No. 2019- 5842

Official Order
of the
Texas Commissioner of Insurance

Date: JAN 1 0 2019

Subject Considered:

Texas Department of Insurance
v.
Billy Glenn Ivy, Jr.

SOAH Docket No. 454-18-4456.C

General remarks and official action taken:

The subject of this order is the nunc pro tunc revision of Commissioner's Order No. 2018-5744 and the revocation of the general lines agent license with a property and casualty qualification and a life, accident, and health qualification held by Billy Glenn Ivy, Jr.

Background

The Texas Department of Insurance (TDI) filed a notice of hearing to revoke the general lines agent license held by Mr. Ivy. After the hearing was set, TDI filed a motion for summary disposition, contending that Mr. Ivy's license was revoked by operation of law pursuant to Texas Occupations Code § 53.021(b).

A hearing on the motion was held before Henry D. Card, administrative law judge (ALJ) for the State Office of Administrative Hearings. ALJ Card signed a proposal for decision on summary disposition containing his 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.

The introductory sentence to the proposal for decision issued by ALJ Card states that TDI "filed a notice of hearing to revoke the general lines agent license with a property and casualty qualification held by Respondent Billy Glenn Ivy, Jr." The proposal for

decision concludes that TDI is required to revoke Mr. Ivy's license under Texas Occupations Code §53.021(b) and proposes that TDI revoke his license.

TDI issued Commissioner's Order No. 2018-5744 adopting the proposed findings of fact and conclusions of law. Consistent with the penalty sought as stated in the proposal for decision, Commissioner's Order No. 2018-5744 revoked "the general lines agent license with a property and casualty qualification held by Billy Glenn Ivy, Jr."

However, in addition to the property and casualty qualification referenced in the introductory sentence to the proposal for decision, Mr. Ivy's license included a life, accident, and health qualification. This qualification is referenced in the notice of hearing for the case, the discussion in the proposal for decision, and finding of fact no. 1 in the proposal for decision, but not specifically addressed in the conclusion of law recommending revocation of Mr. Ivy's license.

The drafting of the introductory sentence to the proposal for decision was a clerical error, as demonstrated by the fact that the life, accident, and health qualification was referenced in the discussion and in finding of fact no. 1. To correct this error and to clarify that both qualifications are included in the revocation of Mr. Ivy's license, this order is issued nunc pro tunc. This order stands in place of Commissioner's Order No. 2018-5744.

The Commissioner of Insurance has plenary power to correct an order which contains a clerical error due to inadvertence or mistake at any time by the entry of a nunc pro tunc order. Correction of a clerical error is not a substantive change in the order. In re Ward, 137 SW.3rd 910, 913 (Tex.App,–Texarkana 2004, no pet.).

Findings of Fact

The findings of fact contained in Exhibit A 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 with a property and casualty qualification and a life, accident, and health qualification held by Billy Glenn Ivy, Jr. is revoked.

Kent C. Sullivan
Commissioner of Insurance

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EXHIBIT A

State Office of Administrative Hearings

Lesli G. Ginn
Chief Administrative Law Judge

October 25, 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. 454-18-4456.C, *Texas Department of Insurance v. Billy Glenn Ivy, Jr.*

Dear Commissioner Sullivan:

Please find enclosed a Proposal for Decision on Summary Disposition 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,

Henry D. Card
Administrative Law Judge

HDC/sh

cc: Elissa Mazza, Staff Attorney, Texas Department of Insurance, 333 Guadalupe, Tower, 13th Floor, Austin, Texas 78701 **VIA INTER-AGENCY**
Billy Glenn Ivy, Jr., 9020 Soncy Road, Amarillo, Texas 79119 - **VIA REGULAR MAIL**
Billy Glenn Ivy, Jr., FCI Tucson, Federal Correctional Institution, P.O. Box 23811, Tucson, Arizona 85734 - **VIA REGULAR MAIL**

2019- 5842

SOAH DOCKET NO. 454-18-4456.C

TEXAS DEPARTMENT OF INSURANCE,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	**OF**
v.	§	
	§	
BILLY GLENN IVY, JR.,	§	**ADMINISTRATIVE HEARINGS**
Respondent	§	

PROPOSAL FOR DECISION
ON SUMMARY DISPOSITION

The staff (Staff) of the Texas Department of Insurance (Department) filed a notice of hearing to revoke the general lines agent license with a property and casualty qualification held by Respondent Billy Glenn Ivy, Jr. After the hearing was set, Staff filed a motion for summary disposition, contending that Mr. Ivy's license has been revoked by operation of law pursuant to Texas Occupations Code § 53.021(b). Mr. Ivy did not respond to the motion.

After considering the pleadings, summary disposition evidence, and arguments presented, the Administrative Law Judge (ALJ) granted the motion for summary disposition and canceled the hearing. In this Proposal for Decision, the ALJ finds the evidence shows that the Department is required by operation of law to revoke Mr. Ivy's license and concludes that the Department should revoke the license.

I. JURISDICTION, PROCEDURAL HISTORY, AND UNDISPUTED FACTS

No party challenged the jurisdiction of the Department or the State Office of Administrative Hearings (SOAH). Therefore, those matters are set out in the proposed findings of fact and conclusions of law without further discussion.

Staff's motion was filed on August 1, 2018, and served on Mr. Ivy both at his address of record with the Department and at his current address in federal prison. The motion complied with

SOAH's rule regarding motions for summary disposition.[1] Mr. Ivy did not respond to the motion. On August 31, 2018, the ALJ granted the motion.

The undisputed facts of the case, set out in the motion and supported by exhibits attached to the motion,[2] are set forth below:

> Mr. Ivy holds a general lines agent license with a property and casualty qualification that was issued by the Department on September 22, 1994. He obtained a life, accident, and health qualification for his general lines agent license on May 30, 1995.
>
> On November 13, 2017, Mr. Ivy was sentenced after pleading guilty to the felony offense of possession of an unregistered firearm, in Case No. 2:17-CR-00050-D-BR(1) in the United States District Court, Northern District of Texas, Amarillo Division.
>
> Mr. Ivy was sentenced to 41 months in federal prison, to be followed by three years of supervised release, and ordered to pay a fine in the amount of $25,000 and an assessment fee of $100. The sentence was ordered to run consecutively to any sentences thereafter imposed in Case Nos. 27417, 27434, and 27610 pending in the 251st District Court of Potter County, Texas, and two cases charging solicitation to commit capital murder, also pending in Potter County, Texas.
>
> Mr. Ivy is currently incarcerated in the Federal Correctional Institution in Tucson, Arizona.

II. DISCUSSION

A. Applicable Law

Under SOAH's rule, summary disposition shall be granted on all or part of a contested case if the pleadings, the motion for summary disposition, and the summary disposition evidence show that

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[1] 1 Tex. Admin. Code (TAC) § 155.505.

[2] The motion included four attached exhibits. The Administrative Law Judge takes official notice of those exhibits.

there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as matter of law on all or some of the issue expressly set out in the motion.[3]

Texas Occupations Code § 53.021(b) states:

> A license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

B. Analysis

The summary disposition evidence, regarding which there is no dispute, shows that Mr. Ivy has been imprisoned following a felony conviction. Texas Occupations Code § 53.021(b) requires the licensing agency to revoke a license under those circumstances. Therefore, the Department is required by law to revoke Mr. Ivy's license, and the ALJ concludes it should do so.

III. FINDINGS OF FACT

1. Billy Glenn Ivy, Jr. holds a general lines agent license with a property and casualty qualification that was issued by the Texas Department of Insurance (Department) on September 22, 1994. He obtained a life, accident, and health qualification for his general lines agent license on May 30, 1995.

2. On November 13, 2017, Mr. Ivy was sentenced after pleading guilty to the felony offense of possession of an unregistered firearm, in Case No. 2:17-CR-00050-D-BR(1) in the United States District Court, Northern District of Texas, Amarillo Division.

3. Mr. Ivy was sentenced to 41 months in federal prison, to be followed by three years of supervised release, and ordered to pay a fine in the amount of $25,000 and an assessment fee of $100. The sentence was ordered to run consecutively to any sentences thereafter imposed in Case Nos. 27417, 27434, and 27610 pending in the 251st District Court of Potter County,

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[3] 1 TAC § 155.505(a).

Texas, and two cases charging solicitation to commit capital murder, also pending in Potter County, Texas.

4. Mr. Ivy is currently incarcerated in the Federal Correctional Institution in Tucson, Arizona.

5. On June 25, 2018, the Department's staff (Staff) filed a notice of hearing to revoke Mr. Ivy's license.

6. The notice 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.

7. After the hearing was set, Staff filed a motion for summary disposition.

8. The motion was filed more than 30 days before the scheduled hearing date and contained the information required by 1 Texas Administrative Code § 155.505.

9. Staff's motion was filed on August 1, 2018, and served on Mr. Ivy both at his address of record with the Department and at his current address in federal prison.

10. Mr. Ivy did not respond to the motion.

11. After considering the pleadings, summary disposition evidence, and arguments presented, the Administrative Law Judge granted the motion for summary disposition and canceled the hearing in Order No. 1, issued August 31, 2018.

IV. CONCLUSIONS OF LAW

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to Texas Insurance Code §§ 82.051, 4001.002, 4005.101-.102, 4051.051, and 4054.051; and Texas Government Code §§ 2001.051-.178.

2. The State Office of Administrative Hearings has jurisdiction to hear this matter and issue a proposal for decision. Tex. Gov't Code ch. 2003.

3. Staff's motion for summary disposition was timely, complete, and properly served on Mr. Ivy pursuant to 1 Texas Administrative Code (TAC) § 155.505.

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4. Because there is no genuine issue of material fact, summary disposition is appropriate in this matter under 1 TAC § 155.505.

5. The Department is required to revoke Mr. Ivy's license. Texas Occupations Code § 53.021(b).

6. The Department should revoke Mr. Ivy's license pursuant to Texas Occupations Code § 53.021(b).

SIGNED October 25, 2018.

HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS