

No. 2017- 5193

**OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE**

Date: AUG 23 2017

Subject Considered:

OTERIAS LAVALLE KELLEY, II
20750 Rainmead
Houston, Texas 77449

DEFAULT ORDER
SOAH DOCKET NO. 454-17-4520.C
TDI ENFORCEMENT FILE NO. 11795

General remarks and official action taken:

This order is in consideration of the application for a general lines agent license with a property and casualty qualification for Oterias Lavalle Kelley, II.

FINDINGS OF FACT

1. Oterias Lavalle Kelley, II submitted an application for a general lines agent license with a property and casualty qualification to the department on March 5, 2016.
2. The department proposed to deny Kelley's application on May 31, 2016, based on his criminal history. He appealed that decision and made a written request for a hearing.
3. On June 9, 2017, TDI sent a notice of hearing to Kelley's last known address provided in writing to the department, 20750 Rainmead, Houston, Texas, 77449. Notice was also sent to two additional addresses associated with Kelley: 6407 Antoine Dr Apt 1706, Houston, Texas 77091 and P.O. Box 670764, Houston, Texas 77267.
4. Kelley failed to file a written response to the notice of hearing within 20 days of the date the notice of hearing was mailed.
5. On August 1, 2002, the 14th Circuit Court Muskegon of Muskegon County, Michigan sentenced Kelley to 10 to 30 years in prison for the offense of Homicide-Murder-Second Degree, a felony offense.
6. In his statement provided to the department regarding his criminal history, Kelley stated that after being robbed at gunpoint, he took a handgun from his step-father and went to confront his assailants. When he arrived at their location, someone fired a handgun at him, at which point he returned fire. He claimed that one of the bullets ricocheted off the cement

and hit a man in the buttocks and exited his neck. The shot ultimately resulted in the man's death.

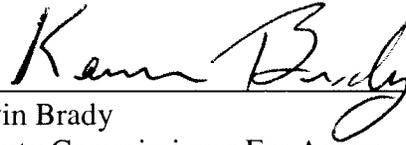
7. On January 16, 2017, Kelley provided the department with a police report from the incident that provided a different set of circumstances. The police report indicates that Kelley killed a 17 month old infant by striking him multiple times.
8. On January 17, 2017, Kelley confirmed that the offense report he sent was the correct report and stated it was the only crime of which he was ever accused. Therefore, Kelley's original story to the department was false.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction pursuant to TEX. INS. CODE §§ 82.051-82.055, 4001.002, 4001.102, 4001.105, 4005.101, 4005.102, and 4051.051; TEX. OCC. CODE §§ 53.021-53.023; 28 TEX. ADMIN. CODE § 1.502; and TEX. GOV'T CODE §§ 2001.051-2001.178.
2. TEX. GOV'T CODE § 2001.056; TEX. INS. CODE § 82.055; and 28 TEX. ADMIN. CODE §§ 1.47, 1.88, and 1.89 give the commissioner authority to dispose of this case informally.
3. Based on 28 TEX. ADMIN. CODE § 19.906, Kelley's last known address is presumed to be 20750 Rainmead, Houston, Texas 77449.
4. The department sent a notice of hearing to Kelley's last known address as required by 28 TEX. ADMIN. CODE §§ 1.28(c) and 1.88(c), 1 TEX. ADMIN. CODE § 155.401, and TEX. GOV'T CODE Ch. 2001. The department sent a notice of hearing to two additional addresses associated with Kelley: 6407 Antoine Dr Apt 1706, Houston, Texas 77091 and P.O. Box 670764, Houston, Texas 77267.
5. The department's allegations in the notice of hearing, set out herein as findings of fact nos. 1-2 and 5-8, are deemed admitted as true pursuant to 28 TEX. ADMIN. CODE § 1.89.
6. Kelley has committed an act for which a license may be denied under TEX. INS. CODE, Chapter 4005, Subchapter C, because:
 - a. He attempted to obtain a license by fraud or misrepresentation, as contemplated by TEX. INS. CODE § 4005.101(b)(3); and
 - b. He has been convicted of a felony, as completed by TEX. OCC. CODE § 53.021(a) and (d) and TEX. INS. CODE § 4005.101(b)(8).
7. Kelley committed an offense that the department considers to be of such a serious nature that it is of prime importance in determining fitness for licensure, as contemplated by 28 TEX. ADMIN. CODE § 1.502(e).
8. Department guidelines, 28 TEX. ADMIN. CODE § 1.502(c) - (e), emphasize that TDI:

- a. considers it very important that applicants be honest, trustworthy, and reliable;
- b. may refuse to issue an original license if the department determines that the applicant has committed a felony or misdemeanor, or has engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation; and
- c. considers the offense of homicide-murder to be of such serious nature that it is of prime importance when determining fitness for licensure. 28 TEX. ADMIN. CODE § 1.502(e)(4)(A).

It is ordered that Oterias Lavallo Kelley, II's application for a general lines agent license with a property and casualty qualification is denied.



Kevin Brady
Deputy Commissioner For Agency Affairs
Texas Department of Insurance
Delegation Order 4506

AFFIDAVIT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, the undersigned authority, personally appeared Mary Ruiz, who, being by me duly sworn, deposed as follows:

“My name is Mary Ruiz and I am employed by the Texas Department of Insurance. I am of sound mind, capable of making this affidavit, and have personal knowledge of these facts which are true and correct.

I have reviewed TDI’s records concerning Oterias Lavallo Kelley, II. I have confirmed that:

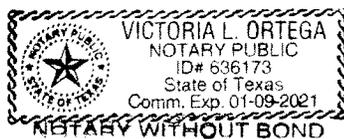
- a. The last mailing address provided to the department by Oterias Lavallo Kelley, II in writing was 20750 Rainmead, Houston, Texas, 77449.
- b. The file maintained by the Enforcement Section of the Legal and Enforcement Division contains a notice of hearing dated June 9, 2017, which was filed with the State Office of Administrative Hearings.
- c. The notice of hearing was addressed to Oterias Lavallo Kelley, II at his last known address and mailed first class and certified, with return receipt requested, on June 9, 2017. Notice was also sent on June 9, 2017, by first class mail and certified with return receipt requested, to two additional addresses associated with Kelley: 6407 Antoine Dr Apt 1706, Houston, Texas 77091 and P.O. Box 670764, Houston, Texas 77267.

Copies of the first class and certified mail logs maintained by the Enforcement Section are attached as Exhibit A and Exhibit B.”

Mary Ruiz
Affiant

SWORN TO AND SUBSCRIBED before me on August 11, 2017.

(NOTARY SEAL)



Victoria L. Ortega
Signature of Notary Public

Victoria L. Ortega
Printed Name of Notary Public

