

No. 2018- 5782

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

Date: DEC 14 2018

Subject Considered:

Texas Department of Insurance

v.

Byron Arninski Foster

SOAH Docket No. 454-18-2410.C

General remarks and official action taken:

The subject of this order is Byron Arninski Foster's application for an adjuster all lines license.

Background

Mr. Foster submitted an application for an adjuster all lines license. TDI proposed to deny the application based on Mr. Foster's criminal history.

A hearing in this case was held before Casey A. Bell, administrative law judge (ALJ) for the State Office of Administrative Hearings. ALJ Bell signed a proposal for decision containing a 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 Bell's proposal for decision. Mr. Foster did not file a response to the exceptions.

In response to the filed exceptions, ALJ Bell did not recommend revising the findings of fact or conclusions of law contained in the proposal for decision. A copy of ALJ Bell's response to exceptions is attached as Exhibit B.

2018- 5782

COMMISSIONER'S ORDER
TDI v. Byron Arninski Foster
SOAH Docket No. 454-18-2410.C
Page 2 of 2

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 Byron Arninski Foster's application for an adjuster all lines license is approved.



Kent C. Sullivan
Commissioner of Insurance

2018 - 5782

State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

September 28, 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. 454-18-2410.C; Texas Department of Insurance v. Byron Arninski Foster

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 Texas Administrative Code § 155.507(c), a SOAH rule which may be found at www.soah.texas.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Casey A. Bell".

Casey A. Bell
Administrative Law Judge

CB/lc
Enclosures include Certified Evidentiary Record

cc: Micah Mireles, Chief Clerk, Texas Department of Insurance, 333 Guadalupe, Tower 1, 13th Floor, Mail Code 113-2A, Austin, Texas 78714-9104 - VIA INTER-AGENCY
Lakisha T. Seldon McKay, Staff Attorney, Texas Department of Insurance, 333 Guadalupe, Tower 1, 13th Floor, Austin, Texas 78701 - VIA INTER-AGENCY
Byron Arninski Foster, 10103 Sage Aspen, Houston, TX 77089 - VIA REGULAR MAIL

SOAH DOCKET NO. 454-18-2410.C

TEXAS DEPARTMENT
OF INSURANCE,
Petitioner

v.

BYRON ARNINSKI FOSTER,
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 deny Byron Arninski Foster's application for an adjuster all lines license based on his criminal history. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department grant Mr. Foster's application.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this case was held on May 15, 2018, before ALJ Casey A. Bell at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff was represented by attorney LaKisha McKay. Mr. Foster appeared and represented himself. The hearing concluded the same day.

After the hearing, the ALJ held the record open for Mr. Foster to offer additional letters of recommendation as evidence in support of his licensure. Mr. Foster filed six letters of recommendation on May 30, 2018, and on June 11, 2018, Staff filed objections to the letters. On June 13, 2018, the ALJ issued Order No. 3 overruling Staff's objections and admitting the six letters into evidence.

On June 27, 2018, Staff filed a written closing argument. On July 23, 2018, Mr. Foster filed a written closing argument. On July 24, 2018, Staff filed the written transcript of the

hearing. On August 1, 2018, the ALJ issued Order No. 4 admitting the parties' closing arguments and the hearing transcript and closing the record.

Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law without further discussion.

II. DISCUSSION

A. Undisputed Material Facts

On September 20, 1990, in the 209th Criminal District Court of Harris County, Texas, Mr. Foster pleaded guilty to a felony charge of burglary of a habitation. The court sentenced Mr. Foster to six years of probation and imposed a fine, and Mr. Foster was discharged from probation on October 7, 1996.

On June 10, 1998, the 338th Criminal District Court of Harris County, Texas, placed Mr. Foster on deferred adjudication for the offense of theft greater than \$1,500 but less than \$20,000, a state jail felony. Mr. Foster was placed on probation for three years. The court revoked his probation on September 8, 2000, sentenced him to seven months in state jail, and assessed a \$300 fine and \$171.25 in court costs.

On September 11, 2000, in Harris County Criminal Court at Law No. 4, Mr. Foster pleaded guilty to the misdemeanor charge of evading arrest. The court sentenced Mr. Foster to 11 days confinement and assessed \$200.25 in court costs.

On May 31, 2016, Mr. Foster applied with the Department for an adjuster-all lines license. On January 25, 2018, the Department proposed to deny his application based on his criminal record, and on February 1, 2018, Mr. Foster timely requested a hearing.

B. Applicable Law

The Department may deny a license application if the Department determines that the applicant has been convicted of a felony.¹ The Department, in accordance with Texas Occupations Code § 53.025, 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.² The Department may refuse to issue a license if it 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.³ The Department considers burglary and theft offenses to be of such a serious nature that they are of prime importance in determining fitness for licensure.⁴

In determining the fitness of a person who has been convicted of a crime to perform the duties and responsibilities of the licensed occupation, the licensing authority must also consider the following 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 following release;
- other evidence of the person's present fitness, including letters of recommendation from:

¹ Tex. Ins. Code § 4005.101(b)(8).

² Tex. Occ. Code § 53.025(a); 28 Tex. Admin. Code § 1.502(e).

³ 28 Tex. Admin. Code § 1.502(d).

⁴ 28 Tex. Admin. Code § 1.502(e)(4)(E)-(F).

- prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
- the sheriff or chief of police in the community where the person resides; and
- any other persons in contact with the convicted person; and
- proof furnished by the applicant that the applicant has:
 - maintained a record of steady employment;
 - maintained a record of good conduct; and
 - 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

C. Evidence

Staff offered five exhibits, which were admitted, including Mr. Foster's application, along with information he provided about his convictions and letters of recommendation, as well as an incident report regarding Mr. Foster's burglary of a habitation and arrest records pertaining to his evading arrest offense. Staff also called Mr. Foster and Lewis Weldon Wright IV, Continuing Education and Administrative Review Manager for the Department, as witnesses. As previously discussed, Mr. Foster offered six letters of recommendation that were admitted over Staff's objections.

1. Mr. Foster's Testimony

Mr. Foster testified that he has been self-employed since 2004 as a consultant for oil and gas companies. Specifically, he is a lease analyst. After oil and gas leases are executed, he enters the lease information into a computer system, maintains the leases, and ensures that the lessors receive timely royalty payments pursuant to the leases. As part of his work, he has access

⁵ Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(h)(2).

to the personal information of the parties to the leases, including social security numbers, addresses, and bank account and routing numbers. Before his current work, he owned a trucking company. According to Mr. Foster, he applied for his adjuster-all lines license because of the uncertainty and volatility of the oil and gas market. He also currently owns a business called Infinite Taxes that provides tax return preparation advice, and he just started a horizontal drilling company. Mr. Foster has earned income through Infinite Taxes, but has not yet made money from the drilling company operations.

Mr. Foster admitted that he has two felony convictions, one for burglary of a habitation and one for theft, and one misdemeanor conviction for evading arrest. He was 19 years old when he committed the burglary, 27 years old when he committed the theft, and 29 years old when he evaded detention.

Regarding his evading arrest conviction, Mr. Foster testified that an officer pulled him over after he drove through a yellow light. At the time, he had a warrant out for his arrest for a probation violation. Mr. Foster ran from the officer that pulled him over. He stated that the officer that pulled him over was a classmate of his, and the arresting officer was a member of his church. Mr. Foster testified that it was stupid of him to run from the officer. Mr. Foster wrote a statement regarding the offense that he included with his license application.⁶ The statement is consistent with his testimony at the hearing.

In response to Staff's notice of hearing in this case, Mr. Foster submitted to Staff and filed with SOAH a letter offering an explanation of his convictions.⁷ He testified that he provided the explanations orally to a friend, Tomeka Douglas, who actually wrote the letter. Mr. Foster did not read over the letter before it was sent to Staff and filed with SOAH. The letter indicates that before his arrest for evading detention, Mr. Foster did not know he was being pulled over. It also states that he felt he was being racially profiled, and that the officer said he

⁶ Staff Ex. 2 at 26.

⁷ Staff Ex. 1 at 21-22.

did not apply a turn signal.⁸ Mr. Foster testified that none of these statements are accurate, and implied that Ms. Douglas had misunderstood what he had told her. In the incident report regarding the evading arrest offense, the arresting officer wrote a narrative of the events leading to Mr. Foster's arrest.⁹ Mr. Foster testified that much of the narrative is inaccurate; specifically, he stated that he was never struck with a baton by the arresting officer or grabbed by the officers as stated in the narrative.

Concerning his burglary conviction, Mr. Foster stated that he did not commit the crime as alleged. He testified that he pleaded guilty because he worried about serving prison time. According to Mr. Foster, he should have been charged with possession of stolen property and not burglary. He explained that persons whom he knew had stolen audio and video equipment from a house and brought it to his mother's house, where he was living at the time. Mr. Foster stated that he told them to take all of the equipment away except for some speakers that he put in his car. Later, one of the persons tried to pawn some of the stolen equipment. After that person was caught by the police, he directed them to Mr. Foster's mother's house for the speakers. Mr. Foster denied that he was present during the burglary or that he knew the equipment was stolen at the time. He claimed he was told that if he did not plead guilty to the burglary charge, he would serve ten years in prison.

As for the theft offense, Mr. Foster explained that he obtained some computers from a friend. When he went to sell the computers to another friend, the police arrived and asked if the computers were stolen. He stated that he was set free after the police ran the serial numbers of the computers and did not find any of them reported stolen. Mr. Foster stated that a month later, a detective called him and told him that the computers were in fact stolen.

He testified that after he was put on probation for this offense, he failed to timely complete his community service because he injured his ankle playing basketball. When he went back to court, he was offered the choice of restarting the three years of probation or serving

⁸ Staff Ex. 1 at 22.

⁹ Staff Ex. 5 at 104-05.

seven months in prison, and he chose to serve the time in prison. Mr. Foster stated that he has had no trouble or run-ins with law enforcement since he was released from prison. He testified that he has paid all of his fines and court costs.

Mr. Foster stated that if the Department grants his license application, he plans to work for Ms. Douglas's company. He testified that Ms. Douglas is a licensed insurance agent who has been working in the insurance field for 25 years.

Mr. Foster testified that he has shown his trustworthiness because he has had access to bank account information and Social Security numbers for years in his current work without incident. He also contended that his convictions occurred many years ago, and that his behavior that led to those convictions is not indicative of his character. Mr. Foster testified that he made mistakes and had no excuses for them. He apologized for his actions and stated that he has learned lessons from his mistakes that he applies in raising his 11-year-old and 6-year-old sons. Mr. Foster stated that his 6-year-old lives with him and that he sees his 11-year-old, who lives close by with his mother, on a regular basis. He testified that he pays child support for his older son.

2. Letter of Recommendation

Ms. Douglas wrote a letter of recommendation for Mr. Foster.¹⁰ Her letter states that she came to know Mr. Foster through working with him in the oil and gas industry. She recommends him for insurance work and states that he is "very upstanding, respectful and [a] diligent working individual" who does volunteer work. She further states that he is "very friendly"; develops "excellent rapport" with clients and professional organizations; and is assertive, polite, trustworthy, and intelligent.¹¹

¹⁰ Staff Ex. 2 at 40.

¹¹ Staff Ex. 2 at 40.

Mr. Foster also submitted two letters of recommendation from Roswald O. Hawkins II, an insurance agent from Hawkins Insurance Agency in Houston.¹² Mr. Hawkins states that he has known Mr. Foster for two years.¹³ According to Mr. Hawkins, Mr. Foster is professional and relates well with customers. One of the letters states that Mr. Hawkins has never received any complaints regarding Mr. Foster's "work aptitude or customer service skill-set."¹⁴ He also opines that Mr. Foster has great character, is compassionate, and keeps his word. Mr. Hawkins appreciates Mr. Foster's contributions to his church and their community.¹⁵

Mr. Foster submitted a letter of recommendation from Steve Barbosa, a family friend.¹⁶ Mr. Barbosa states that he and Mr. Foster went to school together and that he has known Mr. Foster for 30 years. He indicates that Mr. Foster is loyal and dedicated, professional, and kind and generous. Mr. Barbosa compliments Mr. Foster on his work in the oil and gas business, stating that he "will always go the extra mile on his projects," and that he is a "team player" and a good communicator. Mr. Barbosa states that Mr. Foster "leads by example, as an active church goer and dependable neighbor."¹⁷

Mr. Foster also submitted a letter of recommendation from Marcy Lester. Ms. Lester indicates that she is Mr. Foster's friend and that they have also worked together. She states that Mr. Foster demonstrates honesty and integrity and has a strong work ethic, and that he is caring and compassionate and helps others. Ms. Lester states that Mr. Foster mentors youth in his church and is involved in community outreach programs. Based on their joint business endeavors, Ms. Lester opines that Mr. Foster possesses the qualities required to establish "lasting personal and professional relationships."¹⁸

¹² Staff Ex. 2 at 39; Resp. Ex. 1 at 6.

¹³ Resp. Ex. 1 at 6.

¹⁴ Staff Ex. 2 at 39.

¹⁵ Resp. Ex. 1 at 6.

¹⁶ Resp. Ex. 1 at 1.

¹⁷ Resp. Ex. 1 at 1.

¹⁸ Resp. Ex. 1 at 2.

Mr. Foster submitted a letter of recommendation from Ellis Hubbard III.¹⁹ The letter states that Mr. Hubbard met Mr. Foster two years ago through the disaster recovery business, and that Mr. Foster is loyal and hard-working with a strong desire to help people.²⁰

Mr. Foster submitted a letter of recommendation from Gloria Davis.²¹ Ms. Davis states that she has known Mr. Foster since he was in high school, where she states that he was a leader. Ms. Davis states that Mr. Foster encourages those around him and makes them better, and he is quick to make friends. She notes that he is an active member of his church, where he donates his time to transport elders to and from church service and mentors youth members. Ms. Davis recounts how Mr. Foster helped strangers recover after Hurricane Harvey hit Houston last year by cleaning debris and waste from yards and homes and providing transportation.²²

Finally, Mr. Foster submitted a letter of recommendation from Dr. Marcus D. Cosby, Senior Pastor at Wheeler Avenue Baptist Church in Houston.²³ Dr. Cosby states that Mr. Foster has been a member at his church since October 2006. He states that Mr. Foster has grown spiritually and is committed to the church. He states that Mr. Foster is trustworthy and dependable, and that he has "every confidence that despite whatever mistakes or missteps Mr. Foster made nearly thirty years ago, those errors have no connection to the man he is today."²⁴

3. Mr. Wright's Testimony

Mr. Wright has been with the Department for ten years. He previously worked as a health claims examiner manager handling group health insurance claims. Mr. Wright has also worked as an underwriter for seven years and an insurance agent for 12 years. Overall, he has

¹⁹ Resp. Ex. 1 at 3.

²⁰ Resp. Ex. 1 at 3.

²¹ Resp. Ex. 1 at 5.

²² Resp. Ex. 1 at 5.

²³ Resp. Ex. 1 at 7.

²⁴ Resp. Ex. 1 at 7.

been in the insurance industry for approximately 31 years. Mr. Wright currently oversees a staff at the Department that analyzes applications for licenses that have unacceptable responses to questions or reveal that the applicant has a criminal background.

Mr. Wright explained generally the process that he and his staff go through for an applicant with a criminal record. He stated that for those types of applications, the Department may deny them, issue the license, or issue the license but suspend it immediately pursuant to a probation agreement. For a probated license, Mr. Wright explained that the licensee could be subject to additional reporting requirements, to the Department as well as to employers or professional associations or affiliates. A probated license might also include additional continuing education requirements. He testified that the additional requirements for a probated license are intended to allow for additional monitoring by the Department of the licensee to ensure that Texas consumers are protected.

According to Mr. Wright, Mr. Foster disclosed all of his criminal convictions in his application and provided written statements explaining those convictions. He noted that Mr. Foster also provided the Department with a resume and letters of recommendation from two insurance-related professionals.

Mr. Wright also explained the duties and responsibilities of an insurance adjuster, and stated that the job requires significant exposure to Texas consumers and their property. He testified that the Department must find a person trustworthy before licensing that person as an adjuster. He opined that based on his review of Mr. Foster's application and the supplemental information Mr. Foster provided the Department, Mr. Foster is not currently fit for licensure as an adjuster. Mr. Wright stated that at the very least, any license issued to Mr. Foster must be probated with required education regarding "the insurance mechanism" and ethics. He testified that although every case must be evaluated on a case-by-case basis, approximately ten years is a sufficient time to establish a good track record for an applicant. However, the burglary and theft convictions and Mr. Foster's overall pattern of conduct heightened his concern and were important factors in the Department's decision to deny Mr. Foster's application. Mr. Wright did

indicate that additional letters of recommendation could change the result of Mr. Foster's application.

D. Analysis and Recommendation

Pursuant to Texas Insurance Code § 4005.101(b)(8), the Department may deny a license application if the Department determines that the applicant has been convicted of a felony. The Department must consider the factors listed in Texas Occupations Code § 53.023 and 28 Texas Administrative Code § 1.502(h)(2), set out above, in determining whether to grant Mr. Foster's license application.

Mr. Foster has two felony convictions, one for burglary of a habitation and the other for theft. These offenses both occurred over 20 years ago. He was 19 years old when he committed the first offense and 27 years ago when he committed the second. He was also convicted of a misdemeanor evading arrest charge for an offense that occurred over 18 years ago. The felonies are certainly serious crimes and rightly caused the Department concern about Mr. Foster's fitness to act as an insurance adjuster.

However, Mr. Foster paid all of his fines and court costs and completed all requirements of his sentences. Since his release from prison over 17 years ago, Mr. Foster has clearly rehabilitated himself and established a record of good conduct. He expressed remorse and accepted responsibility for his past transgressions. The evidence shows that he has worked steadily, been a successful businessman in several different fields, not been charged with any further crimes, and become a valued and respected member of his church and community. Significantly, he has worked with sensitive personal information in his job as a lease analyst and through his tax advice business without reported incident. Although none of his seven letters of recommendation are from prosecutors, law enforcement, or correctional officers, two of them are from licensed insurance professionals, and they all consistently praise Mr. Foster for his integrity, willingness and desire to help others, good character, trustworthiness, and dependability.

The preponderance of the evidence shows that over the last 17 years, Mr. Foster has turned his life around. He has become a productive and successful member of society who supports his dependents and is committed to his career and to being a positive presence in his church and his community. The ALJ finds that Mr. Foster is currently fit to perform the duties and responsibilities of a licensed insurance adjuster. Therefore, the ALJ recommends that the Department grant his application for an adjuster-all lines license.

III. FINDINGS OF FACT

1. On May 31, 2016, Byron Arninski Foster applied for an adjuster-all lines license from the Texas Department of Insurance (Department).
2. On January 25, 2018, the Department proposed to deny Mr. Foster's application. On February 1, 2018, Mr. Foster timely requested a hearing to challenge the denial.
3. On February 21, 2018, the Department issued to Mr. Foster a notice of hearing on the denial of his application.
4. 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 incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
5. The hearing was held on May 15, 2018, before Administrative Law Judge (ALJ) Casey A. Bell at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff was represented by attorney LaKisha McKay. Mr. Foster appeared and represented himself. The hearing concluded the same day.
6. After the hearing, the ALJ held the record open for Mr. Foster to offer additional letters of recommendation as evidence in support of his licensure. Mr. Foster filed six letters of recommendation on May 30, 2018, and on June 11, 2018, Staff filed objections to the letters.
7. On June 13, 2018, the ALJ issued Order No. 3 overruling Staff's objections and admitting the six letters into evidence.
8. On June 27, 2018, Staff filed a written closing argument. On July 23, 2018, Mr. Foster filed a written closing argument. On July 24, 2018, Staff filed the written transcript of the hearing.

9. On August 1, 2018, the ALJ issued Order No. 4 admitting the parties' closing arguments and the hearing transcript and closing the record.
10. On September 20, 1990, in the 209th Criminal District Court of Harris County, Texas, Mr. Foster pleaded guilty to a felony charge of burglary of a habitation. The court sentenced Mr. Foster to six years of probation and imposed a fine, and Mr. Foster was discharged from probation on October 7, 1996.
11. On June 10, 1998, the 338th Criminal District Court of Harris County, Texas, placed Mr. Foster on deferred adjudication for the offense of theft greater than \$1,500 but less than \$20,000, a state jail felony. Mr. Foster was placed on probation for three years. The court revoked his probation on September 8, 2000, sentenced him to seven months in state jail, and assessed a \$300 fine and \$171.25 in court costs.
12. On September 11, 2000, in Harris County Criminal Court at Law No. 4, Mr. Foster pleaded guilty to the misdemeanor charge of evading arrest. The court sentenced Mr. Foster to 11 days confinement and assessed \$200.25 in court costs.
13. Mr. Foster was 19 years old at the time of the burglary of a habitation offense.
14. Mr. Foster was 27 years old at the time of the theft offense.
15. Mr. Foster was 29 years old at the time of the evading arrest offense.
16. Over 18 years have passed since Mr. Foster last committed a crime, and he has been out of prison for over 17 years.
17. Mr. Foster paid all of his fines and court costs and completed all requirements of his sentences.
18. Since his release from prison, Mr. Foster has rehabilitated himself and established a record of good conduct.
19. Mr. Foster expressed remorse and accepted responsibility for his past transgressions.
20. Since his release from prison, Mr. Foster has worked steadily, been a successful businessman in several different fields, not been charged with any further crimes, and become a valued and respected member of his church and community.
21. Mr. Foster has worked with sensitive personal information in his job as a lease analyst and through his tax advice business without reported incident.
22. The letters of recommendation submitted on behalf of Mr. Foster, two of which came from insurance industry professionals, consistently praise Mr. Foster for his integrity, willingness and desire to help others, good character, trustworthiness, and dependability.

23. Mr. Foster supports his dependents and is committed to his career.

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. Foster received timely and sufficient notice of hearing. Tex. Gov't Code ch. 2001; Tex. Ins. Code § 4005.104(b).
4. The Department may deny a license application if the Department determines that the applicant has been convicted of a felony. Tex. Ins. Code § 4005.101(b)(8).
5. Mr. Foster has shown the fitness required to perform the duties and discharge the responsibilities of a licensed insurance adjuster. Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(h)(2).
6. The Department should approve Mr. Foster's application.

SIGNED September 28, 2018.



CASEY A. BELL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

2018 - 5782



State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

November 16, 2018

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. 454-18-2410.C; Texas Department of Insurance v. Byron Arninski Foster

Dear Commissioner Sullivan:

On September 28, 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 15, 2018. Respondent Byron Arninski Foster did not file any exceptions and did not respond to Staff's exceptions.

Staff's exceptions mostly set forth arguments that were fully presented at the hearing in this case and which I carefully considered in preparation of the PFD. However, I will address Staff's contention that the PFD misinterpreted certain testimony provided by Staff witness Lewis Weldon Wright IV. Mr. Wright was asked by the ALJ how long it would take for Mr. Foster to continue steady employment and good conduct before Staff could find him fit for licensure. Mr. Wright testified that Staff evaluates each applicant on a case-by-case basis, and that in a particular case, having numerous credible letters of recommendation could "tip the boat" in favor of an applicant. He was not referring to Mr. Foster's application specifically, but his testimony could fairly be interpreted to apply to Mr. Foster's case generally, given the number of recommendation letters submitted on his behalf. Regardless, I would have reached the same decision on Mr. Foster's fitness for licensure without this testimony from Mr. Wright.

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SOAH Docket No. 454-18-2410.C

Exceptions Letter

Page 2

I do not recommend any changes to the PFD in response to Staff's exceptions, and the PFD is ready for your consideration.

Sincerely,



Casey A. Bell
Administrative Law Judge

CAB/lc

cc: LaKisha T. McKay, Staff Attorney, Texas Department of Insurance, 333 Guadalupe Street, MC110-1A, Austin, Texas 78701 **VIA FACSIMILE: (512) 490-1020**
Byron Aminski Foster, 10103 Sage Aspen, Houston, TX 77089 - **VIA REGULAR MAIL & VIA EMAIL** at Aminskib@yahoo.com
Micah Mireles, Chief Docket Clerk, Texas Department of Insurance, 333 Guadalupe, Tower, 13th Floor, Austin, Texas 78701 **VIA FACSIMILE: (512) 490-1064**
Norma Garcia, General Counsel, Texas Department of Insurance, 333 Guadalupe, Tower, 13th Floor, Austin, Texas 78701 **VIA FACSIMILE: (512) 490-1064**

2018- 5782

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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SERVICE LIST

AGENCY: Insurance, Texas Dept. of (TDI)
STYLE/CASE: BYRON ARNINSKI FOSTER
SOAH DOCKET NUMBER: 454-18-2410.C
REFERRING AGENCY CASE: 14224

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ CASEY BELL

REPRESENTATIVE / ADDRESS

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TEXAS DEPARTMENT OF INSURANCE

2018- 5782

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