Restitution-delinquent \$81,070.49," the Nunc Pro Tunc order clarified that he was "delinquent \$1,070.49 on balance remaining \$7,464.03."²⁷

b. Felony False Statement on a Written Instrument (Charge 1)

On March 1, 1996, Mr. Stearnes was charged in the 299th Judicial District Court of Travis County, Texas with knowingly and intentionally filing a written instrument with the Department that contained a false, fictitious, and fraudulent statement. Specifically, on an application for a license submitted after he had been indicted for felony misapplication of fiduciary property,

²³ Ex. 8 at 075.

²⁴ Mr. Stearnes testified that he was arrested in Travis County while in town to accompany his daughter to a UIL concert, and "some probation people . . . hauled me to jail 20 years after this thing happened." He was held in jail for 10-12 days before being released. Tr. 59.

²⁵ Ex. 8 at 077.

²⁶ Ex. 8 at 078.

²⁷ Ex. 8 at 077-78.

Mr. Stearnes was alleged to have falsely claimed that he had never been indicted for a felony.²⁸ Mr. Stearnes waived indictment and pleaded guilty to the felony charge the same day.²⁹

A Judgment of Community Supervision was entered on March 28, 1996, finding Mr. Stearnes guilty and convicting him of the third-degree felony offense of False Statement on a Written Instrument, an offense committed on January 10, 1996. Mr. Stearnes was sentenced to ten years' confinement in TDCJID, but the sentence was suspended and he was placed on community supervision for ten years. His community supervision terms included requirements to pay a \$1,000 fine and other court costs and fees, and to complete 200 hours of community service.³⁰

In August 1997, the assistant district attorney moved to revoke Mr. Stearnes's community supervision and a warrant was signed against him.³¹ The court did not otherwise address the probation violations for over twenty years, and Mr. Stearnes was not released from community supervision until June 11, 2018, when the court issued an Order Unsatisfactorily Releasing the Defendant from Community Supervision. The court found that Mr. Stearnes had failed to report to his probation officer in March, April, and May 1997; and failed to pay approximately \$660 in fees, fines, and court costs.³²

c. Felony False Statement on a Written Instrument (Charge 2)

On March 1, 1996, Mr. Stearnes was charged in the 299th Judicial District Court of Travis County, Texas with a second count of knowingly and intentionally filing a written instrument with the Department that contained a false, fictitious, and fraudulent statement. Specifically, on an application for a license, Mr. Stearnes claimed he "had never had an agency contract or company appointment canceled for cause, when in truth and in fact, [he] previously had been canceled for

²⁸ Ex. 9 at 079.

²⁹ Ex. 9 at 081-84.

³⁰ Ex. 9 at 085-91. Though the Judgment of Community Supervision states that the case was called for trial on March 1, 1996, the judgment was not signed until March 28, 1996, and was file-stamped the following day.

³¹ Ex. 9 at 092.

³² Ex. 9 at 095.

cause by Dairyland Insurance.”³³ Mr. Stearnes waived indictment and pleaded guilty to the felony charge the same day.³⁴

A Judgment of Community Supervision was entered on March 22, 1996, finding Mr. Stearnes guilty and convicting him of another third-degree felony offense of False Statement on a Written Instrument, an offense committed on January 10, 1996. Mr. Stearnes was sentenced to ten years’ confinement in TDCJID, but the sentence was suspended and he was placed on community supervision for ten years. His community supervision terms included a requirement to pay a \$1,000 fine and other court costs and fees and complete 200 hours of community service.³⁵

In August 1997, the assistant district attorney moved to revoke Mr. Stearnes’s community supervision and a warrant was signed against him.³⁶ The court did not otherwise address the probation violations for over twenty years, and Mr. Stearnes was not released from community supervision until June 11, 2018, when the court issued an Order Unsatisfactorily Releasing the Defendant from Community Supervision. The court found that Mr. Stearnes had failed to report to his probation officer in March, April, and May 1997; and failed to pay a total of \$100.00 in fines and court costs.³⁷

3. Application for New License

In August 2018, Mr. Stearnes submitted an application for a general lines—life, accident, and health insurance agent license.³⁸ On the application, Mr. Stearnes truthfully answered “yes” in response to questions asking whether he had ever been convicted of, placed on deferred adjudication for, or served probation for a misdemeanor or felony offense.³⁹ However, in response

³³ Ex. 10 at 100-01.

³⁴ Ex. 10 at 096-100.

³⁵ Ex. 10 at 103-08. Though the Judgment of Community Supervision states that the case was called for trial on March 1, 1996, this judgment was not signed and filed until March 22, 1996.

³⁶ Ex. 10 at 109.

³⁷ Ex. 10 at 113.

³⁸ Ex. 7. Some of the materials included with the application are addressed below in the discussion of Mr. Stearnes’s evidence.

³⁹ Ex. 7 at 021.

to a question asking whether he had “ever had an agency contract or company appointment canceled for cause (e.g., misrepresentation, misappropriation, etc.),” Mr. Stearnes answered “no.”⁴⁰

After reviewing Mr. Stearnes’s criminal and licensing history, Ms. Delgado recommended that the Department deny his application.⁴¹ She explained that his criminal offenses were particularly concerning to the Department because they occurred while he was licensed as an agent with the Department and directly involved his work as an insurance agent. Specifically, he was convicted of failing to remit premiums to an insurance company and of making false statements in a license application submitted to the Department.⁴² Ms. Delgado testified that Mr. Stearnes’s criminal background is considered very serious and directly related to the business of insurance because each of the offenses involved deceit and dishonesty.⁴³ She also noted that he was a mature adult—approximately 50 years old—when he committed the felony offenses.⁴⁴

Ms. Delgado was also troubled by Mr. Stearnes’s failure to comply with the terms of his community supervision, noting that the court records indicate he apparently just stopped reporting to his probation officer not long after his ten-year probation term started.⁴⁵ He also did not pay his probation fees, court costs, or restitution.⁴⁶

Ms. Delgado also emphasized Mr. Stearnes’s untruthfulness on his current license application, where he denied having had any agency contract or company appointment canceled for cause. Ms. Delgado contended that the response was knowingly false, because Mr. Stearnes was well aware that Dairyland had canceled his contract or appointment in 1994 due to his failure to remit the premiums, and he was well aware that he was subsequently convicted both of misappropriating the Dairyland premiums and of falsely denying on a prior license application that

⁴⁰ Ex. 7 at 022.

⁴¹ Tr. 21.

⁴² Tr. 22-25.

⁴³ Tr. 31.

⁴⁴ Tr. 32.

⁴⁵ Tr. 33.

⁴⁶ Tr. 34.

his Dairyland contract or appointment had been canceled.⁴⁷ This is part of a “pattern of dishonesty” that shows he lacks the honesty and trustworthiness to hold a license, according to Ms. Delgado.⁴⁸

Finally, Ms. Delgado testified that Mr. Stearnes’s failure to accept responsibility for his criminal offenses contributed to the Department’s decision to deny his license application. She explained that he continues to blame others for the misappropriation offense, despite his guilty plea, and seems to deny any wrongdoing.⁴⁹

B. Mr. Stearnes’s Evidence

With the application, Mr. Stearnes submitted a letter addressing his criminal offenses and the prior revocation of his licenses. He explained that at the time he had been dealing with marital and financial problems and his business was struggling after a valuable employee left. He said he “hired a walk-in in haste,” and the new employee “took advantage of my trust and began to hoard and steal monies” from clients and customers and did not pay their premiums.⁵⁰ He claimed the employee quit before he discovered her wrongdoing, leaving him to “quickly clean things up.” In the letter, Mr. Stearnes acknowledged that Dairyland had lost significant sums but lamented that even though he had brokered with Dairyland “for over 10 years flawlessly,” the company did not afford him enough time to pay them back before reporting him to the Department. Mr. Stearnes also complained that Dairyland had stopped paying his commissions despite still receiving premiums from Mr. Stearnes’s customers.⁵¹

Also with his application, Mr. Stearnes provided a certificate showing he completed an Anti-Money Laundering course in July 2018.⁵² He also provided several letters of support written in September and October of 2018:

⁴⁷ Tr. 24-26; Ex. 8 at 070; Ex. 10 at 101.

⁴⁸ Tr. 27.

⁴⁹ Tr. 26-27.

⁵⁰ Ex. 7 at 025.

⁵¹ Ex. 7 at 025.

⁵² Ex. 7 at 029.

- Debra R. Veal wrote that she had known Mr. Stearnes for approximately eight years and highly recommended him for licensure, praising his “hard work, diligence, and the highest standards of excellence.”⁵³
- Vawn Gretta Stearnes, Mr. Stearnes’s daughter, wrote that when she was growing up she saw how her father was respected and admired in the community and known as “THE ‘insurance man.’” She said his career was taken away after a “brief indiscretion” but the community and insurance industry would benefit if he is allowed to return to the insurance business.⁵⁴
- Edwina Johnson Clark wrote that she had known Mr. Stearnes for “several years” and recommended him highly for licensure with the Department. She explained how much he loved the business of insurance and had “discussed in great detail the brief period during the 1990s that cost him dearly while he trusted another and lost focus.” Ms. Clark believes Mr. Stearnes to be reliable, professional, ethical, and caring.⁵⁵

In forwarding these letters to the Department, Mr. Stearnes wrote in an email that “[o]nly a handful of people knew/know about any negative history I might have with law enforcement,” and that many of his insurance colleagues “were in disbelief” that he had been canceled by Dairyland.⁵⁶ He also emphasized that he worked with Dairyland for 15 years until “[f]or some reason they decided to single me out,” and he again complained that Dairyland profited when it quit paying his commissions after terminating his appointment.⁵⁷ He wrote that the termination of the Dairyland appointment and the criminal convictions were all “resulting from my unfaithful employee,” and that he had tried to resolve the criminal matter without “mentioning the villain, the guilty one, my employee.”⁵⁸

Mr. Stearnes also provided the Department with a resume that showed he worked as a staff manager for Herald Life Insurance Company from 1972 to 1976; was a special agent for Prudential Insurance Company from 1977 to 1995; owned his own business, Rudy Stearnes Insurance and

⁵³ Ex. 7 at 032.

⁵⁴ Ex. 7 at 034-35.

⁵⁵ Ex. 7 at 035-36. When asked about these letters, Ms. Delgado testified that in her opinion they were “not terribly strong” because they did not directly acknowledge his criminal history, and because letters from family members like Mr. Stearnes’s daughter do not carry as much weight with the Department as letters from disinterested persons. Tr. 27-28.

⁵⁶ Ex. 7 at 039.

⁵⁷ Ex. 7 at 039-40.

⁵⁸ Ex. 7 at 039.

Annuities, from 1980 to 1996; and then worked for Verizon Wireless from 1999 until semi-retirement in May 2011. At Verizon, he worked in customer care and then moved into technical support.⁵⁹

At the hearing, Mr. Stearnes testified that he was “not very proud” of the events that led to his criminal convictions and license revocation but emphasized that they transpired during a short period in an otherwise long and successful life. He said he strove to conduct himself in a professional and ethical manner, but “just kind of dropped the ball” when the events at issue occurred in the mid-1990s.⁶⁰ Consistent with his written statements, Mr. Stearnes testified that he was dealing with problems in his personal life at the time and was taken advantage of by an employee he trusted but did not supervise adequately. He said the employee would take customers’ insurance applications but then put their application in the trash and pocket the money they had paid for the premium.⁶¹ He denied Staff’s allegation that he had not accepted responsibility for the theft, saying he felt responsible for the things that happened in his business but wanted the Department to understand that it was not an intentional act on his part.⁶²

Regarding his convictions for making false statements in a 1996 application to the Department, Mr. Stearnes said he missed or misunderstood the questions at issue. He also indicated that he regretted pleading guilty but was overwhelmed at the time with his marital difficulties and pending legal problems.⁶³ He said he was naïve and unfamiliar with the criminal justice system and feels the prosecutors treated him unfairly.⁶⁴ Mr. Stearnes pointed out that his ten-year probation somehow lasted over twenty years, and he said civil rights groups are looking into clearing his record.⁶⁵ He feels that prosecutors may have dealt with him more harshly in part because, at the time of his convictions, they were upset that O.J. Simpson had recently been found

⁵⁹ Ex. 7 at 044-45.

⁶⁰ Tr. 43.

⁶¹ Tr. 43-44, 46.

⁶² Tr. 47, 56.

⁶³ Tr. 55.

⁶⁴ Tr. 52-54, 65.

⁶⁵ Tr. 57, 61.

not guilty. Mr. Stearnes suggested that he otherwise might have been convicted of only misdemeanor offenses, not felonies.⁶⁶

Mr. Stearnes testified that, prior to his convictions, he had a long and successful career as an insurance agent. While working for Prudential Insurance Company, he held a Series 6 securities license and handled transactions worth hundreds of thousands of dollars involving variable annuities and products, without incident.⁶⁷ He said he was also very successful with Dairyland for over 15-20 years and had a low loss ratio despite Dairyland being a high-risk auto insurance company. Mr. Stearnes emphasized that he would never have deliberately jeopardized that lucrative relationship.⁶⁸ He also elaborated on why he believed Dairyland had treated him unfairly, explaining that he was sending them “hundreds of thousands of dollars [a year] worth of premiums” which they continued collecting from his customers even after they stopped paying his commissions. He feels that, in view of their long and profitable relationship, Dairyland should have worked with him to resolve what he characterized as “a three-month, four-month incident” instead of reporting him to the Department or law enforcement.⁶⁹ Mr. Stearnes also contends that the commissions he earned but never received from Dairyland far exceeded the amount he was accused of stealing from Dairyland.⁷⁰ In his view, “I didn’t owe them anything,” and he did not think it was fair that he was ordered to pay restitution.⁷¹ On cross-examination, Mr. Stearnes also disputed Staff’s contention that Dairyland was legally prohibited from paying him commissions after his license was revoked and said he still feels that “[t]hey could have applied it to the debt if they wanted to.”⁷²

Mr. Stearnes was proud that, while working in the insurance business, he had the opportunity to employ women and people of color, providing them professional opportunities they

⁶⁶ Tr. 57, 65.

⁶⁷ Tr. 44.

⁶⁸ Tr. 44-45.

⁶⁹ Tr. 64.

⁷⁰ Tr. 55.

⁷¹ Tr. 55, 67.

⁷² Tr. 67-68.

might not have gotten elsewhere.⁷³ He was also involved with his community and the local Chamber of Commerce, and was a member of the Life Insurance Association for professional insurance.⁷⁴ He testified that he was the only Black man in Galveston County in his line of business and is proud that he did it for nearly thirty years.⁷⁵ Losing his licenses was embarrassing and forced him to move from Galveston County to Houston to restart a new career with Verizon, where he worked for over twelve years without any professional problems.⁷⁶

Now Mr. Stearnes wants to return to the insurance industry and particularly wants to get in the senior market and sell products to people his age. He said that many of his former customers still have policies he sold them and would do business with him again if he were able to regain his license.⁷⁷ He said he was moved to reapply for a license after Hurricane Harvey, when he realized that many people did not understand what insurance they had or whether their hurricane or flood damage was covered. He helped as much as he could but realized he needed an insurance license to do more.⁷⁸

IV. ANALYSIS AND RECOMMENDATION

Under Texas Insurance Code § 4005.101(b)(8) and 28 Texas Administrative Code § 1.50(d), the Department may deny a license application if the applicant has been convicted of a felony or has engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of an insurance agent. Mr. Stearnes has three felony convictions, each of which is considered directly related to the occupation of an insurance agent because his offenses (misappropriation of fiduciary property and false statement on a written instrument) entail fraud, dishonesty, or deceit as an essential element.⁷⁹ The offenses also establish that Mr. Stearnes engaged in fraudulent or dishonest acts or practices that directly relate to the duties and responsibilities of an insurance agent, which is another basis for denying his application, pursuant

⁷³ Tr. 45-46.

⁷⁴ Tr. 46, 64.

⁷⁵ Tr. 64.

⁷⁶ Tr. 64.

⁷⁷ Tr. 47, 49.

⁷⁸ Tr. 50-51.

⁷⁹ 28 Tex. Admin. Code § 1.502(e)(1).

to Texas Insurance Code § 4005.101(b)(5). Staff has therefore met its burden of proving it is authorized to deny Mr. Stearnes's license application.

The question, then, is whether Mr. Stearnes has met his burden of proving he is fit to be licensed despite his criminal history. Because Mr. Stearnes has had previous licenses revoked by the Department, he has an additional burden of showing good cause why the prior revocation should not be a bar to the issuance of a new license.⁸⁰ Pursuant to 28 Texas Administrative Code § 1.502(h), the Department will consider the factors listed in Texas Occupations Code §§ 53.022 and .023, set out above, in determining whether to grant Mr. Stearnes's license application.

The Department has already taken the factors in Texas Occupations Code § 53.022 into account in determining that offenses involving fraud, deceit, or dishonesty are among those offenses so serious that they are of prime importance in determining fitness for licensure.⁸¹ The particular facts of Mr. Stearnes's offenses only strengthen this determination. His felony offense of misappropriation of fiduciary property was committed in his capacity as a licensed insurance agent and involved his failure to pay over \$14,000 owed to an insurer. And his felony offenses of making false statements on written instruments involved false statements made to the Department on a license application. These are serious offenses, and a new license would present an opportunity for Mr. Stearnes to engage in further criminal activity similar to his misappropriation offense.

Some of the factors in Texas Occupations Code § 53.023 weigh in favor of Mr. Stearnes. The three offenses, though serious felonies, were all committed within a relatively confined period of time in the mid-1990s. He has no other criminal history, and his most recent criminal offenses (the misstatements on his 1996 license application to the Department) were committed over twenty-five years ago. Mr. Stearnes has maintained steady employment throughout his adult life, both before and after the criminal convictions, and has offered testimony and letters of support that show he has been a respected member of his community. Staff does not contend that Mr. Stearnes ever failed to support his dependents or engaged in further bad conduct after his convictions.

⁸⁰ Tex. Ins. Code § 4005.105(c).

⁸¹ 28 Tex. Admin. Code § 1.502(e)(1).

Other factors, however, weigh against Mr. Stearnes. He was in his 50s when the crimes were committed, so they cannot be considered youthful indiscretions. There is also scant evidence of his rehabilitation. Despite pleading guilty to the offenses, Mr. Stearnes seems to primarily blame a dishonest employee and failures of the justice system for his criminal convictions. In his testimony and correspondence with the Department, he dwelled at length on how he felt wronged by Dairyland rather than accepting that he had been court-ordered to pay restitution. He also recently made the same misrepresentation for which he was convicted in 1996, denying on his 2018 license application that he had “ever had an agency contract or company appointment canceled for cause (e.g., misrepresentation, misappropriation, etc.)” despite his 1996 felony conviction for making the same misrepresentation on an application to the Department after his appointment with Dairyland had been canceled for cause.

Also weighing against Mr. Stearnes is the evidence that he failed to successfully complete community supervision for his felony offenses. The court records show he fell out of compliance within a year of being granted community supervision. In the motions to revoke his community supervision filed in mid-1997, the prosecutor cited Mr. Stearnes’s failure to report to his probation officer for three consecutive months, and his failure to pay the court costs, fines, and restitution he had been ordered to pay. The ALJ cannot comment on why authorities did not act on his noncompliance at the time, but the evidence is undisputed that when he was finally released from community supervision in 2018, the court made express findings that Mr. Stearnes had not completed the terms and conditions of any of the three community supervision orders and his release was termed “unsatisfactory.” Mr. Stearnes still owed over half of the restitution he was ordered to pay in the 1996 Judgment of Community Supervision for the misappropriation offense,⁸² and still owed court costs and fines that were ordered in all three of the 1996 judgments placing him on community supervision.

Based on this record, the ALJ concludes that the factors in Texas Occupations Code §§ 53.022 and .023, and the considerations in the Department’s rule at 28 Texas Administrative Code § 1.502, weigh against granting Mr. Stearnes’s application. His evidence of mitigating

⁸² In the Judgment of Community Supervision, Mr. Stearnes was ordered to pay \$11,672.30 in restitution, requiring payments of \$100 per month. The Nunc Pro Tunc Order Unsatisfactorily Releasing the Defendant from Community Supervision stated that, among other deficiencies, Mr. Stearnes was delinquent \$1,070.49 and had a balance remaining of \$7,464.03. Ex. 7 at 072, 078.

factors does not outweigh the serious nature of his criminal offenses, particularly in view of the evidence that he did not comply with or successfully complete his community supervision; he continues to deny responsibility for the offenses; and he recently committed a similar violation when he untruthfully denied having ever had an agency contract canceled for cause, despite the extensive legal consequences that flowed from Dairyland's cancellation of his appointment in 1994.⁸³ Mr. Stearnes has not shown his fitness for licensure or good cause why the prior revocation should not be a bar to the issuance of a new license. Therefore, the ALJ recommends that the Department deny his current application for an insurance agent license. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

V. FINDINGS OF FACT

1. Rudolph Jovan Stearnes, Jr. previously held a Group I Legal Reserve Life Insurance Agent's license and a Group II Insurance Agent's license, both issued by the Texas Department of Insurance (Department). Those license categories have since been renamed and today are referred to as insurance agent licenses for general lines—life, accident and health and general lines—property and casualty.
2. Following a contested-case hearing at the State Office of Administrative Hearings (SOAH), Mr. Stearnes's licenses were both revoked by an October 31, 1996 Order of the Commissioner of Insurance.
3. In August 1994, Dairyland County Mutual Insurance Company (Dairyland) canceled Mr. Stearnes's insurance agent's contract or appointment due to his failure to pay \$14,719 in insurance premiums collected from September 1993, to February 1994.
4. On January 19, 1996, in Case No. 952453, Mr. Stearnes pleaded guilty in the 299th Judicial District Court of Travis County, Texas, to the third-degree felony offense of misapplication of fiduciary property. The offense was committed when Mr. Stearnes misapplied property he held as fiduciary for Dairyland in a number of transactions between September 1993 and February 1994, ranging in amount from \$58.40 to \$1,434.00. A total of \$14,719.00 was misappropriated from Dairyland.
5. In a Judgment of Community Supervision dated March 18, 1996, Mr. Stearnes was convicted of the felony misappropriation offense and sentenced to ten years' confinement in the Texas Department of Criminal Justice Institutional Division (TDCJID), but the court suspended his sentence and instead placed Mr. Stearnes on community supervision for ten years. Among other terms of community supervision, Mr. Stearnes was ordered to pay a \$2,000 fine, \$11,672.30 in restitution, and certain court fees; and was ordered to complete 200 hours of community service.

⁸³ 28 Tex. Admin. Code § 1.502(g), (h).

6. In August 1997, the assistant district attorney filed a motion to revoke Mr. Stearnes's community supervision, citing several violations. Though a warrant was issued to secure Mr. Stearnes's appearance, the court did not otherwise address the probation violations for over twenty years.
7. On June 11, 2018, a Travis County judge entered an Order Unsatisfactorily Releasing the Defendant from Community Supervision in Case No. 952453. The order stated that Mr. Stearnes had not fully completed the terms and conditions of community supervision and cited his failure to report to his probation officer in March, April, or May 1997; failure to pay court costs, fines, and restitution; and failure to complete a required felony theft class.
8. A Nunc Pro Tunc Order Unsatisfactorily Releasing the Defendant from Community Supervision was subsequently entered on April 26, 2019, in Case No. 952453, to correct the amount of restitution that Mr. Stearnes still owed. The Nunc Pro Tunc order clarified that Mr. Stearnes was "delinquent \$1,070.49 on balance remaining \$7,464.03."
9. On March 1, 1996, in Case No. 960864, Mr. Stearnes pleaded guilty in the 299th Judicial District Court of Travis County, Texas, to the third-degree felony offense of knowingly and intentionally filing a written instrument with the Department that contained a false, fictitious, and fraudulent statement. The offense was committed on January 10, 1996, when Mr. Stearnes claimed on a license application to the Department that he had never been indicted for a felony, despite then being under felony indictment for the misappropriation offense.
10. In a Judgment of Community Supervision dated March 28, 1996, Mr. Stearnes was convicted of the felony offense of False Statement on a Written Instrument. He was sentenced to ten years' confinement in TDCJID, but the sentence was suspended and he was placed on community supervision for ten years. His community supervision terms included requirements to pay a \$1,000 fine and other court costs and fees, and to complete 200 hours of community service.
11. In August 1997, the assistant district attorney moved to revoke his community supervision and a warrant was signed against Mr. Stearnes, but the court did not otherwise address the probation violations for over twenty years.
12. On June 11, 2018, a Travis County judge entered an Order Unsatisfactorily Releasing the Defendant from Community Supervision in Case No. 960864. The court stated that Mr. Stearnes had not fully completed the terms and conditions of community supervision and cited his failure to report to his probation officer in March, April, and May 1997; and failure to pay approximately \$660 in fees, fines, and court costs.
13. On March 1, 1996, in Case No. 960865, Mr. Stearnes pleaded guilty in the 299th Judicial District Court of Travis County, Texas to a second count of knowingly and intentionally filing a written instrument with the Department that contained a false, fictitious, and fraudulent statement. The offense was committed on January 10, 1996, when Mr. Stearnes claimed on a license application to the Department that he had never had an agency contract or company appointment canceled for cause, when in fact he previously had been canceled for cause by Dairyland.

14. In a Judgment of Community Supervision dated March 22, 1996, Mr. Stearnes was convicted of the felony offense of False Statement on a Written Instrument. He was sentenced to ten years' confinement in TDCJID, but the sentence was suspended and he was placed on community supervision for ten years. His community supervision terms included a requirement to pay a \$1,000 fine and other court costs and fees and complete 200 hours of community service.
15. In August 1997, the assistant district attorney moved to revoke his community supervision and a warrant was signed against Mr. Stearnes, but the court did not otherwise address the probation violations for over twenty years.
16. On June 11, 2018, a Travis County judge entered an Order Unsatisfactorily Releasing the Defendant from Community Supervision in Case No. 960865. The court stated that Mr. Stearnes had not fully completed the terms and conditions of community supervision and cited his failure to report to his probation officer in March, April, and May 1997; and failure to pay approximately \$100 in fees, fines, and court costs.
17. Mr. Stearnes still owes over half of the restitution he was ordered to pay in the 1996 Judgment of Community Supervision for the misappropriation offense and still owes court costs and fines that were ordered in all three of the 1996 judgments placing him on community supervision.
18. On July 18, 2018, Mr. Stearnes applied to the Department for a general lines agent license with a property and casualty qualification.
19. On the application, Mr. Stearnes truthfully answered "yes" in response to questions asking whether he had ever been convicted of, placed on deferred adjudication for, or served probation for a misdemeanor or felony offense.
20. The application asked if Mr. Stearnes had "ever had an agency contract or company appointment canceled for cause (e.g., misrepresentation, misappropriation, etc.)," and in response, Mr. Stearnes untruthfully answered "no."
21. Mr. Stearnes completed an Anti-Money Laundering course in July 2018.
22. Mr. Stearnes worked as a staff manager for Herald Life Insurance Company from 1972 to 1976; was a special agent for Prudential Insurance Company from 1977 to 1995; and owned his own business, Rudy Stearnes Insurance and Annuities, from 1980 to 1996.
23. After his insurance licenses were revoked, Mr. Stearnes worked for Verizon Wireless from 1999 to 2011. At Verizon, he worked in customer care and technical support.
24. Mr. Stearnes has maintained steady employment throughout his adult life, both before and after the criminal convictions.
25. Mr. Stearnes provided letters of support from two friends and from his daughter that vouched for his good character, strong worth ethic, and involvement in his community.
26. Mr. Stearnes was in his 50s when his criminal offenses were committed, so they cannot be considered as youthful indiscretions.

27. Mr. Stearnes's offenses, though serious felonies, were all committed within a relatively confined period of time in the mid-1990s. He has no other criminal history.
28. Mr. Stearnes's most recent criminal offenses were committed over twenty-five years ago.
29. A new insurance agent license would present an opportunity for Mr. Stearnes to engage in further criminal activity similar to his misappropriation offense.
30. Mr. Stearnes has not fully accepted responsibility for his crimes and primarily blames his criminal convictions on a dishonest employee, failures of the justice system, and unfair treatment by Dairyland.
31. On May 14, 2019, Staff of the Department proposed to deny Mr. Stearnes's application for a general lines agent license based on his criminal history and prior misconduct.
32. Mr. Stearnes requested a hearing to challenge the denial.
33. On June 10, 2020, Staff issued a notice of hearing on the denial of his application.
34. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
35. The hearing in this case was held via Zoom videoconference on April 14, 2021, before ALJ Sarah Starnes at the State Office of Administrative Hearings (SOAH). Staff was represented by staff attorney Stephanie Andrews. Mr. Stearnes appeared and represented himself. The hearing concluded that day, and the record closed on April 29, 2021, when the court reporter's transcript was filed with SOAH.

VI. 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. Mr. Stearnes received timely and sufficient notice of the hearing. Tex. Gov't Code §§ 2001.051-.052.; Tex. Ins. Code § 4005.104(b).
4. Staff has the burden of proving its basis for denying Mr. Stearnes's application. Mr. Stearnes has the burden to prove his fitness to be licensed despite the criminal history or fraudulent or dishonest conduct, and he must show good cause why the revocation of his prior license should not be a bar to the issuance of a new license. Tex. Ins. Code § 4005.105(c); Tex. Occ. Code § 53.023(b)-(c); 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 1.502(g)-(h).

5. The burden of proof is by a preponderance of the evidence. *Granek v. Texas St. Bd. of Med. Examiners*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
6. The Department has determined that certain crimes are of such a serious nature that they are of prime importance in determining fitness for licensure. These crimes include offenses involving fraud, dishonesty, or deceit as an essential element. 28 Tex. Admin. Code § 1.502(e)(1).
7. The Department may deny Mr. Stearnes's license application because he has been convicted of three felony offenses. Tex. Ins. Code § 4005.101(b)(8); 28 Tex. Admin. Code § 1.502(d).
8. The Department may deny Mr. Stearnes's license application because he has been convicted of offenses that directly relate to the duties and responsibilities of the licensed occupation. Tex. Occ. Code § 53.021(a)(1).
9. The Department may deny Mr. Stearnes's license application because he has engaged in fraudulent or dishonest acts or practices that directly relate to the duties and responsibilities of an insurance agent. Tex. Ins. Code § 4005.101(b)(5); 28 Tex. Admin. Code § 1.502(d).
10. The Department will consider the factors listed in Texas Occupations Code §§ 53.022 and 53.023 in determining whether to issue a license to an applicant, despite a criminal offense or fraudulent or dishonest conduct, and will not issue a license unless those mitigating factors outweigh the serious nature of the criminal offense or fraudulent or dishonest conduct when viewed in the light of the occupation being regulated. 28 Tex. Admin. Code § 1.502(g), (h).
11. The mitigating factors do not outweigh the seriousness of Mr. Stearnes's criminal offenses and his fraudulent or dishonest conduct, and he has not shown his fitness for licensure. Tex. Occ. Code §§ 53.022-.023; 28 Tex. Admin. Code § 1.502(g)-(h).
12. The Department should deny Mr. Stearnes's application for a license.

SIGNED June 3, 2021.



SARAH STARNES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS