

No. 2021-6684

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

Date: 02/22/2021

Subject Considered:

Vladimir Leonardo Vivas

[REDACTED]
Houston, Texas 77079

Consent Order
TDI Enforcement File No. 26520

General remarks and official action taken:

This consent order is with Vladimir Leonardo Vivas (Vivas). The Texas Department of Insurance has reviewed Vivas's application for a life agent license and his rehabilitative evidence and determined that the license should be granted subject to a three-year probated suspension and reporting as detailed in this order.

Waiver

Vivas acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Vivas waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

Findings of Fact

License Application

1. On November 3, 2020, Vivas applied for a life agent license to be issued by the department.

Criminal History

2. On March 9, 2018, Vivas was convicted of the third-degree felony offense of intoxicated assault with a vehicle, in case no. 153472601010, in the [REDACTED]

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██████████ Harris County, Texas. Vivas was sentenced to five years confinement, which was suspended, and he was placed on community supervision for five years. Vivas was also fined \$1,000.

3. Vivas remains on probation until March 8, 2023.

Evidence of Rehabilitation

4. Vivas has cooperated extensively and timely with the department in its investigation of his criminal background. Vivas provided evidence of his rehabilitation to support his fitness for licensure.
5. In accordance with the requirements of TEX. OCC. CODE § 53.025, the department has developed guidelines relating to the matters which the department will consider in determining whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction, as described in 28 TEX. ADMIN. CODE §§ 1.502(e)-1.502(k).
6. The factors the department must initially consider in determining whether the offense directly relates to the duties and responsibilities of the licensed occupation are listed in TEX. OCC. CODE § 53.022 and 28 TEX. ADMIN. CODE § 1.502(h)(1):
 - (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;
 - (4) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and
 - (5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.
7. Considering the factors set forth in TEX. OCC. CODE § 53.022 and 28 TEX. ADMIN. CODE § 1.502(h)(1), Vivas's crime is directly related to the business of insurance. It was a serious, third degree felony for intoxicated assault with a vehicle. The crime bears a direct relationship to the purpose for requiring an agent's license, specifically protecting the public. However, it is unlikely that a license might offer an opportunity to repeat the crime. The crime does not presently impair Vivas's ability

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or capacity to perform the duties and responsibilities of an insurance agent, even though there is a correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

9. Because the crime is directly related to the duties and responsibilities of the licensed occupation, the department must consider additional factors in determining whether issuance of the license is appropriate, specifically the factors in TEX. OCC. CODE § 53.023 and 28 TEX. ADMIN. CODE § 1.502(h)(2):
 - (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 after release;
 - (6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
 - (7) other evidence of the person's fitness, including letters of recommendation.
8. The applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations described by TEX. OCC. CODE § 53.023(a)(7).
9. In consideration of the TEX. OCC. CODE § 53.023(a)(1) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(A), Vivas has a single conviction resulting from his driving while under the influence of alcohol on December 18, 2016. He states he stopped drinking alcohol that day and now has a healthier lifestyle. Vivas has accepted responsibility and expressed remorse for his criminal conduct.
10. In consideration of TEX. OCC. CODE § 53.023(a)(2) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(B), Vivas was 35 years old at the time of his criminal offense.
11. In consideration of TEX. OCC. CODE § 53.023(a)(3) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(C), four years have elapsed since Vivas's last criminal activity.
12. In consideration of the TEX. OCC. CODE §§ 53.023(a)(4)-(5) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(D)-(E), Vivas provided evidence demonstrating his commitment to

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rehabilitation while on probation and after probation, including a detailed resume showing steady employment since 2007. His previous employment includes working as a commercial assistant, finance manager, and integral leader at a pharmacy, a position that ultimately led to a manager position. He currently owns and manages a janitorial service. Vivas has participated and volunteered in numerous events at his church such as clean-up days, fundraising events, clothes closet, and singing in the gospel choir. Through his janitorial service, he has helped the church through its financial hardships. Vivas also spent many hours helping clean and repair the church after it was damaged in Hurricane Harvey. Vivas has also volunteered many hours at the food bank.

13. In consideration of TEX. OCC. CODE § 53.023(a)(6), Vivas is currently on community supervision and set to be released in 2023. His community supervision officer wrote a letter stating that Vivas has maintained stable employment, been responsible with fees, and compliant with all special court orders. The officer also states that Vivas has been polite and well-mannered at every office visit. Vivas also provided payment records from the Harris County Community Supervision and Corrections Department showing that he paid his court costs and fees.
14. In consideration of TEX. OCC. CODE § 53.023(a)(7), the department received two letters of recommendation: one from Vivas's church and one from his employer. Both letters indicate familiarity with Vivas's criminal history and support of his licensure. The church letter describes him both professionally and personally as hard-working, reliable, trustworthy, and committed to giving back to the community. His employer and sponsor is a licensed insurance agent familiar with Vivas's criminal history who states that it does not pose an issue with employment in their organization.
15. The factors described in TEX. OCC. CODE §§ 53.022 and 53.023 and 28 TEX. ADMIN. CODE § 1.502(h) outweigh the serious nature of Vivas's conviction.
16. Due to Vivas's criminal background, the department needs the opportunity to monitor his insurance activities to ensure he demonstrates the ability, capacity, and fitness required to perform and discharge the responsibilities of a licensed agent.

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Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051-82.055, 4005.101, 4005.102, and 4054.301; TEX. GOV'T CODE §§ 2001.051-2001.178; 28 TEX. ADMIN. CODE § 1.502; and TEX. OCC. CODE §§ 53.021-53.023.
2. The commissioner has the authority to dispose of this case informally pursuant to the provisions of TEX. GOV'T CODE §§ 2001.056 and 82.055, and 28 TEX. ADMIN. CODE § 1.47.
3. Vivas has knowingly and voluntarily waived all procedural rights to which he may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. Vivas committed an act for which the department may deny a license under TEX. INS. CODE §§ 4001.105 and 4005.101.
5. Pursuant to 28 TEX. ADMIN. CODE § 1.502(f), the commissioner has determined that the factors in TEX. OCC. CODE §§ 53.022-53.023 outweigh the serious nature of Vivas' criminal conviction.

Order

It is ordered that a life agent license is granted to Vladimir Leonardo Vivas. It is further ordered that the license is suspended for three years. The suspension shall be probated, and the terms and conditions stated in this order will apply.

If, during the probation period imposed by this order, the department issues any additional licenses or authorizations to Vivas, those additional licenses or authorizations will be suspended until the probation period imposed by this order has ended. The suspension shall 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, Vivas 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. Vivas must provide the department with a copy of the notification within 30 days of the

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appointment, employment, or sponsorship by emailing it to the Texas Department of Insurance at EnforcementReports@tdi.texas.gov.

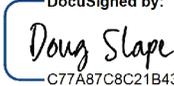
Beginning from the date of this order and continuing through the probation period, Vivas must file a written report, on or before the 15th day of the month on a quarterly basis for the months of March, June, September, and December, with the Texas Department of Insurance by emailing it to EnforcementReports@tdi.texas.gov. The reports must include the following information:

- a. Vivas's current mailing address and telephone number;
- b. the name, mailing address, and telephone number of Vivas's employer, and if Vivas 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 which has appointed Vivas as an agent;
- d. the name and address of any insurer which has cancelled Vivas's appointment as an agent; and
- e. a copy of any and all contracts Vivas has entered into with an insurer, broker, agent, agency, managing general agent, or any other person or entity in the business of insurance.

Vivas must notify the department 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 Vivas concerning his performance as an agent, as well as a written explanation detailing the steps taken to resolve it.

Commissioner of Insurance

DocuSigned by:

By: C77A87C8C21B435...
Doug Slape
Chief Deputy Commissioner
TEX. GOV'T CODE § 601.002
Commissioner's Order No. 2018-5528

Recommended and reviewed by:



Leah Gillum, Deputy Commissioner
Enforcement Division



Amanda Atkinson Cagle, Staff Attorney
Enforcement Division

Affidavit

STATE OF TEXAS

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COUNTY OF Harris

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Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed of the following:

"My name is Vladimir Leonardo Vivas. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

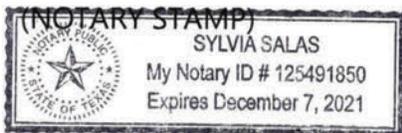
I waive rights provided by the Texas Insurance Code and other applicable law and acknowledge the jurisdiction of the commissioner.

I have knowingly and voluntarily entered into this consent order and agree with and consent to the issuance and service of the same by the commissioner of insurance of the State of Texas."

Vladimir Leonardo Vivas

Affiant

SWORN TO AND SUBSCRIBED before me on this 9 day of Feb., 2021.



Sylvia Salas
Signature of Notary of Public