

No. 2023-7902

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

Date: 4/21/2023

Subject Considered:

Texas Department of Insurance

v.

John H. Sutterfield and 5S Insurance Agency, LLC

SOAH Docket No. 454-22-05841.C

General Remarks and Official Action Taken:

The subject of this order is John H. Sutterfield's general lines agent license with a property and casualty qualification and 5S Insurance Agency, LLC's general lines agency license with a property and casualty qualification. This order revokes both Mr. Sutterfield's license and the license of 5S Insurance Agency.

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 Mr. Sutterfield's and 5S Insurance Agency's licenses 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 commissioner and incorporated by reference into this order.


Conclusions of Law

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

COMMISSIONER'S ORDER
TDI v. John H. Sutterfield and 5S Insurance Agency, LLC
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Order

It is ordered that John H. Sutterfield's general lines agent license with a property and casualty qualification and 5S Insurance Agency, LLC's general lines agent license with a property and casualty qualification are revoked.

DocuSigned by:

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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

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Jessica Barta, General Counsel

DocuSigned by:

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Justin Beam, Assistant General Counsel

SOAH Docket No. 454-22-05841

Suffix: C

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS DEPARTMENT OF INSURANCE,
PETITIONER**

V.

**JOHN H. SUTTERFIELD
AND 5S INSURANCE AGENCY, LLC,
RESPONDENTS**

PROPOSAL FOR DECISION

John Sutterfield holds an insurance license and so does his business, 5S Insurance Agency, LLC. In 2014 and 2015, Mr. Sutterfield stole public money through a fraudulent federal crop insurance scheme. In 2020, he was convicted of theft of public money and sentenced to three years of probation. Staff for the Texas Department of Insurance seeks to revoke Mr. Sutterfield's and his business's insurance licenses. After holding a hearing and considering the evidence, the Administrative Law Judge recommends that their insurance licenses be revoked.

I. PROCEDURAL HISTORY

The Texas Department of Insurance (Department) referred this matter to the State Office of Administrative Hearings (SOAH) for a hearing. On November 15, 2022, a hearing was held before Administrative Law Judge (ALJ) Andrew Lutostanski with SOAH. Attorney Sarah White represented Staff. Mr. Sutterfield represented himself and 5S Insurance Agency, LLC (5S). The record closed when the hearing transcript was filed on December 1, 2022.

II. APPLICABLE LAW

The Department regulates the practice of insurance and may revoke an insurance license for certain reasons.¹ Here, Staff asserts Mr. Sutterfield's insurance license should be revoked because he violated an insurance law and because of his criminal history. Staff further asserts that 5S's insurance license should also be revoked because, if Mr. Sutterfield's insurance license is revoked, 5S will no longer be qualified to sell insurance because it will lack an officer who is individually licensed and because one of its officers had his license revoked.

A. VIOLATION OF AN INSURANCE LAW

The Department may revoke a license if a person engaged in fraudulent or dishonest practices.²

¹ Tex. Ins. Code §§ 4005.101(b), .102(2).

² Tex. Ins. Code § 4005.101(b)(5).

B. CRIMINAL HISTORY

The Department may revoke a license if a person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.³ Certain factors are considered when determining whether a crime directly relates to the duties and responsibilities of the licensed occupation.⁴ The Department has determined that crimes involving fraud, dishonesty, or deceit are “of prime importance” in determining an applicant’s fitness for licensure.⁵ The Department “considers it very important that license holders and applicants . . . be honest, trustworthy, and reliable.”⁶

When deciding whether to revoke a license under chapter 53 of the Texas Occupations Code based on a person’s criminal history, the Department considers certain factors:

- the extent and nature of the person’s past criminal activity;
- the age of the person when the crime was committed;
- the amount of time that has elapsed since the person’s last criminal activity;
- the conduct and work activity of the person before and after the criminal activity;
- evidence of the person’s rehabilitation or rehabilitative effort while incarcerated or after release;
- evidence of the person’s compliance with any conditions of community supervision, parole, or mandatory supervision; and

³ Tex. Occ. Code § 53.021(a)(1).

⁴ Tex. Occ. Code § 53.022.

⁵ Tex. Occ. Code § 53.025; 28 Tex. Admin. Code § 1.502(e)(1).

⁶ 28 Tex. Admin. Code § 1.502(c).

- other evidence of the person’s fitness, including letters of recommendation.⁷

The Department also considers whether the person has maintained a record of steady employment, supported their dependents if any, otherwise maintained a record of good conduct, and paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which the applicant has been convicted.⁸

C. QUALIFICATIONS TO CONDUCT BUSINESS

The Department must revoke or suspend the license of a license holder who fails to maintain qualifications.⁹ For a corporation, there are two qualifications at issue here:

- at least one officer of the corporation must be individually licensed by the Department separately from the corporation or partnership;¹⁰
- an officer cannot have had a license suspended or revoked or have committed an act for which a license may be denied under Subchapter C, Chapter 4005, including fraudulent or dishonest practices.¹¹

⁷ Tex. Occ. Code § 53.023(a).

⁸ 28 Tex. Admin. Code § 1.502(h)(2)(G).

⁹ Tex. Ins. Code § 4001.254.

¹⁰ Tex. Ins. Code § 4001.106(b)(2).

¹¹ Tex. Ins. Code §§ 4001.106(b)(6), 4005.101(b)(5).

D. PROCESS

A person is entitled to a hearing to contest the proposed revocation of a license.¹² At the hearing, Staff has the burden of proving, by a preponderance of the evidence, a basis for revoking the license.¹³ Afterward the ALJ prepares a proposal for decision with findings of fact and conclusions of law.¹⁴ The Commissioner then considers the proposal for decision and issues a final order.¹⁵

III. EVIDENCE

Staff's twelve exhibits were admitted, and two witnesses testified. Lewis Wright testified for Staff, discussed Mr. Sutterfield's criminal conduct, and recommended that Mr. Sutterfield's and 5S's insurance licenses be revoked. Mr. Sutterfield testified in his own defense, discussed his conduct, and recommended that he and his business each keep their insurance license.

A. LEWIS WRIGHT'S TESTIMONY

Mr. Wright has worked for the Department for 15 years. He is an administrative review liaison responsible for licensing issues with new applicants and licensed agents. Before joining the Department, he worked as an insurance agent for 12 years.

¹² Tex. Ins. Code § 4005.104(a).

¹³ 1 Tex. Admin. Code § 155.427.

¹⁴ Tex. Ins. Code § 40.048.

¹⁵ Tex. Ins. Code §§ 40.059-.060.

Mr. Wright opined that an insurance license conveys to the public that a person is honest, reliable, and competent to work in Texas as an insurance agent. He explained that the insurance business is complex; agents have a fiduciary responsibility to their clients; and an untrustworthy insurance agent can cause consumer harm.

Mr. Wright explained that Mr. Sutterfield has a significant background in insurance, holding a general lines agent license since 2002.¹⁶ The license authorizes Mr. Sutterfield to sell insurance and in particular crop insurance.¹⁷

Through an investigation into another license holder, the Department learned that Mr. Sutterfield participated in a fraudulent federal crop insurance scheme.¹⁸ Applications for federal crop insurance are signed by an applicant and by an insurance agent, and the applicant and agent certify that the information provided is accurate.¹⁹ Mr. Sutterfield worked as an insurance agent and submitted false applications for federal crop insurance, using leases to falsely represent someone as a lessee and new producer, thereby allowing them to receive indemnities from federal crop insurance policies.²⁰ Mr. Sutterfield's fraud resulted in the federal crop insurance program wrongly issuing \$279,578.00 in indemnities.²¹ His deceit was also part of a much larger fraudulent enterprise: as

¹⁶ Staff Ex. 4A.

¹⁷ Tr. 29.

¹⁸ Tr. 27.

¹⁹ Staff Ex. 10 at 73.

²⁰ Staff Ex. 9 at 65; Staff Ex. 10 at 86-87.

reflected in his conviction for theft of public money, Mr. Sutterfield was jointly and severally required to pay about \$3.5 million in restitution with his co-participants (doctors in Amarillo and two other insurance agents in Spearman).²² Mr. Sutterfield engaged in the fraud from about June 2014 to September 2015.²³

Eventually, in December 2020, Mr. Sutterfield was convicted of theft of public money, sentenced to three years on probation, ordered to perform 400 hours of community service, and ordered to pay a \$50,000.00 fine and a \$5,000.00 prosecution fee.²⁴ He was also given a special condition of probation—prohibiting him from working in any fiduciary capacity or position allowing access to credit or personal financial information of others, unless his employer is fully aware of his offense and conviction and his probation officer approves.²⁵

Mr. Sutterfield's insurance fraud was directly related to the business of insurance, Mr. Wright said. In fact Mr. Sutterfield received commissions for his work on the fraudulent crop insurance policies and applications.²⁶ Mr. Wright explained that protecting the public from insurance fraud is one of the Department's main concerns.²⁷

²¹ Staff Ex. 10 at 89.

²² Staff Ex. 11 at 94.

²³ Tr. 32.

²⁴ Staff Ex. 11 at 94.

²⁵ Staff Ex. 11 at 94.

²⁶ Tr. 38.

²⁷ Tr. 39.

Mr. Wright discussed the circumstances around Mr. Sutterfield’s criminal conduct in more depth:

- This is Mr. Sutterfield’s only criminal activity;²⁸
- Mr. Sutterfield had an insurance license when he committed the crime;²⁹
- Theft is a crime of prime importance to the Department;³⁰
- His theft was serious—a scheme involving fraud and a lot of money;³¹
- Mr. Sutterfield was 51 years old when he committed the crime;³²
- Not much time has passed to show rehabilitation;³³
- He remains on probation until December 2023;³⁴
- The condition of probation requiring him to get his employer’s and his probation officer’s approval to work in a position with access to finances shows it is risky to let him work in such a position again;³⁵
- The restitution Mr. Sutterfield owed was paid by others;³⁶ and
- Mr. Sutterfield failed to provide letters of recommendation or other evidence of his fitness to work in insurance.³⁷

Mr. Wright opined that Mr. Sutterfield’s insurance license should be revoked because Mr. Sutterfield was dishonest and because the factors around his criminal conduct show he is not fit for licensure.³⁸ Mr. Wright noted that the other

²⁸ Tr. 49.

²⁹ Tr. 39, 49.

³⁰ Tr. 45.

³¹ Tr. 38.

³² Tr. 50.

³³ Tr. 47.

³⁴ Tr. 40, 50.

³⁵ Tr. 41.

³⁶ Tr. 41.

³⁷ Tr. 51.

two insurance agents and an insurance business involved in the same fraudulent scheme all lost their insurance licenses.³⁹

Mr. Wright discussed Mr. Sutterfield's business, 5S. Mr. Sutterfield is the president, sole owner, and designated responsible licensed person for the business.⁴⁰ Mr. Sutterfield is the only person associated with the business who holds an individual insurance license.⁴¹ Mr. Wright said that if Mr. Sutterfield's insurance license was revoked, then the business would no longer qualify for a license.⁴²

B. JOHN SUTTERFIELD

Mr. Sutterfield testified on his behalf. He discussed his criminal conduct, apologized for his actions, and requested to keep his insurance license and his business's license so he could continue providing insurance to his community.

Mr. Sutterfield acknowledged he had pleaded guilty to theft but alluded to "extenuating circumstances." His job at the time was to enter applications into the system for the insurance company, making sure details like addresses, phone numbers, and entity names were correct. It was data entry, he explained.⁴³ He also

³⁸ Tr. 51.

³⁹ Tr. 37.

⁴⁰ Staff Ex. 5 at 46; Tr. 54.

⁴¹ Staff Ex. 5.

⁴² Tr. 54.

⁴³ Tr. 57.

signed every document that went through the office. Looking back now and knowing more, he “completely understands” why he has been held responsible for criminal acts.⁴⁴ He apologized for his involvement in the fraud.

Mr. Sutterfield said he has grown his insurance business recently and has nearly paid off his \$50,000.00 fine (\$8,500.00 remaining). He also supports his wife, youngest son, and, in many respects, his mother, who he helps travel to and from Amarillo for medical treatment and for whom he buys food and pays bills.⁴⁵

Mr. Sutterfield said he “learned his lesson.”⁴⁶ He said it will be very hard for him to get another job after his criminal conviction.⁴⁷ And although he was convicted of theft, his community—those he lives near, attends church with, and does business with—continues to trust him and continues to work with him.⁴⁸ He wants to continue to provide insurance in his community.

IV. ANALYSIS

After considering the evidence and the arguments, the ALJ concludes that Mr. Sutterfield’s and his business’s insurance licenses should be revoked.

⁴⁴ Tr. 58.

⁴⁵ Tr. 59, 61.

⁴⁶ Tr. 56.

⁴⁷ Tr. 56.

⁴⁸ Tr. 58.

First, Mr. Sutterfield's insurance license should be revoked under section 4005.101(b)(5) of the Texas Insurance Code because he committed insurance fraud. Although Mr. Sutterfield claims he only did clerical work, court records show that insurance agents for federal crop insurance are responsible for more than clerical work: they must certify that the information in an application is true and correct. Mr. Sutterfield provided false information. And he admits he didn't try to verify what he provided was true, describing his work as only signing forms.

Second, Mr. Sutterfield's insurance license should be revoked under section 53.021 of the Texas Occupations Code because the relevant factors show he is unfit for licensure. Although it has been seven years since his only criminal activity, Mr. Sutterfield committed insurance fraud while working as an insurance agent. Insurance fraud directly relates to the practice of insurance, and insurance agents must be honest. Mr. Sutterfield was an adult (51 years old) when he committed fraud, and he remains on probation. Though his other work history is commendable, as is the fact that he supports his family, Mr. Sutterfield has scant evidence of his fitness to continue to practice insurance in his community—no letters of recommendation or testimony from anyone vouching for his character. And besides paying down his fine and complying with the mandatory conditions of probation, he provided no evidence of rehabilitation. Ultimately, the factors in section 53.023 of the Texas Occupations Code weigh against him and in favor of revoking his license.

Last, 5S's license should be revoked as well. Under section 4001.254 of the Texas Insurance Code, the Department shall revoke or suspend the license of a license holder who fails to maintain necessary qualifications. Because Mr. Sutterfield is 5S's only officer individually licensed separately from his business, without his personal insurance license, 5S does not qualify to provide insurance.⁴⁹ Similarly, an insurance business's controlling person cannot (a) have had his insurance license suspended or revoked, or (b) have committed an act for which an application for a license may be denied.⁵⁰ Because Mr. Sutterfield controls 5S and because he committed fraud, for which an application for a license could be denied, 5S is not qualified to provide insurance. Thus 5S's insurance license should be revoked as well.

The ALJ recommends that Mr. Sutterfield's and 5S's insurance licenses be revoked.

V. FINDINGS OF FACT

1. John H. Sutterfield has worked in insurance in Texas for many years.
2. He held an adjuster license from 1992 to 2003. He has held a license as a general lines agent with property and casualty qualifications since 2002. He has no prior disciplinary history.
3. Mr. Sutterfield operates an insurance business, 5S Insurance Agency, LLC (5S). He is the president, sole owner, and designated responsible licensed

⁴⁹ Tex. Ins. Code § 4001.106(b)(2).

⁵⁰ Tex. Ins. Code § 4001.106(b)(6).

person for the business. He is also the only person associated with the business who holds an individual insurance license in Texas.

4. Mr. Sutterfield committed insurance fraud over several months, from about June 2014 to September 2015.
5. He worked as an insurance agent and submitted false applications for federal crop insurance, using leases to falsely represent someone as a lessee and new producer and thereby receive indemnities.
6. Mr. Sutterfield's fraud resulted in the federal crop insurance program wrongly issuing \$279,578.00 in indemnities. His fraud was part of a larger criminal scheme.
7. Mr. Sutterfield was 51 years old when he committed insurance fraud. He has no other criminal activity.
8. In December 2020, Mr. Sutterfield was convicted of theft of public money. He was sentenced to three years' probation and ordered to perform 400 hours of community service and pay a \$50,000.00 fine and a \$5,000.00 fee.
9. About seven years have passed since Mr. Sutterfield committed insurance fraud.
10. Other than his crime, Mr. Sutterfield's conduct and work history is positive.
11. Mr. Sutterfield remains on probation until December 2023.
12. Mr. Sutterfield is in compliance with the terms of his probation. Under its terms, he cannot be employed in any fiduciary capacity or position allowing access to credit or personal financial information of others, unless his employer is fully aware of his offense and conviction and his probation officer approves.
13. Mr. Sutterfield was jointly and severally required to pay about \$3.5 million in restitution along with his co-participants in the fraud. Mr. Sutterfield no longer owes restitution; others paid the restitution owed.

14. Mr. Sutterfield has nearly paid off his \$50,000.00 fine (\$8,500.00 remaining).
15. Mr. Sutterfield supports his wife, his youngest son, and his mother.
16. No additional evidence of rehabilitation or rehabilitative effort was provided.
17. No one provided letters of recommendation in support of Mr. Sutterfield.
18. On July 15, 2022, the State Office of Administrative Hearings (SOAH) sent the parties an order scheduling the hearing.
19. On July 18, 2022, Staff for the Department of Insurance (Department) issued a notice of hearing, and on September 16, 2022, Staff issued an amended notice of hearing.
20. Together, the SOAH order scheduling the hearing and Staff's amended notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted, or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
21. On November 15, 2022, a hearing was held before Administrative Law Judge (ALJ) Andrew Lutostanski with SOAH. Attorney Sarah White represented Staff. Mr. Sutterfield represented himself and 5S. The record closed afterward when the hearing transcript was filed on December 1, 2022.

VI. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code chs. 4001, 4005.
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. Sutterfield and 5S received timely and sufficient notice of hearing. Tex. Gov't Code §§ 2001.051-.052; Tex. Ins. Code § 4005.104(b).
4. Staff had the burden of proving a basis for revoking the licenses. 1 Tex. Admin. Code § 155.427.
5. The standard of proof is by a preponderance of the evidence. *Granek v. Tex. St. Bd. of Med. Examin'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
6. The Department may revoke a license if a person engaged in fraudulent or dishonest practices. Tex. Ins. Code § 4005.101(b)(5).
7. Mr. Sutterfield engaged in fraudulent or dishonest practices. Tex. Ins. Code § 4005.101(b)(5).
8. The Department may revoke a license if a person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Tex. Occ. Code § 53.021(a)(1).
9. Insurance fraud is a crime that relates to the duties and responsibilities of an insurance agent. 28 Tex. Admin. Code § 1.502(e)(1).
10. Mr. Sutterfield is not currently fit to perform the duties and discharge the responsibilities of a licensed insurance agent. Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502.
11. To qualify for licensure, a corporation must have at least one officer individually licensed by the Department separate from the corporation, and a person who has the right or ability to control the corporation must not have had their insurance license revoked or committed an act for which an insurance license may be denied. Tex. Ins. Code § 4001.106(b)(2), (6).
12. 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.
13. The Department is authorized to revoke 5S's insurance license. Tex. Ins. Code §§ 4001.106, .254.

14. Mr. Sutterfield's insurance license should be revoked.
15. 5S's insurance license should be revoked.

Signed: January 23, 2023.

ALJ Signature:

A handwritten signature in black ink, appearing to read "Andrew Lutostanski", written over a horizontal line.

Andrew Lutostanski,

Presiding Administrative Law Judge

2023-7902

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John H. Sutterfield		[REDACTED]	1/23/2023 9:37:26 AM	SENT