

No. 2022-7280

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

Date: 03/29/2022

Subject Considered:

Texas Department of Insurance
v.
Jeffery Dean Hartsfield and Trinity Insurance Specialists, Inc.

SOAH Docket No. 454-21-0322.C

General remarks and official action taken:

The subjects of this order are the general lines agent license with a property and casualty qualification held by Jeffery Dean Hartsfield and the general lines agency license with property and casualty and life, accident, health, and HMO qualifications held by Trinity Insurance Specialists, Inc. (Trinity). Collectively, Mr. Hartsfield and Trinity are referred to as "Respondents" in this order.

This order revokes Trinity's license and suspends Mr. Hartsfield's license for two years, but probates that suspension.

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) sanction Mr. Hartsfield and revoke the license held by Trinity. A copy of the proposal for decision is attached as Exhibit A.

Enforcement staff for TDI filed exceptions to the administrative law judge's proposal for decision and Respondents filed a reply.

In response to the exceptions, the administrative law judge recommended revising Finding of Fact No. 4. A copy of the administrative law judge's response to exceptions is attached as Exhibit B.

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TDI adopts the administrative law judge's proposed findings of fact and conclusions of law with changes to Findings of Fact Nos. 1 and 4 as described in this order. This order also addresses other issues with the proposal for decision that do not require changes to the proposed findings of fact and conclusions of law.

Discussion of Applicable Law

Texas Insurance Code § 4005.101(b)(5)

TDI Enforcement staff alleged that the Respondents committed a fraudulent or dishonest act, in violation of Tex. Ins. Code § 4005.101(b)(5). The basis for this allegation is that the Respondents issued a certificate of insurance (COI) indicating that Studio Art House had automobile insurance when it did not. On page 10 of the proposal for decision, the administrative law judge explained that while staff "established that the Studio Art House COI was incorrect, it did not present any evidence that its issuance was intentional fraud or that Respondents acted dishonestly, as opposed to carelessly."

This statement by the administrative law judge gives the false impression that only an intentional act can qualify as fraudulent or dishonest under Tex. Ins. Code § 4005.101(b)(5). As has been explained in prior Commissioner's Orders, a fraudulent act may be committed by someone acting willfully or recklessly, though negligence is not sufficient. *See, e.g.,* Commissioner's Order 2021-6974¹ pg. 2 (citing *Meyer v. Tex. Dept. of Ins.*, No. 03-10-00642-CV, 2011 WL 5865240 (Tex. App.—Austin 2011, pet. denied) (mem. op)). Similarly, TDI has found that "a dishonest act is marked by deliberate or reckless deception – an honest mistake will not suffice." *Id.* pg. 3, footnote 3.

The administrative law judge ultimately found that the Respondents did not violate Tex. Ins. Code § 4005.101(b)(5) because the "evidence did not establish that the incorrect COI was anything other than a mistake." Therefore, while the administrative law judge misstated the applicable standard for establishing a fraudulent or dishonest act, her ultimate finding was not impacted by that misstatement and no changes to the findings of fact or conclusions of law are necessary on that issue.

¹ *Tex. Dep't of Ins. v. Elizabeth Carolina Perez and Elizabeth C. Perez Insurance Agency, Inc.*, issued August 30, 2021.

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Texas Insurance Code § 4005.101(b)(1)

TDI Enforcement staff also alleged that the Respondents willfully violated an insurance law of this state, in violation of Tex. Ins. Code § 4005.101(b)(1). The basis for this allegation is that the Respondents failed to respond to TDI inquiries under Tex. Ins. Code § 38.001(c). On page 10 of the proposal for decision, the administrative law judge states that "'[w]illful' is not defined in the Insurance Code[.]"

While it is true that the Insurance Code does not define the term "willful," the administrative law judge failed to acknowledge that TDI has recently defined it for purposes of Tex. Ins. Code § 4005.101(b)(1) as "deliberate, voluntary, or intentional." See Commissioner Order No. 2019-6028,² pg. 3 (citing *Otis Engineering Corp. v. Pennington*, No. 05-91-00002-CV, 1992 WL 172389 at 9 (Tex. App.—Dallas 1992, no writ) (not designated for publication)). Nevertheless, failure to recognize this definition in the proposal for decision does not necessitate any changes to the findings of fact or conclusions of law.

Appropriate Sanction for Mr. Hartsfield

The administrative law judge concluded that Mr. Hartsfield violated Tex. Ins. Code § 4005.101(b)(1) by willfully violating an insurance law of this state, but she explained that this single violation does not justify revocation of his license, and that in the absence of evidence supporting a lesser penalty, she is unable to recommend one.³

TDI accepts the administrative law judge's recommendation that a penalty lesser than revocation of Mr. Hartsfield's license is appropriate. In light of the Respondents' failure to abide by key provisions of the Insurance Code, as explained in the proposal for decision, TDI finds that Mr. Hartsfield's license should be placed on probated suspension for two years, with reporting requirements, to allow TDI to observe how he continues to perform as a licensee. The imposition of this sanction does not require any changes to the findings of fact or conclusions of law.

Changes to Proposal for Decision

The legal authority for the changes 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

² *Tex. Dep't of Ins. v. Everett Wayne Collier*, issued July 31, 2019.

³ Conclusion of Law No. 10; Proposal for Decision, pg. 12-13.

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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."

Licenses held by Mr. Hartsfield and Paul Clemons

Findings of Fact Nos. 1 and 4 incorrectly refer to Mr. Hartsfield's and Mr. Clemons' licenses as "generalized agent license[s]." The correct term is *general lines* agent license, as noted elsewhere in the proposal for decision and in the original petition. These technical errors are corrected by this order.

Findings of Fact

1. Findings of Fact Nos. 2, 3, and 5 – 21 as contained in Exhibit A are adopted by TDI and incorporated by reference into this order.
2. In place of Finding of Fact No. 1 as contained in Exhibit A, the following finding of fact is adopted:

Respondent Jeffery Dean Hartsfield holds a general lines agent license with a property and casualty qualification, originally issued by the Texas Department of Insurance (Department) in 2001.

3. In place of Finding of Fact No. 4 as contained in Exhibit A and as revised consistent with Exhibit B, the following finding of fact is adopted:

At the time of Trinity's application, Mr. Clemons held a general lines agent license.

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 the general lines agency license with property and casualty and life, accident, health, and HMO qualifications held by Trinity Insurance Specialists, Inc. is revoked.

It is further ordered that Jeffery Dean Hartsfield's general lines agent license with a property and casualty qualification is suspended for two years. The suspension is

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probated, and during the period of probation, Mr. Hartsfield must comply with the following terms and conditions.

If, during the probation period imposed by this order, TDI issues any additional licenses or authorizations to Mr. Hartsfield, those additional licenses or authorizations will be suspended until the probation period imposed by this order has ended. The suspension will be probated, and the same terms and conditions stated in this order will apply.

Beginning from the date of this order and continuing through the probation period, Mr. Hartsfield must provide written notice of his criminal record to any appointing company, agency, employer, sponsor, or other entity on behalf of which he performs the acts of an agent. Mr. Hartsfield must provide TDI with a copy of the notification within 30 days of the appointment, employment, or sponsorship by emailing it to TDI at EnforcementReports@tdi.texas.gov.

Beginning from the date of this order and continuing through the probation period, Mr. Hartsfield must file a written report, on or before the 15th day of the month on a quarterly basis for the months of April, July, October, and January, with TDI by emailing it to EnforcementReports@tdi.texas.gov.

The report must include the following information:

- a. Mr. Hartsfield's current mailing address and telephone number;
- b. the name, mailing address, and telephone number of Mr. Hartsfield's employer, and if Mr. Hartsfield is self-employed, a statement that he is self-employed and the name, mailing address, and telephone number of his business;
- c. the name and address of any insurer that has appointed Mr. Hartsfield as an agent;
- d. the name and address of any insurer that has cancelled Mr. Hartsfield's appointment as an agent; and
- e. a copy of any and all contracts Mr. Hartsfield enters into with an insurer, broker, agent, agency, managing general agent, or any other person or entity in the business of insurance.

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Mr. Hartsfield must notify TDI immediately of the following by emailing EnforcementReports@tdi.texas.gov:

- a. any charges or indictments filed against him for a misdemeanor or felony during the period he is required to file reports, excluding traffic offenses and Class C misdemeanors;
- b. any state or regulatory actions taken against him, including formal and informal actions;
- c. any change in his employment or his residence; and
- d. any complaint made against Mr. Hartsfield concerning his performance as an agent, as well as a written explanation detailing the steps taken to resolve it.

DocuSigned by:

FC5D7EDDFFBB4F8...
Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

75578E954EFC48A...
James Person, General Counsel

DocuSigned by:

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Justin Beam, Assistant General Counsel



<p>TEXAS DEPARTMENT OF INSURANCE, Petitioner</p> <p>v.</p> <p>JEFFERY DEAN HARTSFIELD AND TRINITY INSURANCE SPECIALISTS, INC., Respondents</p>	<p>§</p> <p>§</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) brought this enforcement action to revoke the general lines agent license held by Jeffery Dean Hartsfield and the general lines agency license held by his company, Trinity Insurance Specialists, Inc. (Trinity). Staff alleges that Mr. Hartsfield and Trinity engaged in fraudulent or dishonest acts in violation of the Texas Insurance Code, willfully violated insurance laws, and in the case of Trinity, failed to maintain its qualification for licensure. The Administrative Law Judge (ALJ) finds that Staff did not establish fraudulent or dishonest acts, but established that Respondents failed to respond to Department inquiries and that Trinity failed to maintain the qualification for licensure. Based on those findings the ALJ recommends that Trinity’s license be revoked and recommends a finding that that Mr. Hartsfield committed a violation but, based on the evidence, is unable to recommend a specific sanction.

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 August 3, 2021, before ALJ Rebecca S. Smith. Staff appeared and was represented by Staff Attorney Nancy Williams. Respondents were represented by attorneys Sarah R. Smith and Alison N. Griswold. 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, the Department may take disciplinary action under Texas Insurance Code § 4005.101 against a license holder for engaging in a fraudulent or dishonest act or practice² or under Texas Insurance Code § 4005.101(b)(1) for willfully violating an insurance law of the state. The particular insurance law Staff alleges that Respondents willfully violated is Texas Insurance Code § 38.001(c), which requires a person to respond to a Department inquiry relating to the person's business condition or to any matter connected with the person's transactions that the Department considers necessary for the public good or for the proper discharge of its duties no later than the 15th day after receiving it.

Additionally, the Department must revoke or suspend a license of a license holder who does not maintain the qualifications necessary to obtain the license.³ These qualifications include, among other things:

- (1) the corporation or partnership is:
 - (A) organized under the laws of this state or another state; and
 - (B) authorized by its articles of incorporation or its partnership agreement to act as an agent;
- (2) at least one officer of the corporation or one active partner of the partnership and all other persons performing any acts of an agent on behalf of the corporation or partnership in this state are individually licensed by the department separately from the corporation or partnership;
- (3) the corporation or partnership will have the ability to pay any amount up to \$25,000 that it might become legally obligated to pay under a claim made against it by a customer and caused by a negligent act, error, or omission of the corporation or partnership or a person for whose acts the corporation or partnership is legally liable in the conduct of its business under this code.⁴

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

² Tex. Ins. Code § 4005.101(b)(5).

³ Tex. Ins. Code § 4001.254.

⁴ Tex. Ins. Code § 4001.106(b).

The ability to pay up to \$25,000 can be satisfied by obtaining and errors and omissions (E&O) policy.⁵

Staff bears the burden of proof on these allegations.⁶

III. EVIDENCE, ARGUMENT, AND ANALYSIS

Mr. Hartsfield holds a generalized agent license with a property and casualty qualification first issued by the Department in 2001.⁷ At the time of the hearing, Trinity held a general lines agency license with a property and casualty qualification, and a life, accident, health, and HMO qualification, originally issued by the Department on January 12, 2012. During the hearing, Trinity voluntarily surrendered its life, accident, health, and HMO qualification.

At the hearing, Staff offered eleven exhibits, which were admitted, and presented the testimony of two witnesses, James Blount and Lewis W. Wright IV. Respondents offered six exhibits and presented the testimony of Mr. Hartsfield.

A. Evidence

The parties largely agree about certain facts. On September 22, 2018, an employee of a company called Studio Art House was involved in an automobile accident that resulted in serious injury to another person. Studio Art House had a general liability policy issued by the Hartford Financial Services Group (the Hartford), but did not have an automobile policy.

Even though Studio Art House did not have an automobile policy, on September 24, 2018, Trinity issued a Certificate of Insurance (COI), signed by Mr. Hartsfield, indicating that Studio Art House had automobile insurance through the Hartford. Studio Art House submitted the COI to the Hartford following the accident and attempted to make a claim. The Hartford began

⁵ Tex. Ins. Code § 4001.106(c)(1).

⁶ 1 Tex. Admin. Code § 155.427.

⁷ TDI Ex. A.

investigating the situation and forwarded its investigation results to the Department. The Department, too, began an investigation.

Staff's allegations in this matter involve the issuance of the COI for a policy Studio Art House did not have, other concerns the Department discovered during its investigation, and finally, Respondents' conduct in engaging with the Department during the investigation.

1. Testimony of James Blount

James Blount, who works for the Hartford as a senior investigator, conducted the investigation that was triggered when Studio Art House submitted a claim on the nonexistent automobile policy.⁸ In forwarding the investigation, the claims office expressed concern that a COI had a policy number that appeared to be fictitious; that the agent was unresponsive to telephone calls, faxes, emails, and voicemails; that the business appeared closed, and that the claims office had trouble finding the agent's E&O carrier.⁹ A few years before the investigation, the Hartford had terminated Respondents' agreement with them for low sales, not for cause.¹⁰

Mr. Blount described a COI's purpose as providing a summary of all the coverage an insured has from an insurer. The COI Studio Art House submitted to the Hartford listed commercial general liability insurance, auto liability insurance, workers' compensation insurance, and business personal property insurance.¹¹ Mr. Blount testified that the Hartford could not find any automobile policy for Studio Art House; the policy listed on the COI appeared to be a quote, not an actual policy.¹² He also noted that the name of the writing company on the COI is similar to one of the Hartford's writing companies, but is not actually one of those companies.¹³ Additionally, he pointed out that although the COI indicates that all the coverages were under one

⁸ Transcript of the Hearing on the Merits (Tr.) at 15-17.

⁹ Tr. at 16-17.

¹⁰ Tr. at 31-32.

¹¹ TDI Ex. F at 425.

¹² Tr. at 18-19.

¹³ Tr. at 19.

single policy, this combination of disparate coverage into a single policy would not be possible under the Hartford's normal business practices.¹⁴

Mr. Blount testified that, from the beginning of the investigation, the Hartford employees had difficulty contacting Mr. Hartsfield. Adjusters attempted to contact Mr. Hartsfield several times but his voice mailbox was full. They left unreturned messages on his cell phone and sent faxes and emails.¹⁵ Mr. Blount testified that an employee drove by the Trinity office, which appeared to be closed. Mr. Blount also attempted to contact Mr. Hartsfield.¹⁶

From a search of the Texas Secretary of State's website, Mr. Blount discovered that Trinity forfeited its corporate status in 2015.¹⁷ He also observed that Trinity's website still featured the Hartford's logo, even though the termination letter had instructed Trinity to remove it.¹⁸ He noted that by July 2021, the logo had been removed.

On cross examination, Mr. Blount agreed that a COI, as a summary, does not bind the insurer.¹⁹ He also agreed that he had no information about whether Trinity received premiums for the Studio Art House automobile policy.²⁰ Mr. Blount testified that he was not involved in the Hartford's investigation into Trinity's E&O coverage.²¹

¹⁴ Tr. at 19.

¹⁵ Tr. at 22.

¹⁶ Tr. at 23.

¹⁷ Tr. at 23-24.

¹⁸ Tr. at 24.

¹⁹ Tr. at 27.

²⁰ Tr. at 42.

²¹ Tr. at 44.

2. Testimony of Lewis W. Wright, IV

Mr. Wright, who has worked for the Department for approximately 14 years, is the Department's administrative review liaison to the Department's enforcement division.²² In that position, he deals with cases of misconduct involving licensed agents and adjusters.²³

Mr. Wright testified that licensed agents must maintain the requirements for licensure. Thus, in addition to being honest and trustworthy, licensees must provide the Department with up-to-date contact information.²⁴ Similarly, an agency is required to verify that it is able to transact business within the state, including proof that it has valid E&O coverage. Once licensed, an agency or agent cannot just stop following the requirements.²⁵

Mr. Wright also described another requirement for agency licensure: an entity may not hold a license unless an individual within the organization holds equal (or greater) authority than the authority being considered. In Trinity's case, the only affiliated person with a life, accident, health, and HMO qualification (Brandon Jenkins) ended his affiliation with the agency in 2017. After that, Trinity had no qualifying individual for its license to sell life, accident, and health policies. Mr. Wright agreed, however, that Trinity had not tried to write a life, accident, and health policy after Mr. Jenkin's departure. He noted that workers' compensation insurance, which was listed on the COI, would fall under the life, accident, and health category.

According to Mr. Wright, once the Department is notified of an issue, its investigations begin with information gathering. Getting information from the license holder is an important part of the investigation.²⁶ He added that the license holder has a responsibility to have correct information on file with the Department.²⁷ He testified that the Department unsuccessfully tried to reach Mr. Hartsfield multiple times.

²² Tr. at 54.

²³ Tr. at 54-55.

²⁴ Tr. at 55.

²⁵ Tr. at 58.

²⁶ Tr. at 59.

²⁷ Tr. at 60.

Mr. Wright emphasized that in order for Trinity to obtain a license, it was required to provide the Department with a copy of its incorporation documents. During the investigation, Mr. Wright learned that Trinity's corporate charter had been forfeited in 2015. No one affiliated with Trinity had notified the Department of the forfeiture.²⁸ According to Mr. Wright, chapter 4001 of the Texas Insurance Code requires that qualifications must be maintained with the same name as shown in the Secretary of State incorporation records.²⁹

Mr. Wright also testified that during the investigation, TDI learned that Trinity's E&O coverage on file with the Department was no longer active.

3. Mr. Hartsfield's Evidence and Testimony

Mr. Hartsfield testified that he is a principal of Trinity, which was formed in 2012 and is based in Grapevine, Texas.³⁰ He testified that in the fall of 2019, Trinity had an on-site receptionist, who was instructed to direct any callers to his cell phone if he was not in the office.³¹

Mr. Hartsfield testified that Studio Art House started placing insurance through Trinity in the fall of 2016.³² At that time, Studio Art House purchased a commercial general liability policy. Although Studio Art House briefly discussed automobile coverage, nothing came of that discussion.³³ According to Mr. Hartsfield, Trinity only obtained the VIN for the vehicle, which is insufficient information to quote a premium amount for the policy. Instead, Trinity would have needed garaging information; the year, make, and model of the vehicle; and a completed application. He noted that Marty Robbins, Studio Art House's principal, did not complete the application or pay a premium. He added that Trinity did not collect any money for automobile coverage for Studio Art House.³⁴

²⁸ Tr. at 69.

²⁹ Tr. at 70.

³⁰ Tr. at 115.

³¹ Tr. at 116.

³² Tr. at 117.

³³ Tr. at 117-18.

³⁴ Tr. at 118.

According to Mr. Hartsfield, normally if a client had requested a COI, he would have issued it himself, but in September 2018 when Studio Art House requested one, he was in Canada and unable to issue it.³⁵ Because Studio Art House requested the COI for the same day, Paul Clemons, who was a personal lines producer at Trinity, issued it after speaking with Mr. Hartsfield.³⁶ After issuing the COI, Mr. Clemons looked more closely at the files and realized he had made a mistake and that Studio Art House did not have an automobile policy.³⁷ Mr. Hartsfield testified that Mr. Clemons called Studio Art House within the hour and told him about the mistake the next morning.³⁸ Mr. Hartsfield added that Mr. Clemons had not previously prepared other COIs and was not familiar with the process.³⁹ Mr. Hartsfield agreed that his signature was on the COI, but said it was an electronic signature that was placed on every COI Trinity generated.⁴⁰ Since the time the Studio Art House COI was issued, Trinity created office policies to establish that no one other than Mr. Hartsfield can issue a COI and to ensure that no one else has access to his electronic signature.⁴¹

After the incident, Trinity put its E&O carrier, Hiscox Insurance Company, on notice. Studio Art House sued Trinity, and the case settled.⁴²

Mr. Hartsfield agreed that he received a December 3, 2019 letter from the Department about the investigation, but testified that he did not respond to it because he thought the letter related to the Studio Art House lawsuit and assumed his attorney would handle it.⁴³ He testified that he did not respond to a December 23, 2019 letter from the Department for the same reasons. He added that he had undergone spinal fusion surgery in late November 2019 and was bedridden

³⁵ Tr. at 120.

³⁶ Tr. at 121.

³⁷ Tr. at 122.

³⁸ Tr. at 122, 126.

³⁹ Tr. at 126.

⁴⁰ Tr. at 127.

⁴¹ Tr. at 131.

⁴² Tr. at 132-33.

⁴³ Tr. at 136.

for several months.⁴⁴ He also agreed that he did not respond to the Hartford's inquiries. Trinity's current office policy, according to Mr. Hartsfield, is to immediately handle any correspondence from the Department or from a carrier.⁴⁵

Mr. Hartsfield testified that when Trinity was formed in 2014, he and Mr. Clemons were the officers and directors of the company. Later, Mr. Clemons was removed and Brandon Jenkins was added. Mr. Jenkins stopped working with Trinity and Mr. Hartsfield in 2017.⁴⁶ Around that time, Mr. Jenkins' Department license, which had a life, accident, health and HMO qualification, expired.⁴⁷ Currently, Mr. Hartsfield, who does not have a life, accident, health, and HMO qualification, is Trinity's sole officer or director.⁴⁸

Mr. Hartsfield testified that Trinity has not sold any life, accident, or health policies since Mr. Jenkins left.⁴⁹ He added that Trinity's website contained a Blue Cross Blue Shield health insurance questionnaire after that time because it had not been updated. According to Mr. Hartsfield, as of the date of the hearing, Trinity was in the process of revamping its website.⁵⁰

Mr. Hartsfield became aware that the agency forfeited its corporate existence in 2015. He testified that he tried to fix the problem, but was not able to get the name back, so he set up a new entity under the name Trinity INS. He did not inform the Department of that change. He regained the original Trinity name in 2021.⁵¹ Mr. Hartsfield also testified that he failed to provide the Department with the new, updated E&O declaration page, but added that this failure was not intentional.⁵²

⁴⁴ Tr. at 137. Mr. Hartsfield's medical records reference a microdissectomy in November 2019. Resp. Ex. F at 266-67. Other notes dated from 2020 onward refer to a prior back surgery without providing a date. *See, e.g.*, Resp. Ex. F at 241, 272.

⁴⁵ Tr. at 138.

⁴⁶ Tr. at 140.

⁴⁷ Tr. at 141.

⁴⁸ Tr. at 140-41.

⁴⁹ Tr. at 141.

⁵⁰ Tr. at 141-42.

⁵¹ Tr. at 142-43.

⁵² Tr. at 144.

B. Argument and Analysis

1. Alleged Violations

Staff's allegations fall into three categories: fraudulent or dishonest acts or practices; violation of insurance laws, specifically the requirement that a person respond to a Department inquiry; and Trinity's failure to maintain the qualifications for licensure.

Staff first alleges that the issuance of the Studio Art House COI showing that it had automobile insurance was a fraudulent or dishonest act because that policy did not exist. But while Staff established that the Studio Art House COI was incorrect, it did not present any evidence that its issuance was intentional fraud or that Respondents acted dishonestly, as opposed to carelessly. Staff presented no evidence that Respondents benefited in any way from issuing the incorrect COI. There was no evidence that Respondents received commissions on the non-existent policies, for example. Staff presented no evidence of a long-standing relationship or any relationship outside of a regular agent-customer one that might cause Respondents to inappropriately assist Studio Art House. Nor was there any other evidence why Respondents might have wanted to create such an obviously incorrect document. Additionally, Staff did not allege or offer evidence that Respondents had fraudulently represented to Studio Art House that it had automobile coverage before the request for the COI was made. In short, Staff did not establish that the issuance of the COI was anything more than a mistake, and accordingly did not establish that Respondents acted fraudulently or dishonestly.

On the other hand, Staff established that Respondents failed to respond to Department inquiries under Texas Insurance Code § 38.001(c).⁵³ Mr. Hartsfield testified that he did not respond to those inquiries because he thought his lawyer would be taking care of them.

Respondents argue that Staff has not established that Respondents' violations were willful, as required for discipline under Texas Insurance Code § 4005.101(b)(1). "Willful" is not defined in the Insurance Code, but the ALJ concludes from Mr. Hartsfield's testimony that he received the

⁵³ The ALJ also finds that the other requirements of § 38.001(c) apply, namely that the inquiry related to Respondents' business condition or to any matter connected with their transactions that the Department considers necessary for the public good or for the proper discharge of its duties.

inquiries, recognized what they were, and decided not to respond to them without confirming that his lawyer was responding. Moreover, Mr. Hartsfield was on notice of the potential consequences: the letters noted that failure to respond would be a violation.⁵⁴ Although he testified that he also had medical issues when he chose not to respond to the inquiries, the ALJ does not find that the evidence supports a determination that he was too incapacitated to respond. Staff established that the violation was willful.

Finally, Staff alleges Trinity failed to maintain its qualifications for licensure in three ways: it failed to maintain its corporate entity status; failed to maintain an officer of the corporation that was individually licensed by the Department for the type of license the corporation was licensed to offer; and failed to maintain a sufficient E&O policy to cover the amounts required. The ALJ finds that Staff did not establish a failure to maintain a sufficient E&O policy. Although Staff established that Trinity failed to update its information with the Department, failure to update information with the Department was not pleaded. Nor did Staff cite to a provision that requires updating of this information. Instead, Staff alleged that Trinity failed to maintain appropriate financial assurance. But the evidence indicates that Trinity had an E&O policy in effect that would cover claims.

On the other hand, Staff established the remaining two failures of Trinity to maintain its qualifications for licensure. Staff showed that Trinity failed to maintain its corporate entity status for several years and failed to maintain an officer who was licensed for all the types of insurance Trinity was licensed to sell. Although both violations have been resolved in some sense—given Trinity’s agreement to give up its license to sell life, accident, and health insurance and its recovery of its corporate name— for years, Trinity lacked some of the qualifications for licensure.

Accordingly, Staff established a basis for disciplining Respondents under Texas Insurance Code § 4005.101(b)(1) for willfully violating an insurance law of the state and established that Trinity failed to maintain the requirements for licensure under Texas Insurance Code § 4001.254.

⁵⁴ TDI Exs. G, H.

2. Penalty for Violations

Because Staff established that Respondents engaged in conduct for which they 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. Under Texas Insurance Code § 4001.254, the Department shall revoke, suspend, or refuse to renew a license for failure to maintain qualifications.

In his testimony, Mr. Wright explained why he believed that license revocation, while serious, was the appropriate penalty. Much of his testimony, however, was based on the fraud and dishonesty allegation, which was not proven.⁵⁵ Staff only established that Mr. Hartsfield committed one violation, failure to respond to the Department's inquiry. The ALJ does not find that this violation, standing alone, would justify revocation. Staff did not present evidence supporting any lesser penalty, which leads the ALJ to be unable to recommend one.

As for Trinity's failure to maintain the standards for licensure, the Insurance Code anticipates that failure to maintain the requirements for licensure would result in revocation or suspension. Although given Trinity's relinquishment of its life, health, and HMO qualification, and its regaining of its corporate name, Trinity has, to some extent, resolved these issues, the fact remains that for several years, Trinity was licensed when it was not qualified to be. Staff has established a basis for revoking Trinity's license. That Trinity was a multi-year operation with licenses it was not qualified to hold, combined with the failure to respond to the Department's inquiries, supports revocation, not suspension.

C. Conclusion

For the reasons stated above, the ALJ recommends that Trinity's agent license be revoked. The ALJ finds that Mr. Hartsfield has committed one violation of the Insurance Code, but is unable

⁵⁵ See, e.g., Tr. at 85 ("In this case, the primary concern is the conduct involving the certificate of insurance that was presented representing coverage.")

to recommend an appropriate penalty for that violation. The ALJ proposes the following Findings of Fact and Conclusions of Law.

IV. FINDINGS OF FACT

1. Respondent Jeffery Dean Hartsfield holds a generalized agent license with a property and casualty qualification, originally issued by the Texas Department of Insurance (Department) in 2001.
2. At the beginning of the hearing on the merits, Trinity Insurance Specialists, Inc. (Trinity) held a general lines agency license with a property and casualty qualification, and a life, accident, health, and health maintenance organization (HMO) qualification, originally issued by the Department on January 12, 2012. During the hearing, Trinity agreed to surrender its life, accident, health, and HMO qualification.
3. At the time Trinity applied for licensure, its principals (officers) were Mr. Hartsfield and Paul Clemons.
4. At the time of Trinity's application, Mr. Clemons held a generalized agent license with a life, accident, health, and HMO qualification.
5. At some point, Brandon Jenkins replaced Mr. Clemons as an officer or director. Mr. Jenkins had a license with a life, accident, health, and HMO qualification.
6. Mr. Jenkins' license expired in 2017 and he left Trinity that year. After that time, Trinity did not have an officer with a life, accident, health, and HMO qualification.
7. On September 22, 2018, an employee of a company called Studio Art House was involved in an automobile accident that resulted in serious injury to another person.
8. Studio Art House had a general liability policy issued by the Hartford Financial Services Group (the Hartford), but did not have an automobile policy.
9. Trinity was the agent for Studio Art House's general liability policy.
10. Even though Studio Art House did not have an automobile policy, on September 24, 2018, Trinity issued a Certificate of Insurance (COI), signed by Mr. Hartsfield, indicating that Studio Art House had automobile insurance through Hartford.
11. Mr. Hartsfield was on vacation at the time, and Mr. Clemons, who was at that time a personal lines producer, completed the COI for him. Mr. Hartsfield's electronic signature was included on the COI.
12. Mr. Clemons was unfamiliar with the process and mistakenly included an automobile policy.

13. Studio Art House submitted the COI to the Hartford. When it was discovered that Studio Art House did not have the coverage represented on the COI, the Hartford began an investigation.
14. The evidence did not establish that the incorrect COI was anything other than a mistake.
15. In 2015, Trinity forfeited its corporate existence.
16. Following the forfeiture, Mr. Hartsfield created a new entity that essentially took over Trinity's business. In 2021, Mr. Hartsfield regained the Trinity name.
17. No one from Trinity notified the Department about the forfeiture of Trinity's corporate existence or about the new entity.
18. On December 4, 2019, and again on December 23, 2019, the Department sent written inquiries to Respondents, requesting a response.
19. Respondents did not respond to either of the Department's inquiries.
20. On October 6, 2020, the Department mailed a Notice of Hearing to Respondents. 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.
21. The hearing on the merits was held via Zoom videoconference on August 3, 2021, before ALJ Rebecca S. Smith. Staff appeared and was represented by Staff Attorney Nancy Williams. Respondents were represented by attorneys Sarah R. Smith and Alison N. Griswold. 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 a violation and the appropriate penalty for a violation. 1 Tex. Admin Code § 155.427.
5. By failing to respond to the Department's December 4, 2019 and December 23, 2019 inquiries no later than the 15th day after receiving them, Respondents violated Texas Insurance Code § 38.001(b)-(c).

6. To qualify for licensure, a corporation must be organized under the laws of Texas or another state, must have at least one officer individually licensed by the Department separate from the corporation, and must have the ability to pay a claim of any amount up to \$25,000. Tex. Ins. Code § 4001.106(b).
7. The Department shall revoke, suspend, or refuse to renew the license of a license holder who does not maintain the qualifications necessary to obtain the license. Tex. Ins. Code § 4001.254.
8. The Department is authorized to revoke Trinity's license. Tex. Ins. Code § 4001.254.
9. Trinity's license should be revoked.
10. The Department is authorized to sanction Mr. Hartsfield but has not established that his license should be revoked.

SIGNED September 28, 2021.


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

2022-7280

Exhibit B

FILED
454-21-0322
10/29/2021 2:15 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

ACCEPTED
454-21-0322
10/29/2021 2:16:32 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

October 29, 2021

Chief Clerk for Cassie Brown
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe, Tower 1, 13th Floor, MC 113-2A
Austin, TX 78714

VIA EFILE TEXAS

RE: Docket No. 454-21-0322.C; *Texas Department of Insurance v. Jeffery Dean Hartsfield and Trinity Insurance Specialists*

Dear Commissioner Brown:

I issued a proposal for decision (PFD) in this matter on September 28, 2021. On October 11, 2021, the Texas Department of Insurance Staff filed exceptions to the PFD. On October 26, 2021, Respondents Jeffery Dean Hartsfield and Trinity Insurance Specialists filed responses to those exceptions.

Staff objected to seven specific findings of fact. The ALJ believes that, with one exception, all of the findings of fact are fully supported by the record and reflect the ALJ's weighing of the evidence. On the other hand, the ALJ believes that finding of fact 4 should be amended to reflect an uncertainty in the evidence. Accordingly, finding of fact 4 should read:

4. At the time of Trinity's application, Mr. Clemons held a generalized agent license.

With this change, the PFD is ready for your consideration.

Sincerely,

Rebecca S. Smith
Administrative Law Judge

RS/tt

cc: Parties of Record