

No. 2024-8720

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

Date: 7/3/2024

Subject Considered:

Texas Department of Insurance

v.

William Elzy Kelley, Jr.

SOAH Docket No. 454-24-07045.C

General Remarks and Official Action Taken:

The subject of this order is William Elzy Kelley, Jr.'s application for a life agent license. This order denies Mr. Kelley's application.

Background

After proper notice was given, the above-styled case was heard by an administrative law judge for the State Office of Administrative Hearings. The administrative law judge made and filed a proposal for decision containing a recommendation that the Texas Department of Insurance (TDI) deny Mr. Kelley's application.

TDI adopts the administrative law judge's proposed findings of fact and conclusions of law.

Findings of Fact

The findings of fact contained in Exhibit A are adopted and incorporated by reference into this order.

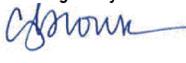
Conclusions of Law

The conclusions of law contained in Exhibit A are adopted and incorporated by reference into this order.

COMMISSIONER'S ORDER
TDI v. William Elzy Kelley, Jr.
SOAH Docket No. 454-24-07045.C
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Order

It is ordered that William Elzy Kelley, Jr.'s application for a life agent license is denied.

DocuSigned by:

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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

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Jessica Barta, General Counsel

DocuSigned by:

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Justin Beam, Chief Clerk

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS DEPARTMENT OF INSURANCE,
PETITIONER**

v.

**WILLIAM ELZY KELLEY, JR.,
RESPONDENT**

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny the application of William Elzy Kelley, Jr. (Respondent) for a life agent license based on Respondent's criminal history and fraudulent and dishonest conduct. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) finds that Staff met its burden of proof and recommends that the Department deny Respondent's license application.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

The hearing was held on March 5, 2024, before ALJ Jessica Witte of the State Office of Administrative Hearings (SOAH) via the Zoom videoconference platform. Staff was represented by Jeannie Ricketts. Respondent represented himself. The hearing concluded the same day, and the record closed on March 19, 2024, on receipt of the transcript. Notice and jurisdiction are not disputed and are set out in the findings of fact and conclusions of law.

II. APPLICABLE LAW

The Department may deny a license to an applicant who has engaged in fraudulent or dishonest acts or practices or who has been convicted of a felony.¹ The Department may also disqualify a person from receiving a license on the grounds that the person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.² The Department has identified certain crimes that it considers to be of such a serious nature that they are of prime importance in determining fitness for licensure.³ These crimes include any offense for which fraud, dishonesty, or deceit is an essential element and burglary offenses.⁴

¹ Tex. Ins. Code § 4005.101(b)(5), (8).

² Tex. Occ. Code § 53.021(a)(1).

³ 28 Tex. Admin. Code § 1.502(e). Section 1.502 was amended by the Department effective September 26, 2023. This Proposal for Decision cites to the prior version of this rule that was in effect at the time Respondent filed his application.

⁴ 28 Tex. Admin. Code § 1.502(e)(1), (e)(4)(E).

If a license applicant pled guilty to a crime, received deferred adjudication, and, at the conclusion of the period of supervision, a judge dismissed the proceedings, then the Department may not consider the applicant convicted of the offense at issue.⁵

Whether a convicted offense directly relates to the duties and responsibilities of a licensed occupation is determined by considering the following factors:

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.⁶

The Department must also consider the following factors to determine whether a person who has been convicted of a crime is fit for licensure:

1. the extent and nature of the person's past criminal activity;
2. the age of the person when the crime was committed;

⁵ Tex. Occ. Code § 53.021(c).

⁶ Tex. Occ. Code § 53.022; 28 Tex. Admin. Code § 1.502(h)(1).

3. the amount of time that has elapsed since the person's last criminal activity;
4. the conduct and work activity of the person prior to and following the criminal activity;
5. evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following 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.⁷

Staff has the burden of producing evidence to show that Respondent's application should be denied because he has a criminal history that warrants denial of the registration.⁸ Once Staff produces such evidence, the burden of production

⁷ Tex. Occ. Code § 53.023(a); *see also* 28 Tex. Admin. Code 1.502(h)(2) (referring to the version of Texas Occupations Code section 53.023 prior to its amendment in 2019).

⁸ The Amended Petition repeatedly references 28 Tex. Admin. Code § 1.502(e)(2) as the Department's authority to deny Respondent's application based on his commitment of a crime of such a serious nature that it is of prime importance in determining fitness for licensure. However, this subsection details authority to deny a license application when the applicant has committed violations of state or federal insurance law. Such facts are not at issue here. Instead the applicable subsection is Rule 1.502(e)(1) regarding any offense for which fraud, dishonesty, or deceit is an essential element. The Amended Petition also alleges that Petitioner has convicted of a felony under 18 U.S.C. § 1033, and therefore requires written consent of the commissioner of insurance to engage in the business of insurance. Such a conviction is not reflected in the record and Staff did not argue this at the hearing. Staff did not meet its burden to prove such an allegation and it is not addressed further herein.

shifts to Respondent to show that he is fit for licensure despite his criminal history.⁹ The standard of proof is by a preponderance of the evidence.¹⁰

III. EVIDENCE

Staff presented the testimony of Lewis Wright, Department Administrative Review Program Specialist, and offered three exhibits, which were admitted.¹¹ Respondent testified on his own behalf and did not offer any documentary exhibits.

In 1984, Respondent pled guilty to felony burglary in the 278th District Court in Walker County, Texas.¹² Respondent testified that he was in college at this time, and that one of his roommates committed the crime without his knowledge but all the roommates were charged. He was advised to plead guilty by his public defender.¹³ Respondent received deferred adjudication, served three years of probation, and paid a fine.¹⁴

⁹ 1 Tex. Admin. Code § 155.427.

¹⁰ See *Granek v. Texas St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.) (in rejecting application of higher proof standard, observing that “agency license-revocation proceedings are civil in nature and that in civil cases, no doctrine is more firmly established than that issues of fact are resolved by a preponderance of the evidence” (internal citations and quotations omitted)).

¹¹ Staff Exhibit 1 is a collection of filings in this case at SOAH; Staff Exhibit 2 is Respondent’s TDI license application file; Staff Exhibit 3 is additional court documentation related to Respondent’s criminal history. Citations to page numbers in the exhibits refer to the TDI Bates numbers.

¹² Staff Ex. 3 at 149-50.

¹³ Transcript (Tr.) 39-42.

¹⁴ Staff Ex. 3 at 149-50.

Respondent went on to work in the insurance business for a number of years, first in Louisiana, then in Texas.¹⁵ He was issued a combination/industrial agent license in 1991 that expired in 1993. He was issued a general lines agent license in 1993 that expired in 2007 due to a failure to renew.¹⁶ He then worked in sales in other industries and owned his own public safety business from 2010 to 2014.¹⁷ Respondent was issued a life agent license on May 7, 2014, that expired in 2017 due to failure to renew.¹⁸ However, he did not work in insurance while this license was active; he was working in sales in another industry.¹⁹

From 2012 to 2014, Respondent was the president of the Booster Club for the West Brook High School football team, a nonprofit organization separate from the local school district. Between September 2013 and February 2014, Respondent withdrew for personal use a total of \$33,891.17 from the Booster Club bank account in 62 separate transactions.²⁰ At some point thereafter, Respondent sold some personal assets and repaid the Booster Club account \$30,000.²¹ Respondent testified that he did not think it was wrong at the time to use the Booster Club debit card for personal expenses because he intended to pay it back, and that he told the Booster

¹⁵ Staff Ex. 2 at 88; Tr. 42-44.

¹⁶ Staff Ex. 2 at 31.

¹⁷ Staff Ex. 2 at 73, 88; Tr. 44-45.

¹⁸ Staff Ex. 2 at 32.

¹⁹ Staff Ex. 2 at 73.

²⁰ Staff Ex. 2 at 83-84; Tr. 59.

²¹ Staff Ex. 2 at 85, 88.

Club treasurer about it.²² Another member of the Booster Club became aware of these transactions and reported the conduct.²³ Respondent testified generally that he felt the conduct was blown out of proportion; the whistleblower exercised a personal grievance against him; and law enforcement attempted to tie him to a much broader, and unrelated, criminal fraud investigation involving the Beaumont Independent School District.²⁴

On September 8, 2014, Respondent was charged through a criminal information in the United States District Court for the Eastern District of Texas, Beaumont Division, with one count of wire fraud, a federal felony, for his unauthorized conversion of Booster Club funds.²⁵ On April 13, 2015, Respondent entered into a plea agreement whereby he pled guilty to one count of wire fraud as detailed in the criminal information.²⁶ On June 21, 2015, the court entered an amended judgment finding Respondent guilty of one count of wire fraud and sentencing him to imprisonment for 12 months and one day, followed by two years of supervised release. The court also imposed \$100 in fees and \$3,891.17 in

²² Tr. 46-47, 60.

²³ Staff Ex. 2 at 83.

²⁴ Tr. 47-53, 58, 60.

²⁵ Staff Ex. 3 at 115-16.

²⁶ Staff Ex. 3 at 140-46.

restitution to the Booster Club.²⁷ Respondent completed his term of imprisonment and supervised release as of June 8, 2018.²⁸ He returned to working in sales.²⁹

On April 13, 2022, Respondent applied for a life agent license wherein he disclosed a prior felony conviction.³⁰ On April 15, 2022, Staff contacted Respondent requesting that he provide the court documents for the felony conviction, a personal statement describing the circumstances of the offense, letters of recommendation, and a resume.³¹ Respondent provided these documents. The personal statement generally admits the details of misappropriating the Booster Club funds, but focuses on deflecting blame to other individuals for pursuing the matter criminally when Respondent had already repaid \$30,000 to the Booster Club account. One line at the end acknowledges, “... I know I did wrong.”³² Mr. Wright testified that Staff made a similar assessment of the personal statement, and that Respondent’s recounting of events was inconsistent in some ways with the court documents.³³ Four short letters of recommendation were provided from friends and acquaintances. Only one makes a vague reference to being aware of criminal charges against Respondent.³⁴ Mr. Wright testified that Staff were unable to determine whether the

²⁷ Staff Ex. 2 at 74-79.

²⁸ Staff Ex. 2 at 68.

²⁹ Staff Ex. 2 at 73.

³⁰ Staff Ex. 2 at 37-42.

³¹ Staff Ex. 2 at 54, 101-02.

³² Staff Ex. 2 at 64-67.

³³ Tr. 30-31.

³⁴ Staff Ex. 2 at 60-63.

recommendation writers had full knowledge of Respondent's criminal conduct.³⁵ Mr. Wright testified that Staff considered Respondent's consistent work history as a factor in his favor in the licensing determination.³⁶

On May 16, 2022, Respondent received notice that the Department proposed to deny his application based on his criminal history.³⁷ On May 31, 2022, Respondent requested a hearing to challenge the denial.³⁸

Respondent testified that he understands the importance of protecting insurance customers and their funds. He further testified that, as a life insurance agent, he would be insulated from the exchange of money because the insurance companies handle payments securely, not the individual agents.³⁹

IV. ANALYSIS

The ALJ finds that the Department established by a preponderance of the evidence that Respondent's application should be denied based on his criminal history. In addition, Respondent did not meet his burden to prove he was currently fit to receive a permanent life agent license. Accordingly, the ALJ recommends that Respondent's application for a life agent license be denied.

³⁵ Tr. 33.

³⁶ Tr. 31-32.

³⁷ Staff Ex. 2 at 56.

³⁸ Staff Ex. 2 at 45.

³⁹ Tr. 56-58.

Respondent's conviction for wire fraud is a felony and constitutes fraudulent and dishonest acts under the Texas Insurance Code. The evidence also established that the wire fraud conduct directly relates to the duties and responsibilities of the licensed occupation based on: the nature and seriousness of this federal felony fraud offense, the relationship between fraud and the consumer protection purposes of licensing insurance agents, the extent to which licensure as an insurance agent would offer the opportunity to engage in further fraud, the relationship of past fraud to Respondent's fitness to perform the duties and discharge the responsibilities of an insurance agent, and the correlation between committing fraud and the duties of a life agent. Respondent attempted to deflect the opportunity for further fraud by emphasizing that large insurance companies typically process customers' funds securely, not individual agents. However, the license for which Respondent has applied does not impose such a limitation.

The Department also properly weighed the additional factors in section 53.023(a) of the Texas Occupations Code. Regarding Respondent's past criminal activity, the evidence does not establish that the 1984 deferred adjudication for burglary constitutes a conviction of a felony. The evidence also does not support that Respondent engaged in fraudulent and dishonest acts in this 1984 incident. He testified credibly to the circumstances and his lack of involvement in his college roommate's crime. He was subsequently licensed by the Department for many years. Therefore, the ALJ does not give the 1984 incident weight in considering Respondent's past criminal activity.

However, the wire fraud crime was serious and recent, committed in 2013 and 2014 while Respondent was an adult. Respondent has maintained a steady work history both before and after the crime, including in the insurance industry, completed the terms of his supervised release, and submitted letters of recommendation speaking highly to his character. On the other hand, these recommendations do not reflect awareness of the extent of the wire fraud conduct. The evidence also shows limits in Respondent's rehabilitation in that he primarily seems to believe that the biggest problem with his use of Booster Club funds was that the wrong person found out about it and reported it as a criminal matter.

The ALJ concludes that the evidence regarding Respondent's current fitness for licensure does not outweigh the serious nature of his offense when viewed in light of the potential occupation being licensed. Accordingly, the ALJ recommends Respondent's license application should be denied. In support of the recommendation, the ALJ issues the following findings of fact and conclusions of law.

V. FINDINGS OF FACT

1. On April 13, 2022, William Elzy Kelley, Jr. (Respondent), applied for a life agent license with the Texas Department of Insurance (Department).
2. On May 16, 2022, the staff (Staff) of the Department proposed to deny his application based on his criminal history.
3. On May 31, 2022, Respondent requested a hearing to challenge the denial.
4. On December 13, 2023, Staff issued a notice of hearing on the denial of his application.

5. 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.
6. The hearing in this case was held via Zoom videoconference on March 5, 2024, before Administrative Law Judge Jessica Witte at the State Office of Administrative Hearings (SOAH). Staff was represented by staff attorney Jeannie Ricketts. Respondent represented himself. The hearing concluded the same day and the record closed upon receipt of the transcript.
7. On April 13, 2015, Respondent pled guilty to wire fraud, a felony, in Cause No. 1:14-CR-00093-001, in the United States District Court for the Eastern District of Texas, Beaumont Division. Respondent was sentenced to imprisonment for 12 months and one day followed by two years of supervised release. He was ordered to pay \$3,891.17 in restitution and \$100 in court costs.
8. Respondent completed the terms of his imprisonment and supervised release as of June 2018.
9. Wire fraud involves fraudulent conduct and dishonesty.
10. Licensure as a life agent would provide Respondent the opportunity to reoffend beyond his current opportunities.
11. Respondent's crime reflects adversely on his ability or capacity to perform the duties of a life agent.
12. Respondent's criminal conduct was committed in 2013 and 2014 when he was an adult.
13. Respondent has maintained steady employment both before and after imprisonment for wire fraud.
14. Respondent provided the Department with letters of recommendation speaking highly of his character, but the letters did not establish that the writers knew the extent of Respondent's criminal history.

15. Respondent submitted his application to the Department less than five years after being discharged from supervised release.
16. Respondent's rehabilitation is limited by his deflection of responsibility for the conduct of wire fraud.
17. The preponderance of the evidence does not show Respondent's current fitness to hold the license.

VI. 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. Respondent received timely and sufficient notice of hearing. Tex. Gov't Code §§ 2001.051-.052; Tex. Ins. Code § 4005.104(b).
4. The Department may deny a license if the Department determines that the applicant has engaged in fraudulent or dishonest acts or practices or has been convicted of a felony. Tex. Ins. Code § 4005.101(b)(5), (8).
5. The Department has determined that certain crimes are of such a serious nature that they are of prime importance in determining fitness for licensure. These crimes include any offense for which fraud, dishonesty, or deceit is an essential element. 28 Tex. Admin. Code § 1.502(e)(1).
6. The Department will consider the factors listed in Texas Occupations Code sections 53.022 and 53.023 in determining whether to issue a license to an applicant with a criminal history. 28 Texas Administrative Code § 1.502(f), (h).
7. Staff had the burden of proving its asserted grounds for denying Respondent's application, while Respondent had the burden to present any favorable evidence of his fitness to be licensed despite the criminal history. 1 Tex. Admin. Code § 155.427.

8. The standard of proof is by a preponderance of the evidence. *Granek v. Tex. St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
9. Staff met its burden to prove that Respondent engaged in fraudulent or dishonest acts or practices; was convicted of a felony; and the acts and the offense were “directly related” to the duties and responsibilities of the licensed occupation. *See* Tex. Ins. Code § 4005.101(b)(5), (8); Tex. Occ. Code §§ 53.021(a)(1), .022; 28 Tex. Admin. Code § 1.502(e)(1).
10. Respondent did not meet his burden to prove that he is presently fit to perform the duties and discharge the responsibilities of the licensed occupation despite his criminal history. Tex. Occ. Code § 53.023.

VII. ALJ RECOMMENDATION

Respondent’s license application should be denied.

SIGNED APRIL 10, 2024

ALJ Signature:

A handwritten signature in black ink, appearing to read "J. Witte", is written over a horizontal line.

Jessica Witte

Presiding Administrative Law Judge