

No. **2022-7217**

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

Date: 02/09/2022

Subject Considered:

Texas Department of Insurance

v.

Kenneth Allen Moorman

SOAH Docket No. 454-20-3534.C

General remarks and official action taken:

The subject of this order is Kenneth Allen Moorman's general lines agent license with a life, accident, health, and health maintenance organization (HMO) qualification. This order revokes Mr. Moorman's license.

Background

After proper notice was given, the above-styled case was heard by an administrative law judge for the State Office of Administrative Hearings. The administrative law judge made and filed a proposal for decision containing a recommendation that Kenneth Allen Moorman's general lines agent license be revoked. 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 the Texas Department of Insurance (TDI) and incorporated by reference into this order.


Conclusions of Law

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


COMMISSIONER'S ORDER
TDI v. Kenneth Allen Moorman
SOAH Docket No. 454-20-3534.C
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Order

It is ordered that Kenneth Allen Moorman's general lines agent license with a life, accident, health, and HMO qualification is revoked.

DocuSigned by:

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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

75578E954EFC48A...
James Person, General Counsel

DocuSigned by:

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James Kelly, Staff Attorney

2022-7217

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7/8/2021 10:25 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK



SOAH DOCKET NO. 454-20-3534.C
TDI FILE NO. 16638

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**TEXAS DEPARTMENT OF
INSURANCE,
Petitioner**

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BEFORE THE STATE OFFICE

v.

OF

**KENNETH ALLEN MOORMAN,
Respondent**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff (Staff) of the Texas Department of Insurance (Department) brought this enforcement action to revoke the general lines agent license held by Kenneth Allen Moorman. Staff alleges that Mr. Moorman engaged in fraudulent or dishonest acts in violation of the Texas Insurance Code by submitting policy applications on behalf of people and companies that did not exist. The Administrative Law Judge (ALJ) finds that Staff established the basis for discipline and recommends that Mr. Moorman’s license be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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

The hearing on the merits was held via Zoom videoconference on May 12, 2021, before ALJ Rebecca S. Smith. Staff appeared and was represented by Staff Attorney Nancy Williams. Mr. Moorman was represented by attorney Alexander Gonzales. The record closed at the conclusion of the hearing.

II. APPLICABLE LAW

The Texas Insurance Code authorizes the Department to regulate the business of insurance in this state and to take disciplinary action against agents who violate the law or rules related to insurance.¹ In particular, under Texas Insurance Code § 4005.101, the Department may take disciplinary action against a license holder for engaging in a fraudulent or dishonest act or practice.² Staff bears the burden of proof on this allegation.³

III. EVIDENCE, ARGUMENT, AND ANALYSIS

Mr. Moorman holds a generalized agent license issued by the Department in 2015, with a qualification for life, accident, health, and health maintenance organization.⁴

At the hearing, Staff offered four exhibits, which were admitted, and presented the testimony of two witnesses, Seth Graham and Lewis W. Wright, IV. Although Mr. Moorman's counsel made an opening statement and a closing argument, he presented no witnesses and offered no exhibits.

A. Evidence

1. Testimony of Seth Graham

Seth Graham works as an investigator for American Family Life Assurance Company of Columbus (Aflac) in its special investigations unit and conducted the investigation into Mr. Moorman, who had a contract with Aflac to sell insurance products. The investigation began with allegations that Mr. Moorman established an account for a company called Legacy Insurance Solutions (Legacy), that he used to improperly write policies for Aflac associates. The investigation grew from there. The investigation's ultimate scope can be divided into two main

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

² Tex. Ins. Code § 4005.101(b)(5).

³ 1 Tex. Admin. Code § 155.427.

⁴ TDI Ex. 1.

categories: allegations that Mr. Moorman submitted policy applications on behalf of people; and companies that did not exist and allegations that Mr. Moorman improperly used payroll group accounts. This second category involved allegations that Mr. Moorman used the Legacy account to submit policy applications for people who existed but whose policies should not have been part of Legacy's payroll account.⁵

a. Policies for Fictitious Companies and People

Mr. Graham testified he discovered that Mr. Moorman created payroll group accounts for companies that did not exist and then set up policies for nonexistent employees of those fictitious companies. The largest number of policies were for a fictitious company Mr. Moorman called Red Oak Landscaping. Mr. Moorman created six fictitious policyholders under the Red Oak Landscaping account, with a total of 25 or 26 policies.⁶ For a fictitious company called Johnson & Monroe Realtors, Mr. Moorman set up five policies for one fictitious policyholder and six for another.⁷ Mr. Moorman also set up policies for a fictitious policy holder under an account for a fictitious company he named Fiesta Lanes.⁸ Mr. Moorman also created two fictitious policyholders and submitted applications on their behalf through the Legacy account. Mr. Graham confirmed that the policyholders did not exist by running checks on the social security numbers and birthdates that were listed for them.⁹

More evidence was presented about Red Oak Landscaping than the other fictitious companies. Mr. Graham testified that the Red Oak Landscaping group was set up under the name of one of the associates who worked under Mr. Moorman, Barry Vukela. However, Mr. Moorman

⁵ The investigation also involved allegations that Mr. Moorman assisted other agents who worked under him in setting up payroll group accounts on behalf of people who were not eligible to set up those accounts. Because that portion of the investigation does not relate to the allegations in the petition in this case, it will not be addressed further in this Proposal for Decision.

⁶ Transcript (Tr.) at 70-71.

⁷ Tr. at 72.

⁸ Tr. at 73.

⁹ Tr. at 44.

later told Mr. Graham that he, not Mr. Vukela, enrolled the group and placed it under Mr. Vukela's writing number.¹⁰

Staff also introduced into evidence the recording of a call in which someone who identified himself as Mr. Vukela went through Aflac's enrollment process for Red Oak Landscaping.¹¹ In the recording, Mr. Moorman played the part of Jason Smith, Red Oak's administrator, who was authorizing the enrollment. Mr. Moorman later told Mr. Graham that he wrote a script for the call and enlisted a friend of his to play Mr. Vukela.

Mr. Moorman received advance commission amounts for all those policies. According to Mr. Graham's testimony, Mr. Moorman was paid \$14,202.32 in advance commissions for questionable policies, although those amounts were eventually charged back.

Mr. Graham testified that Mr. Moorman told him that he had submitted those applications because of his business's financial difficulties. Mr. Moorman submitted to Aflac a written statement admitting and explaining his conduct.¹²

In September of 2017, my organization was booming with new associates, and we were growing faster than my finances could keep up. It was during this month that I was faced with a terrible decision. We could either be evicted from our district office and lose our office printer, or make the payment within 10 days. It was at this point that I made the decision to create a fictitious payroll account with fictitious policyholders in order to create cash flow to keep our operation afloat. After seeing the gray areas that we had operated over the year, I felt that this would be a victimless violation of Aflac protocol. I highly underestimated the brevity [sic] of this situation at the time of action. This account was Red Oak Landscape Services Between September and October of 2017, 6 fictitious policyholders were written on the account with multiple policies each. These advanced funds were utilized to pay our operational expenses and later charged back to my monthly statement.

During September of 2017, in the same desperate need for cash flow, I wrote 2 fictitious policyholders on the Legacy Insurance Solutions account with the same results as described above. They were listed as Rusty Coleman and Troy Dominique.

¹⁰ Tr. at 40.

¹¹ TDI Ex. 9.

¹² TDI Ex. 3M at 1002-03.

In December of 2017, in the last moment of financial desperation throughout the year, I wrote 3 final fictitious policyholders. 1 on the account names Fiesta Lanes . . . named Michael Dykes . . . 2 more were written on the account named Johnson and Monroe Realtors . . . The actions were taken out of desperation and have since charged back to the monthly statements for each individual.

b. Legacy Payroll Account

Mr. Graham also testified regarding the specifics of the Legacy account. Mr. Moorman also set up a payroll account for Legacy, which was his own company, despite some question about Legacy's eligibility to establish a payroll account. Aflac had a category it called a "payroll group." According to Mr. Graham, to set up a payroll group, a business must have at least three W-2 employees or 1099 contractors.¹³ The business must also authorize the enrollment.¹⁴ The business must be licensed through the state and have a valid tax identification number. Once those requirements are met, the premiums are lower for the payroll group than they would be if the individuals obtained policies on their own.¹⁵ The agent receives a benefit, too: because of Aflac's procedures, an agent is paid an advance commission faster for a payroll-group account than for other policies.¹⁶

As an example of his concerns with the Legacy account, Mr. Graham testified about one particular policy application Mr. Moorman submitted.¹⁷ Aflac's application form required certification that each applicant was a valid member or employee of the named business, in this case, Legacy. Mr. Graham determined, after investigation, that Legacy did not have any employees on its payroll.¹⁸ Despite that, on the application, Mr. Moorman indicated that the premiums would be paid via a payroll deduction.¹⁹ Mr. Graham noted that Mr. Moorman received the commission for the policy.²⁰

¹³ Tr. at 27.

¹⁴ Tr. at 27.

¹⁵ Tr. at 7.

¹⁶ Tr. at 27-28.

¹⁷ TDI Ex. 3E.

¹⁸ Tr. at 46.

¹⁹ Tr. at 48; TDI Ex. 3E at 65.

²⁰ Tr. at 45.

The issues with Legacy extended beyond that one specific application. Mr. Graham testified that none of the policyholders under the Legacy account could be verified to be Legacy employees or contractors.²¹ Mr. Graham also noted that some of the policies written under the Legacy account were for other Aflac agents.²²

Mr. Graham concluded his investigation and wrote a report. Aflac's field ethics committee evaluated the case and decided to terminate Mr. Moorman's relationship with the company.²³

2. Testimony of Lewis W. Wright, IV

Mr. Wright, who has worked in the insurance field for almost 34 years, is the Department's administrative review liaison to the Department's enforcement division. In that position, he deals with cases of misconduct involving licensed agents and adjusters. He noted that whenever a carrier terminates an agent's appointment because of misconduct or fraud, the carrier is required to report it to the Department.²⁴

Mr. Wright also testified regarding the statements made to the Department as compared to the statements he made to Aflac. Contrary to his statements to Aflac, Mr. Moorman's statements to the Department disclaimed all knowledge of what happened with Red Oak and said that he "simply moved forward in these situations under the instructions and direction of Christian Krueger, my manager at the time, in fear of consequences."²⁵ He also denied knowledge of any other fictitious policies or groups. Mr. Wright did not believe that Mr. Moorman was being honest in his answers to the Department.

Mr. Wright testified that the Department follows the statutory guidelines for reviewing misconduct.²⁶ Mr. Wright set out why he believes the appropriate remedy for Mr. Moorman's

²¹ Tr. at 29.

²² Tr. at 30.

²³ Tr. at 81.

²⁴ Tr. at 127-28.

²⁵ TDI Ex. 2 at 20.

²⁶ Tr. at 122.

conduct is revocation of his license. In particular, he questioned whether Mr. Moorman would transact insurance business in an honest and forthright manner.²⁷ He also testified that each individual license holder, such as Mr. Moorman, is responsible for complying with the Texas Insurance Code, regardless of what anyone else tells him or her to do.²⁸ He agreed that there was no direct consumer harm in this case.²⁹

3. Mr. Moorman's Evidence

Mr. Moorman did not present any evidence. Instead, Mr. Moorman argued that Aflac failed to fully comply with a subpoena, which violated his due process rights and prevented him from presenting his case. He indicated that he would be filing a motion to compel.³⁰

B. Argument and Analysis

1. Alleged Violation

Staff seeks to discipline Mr. Moorman for engaging in fraudulent or dishonest acts or practices, namely creating fictitious companies and individuals and submitting applications on behalf of those individuals and companies. Although Mr. Moorman later walked back his admissions, he admitted creating those accounts and policyholders and provided an explanation for why he took the actions he did—namely, that he needed quick money for his business to stay afloat.

Although he hinted at some generalized misconduct taking place at Aflac, Mr. Moorman cannot use what anyone else at Aflac was doing to justify submitting policies for people who did not exist and then receiving advance commissions for those policies, even if those commissions were eventually charged back.

²⁷ Tr. at 135.

²⁸ Tr. at 134.

²⁹ Tr. at 146.

³⁰ Before choosing not to present evidence, Mr. Moorman's counsel was informed that the record would close at the end of hearing that day. Counsel indicated that he understood. No motion to compel has been filed with SOAH.

The ALJ finds that intentionally creating false companies and people and submitting applications to Aflac on their behalf constitutes a fraudulent and dishonest act. Accordingly, Staff established a basis for disciplining Mr. Moorman under Texas Insurance Code § 4005.101(b)(5).

2. Penalty for Mr. Moorman's Violation

Because Staff established that Mr. Moorman engaged in conduct for which he can be disciplined, the issue becomes what discipline is appropriate. Under Texas Insurance Code § 4005.102, the Department may, among other things, suspend or revoke a license, assess an administrative penalty, or reprimand a license holder.

In his testimony, Mr. Wright provided some explanation for why he believed that license revocation, while serious, was the appropriate penalty. He testified that Mr. Moorman's actions in creating false accounts called his integrity into question. Mr. Moorman did not argue for a lesser penalty.

The ALJ finds that revocation is appropriate in this case, where Mr. Moorman repeatedly created fictitious companies and policyholders and submitted applications on their behalf to Aflac because of his financial hardships. This was not a single event, nor was it an accident. The ALJ is not convinced that Mr. Moorman would not take similar action if placed in another situation in which he had financial difficulty. This is particularly true given his statements to the Department downplaying his conduct, which were in contrast to his admissions to Aflac.

C. Conclusion

For the reasons stated above, the ALJ recommends that Mr. Moorman's general lines agent license be revoked. The ALJ proposes the following Findings of Fact and Conclusions of Law.

IV. FINDINGS OF FACT

1. Respondent Kenneth Allen Moorman holds a general lines agent license with a life, accident, health, and health maintenance organization qualification, originally issued by the Texas Department of Insurance (Department) on October 12, 2015.

2. On November 3, 2015, Mr. Moorman was appointed to act as an agent for American Family Life Assurance Company of Columbus (Aflac).
3. Aflac began an investigation into Mr. Moorman based on allegations that he established an account, called Legacy Insurance Solutions (Legacy), that he used to improperly write policies for Aflac associates.
4. The investigation uncovered that Moorman submitted applications for three companies that did not exist: Red Oak Landscaping, Johnson & Monroe Realtors, and Fiesta Lanes.
5. For Red Oak Landscaping, Mr. Moorman submitted applications for 25 or 26 policies for six fictitious policyholders.
6. For Johnson & Monroe Realtors, Mr. Moorman submitted applications for eleven policies for two fictitious policyholders.
7. For Fiesta Lanes, Mr. Moorman submitted applications for one fictitious policyholder.
8. Mr. Moorman also submitted applications for two policies for fictitious policyholders under his Legacy account.
9. Mr. Moorman told the Aflac investigator that he had created the fictitious accounts in order to receive advance commissions to alleviate his cash flow problems.
10. Mr. Moorman also falsely represented that a policyholder on Legacy's payroll group account would pay for premiums via payroll deduction, even though Legacy had no payroll.
11. On July 27, 2018, Aflac canceled Mr. Moorman's appointment.
12. Even though he had previously admitted his conduct to an Aflac investigator, in response to a Department question, Mr. Moorman disclaimed all knowledge of what happened with Red Oak Landscaping and stated that he "simply moved forward in these situations under the instructions and direction of Christian Krueger, my manager at the time, in fear of consequences." Mr. Moorman also denied knowledge of any fictitious policies or groups other than Red Oak Landscaping.
13. On April 30, 2020, the Department mailed a Notice of Hearing to Mr. Moorman. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
14. The hearing on the merits was held via Zoom videoconference on May 12, 2021, before ALJ Rebecca S. Smith. Staff appeared and was represented by Staff Attorney Nancy Williams. Mr. Moorman was represented by attorney Alexander Gonzales. The record closed at the conclusion of the hearing.

V. CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter of this proceeding. Tex. Ins. Code §§ 4001.002, 4005.102.
2. SOAH has jurisdiction over all matters relating to the conduct of the proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052; Tex. Ins. Code § 4005.104(b).
4. Staff had the burden of proof to establish grounds for revocation of Mr. Moorman's license. 1 Tex. Admin Code § 155.427.
5. Mr. Moorman engaged in fraudulent or dishonest acts or practices in violation of Texas Insurance Code § 4005.101(b)(5).
6. The Department is authorized to revoke Mr. Moorman's license. Tex. Ins. Code §§ 4005.101(b)(5), .102(2).
7. Mr. Moorman's license should be revoked.

SIGNED July 8, 2021.


REBECCA S. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS