

No. 2019- 5887

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

Date: MAR 0 4 2019

Subject Considered:

Texas Department of Insurance

v.

Akm Mirajulalam Khan

SOAH Docket No. 454-18-3441.C

General remarks and official action taken:

The subject of this order is the general lines agent license held by Akm Mirajulalam Khan.

Background

A hearing in this case was held before Rebecca S. Smith, administrative law judge (ALJ) for the State Office of Administrative Hearings. ALJ Smith signed a proposal for decision containing her recommendation and underlying rationale and including separately stated findings of fact and conclusions of law. A copy of the proposal for decision is attached as Exhibit A.

TDI filed exceptions to ALJ Smith's proposal for decision. Mr. Khan did not file a response to the exceptions.

In response to the filed exceptions, ALJ Smith recommended revising the findings of fact contained in her proposal for decision. A copy of ALJ Smith's response to exceptions is attached as Exhibit B.

Findings of Fact

The findings of fact contained in Exhibit A as revised consistent with Exhibit B are adopted by 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.

Order

It is ordered that the general lines agent license held by Akm Mirajulalam Khan is not revoked.

Akm Mirajulalam Khan is granted written consent, as contemplated by 18 U.S.C. §1033(e) (2), to engage in the business of insurance, subject to the following requirements:

1. Akm Mirajulalam Khan must continuously maintain a license or other authorization issued by the Texas Department of Insurance to which this written consent applies.
2. This written consent is strictly limited to performing acts which constitute the business of insurance, as defined in TEX. INS. CODE §101.051.
3. This written consent is limited to acts performed by Akm Mirajulalam Khan in the State of Texas for persons that are domiciled in Texas and risks and subjects of insurance that are resident, located, or to be performed in Texas.

If Akm Mirajulalam Khan is subsequently convicted of another felony offense or if additional information concerning Akm Mirajulalam Khan's activities within the

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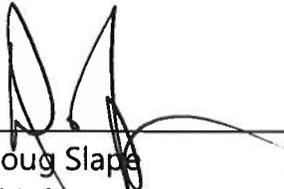
COMMISSIONER'S ORDER
TDI v. Akm Mirajulalam Khan
SOAH Docket No. 454-18-3441.C
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business of insurance becomes available, the department reserves its rights to withdraw this written consent under 18 U.S.C. §1033(e)(2).

This determination does not authorize Akm Mirajulalam Khan to engage in the business of insurance, except as specifically stated in this order, and does not preclude the department from proposing denial of any other license, authority, registration or application Akm Mirajulalam Khan submits at a later date.

Kent C. Sullivan
Commissioner of Insurance

By:



Doug Slape
Chief Deputy Commissioner

2019- 5887



State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

October 4, 2018

Kent Sullivan
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe, Tower 1, 13th Floor, Mail Code 113-2A
Austin, Texas 78714

INTERAGENCY

RE: Docket No. 454-18-3441.C

Dear Commissioner Sullivan:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507, a SOAH rule which may be found at www.soah.texas.gov.

Sincerely,

A handwritten signature in black ink that reads "Rebecca S. Smith".

Rebecca S. Smith
Administrative Law Judge

RS/lc

Enclosure includes 1 CD; Certified Evidentiary Record

cc: Cassie Tigue, Staff Attorney, Texas Department of Insurance, 333 Guadalupe, Tower, 13th Floor, Austin, Texas 78701 VIA INTER-AGENCY
Akm Mirajulalam Khan, 9655 Chimney Hill Ln., Apt. 2126, Dallas, TX 75243-2951 - VIA REGULAR MAIL
Akm Mirajulalam Khan, 5080 Spectrum Dr., Ste. 902 W, Addison, TX 75001-4649 - VIA REGULAR MAIL

SOAH DOCKET NO. 454-18-3441.C

TEXAS DEPARTMENT
OF INSURANCE,
Petitioner

v.

AKM MIRAJULALAM KHAN,
Applicant

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to revoke the general lines agent license of Akm Mirajulalam Khan based on his criminal history and a failure to disclose that criminal history in his first application. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) concludes the Department should not revoke Mr. Khan’s license.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this case was held on June 7, 2018, before ALJ Rebecca S. Smith at the State Office of Administrative Hearings in Austin, Texas. Staff was represented by staff attorneys Cassie Tigue and Elissa Mazza. Mr. Khan represented himself. The hearing concluded and the record closed the same day. The ALJ ordered the record reopened, to allow for briefing on the application of Chapter 53 of the Texas Occupations Code to this proceeding, and closed on August 6, 2018. Jurisdiction was not disputed by the parties and is set out in the Findings of Fact and Conclusions of Law. Notice will be discussed below and in the Findings of Fact and Conclusions of Law.

II. DISCUSSION

A. Background

On October 12, 2006, in Cause No. 3:05-cr-44-BES, in the United States District Court for the District of Nevada, Mr. Khan pleaded guilty to false swearing in an immigration matter, a felony. Mr. Kahn was placed on probation for one year and assessed a \$100 penalty.¹

While living in Nevada, Mr. Khan applied for a non-resident general lines agent license with the Department on April 27, 2017. On his application, he answered “no” to the question whether he had “ever been convicted of a felony.” His application was granted on May 1, 2017. On June 19, 2017, Mr. Khan sent the Department a request for residency change. On the residency change form, Mr. Khan answered “yes” to the questions whether he had “ever been convicted of any misdemeanor or felony offense in Texas, in any other state, or by the federal government.”

B. Applicable Law

The Department may discipline a license holder who has, among other things:

- willfully violated an insurance law of the state;
- intentionally made a material misstatement in a license application;
- obtained a license by fraud or misrepresentation; or
- been convicted of a felony.²

When examining whether to grant, deny, suspend, or revoke any license under its jurisdiction based on a criminal conviction, the Department is to consider the factors set out in Texas Occupations Code §§ 53.022 and 53.023.³ Those factors include:

¹ Staff Ex. 5.

² Tex. Ins. Code § 4005.101(b)(1), (2), (3), (8).

³ 28 Tex. Admin. Code § 1.502(h). The Notice of Hearing did not cite chapter 53 of the Texas Occupations Code, which provides the relevant factors, or Texas Administrative Code § 1.502(h), which requires an analysis of these

1. the nature and seriousness of the crime;
2. the relationship of the crime to the purposes for requiring a license to engage in the occupation;
3. the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
4. the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.⁴

In determining the fitness to perform the duties and responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority must also consider the following factors:

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

factors. It thus did not give Mr. Khan notice of the relevant factors. When the ALJ reopened the record to allow for briefing related to chapter 53, notice was provided to Mr. Khan.

⁴ Tex. Occ. Code § 53.022.

- c. any other persons in contact with the convicted person; and
7. proof furnished by the applicant that the applicant has:
 - a. maintained a record of steady employment;
 - b. supported the applicant's dependents;
 - c. maintained a record of good conduct; and
 - d. paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant or holder has been convicted.⁵

The Department has developed guidelines relating to matters it will consider in determining whether to grant a license if the applicant has been convicted of a crime. The crimes that the Department considers to be of such a serious nature that they are of prime importance in determining fitness for licensure include any offense with the essential elements of fraud, dishonesty, or deceit.⁶

Additionally, federal law requires that, to engage in the business of insurance, a person who has been convicted of any criminal felony involving dishonesty or breach of trust needs the written consent of any insurance regulatory official authorized to regulate that person.⁷

C. Evidence

Staff offered six exhibits, which were admitted into evidence. These exhibits included Mr. Khan's application, along with information he provided about his conviction and letters of recommendation. Staff called as a witness Lewis Weldon Wright IV, the manager of continuing education and administrative review for the Department. Mr. Khan testified on his own behalf and offered one exhibit, which was admitted.

⁵ Tex. Occ. Code § 53.023. The Department has adopted these factors in its rules. 28 Tex. Admin. Code § 1.502(h).

⁶ 28 Tex. Admin. Code § 1.502(e)(1).

⁷ 18 U.S.C. § 1003(e)(1).

1. Mr. Wright's Testimony

Mr. Wright testified that the administrative review section reviews applications when responses to application questions raise concerns, such as concerns about criminal history. He testified that typically, fingerprints are not required for a non-resident application, such as Mr. Khan's first application, because those application decisions are based on reciprocity. A resident application is subject to more scrutiny. Mr. Wright expressed concerns about the trustworthiness and honesty of someone who would commit the crime for which Mr. Khan was convicted and someone who would not disclose that conviction.

Staff did not present any evidence about what sanction or penalty, short of revocation, might be appropriate.

2. Mr. Khan's Testimony

Mr. Khan, who is originally from Bangladesh, testified that he used to work as an insurance agent for Alliance Insurance in Dubai. In 1998, he got married, and in 2000, his in-laws moved to Reno, Nevada. Mr. Khan arrived in the United States with his in-laws, but planned to return to Dubai. His wife, however, wanted to stay with her parents in the United States, so he looked into how to stay. He applied to change his visa status, but the company he was going to work for shut down. He then became undocumented. A fellow Bangladeshi told him that he could get Mr. Khan a green card, if Mr. Khan would pay him. This other man took Mr. Khan to a lawyer's office, where he received a work card in someone else's name. In 2005, Homeland Security found out, and Mr. Khan told them the truth. He agreed to be a witness against the men behind the work card scheme, at which time he received an S visa, which allowed him to work. He provided testimony about the false document scheme. In 2014, he received his green card.

Mr. Khan testified that he did not want to raise children in Reno because it is a gambling town. He first looked into Southern California, but it was too expensive. He moved to Dallas,

Texas, and decided that it would be a good place to live. As part of that move, he changed his Department license from non-resident to resident.

Mr. Khan testified that when he received his green card, he also received what is called a 601 waiver, which waived a ground for inadmissibility. He added that at the time he completed his application for non-resident license, he believed this waiver essentially removed his conviction. He later spoke with a lawyer who informed him that this belief was incorrect, that once he was convicted of a felony, it remained on his record. He testified that his second application was after this conversation, which explains why the answers on the felony conviction were different.

D. Analysis

The ALJ believes Mr. Khan's testimony about the reason for the discrepancy between his application and his residency change form. Therefore, the ALJ finds that Staff did not establish that Mr. Khan intentionally made a material misstatement in a license application or willfully violated a Texas insurance law. Likewise, the ALJ cannot find that Mr. Khan obtained a license by fraud or misrepresentation, both of which would suggest either an intentional or knowing falsehood.

This leaves Mr. Khan's conviction of a felony as the sole basis for discipline. Under the Insurance Code, conviction of a felony can be a basis for discipline. The question is whether revocation is the appropriate sanction. To decide this question, the Department's rules require that the factors contained in chapter 53 of the Texas Occupations Code be examined.⁸

Turning to those factors, Mr. Khan has a single criminal conviction for a serious criminal offense, one that the Department has determined is of prime importance.⁹ Mr. Khan was in his

⁸ 28 Tex. Admin. Code § 1.502(h).

⁹ 28 Tex. Admin. Code § 1.502(e)(1).

mid-thirties at the time of his crime.¹⁰ Over 16 years have passed since he committed his crime, and he completed his twelve months of probation over 10 years ago. A letter from an Assistant United States Attorney describing Mr. Khan's cooperation in the prosecution of the people who sold him the document noted that under cross-examination he "remained unfailingly polite and answered all questions asked in what I deemed to be a truthful manner. He did not attempt to minimize the fact that he was illegally in the United States and had lied under oath in order to get the immigration documents in the assumed identity."¹¹ That same letter noted that no promises were made to Mr. Khan in exchange for his testimony at the criminal trial. It appears that Mr. Khan's conduct since his conviction has been good. All in all, the positive factors outweigh Mr. Khan's crime and that he has shown his fitness for licensure.

Staff alternatively requested a sanction other than revocation but did not present any evidence or argument about what an appropriate sanction would be. Without guidance, the ALJ does not have a sense of an appropriate sanction and cannot recommend one.

E. Conclusion

The ALJ concludes that the Department should not revoke Mr. Khan's general lines agent license. The ALJ also concludes that the Commissioner should provide his consent to Mr. Khan engaging in the business of insurance under 18 U.S.C. § 1033.

III. FINDINGS OF FACT

1. On October 12, 2006, in Cause No. 3:05-cr-44-BES, in the United States District Court for the District of Nevada, Akm Mirajulalam Khan pleaded guilty to false swearing in an immigration matter, a felony. Mr. Kahn was placed on probation for one year and assessed a \$100 penalty.
2. On April 27, 2017, Mr. Khan applied for a non-resident general lines agent license from the Texas Department of Insurance (Department).

¹⁰ Resp. Ex. 1.

¹¹ Staff Ex. 3 at 038

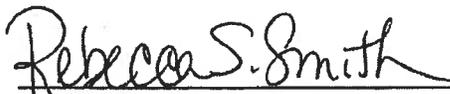
3. On his application, Mr. Khan answered "no" to the question whether he had "ever been convicted of a felony."
4. The Department granted his application on May 1, 2017.
5. On June 19, 2017, Mr. Khan filed a request for residency change with the Department.
6. On the residency change form, Mr. Khan answered "yes" to the question whether he had "ever been convicted of any misdemeanor or felony offense in Texas, in any other state, or by the federal government."
7. The request for residency change was granted, but Mr. Khan's application was referred to the Department's administrative review section because of his conviction and his answer on his first application.
8. On May 1, 2018, Staff issued a notice of hearing in which it sought to discipline Mr. Khan.
9. 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 incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
10. The hearing in this case was held on June 7, 2018, before Administrative Law Judge Rebecca S. Smith at the State Office of Administrative Hearings (SOAH) in Austin, Texas. The staff (Staff) of the Department was represented by staff attorneys Cassie Tigue and Elissa Mazza. Mr. Khan represented himself. The hearing concluded and the record closed the same day. The record was reopened to allow for briefing on the application of Chapter 53 of the Texas Occupations Code on this proceeding and closed on August 6, 2018.
11. At the time Mr. Khan completed his application for non-resident license, he believed that a waiver that was granted for his permanent residence status essentially removed his conviction. He later spoke with a lawyer who informed him that this belief was incorrect.
12. Staff did not establish that Mr. Khan intentionally made a material misstatement in a license application or willfully violated a Texas insurance law.
13. Staff did not establish that Mr. Khan obtained a license by fraud or misrepresentation.
14. Mr. Khan has one criminal conviction that involves dishonesty.
15. Mr. Khan was in his mid-thirties when he committed the crime.

16. Over 16 years have passed since Mr. Khan last committed a crime.
17. Mr. Khan completed his probation over 10 years ago.
18. Mr. Khan truthfully assisted in the prosecution of the people who sold him a green card.
19. Mr. Khan has been supporting his family since his conviction.
20. The preponderance of the evidence shows Mr. Khan's current fitness to hold a license.

IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, .105, 4005.101.
2. SOAH has authority to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Mr. Khan received timely and sufficient notice of hearing. Tex. Gov't Code ch. 2001; Tex. Ins. Code § 4005.104(b).
4. The Department may revoke a license based on a licensee's conviction of a felony offense. Tex. Ins. Code § 4005.101(b)(8).
5. When determining whether to revoke a license based on a conviction, the Department is to consider the factors set out in Texas Occupations Code §§ 53.022 and 53.023. 28 Tex. Admin. Code § 1.502(h).
6. The Department should not revoke Mr. Khan's license.
7. The Commissioner of Insurance should provide his consent to Mr. Khan engaging in the business of insurance under 18 U.S.C. § 1033

SIGNED October 4, 2018.



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



State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

January 9, 2019

Kent Sullivan
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe, Tower 1, 13th Floor, Mail Code 113-2A
Austin, Texas 78714

VIA FACSIMILE: (512) 490-1045

**RE: Docket No. 454-18-3441.C; Texas Department of Insurance v. Akm
Mirajulalam Khan**

Dear Commissioner Sullivan:

On October 4, 2018, I issued the Proposal for Decision (PFD) in this case. The staff of the Texas Department of Insurance (Staff) timely filed exceptions on October 19, 2018. Respondent Akm Mirajulalam Khan did not file any exceptions and did not respond to Staff's exceptions.

Staff's exceptions largely take issue with my finding credible Mr. Khan's testimony that he originally believed when he received a waiver for his grounds of inadmissibility, he thought that meant that his conviction had been erased. I also believed Mr. Khan's testimony that he later had a lawyer who told him that was not the case. His testimony about that conversation provides evidence of it. Again, his beliefs were mistaken, and nowhere did I find (or suggest) that the waiver somehow invalidated his conviction. But given his lack of English fluency, I found his testimony about his understanding to be credible. Therefore, I did not find that he had intentionally misrepresented anything to the Department. Included in that is an implied finding that misrepresentation sufficient to justify license revocation must at least be made knowingly. Staff did not establish that Mr. Kahn's misrepresentation was knowing.

Staff also contends that Mr. Khan also may be disciplined under Texas Insurance Code § 4005.101(b)(10), which states that the Department may deny a license application or discipline a license holder if the license holder is not actively engaged in soliciting or writing insurance for

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Exceptions Letter
Page 2

the public, as required by Section 4001.104(a). Section 4001.104(a) states that the Department may not issue a license unless the Department determines that the applicant is or intends to be actively engaged in the soliciting or writing of insurance for the general public. The ALJ notes that the Notice of Hearing does not cite § 4005.101(b)(10). Therefore, this section cannot be a basis for a finding. The Notice of Hearing does, however, contend that Mr. Khan is “not actively engaged in soliciting or writing insurance for the public generally, in violation of Tex. Ins. Code § 4001.101(a)(1).” This section, however, is not one that a license holder can violate, as it imposes restrictions on the Department, not a license holder. Accordingly, it cannot form the basis for revocation under Texas Insurance Code § 4005.101(b), the provision that provides for discipline for willfully violating an insurance law of this state. This makes sense, too, given that a separate subsection allows for discipline for failing to be actively engaged in soliciting or writing insurance. Regardless, Mr. Khan testified about his intention to be actively engaged in the soliciting or writing insurance for the public, which satisfies 4001.101(a)(1). The ALJ agrees with Staff, however, that a finding to that effect should have been included in the PFD.

Staff's remaining arguments address the nature of Mr. Khan's conviction, which was already considered in the drafting of the PFD. Staff also suggests that the PFD improperly required it to present evidence to support an appropriate sanction. The PFD noted that Staff provided neither evidence nor argument for an alternative sanction, and the ALJ stands by that statement.

I do not recommend any of Staff's proposed changes to the PFD, but would recommend adding a finding that “Mr. Khan intends to be actively engaged in the soliciting or writing of insurance for the public.” The PFD is ready for your consideration.

Sincerely,



Rebecca S. Smith
Administrative Law Judge

RSS/lc
cc:

Micah Mireles, Chief Docket Clerk, Texas Department of Insurance, 333 Guadalupe, Tower, 13th Floor, Austin, Texas 78701 **VIA FACSIMILE: (512) 490-1064**

Akm Mirajulalam Khan, 9655 Chimney Hill Ln., Apt. 2126, Dallas, TX 75243-2951 – **VIA REGULAR MAIL**

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STYLE/CASE: AKM MIRAJULALAM KHAN
SOAH DOCKET NUMBER: 454-18-3441.C
REFERRING AGENCY CASE: 15398

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ REBECCA SMITH

REPRESENTATIVE / ADDRESS

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xc: Docket Clerk, State Office of Administrative Hearings
CHIEF CLERK, TDI, Fax No. 512-490-1064