

No. **2021-6936**

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

Date: 07/21/2021

Subject Considered:

Texas Department of Insurance

v.

Sherri Lynn Cross

SOAH Docket No. 454-20-3309.C

General remarks and official action taken:

The subject of this order is Sherri Lynn Cross's application for an escrow officer license. This order denies Ms. Cross's application.

Background

After proper notice was given, the above styled case was heard by an administrative law judge for the State Office of Administrative Hearings. The administrative law judge made and filed a proposal for decision containing a recommendation that the Texas Department of Insurance (TDI) deny Ms. Cross's application. A copy of the proposal for decision is attached as Exhibit A.

Error in Proposal for Decision

The proposal for decision has a typographical error in discussing the background of the case. When referencing an audit by TDI, the proposal for decision states the audit occurred in April 2017. However, the correct date for the audit is April 2007. The correct date is noted in TDI Exhibit 2, which the proposal for decision cites in footnote 2. This error is noted here but does not necessitate changes to any findings of fact or conclusions of law.

ACCEPTED **2021-6936**
454-20-3309
8/17/2020 1:35 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Donnie Roland, CLERK



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454-20-3309
8/17/2020 12:50 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Donnie Roland, CLERK

SOAH DOCKET NO. 454-20-3309.C

**TEXAS DEPARTMENT OF
INSURANCE,
Petitioner**

v.

**SHERRI LYNN CROSS,
Respondent**

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**BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

Staff (Staff) of the Texas Department of Insurance (TDI or Department) seeks to deny the application of Sherri Lynn Cross for an escrow officer license based on the revocation of her prior escrow officer license due to fraudulent or dishonest acts or practices and on her failure to pay an administrative penalty. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department deny Ms. Cross’s license application.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this case was held telephonically on June 23, 2020, before ALJ Rachelle White at the State Office of Administrative Hearings. Staff was represented by staff attorney Casey Seeboth. Ms. Cross represented herself. The hearing concluded and the record closed the same day. Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below.

II. DISCUSSION

A. Background

Ms. Cross previously held an escrow officer license.¹ On June 24, 2009, after having afforded Ms. Cross proper and timely notice of hearing, the Commissioner of Insurance (Commissioner) disposed of allegations that Ms. Cross had violated the Texas Insurance Code and other rules and regulations in Default Order 09-0492, as summarized below:²

In 2004, Capital Title of Texas, LLC (Capital Title), a licensed Texas title insurance agent, contracted attorney Matthew E. Haddock (Haddock) to perform title-closing services. In 2006, Haddock employed Ms. Cross and Deborah Kharazzi (Kharazzi) as escrow officers. Ms. Cross made a material misstatement about her employer in her April 19, 2006 escrow officer application. After the Department notified Ms. Cross that Haddock may not be licensed and requested Haddock's license number, Ms. Cross amended her application to state that she was a bona fide employee of Capital Title. On that basis, the Department granted her license. However, Ms. Cross had never been directly employed by Capital Title and was actually employed by Haddock.

From 2006 to 2007, Ms. Cross conducted the unauthorized business of title insurance when she closed transactions in the name of Capital Title while Haddock employed her. Ms. Cross also aided Kharazzi, an unlicensed member of Haddock's personnel, in her performance of the duties of an escrow officer when she signed the settlement statement for transactions that Kharazzi had prepared in violation of Texas Insurance Code chapter 2652. Ms. Cross also accepted improper portions of premium payments Haddock collected from Capital Title because she was not licensed as the bona fide employee of Haddock.

In April 2017, an audit by the Department revealed that Ms. Cross had failed to properly close transactions or follow the closing instructions and engaged in deceptive closing practices in at least seventeen guaranty files. On May 11, 2007, Capital Title cancelled Ms. Cross's license. On May 22, 2007, the Department received from Ms. Cross an escrow officer license application that listed United Title of Texas as the appointing title insurance agent. The Department summarily denied Ms. Cross's application; Ms. Cross requested a hearing to contest the Department's proposal to deny her application for licensure.

¹ Staff Ex. 1 at 025.

² Staff 2 at 084. Finding of Fact No. 9 established that the Department sent notice of hearing to Ms. Cross at PO Box 2457, Burleson, Texas 76097-2457, by certified mail return receipt requested and first class mail, which was a new address provided by the United States Postal Service.

The Commissioner revoked Ms. Cross's license, ordered her to pay an administrative penalty of \$10,000, and denied her pending May 22, 2007 escrow officer application.³ On September 19, 2018, Ms. Cross applied for an escrow officer license with the Department. On October 17, 2018, the Department recommended denial of Ms. Cross's new application based on her failure to disclose the previous revocation and denial, and based on her failure to pay the administrative penalty.⁴

B. Applicable Law

In accordance with Texas Insurance Code § 2652.202(b), the Department may deny the license application of an applicant whose license application has been denied, refused, or revoked unless the applicant shows good cause why the denial, refusal, or revocation should not be a bar to issuance of a license.

C. Evidence and Argument

Staff offered four exhibits, which were admitted. Staff also offered the testimony of Lewis Weldon Wright, IV, an administrative review liaison for the Department, and Ms. Cross.

1. Testimony of Mr. Wright

Mr. Wright reviews applications involving criminal history or misconduct, and he oversees the workflow of such applications between the enforcement, legal, and licensing divisions. Mr. Wright confirmed that the Department received Ms. Cross's application on September 19, 2018. Staff checked the application for accuracy and completeness. In response to Question 11 of the application, Ms. Cross responded that she had not "ever had a professional license, an insurance license or company appointment refused, suspended, or revoked in Texas . .

³ Staff 1 at 025, 046-060.

⁴ Staff Ex. 1 at 024-025.

. [.]”⁵ According to Mr. Wright, Ms. Cross provided an incorrect response to Question 11. Mr. Wright said Department records revealed that, in 2009, Ms. Cross had been the subject of an order that revoked the escrow officer license she previously held.⁶ In its review and evaluation of Ms. Cross’s application, Staff also considered whether Ms. Cross had complied with the Commissioner’s order to pay an administrative penalty of \$10,000.00.⁷ Staff determined that she had not complied with the past order. Mr. Wright emphasized that an applicant’s acceptance of responsibility for prior conduct is an important factor in determining whether the prior conduct that led to the revocation should remain a bar to licensure.

In light of Ms. Cross’s enforcement history, Staff completed a good cause evaluation to determine whether the Department should issue the license. According to Mr. Wright, Staff considered the amount of time elapsed since the revocation of the previously held license and Ms. Cross’s submission of additional information that would support a decision to grant the requested license.⁸ Mr. Wright confirmed that staff from different divisions within the Department participated in the evaluation of the application and recommended that licensure be denied.

2. Testimony of Ms. Cross

Ms. Cross testified that, in January 2014, she became aware of the Commissioner’s order that revoked her license and imposed an administrative penalty. Ms. Cross stated that she did not challenge the Commissioner’s order or pay the penalty at that time. She also testified that she did not contest the allegations in 2009 because she did not receive the notice of hearing. Ms. Cross explained that she experienced financial difficulties after her employment at Capital Title ended in 2006, and her residential address changed several times. She recalled utilizing a post office box in Burleson, Texas, which she checked once a month. Ms. Cross indicated she was not aware that

⁵ Staff Ex. 1 at 072.

⁶ Staff Ex. 2; Staff Ex. 4 at 183. During his testimony, Mr. Wright explained that, due to the Department’s record retention schedule, the evidence or litigation file that supported the factual findings of the Commissioner’s order no longer exists, but the Commissioner’s order is permanently retained.

⁷ Staff Ex. 1 at 026; Staff Ex. 2 at 096.

⁸ Staff Ex. 1 at 044.

licensed escrow officers have a duty to notify the Department of any address changes, but noted she was not licensed at the time because Capital Title cancelled her license.

In response to Staff's direct examination, Ms. Cross stated that she accepts responsibility for what happened and she is aware of the reasons for the penalties. Ms. Cross generally maintained that she was put in a very difficult situation, manipulated, and deceived. Ms. Cross stated that she wants a second chance.

3. Parties' Arguments

Staff argued that the Department determines fitness for licensure. Upon receipt of an application, Staff reiterated that the Department is required to evaluate the applicant's statements on the application along with other evidence for truthfulness. In this case, the Department determined that Ms. Cross had had a previous license revoked and a fine imposed for findings of misconduct, which is evidenced in the Commissioner's order. Among other conclusions, the Commissioner determined that Ms. Cross had engaged in fraudulent or dishonest conduct, which was a basis for the license revocation and administrative penalty. Staff emphasized that § 2652.202(b) of the Texas Insurance Code authorizes the Department to deny issuance of another license because Ms. Cross had a prior license revoked and did not demonstrated good cause to overcome that bar. Staff contended that since the time of revocation, the applicant has not shown that her circumstances have changed in a manner that confers confidence in her ability to be a trustworthy and competent license holder.

Staff contended that Ms. Cross's failure to contest the Commissioner's order once she learned about it and her decision to not pay the imposed penalty demonstrate that she does not have the required good cause or character to receive a new license. Staff opined that Ms. Cross blamed others rather than accepting responsibility for the part she played and her conduct that led to the prior revocation of her license. Staff maintained that the Department is authorized to deny the application and denial is the appropriate outcome in this case.

In closing, Ms. Cross contended that she was guilty of being naive about what was going on around her and not taking responsibility for the fact that her name was on the documents. She did not contest that she should accept responsibility for the consequences because her name was on the license, and she did not act accordingly. However, Ms. Cross asserted that the disposition should be based on something other than the underlying conduct and a financial penalty, such as taking into consideration one's ability to pay a penalty. Ms. Cross argued that the additional information she submitted addressed her character and demonstrated that she is a trustworthy person. Based on that, she requested that the Department grant her another license.

D. Analysis

Pursuant to Texas Insurance Code § 2652.201, the Department determined that Ms. Cross had, among other things, willfully violated Title 11, intentionally made a material misstatement in her license application, and obtained or attempted to obtain the license by fraud or misrepresentation. On that basis, the Department denied her previous application for licensure. In 2007, Ms. Cross requested and received proper notice of her hearing, but she failed to participate. Accordingly, the Commissioner entered a default judgment and revoked Ms. Cross's escrow officer license on June 24, 2009. Texas Insurance Code § 2652.202(b), accordingly, authorizes the Department to deny Ms. Cross's current license application based on the prior revocation of her escrow officer license.

Ms. Cross failed to demonstrate good cause why the prior revocation should not be a bar to issuance of the escrow officer license, as allowed by Texas Insurance Code § 2652.202(b). Ms. Cross received notice of the prior revocation and the administrative penalty as early as 2014, but did not present any evidence that she paid or attempted to satisfy any portion of the administrative penalty over the following six years. She maintained that she was unable to pay due to financial reasons, but she did not present any evidence to support her claim. Ms. Cross also attributed fault to others. The ALJ finds that the credible evidence shows Ms. Cross failed to comply with the Commissioner's prior order. When considered in conjunction with her failure to accept responsibility for the prior misconduct found and the resulting disciplinary action,

Ms. Cross's supporting documents are insufficient to overcome the bar to licensure found in the Insurance Code.

Accordingly, the ALJ concludes that Ms. Cross's application for an escrow officer license should be denied. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. On September 19, 2018, Sherri Lynn Cross applied for an escrow officer license with the Texas Department of Insurance (Department).
2. On October 17, 2018, the Department proposed to deny her application based on a prior revocation of her license, her failure to disclose the previous revocation and subsequent license application denial, and her failure to pay the previously-ordered administrative penalty.
3. Ms. Cross requested a hearing to challenge the denial.
4. On April 15, 2020, the Department issued a notice of hearing on the denial of her application.
5. 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.
6. The hearing in this case was held telephonically on June 23, 2020, before Administrative Law Judge Rachelle White at the State Office of Administrative Hearings. The staff (Staff) of the Department was represented by staff attorney Casey Seeboth. Ms. Cross represented herself. The hearing concluded and the record closed the same day.
7. In 2006, the Department granted Ms. Cross an escrow officer license.
8. On June 24, 2009, the Commissioner of Insurance (Commissioner) disposed of allegations that Ms. Cross had violated the Texas Insurance Code and other rules and regulations in

Default Order 09-0492, wherein the Commissioner revoked Ms. Cross's escrow officer license, ordered her to pay an administrative penalty in the amount of \$10,000.00, and denied her pending May 22, 2007 escrow officer license application.

9. More than 11 years have elapsed since the issuance of the Commissioner's Default Order 09-0492 and more than 6 years have elapsed since Ms. Cross stated she received notice of that order. As of the date of hearing, she had not paid the administrative penalty.
10. On September 19, 2018, the Department received Ms. Cross's application for an escrow officer license, wherein she denied that she had ever had a professional license, an insurance license, or company appointment refused, suspended, or revoked in Texas.
11. Ms. Cross failed to show good cause why the revocation of her previous escrow officer license should not be a bar to the issuance of an escrow officer license.
12. The preponderance of the evidence fails to demonstrate Ms. Cross's current fitness to hold a license.

IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 82.051-.056, 2651.301, and 2652.201.
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. Cross received timely and sufficient notice of hearing. Tex. Gov't Code §§ 2001.051-.052.; Tex. Ins. Code § 4005.104(b).
4. The Department may deny the license application of an applicant whose license application has been denied, refused, or revoked. Tex. Ins. Code § 2652.202(b).
5. Ms. Cross has not shown good cause why the denial, refusal, or revocation should not be a bar to issuance of a license. Tex. Ins. Code § 2652.202(b).

6. The Department should deny Ms. Cross's application for a license.

SIGNED August 17, 2020.



RACHELLE WHITE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS