

No. 2024-8723

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

Date: 7/3/2024

Subject Considered:

Texas Department of Insurance

v.

Kathy Carol Witham et al.

SOAH Docket No. 454-24-01094.C

General Remarks and Official Action Taken:

The subject of this order is the escrow officer license held by Kathy Carol Witham aka Kathy Keith Witham.

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 Ms. Witham's license escrow officer license be revoked. A copy of the proposal for decision is attached as Exhibit A.

Enforcement staff for the Texas Department of Insurance (TDI) filed exceptions to the administrative law judge's proposal for decision. Ms. Witham did not file a reply to the exceptions.

In response to the exceptions, the administrative law judge recommended revising the proposal for decision. A copy of the administrative law judge's response to exceptions is attached as Exhibit B.

Findings of Fact

The findings of fact contained in Exhibit A as revised consistent with Exhibit B are adopted by TDI and incorporated by reference into this order.

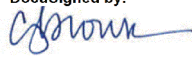
COMMISSIONER'S ORDER
TDI v. Kathy Carol Witham et al.
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Conclusions of Law

The conclusions of law contained in Exhibit A as revised consistent with Exhibit B are adopted by TDI and incorporated by reference into this order.

Order

It is ordered that Kathy Carol Witham aka Kathy Keith Witham's escrow officer license is revoked.

DocuSigned by:

FC5D7EDDFFBB4F8... _____
Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

5DAC5618BBC74D4... _____
Jessica Barta, General Counsel

DocuSigned by:

27ADF3DA5BAF4B7... _____
Justin Beam, Chief Clerk

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

—
**TEXAS DEPARTMENT OF INSURANCE,
PETITIONER**

v.

**KATHY CAROL WITHAM ET AL.,
RESPONDENT**

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to revoke the escrow officer license held by Kathy Carol Witham aka Kathy Keith Witham (Respondent). Staff alleges Respondent has a criminal history that is grounds for revocation. Based on the evidence, the Administrative Law Judge (ALJ) recommends that the Department revoke Respondent's license.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not disputed and are set forth in the Findings of Fact and Conclusions of Law, below. On February 7, 2024, ALJ Megan Johnson of

the State Office of Administrative Hearings convened the hearing on the merits. Attorney Sarah White represented Staff. Attorney Jocelin A. Tapia represented Respondent. The hearing concluded that same day.¹ On February 23, 2024, the record closed upon the filing of the admitted exhibits and transcript.

II. APPLICABLE LAW²

Staff alleged that Respondent violated the Texas Insurance Code when she was guilty of fraudulent or dishonest practices.³ The Department considers it very important that license holders be honest, trustworthy, and reliable,⁴ and will evaluate a license holder’s criminal history and other conduct to determine whether the license holder possesses those qualities.

The Department may revoke a license on several grounds, including if the license holder has engaged in fraudulent or dishonest acts or practices,⁵ has been

¹ A court reporter transcribed the hearing into one volume. References to the transcript in this Proposal for Decision are abbreviated as “Tr. at ___.”

² The Department’s rules were amended in 2023, which resulted in renumbering some of the relevant provisions. The ALJ notes that she has cited to the Department’s rules prior to the 2023 amendments because Respondent’s change to her criminal history occurred in 2019.

³ Tex. Ins. Code § 2652.201(a)(5).

⁴ 28 Tex. Admin. Code § 1.502(c).

⁵ Tex. Ins. Code § 4005.101(b)(5); *see also* 28 Tex. Admin. Code § 1.502(d) (authorizing the Department to refuse to issue a license if it determines the applicant “has engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation.”)

convicted of a felony,⁶ or has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.⁷

In determining whether to revoke a license based on a person’s criminal history, the Department “will consider the factors specified in Texas Occupations Code [sections] 53.022 and 53.023.”⁸ In determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed occupation under Texas Occupations Code section 53.022, a licensed authority, such as the Department, shall consider each of the following factors:

1. the nature and seriousness of the crime;
2. the relationships of the crime to the purposes for requiring a licensee 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

⁶ Tex. Ins. Code § 4005.101(b)(8); *see also* 28 Tex. Admin. Code § 1.502(d) (authorizing the Department to refuse to issue a license if it determines the applicant has committed a felony or misdemeanor).

⁷ Tex. Occ. Code § 53.021(a)(1).

⁸ 28 Tex. Admin. Code § 1.502(h).

5. any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.⁹

To guide its decision-making when considering a license holder's criminal history, the Department has identified certain crimes it considers to be 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, or an offense of theft.¹⁰ The Department has determined that the crimes it considers to be of prime importance are directly related to the occupations it licenses.¹¹

If the Department determines that an offense directly relates to the duties and responsibilities of the licensed occupation, it then considers the following factors under Texas Occupations Code section 53.023 in determining what disciplinary action, if any, to take against a licensee:

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;

⁹ Tex. Occ. Code § 53.022.

¹⁰ 29 Tex. Admin. Code § 1.502(e)(1), (4)(F).

¹¹ 28 Tex. Admin. Code § 1.502(e); *see also* Tex. Occ. Code § 53.025.

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.¹²

It is the license holder’s responsibility, to the extent possible, to obtain and provide to the Department the license holder’s evidence of fitness discussed above.¹³ Additionally, a license holder must furnish proof to the Department that the license holder has: (1) maintained a record of steady employment; (2) supported the license holder’s dependents, where applicable; (3) otherwise maintained a record of good conduct; and (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the license holder has been convicted.¹⁴ The Department will not issue a license unless, when viewed in light of the occupation being licensed, the mitigating factors outweigh the serious nature of the criminal offense or the fraudulent or dishonest conduct.¹⁵

When making a licensing determination, the Department may consider a deferred adjudication to be a conviction if the person has not completed the period of supervision, and if, after considering the factors in Texas Occupations Code

¹² Tex. Occ. Code § 53.023(a).

¹³ 28 Tex. Admin. Code § 1.502(h)(3); Tex. Occ. Code § 53.023(b).

¹⁴ 28 Tex. Admin. Code § 1.502(h)(2)(G).

¹⁵ 28 Tex. Admin. Code § 1.502(f).

sections 53.022 and 53.023(a), the Department determines that the person may pose a continued threat to public safety or that employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.¹⁶ If, after considering the above-listed factors, the Department determines that a deferred adjudication can be treated as a conviction for licensing purposes, then the same factors are weighed in determining whether the applicant is fit to perform the duties and discharge the responsibilities of the licensed occupation despite the criminal offense.¹⁷

In addition to the issues regarding an applicant's criminal history or fraudulent or dishonest conduct, the Department may deny a license if the applicant intentionally made a material misstatement in the license application or attempted to obtain a license by fraud or misrepresentation.¹⁸

Staff has the burden of proving any grounds for revoking Respondent's license, while Respondent has the burden to present any favorable evidence of her fitness to be licensed despite her criminal history.¹⁹ The standard of proof is by a preponderance of the evidence.²⁰

¹⁶ Tex. Occ. Code § 53.021(d).

¹⁷ See Tex. Occ. Code §§ 53.022-.023(a).

¹⁸ Tex. Ins. Code § 4005.101(b)(2)-(3).

¹⁹ 1 Tex. Admin. Code § 155.427.

²⁰ See *Granek v. Tex. St. Bd. Of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

III. EVIDENCE

At the hearing, Staff's Exhibits 1 (Notice of Hearing and Original Petition), 2 (Respondent's Answer), 3A (Certified Copy of TDI Agent and Adjuster Licensing Report with Redactions), and 5 (Additional Documents from Respondent's Counsel to TDI's Enforcement Division) were admitted. Respondent did not offer any exhibits.

Staff presented the testimony from Lewis Wright, the liaison between the Department's agent and adjuster licensing office and the Department's Enforcement Division. Respondent testified on her own behalf and presented the testimony of Christina Zaboura, the office manager at Bhojani Law Firm, with whom she currently works.

A. BACKGROUND FACTS

On October 9, 2013, the Department issued to Respondent escrow officer license number 1308266.²¹ On January 11, 2019, Respondent's license was cancelled.²² Respondent reapplied for her license on June 6, 2019, and the Department reactivated it.²³

On November 1, 2019, Respondent was indicted by a grand jury in Cause Number 1618303D, in the Criminal District Court Number Three in Tarrant

²¹ TDI Ex. 3A at 3.

²² TDI Ex. 3A at 4.

²³ TDI Ex. 3A at 4.

County, Texas for the following two offenses which occurred on August 29, 2018: felony theft of property and felony exploitation of an elderly individual.²⁴ On September 17, 2021, Respondent pled guilty to the second degree felony offense of theft of property and the third degree felony offense of exploitation of an elderly individual.²⁵ The court placed Respondent on deferred adjudication for eight years and ordered her to pay \$169,000 in restitution, in addition to fines and court costs.²⁶ In addition to the standard community supervision conditions, the court also ordered Respondent to comply with additional conditions prohibiting Respondent from obtaining employment or any position where the duties or responsibilities include any of the following:

- Volunteering or working for or with the elderly, except her mother and husband;
- Soliciting or receiving funds from anyone over the age of 65, except for her mother and husband;
- Exercising any rights under any power of attorney purporting to authorize any rights or duties pertaining to financial matters of any other person, except for her mother and husband; and
- Seeking application for appointment or accepting or qualifying for appointment as Guardian, Executor, Administrator of any person or estate without express prior approval of the court, except for her mother and husband.²⁷

²⁴ TDI Ex. 5 at 10.

²⁵ TDI Ex. 5 at 13.

²⁶ TDI Ex. 5.

²⁷ TDI Ex. 5.

Respondent's community supervision probation does not end until September 21, 2029.²⁸

Based on Respondent's criminal history, the Department seeks to revoke Respondent's license.²⁹ Respondent requested a hearing to contest the revocation. She requests that no action be taken against her license.

B. STAFF'S EVIDENCE

In his testimony, Mr. Wright explained that the insurance license application is designed to protect Texas consumers, which is part of the Department's duty.³⁰ He explained that the Department contains an Administrative Review section that reviews license applications of concern that are received, license application that may have a response to a question that raises a concern for the Department, or where a background check has revealed a criminal history that will need to be considered.³¹ The Administrative Review section also considers existing licenses holders if the Department receives a report of misconduct or criminal activity.³² He explained that in situations where the Department has previously granted a person a license, the Department continues to monitor the licensees so as to protect Texas consumers from potential wrongdoing.³³

²⁸ TDI Ex. 5 at 10.

²⁹ TDI Ex. 1 at 7.

³⁰ Tr. at 28-29.

³¹ Tr. at 26.

³² Tr. at 26.

³³ Tr. at 28-29.

One of the ways the Department can ascertain a licensee’s criminal history is by monitoring a database of criminal history reports that are made privy via the Texas Department of Public Safety or the Federal Bureau of Investigation.³⁴ When a licensee is re-arrested, the Department will receive a Criminal History Record Information or Criminal Justice Information System Report—a “rap back” report. Once the Department receives a rap back report on a licensee, the Department gathers information related to the report and monitors the licensee to determine whether the licensee may remain licensed.³⁵

In Respondent’s case, the Department received a rap back report indicating that Respondent’s criminal history should be reviewed.³⁶ Through that review, the Department became aware of Respondent’s “severe” criminal history.³⁷ Mr. Wright testified that both of Respondent’s crimes involved an element of theft and, necessarily, elements of fraud, dishonesty, and deceit.³⁸ He stated that because one of the central problems in the insurance industry is fraudulent acts related to theft and deceitful deception to obtain money, the crimes at issue here are of prime importance.³⁹

³⁴ Tr. at 29.

³⁵ Tr. at 30.

³⁶ Tr. at 31.

³⁷ Tr. at 35.

³⁸ Tr. at 38-39.

³⁹ Tr. at 38.

Mr. Wright testified that in deciding to pursue revocation of Respondent's license, the Department considered additional factors in accordance with the Texas Occupations Code.⁴⁰ The Department considered several factors:

- Respondent's crime occurred over a six-year span of time and that it caused the loss of between \$30,000 to \$150,000;⁴¹
- Respondent's crime victimized an elderly person;⁴²
- Respondent was 60 years old at the time of the crime;⁴³
- Respondent received eight years of probation and is currently still on probation;⁴⁴
- Respondent's offenses occurred relatively recently, between 2012 and 2018;⁴⁵ and
- Respondent had paid the restitution.⁴⁶

Mr. Wright explained that the primary duties of an escrow officer are to act as a fiduciary, primarily in real estate transactions, to handle other people's money, and facilitate the proper transfer of funds as it relates to business transactions.⁴⁷ Because of the special nature of an escrow officer's duties, it is of particular concern to the

⁴⁰ Tr. at 32.

⁴¹ Tr. at 36-37.

⁴² Tr. at 36.

⁴³ Tr. at 37.

⁴⁴ Tr. at 41.

⁴⁵ Tr. at 53.

⁴⁶ Tr. at 40.

⁴⁷ Tr. at 34.

Department that an escrow officer licensee be honest, trustworthy, and reliable.⁴⁸ He concluded that Respondent's criminal history raised serious concerns because the crimes directly relate to the duties of an escrow officer:

An escrow officer primarily acts as a fiduciary handling other peoples' money. And the opportunity to misappropriate, steal, mishandle, is magnified with an escrow officer license as opposed to any other individual as they have easy access to other peoples' funds.⁴⁹

He testified that given the nature and severity of Respondent's offense, its direct relationship to the occupation of escrow officer, and given the potential for harm that exists if Respondent were to maintain her escrow officer license, the Department recommends revocation.⁵⁰

C. RESPONDENT'S EVIDENCE

1. Respondent's Testimony

Respondent currently works as a paralegal and escrow officer at Bhojani Law and Alamo Title in Irving, Texas.⁵¹ She has worked there for the last five years and reports to Ms. Christina Zaboura.⁵² She has held the escrow officer license since 2013.⁵³

⁴⁸ Tr. at 34-35.

⁴⁹ Tr. at 50.

⁵⁰ Tr. at 59-60.

⁵¹ Tr. at 108-109.

⁵² Tr. at 110.

⁵³ Tr. at 108.

Before working at Bhojani Law Firm, Respondent worked as a paralegal and escrow officer for the Handy & Morgan law firm for a total of 28 years.⁵⁴ It was at Handy & Morgan that Respondent worked as a paralegal for attorney J. B. Morgan.⁵⁵

Regarding her own criminal offenses, Respondent testified that Mr. Morgan gave her bonuses out of his personal funds because Mr. Morgan's law partner did not want to give a bonus to his paralegal. Eventually, Mr. Morgan began to show signs of dementia, and when his family became involved in his law firm, they accused Respondent of taking advantage of him and exploiting him financially.⁵⁶ In 2018, Respondent's position with Handy & Morgan was terminated.⁵⁷

Later that year, Respondent started working for Bhojani Law Firm.⁵⁸ In August 2018, Respondent received a call from an investigator informing her that she was having criminal charges filed against her that would be presented to a grand jury.⁵⁹ Respondent informed the Bhojani Law Firm about the pending charges against her, and the law firm allowed her to maintain her job.⁶⁰

⁵⁴ Tr. at 111-112.

⁵⁵ Tr. at 111.

⁵⁶ Tr. at 114-115.

⁵⁷ Tr. at 112.

⁵⁸ Tr. at 112.

⁵⁹ Tr. at 112.

⁶⁰ Tr. at 113.

To avoid the expense and emotion toll of a jury trial, Respondent agreed to a plea deal that required her to pay restitution, complete 240 hours of community service, and remain under probation for eight years.⁶¹ Respondent agreed that she had signed a judicial confession in which she swore that she had read the indictment and committed each and every act alleged within it.⁶²

Since the initial indictment in 2021, Respondent renewed her escrow license twice.⁶³ In 2023, Respondent became aware that she could seek an early release from her probation.⁶⁴ Respondent testified that she reached out to her attorney to request early release, and he has filed the motion in Tarrant County.⁶⁵

Respondent testified that losing her escrow officer license would greatly impact her livelihood.⁶⁶ Respondent explained that her current employer is umbrellaed under Fidelity and because of that arrangement, there are automatic safeguards in place— “lots of checks and balances.”⁶⁷

⁶¹ Tr. at 115-116.

⁶² Tr. at 129-130.

⁶³ Tr. at 117.

⁶⁴ Tr. at 121.

⁶⁵ Tr. at 123.

⁶⁶ Tr. at 125.

⁶⁷ Tr. at 125.

2. Christina Zaboura's Testimony

Ms. Zaboura testified that she is Respondent's supervisor at the Bhojani Law Firm.⁶⁸ She explained that Respondent appeared to be a good fit for the Bhojani Law Firm because she had commercial experience, seemed knowledgeable, and had a calming presence.⁶⁹ Ms. Zaboura explained that Respondent has more than lived up to the expectations of the firm and is an asset to the firm.⁷⁰

Ms. Zaboura testified that Respondent immediately notified the firm and title company about the criminal charges against her.⁷¹ As a result of those charges, the title company, which at that time was under Allegiance Title,⁷² allowed Respondent to work as an "escrow assistant"—meaning she could retain most escrow officer rights except for the funding portion of any transaction.⁷³ However, when the title company switch to Fidelity in 2021, Fidelity denied Respondent access to the escrow officer system until Respondent had a final verdict.⁷⁴ As a result, Respondent has worked as a paralegal and an administrative assistant.⁷⁵ After Respondent received

⁶⁸ Tr. at 133-134.

⁶⁹ Tr. at 135.

⁷⁰ Tr. at 135, 137.

⁷¹ Tr. at 136.

⁷² Tr. at 137.

⁷³ Tr. at 137.

⁷⁴ Tr. at 138.

⁷⁵ Tr. at 138.

her plea agreement, Fidelity granted Respondent limited access to its escrow officer system.⁷⁶

Ms. Zaboura noted that Respondent continued to maintain her licensing credentials even though she was not working as an escrow officer.⁷⁷ She described Respondent as trustworthy, honest, and reliable.⁷⁸

IV. ANALYSIS

A licensing authority may consider a person to have been convicted of an offense, regardless of whether the criminal proceedings were dismissed and the person was discharged, if the person either has not completed the period of supervision or completed the period of supervision less than five years before the date the person applies for the license.⁷⁹ Respondent's two felony deferred adjudications may therefore be treated as convictions for licensing purposes because she has not yet completed her period of supervision.⁸⁰ Furthermore, for reasons explained by Mr. Wright, both of her offenses are directly related to the duties and responsibilities of the insurance occupation for which she holds a license, as provided

⁷⁶ Tr. at 139-140.

⁷⁷ Tr. at 139.

⁷⁸ Tr. at 142. Ms. Zaboura also prepared a favorable letter of recommendation extolling Respondent's trustworthiness and aptitude for the position despite the criminal charges levied against her. *See* TDI Ex. 5 at 4.

⁷⁹ Tex. Occ. Code § 53.021(d)(1)(B)(i).

⁸⁰ Tex. Occ. Code § 53.021(d)(1)(B)(i).

in Texas Occupations Code section 53.022. Accordingly, the Department may revoke Respondent's license based on either one of her offenses.⁸¹

Although the Department has the authority to revoke Respondent's license based on her criminal offense, it may determine whether to do so only after considering the factors listed in Texas Occupations Code section 53.023.

The first factor is the extent and nature of Respondent's criminal history.⁸² This is the most troubling factor for Respondent. Her felony offenses of theft of property and exploitation of an elderly individual may be considered convictions for purposes of licensing. Both offenses are serious in nature and directly relate to the duties and responsibilities of the licensed occupation. This factor weighs in favor of revoking her license.

Other factors include Respondent's age when her crimes were committed and the amount of time that has elapsed since her most recent criminal activity.⁸³ Her offenses were committed between 2012 and 2018, when she was in her fifties.⁸⁴ She has not yet been released from community supervision. On balance, the facts that her crimes are recent and were not youthful indiscretions when they were committed, and that they took place over a number of years, also weigh against allowing her to maintain the license.

⁸¹ Tex. Ins. Code § 4005.101(b)(5), (8); Tex. Occ. Code § 53.021(a)(1).

⁸² Tex. Occ. Code § 53.023(a)(1).

⁸³ *Id.* § 53.023(a)(2)-(3).

⁸⁴ Tr. at 52.

The Department must also consider evidence of Respondent’s conduct and work activity before and after her crimes and evidence of her rehabilitation or rehabilitative effort while incarcerated or after her release.⁸⁵ Regarding these factors, Respondent has maintained a good work history at the Bhojani Law Firm and a record of good conduct.⁸⁶ She is steadily employed and has maintained her escrow officer license credentials. These facts weigh in favor of not revoking the license.

Other factors are evidence of Respondent’s compliance with conditions of community supervision and other evidence of her fitness, including letters of recommendation.⁸⁷ She has paid restitution in full and is currently in compliance with the conditions of her community supervision—including the completion of volunteer service. She has glowing letters of recommendation.⁸⁸ These facts weigh in favor of not revoking the license.

While Respondent maintains her innocence in light of her criminal charges, she acknowledged that the language in her plea agreement and judicial confession reflects her guilt, and she understood that on the date of their execution. Respondent’s record of good behavior since then is to be commended. Respondent appears committed to her rehabilitation and has taken important positive steps to ensure her success. It is also noteworthy that her employer has continued employing

⁸⁵ Tex. Occ. Code § 53.023(a)(4)-(5).

⁸⁶ Tex. Occ. Code § 53.023(a)(4), (7).

⁸⁷ Tex. Occ. Code § 53.023(a)(6), (7).

⁸⁸ Tex. Occ. Code § 53.023(a)(7).

her after learning she had a criminal history and that her colleagues respect and trust Respondent and testified on her behalf. However, the positive factors do not overcome Respondent's relatively recent dishonest behavior and criminal history. Her offenses are serious and directly relate to the duties and responsibilities of the licensed profession. She has not yet completed her community supervision, and at this time, her period of good behavior has been too short to find her fit to hold a license.

For these reasons, based on Respondent's criminal history, and after consideration of the applicable factors, the ALJ recommends that Respondent's license be revoked.

V. FINDINGS OF FACT

1. On October 9, 2013, the Texas Department of Insurance (Department) issued to Kathy Witham (Respondent) an escrow officer license number 1308266.
2. On January 11, 2019, Respondent's license was cancelled.
3. Respondent reapplied for her license on June 6, 2019, and the Department reactivated it.
4. The Department staff (Staff) seeks to revoke Respondent's license.
5. Respondent made a timely request for a hearing to challenge the revocation.
6. On September 15, 2023, Staff issued its Notice of Hearing and Original Petition on revocation of the license.
7. The notice of hearing and attached petition as amended by the second amended petition contain 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.

8. The hearing in this case was held on February 7, 2024, before the State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Megan Johnson. Staff was represented by attorney Sarah White, and Respondent was represented by attorney Jocelin A. Tapia. The hearing concluded that day. The record closed on February 23, 2024, upon the filing of the admitted exhibits and transcript.
9. On November 1, 2019, Respondent was indicted by a grand jury in Cause Number 1618303D, in the Criminal District Court Number Three in Tarrant County, Texas for the following two offenses which occurred on August 29, 2018: felony theft of property and felony exploitation of an elderly individual.
10. On September 17, 2021, Respondent pleaded guilty to the second-degree felony offense of theft of property and the third-degree felony offense of exploitation of an elderly individual.
11. The court placed Respondent on deferred adjudication for eight years and ordered her to pay \$169,000 in restitution, in addition to fines and court costs.
12. In addition to the standard community supervision conditions, the court also ordered Respondent to comply with additional conditions prohibiting Respondent from obtaining employment or any position where the duties or responsibilities include any of the following:
 - a. Volunteering or working for or with the elderly, except her mother and husband;
 - b. Soliciting or receiving funds from anyone over the age of 65, except for her mother and husband;
 - c. Exercising any rights under any power of attorney purporting to authorize any rights or duties pertaining to financial matters of any other person, except for her mother and husband; and

- d. Seeking application for appointment or accepting or qualifying for appointment as Guardian, Executor, Administrator of any person or estate without express prior approval of the court, except for her mother and husband.
- 13. Respondent's community supervision probation does not end until September 21, 2029.
- 14. Both of Respondent's criminal offenses involve elements of dishonest or deceit.
- 15. The primary duties of an escrow officer are to act as a fiduciary, primarily in real estate transactions, to handle other people's money, and facilitate the proper transfer of funds as it relates to business transactions.
- 16. Respondent's criminal offenses are serious and relate directly to the duties of responsibilities of the licensed occupation.
- 17. Respondent's criminal offenses were committed between 2012 to 2018, when she was in her fifties.
- 18. Since her criminal case, Respondent has maintained a record of good conduct, has been steadily employed, and has maintained her escrow officer credentials.
- 19. Respondent has remained in compliance with the conditions of her community supervision, successfully completed her volunteer service, and has paid all her court costs, fees, and restitution.
- 20. Respondent provided the Department with letters of recommendation in support of her application written by various individuals, including her current supervisor.
- 21. Respondent's rehabilitation efforts are relatively recent and do not establish that she is sufficiently honest and trustworthy to hold the license currently.
- 22. 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 chs. 82, 4001, 4005, 4051, 4054; Tex. Gov't Code ch. 2001.
2. SOAH has authority to hear this matter and to 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 the hearing. Tex. Gov't Code ch. 2001; Tex. Ins. Code § 4005.104(b).
4. Staff had the burden of proving its asserted grounds for revoking Respondent's license, while Respondent had the burden to present any favorable evidence of her fitness to be licensed despite the criminal history. 1 Tex. Admin. Code § 155.427. 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.).
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 for which fraud, dishonest, or deceit is an essential element or an offense of theft. 29 Tex. Admin. Code § 1.502(e)(1), (4)(F).
6. Respondent's felony deferred adjudications may be considered convictions for licensing purposes. Tex. Occ. Code § 53.021(a)(1) and (d)(1)(B)(i), (2); Tex. Ins. Code § 4005.101(b)(8).
7. Respondent's criminal offenses directly relate to the duties and responsibilities of a person who hold an escrow officer license. Tex. Occ. Code § 53.022.
8. Respondent engaged in dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(5).
9. The Department will consider the factors listed in Texas Occupations Code §§ 53.022 and 53.023 in determining whether to issue a license to an applicant despite a criminal offense or fraudulent or dishonest conduct and will not issue a license unless the mitigating factors outweigh the serious nature of the

criminal offense or fraudulent or dishonest conduct when viewed in the light of the occupation being licensed. 28 Tex. Admin. Code § 1.502(g)-(h).

10. The mitigating factors do not outweigh the seriousness of Respondent's criminal offenses and her dishonest acts or practices, and she has not shown her fitness for licensure. Tex. Occ. Code §§ 53.022-.023; 28 Tex. Admin. Code § 1.502(g)-(h).
11. The Department should revoke Respondent's license. Tex. Occ. Code § 53.023(a).

Signed April 11, 2024.

ALJ Signature:



Megan Johnson

Presiding Administrative Law Judge

ACCEPTED **2024-8723**
454-24-01094
5/22/2024 4:11:07 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

Exhibit B

FILED
454-24-01094
5/22/2024 4:08 PM
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Kevin Garza, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

May 22, 2024

Sarah White
TDI Staff Attorney

VIA EFILE TEXAS

Jocelin Tapia
Attorney for Respondent

VIA EFILE TEXAS

RE: SOAH Docket Number 454-24-01094.C; *Texas Department of Insurance v. Kathy Carol Witham et al.*

Dear Parties:

On April 26, 2024, Staff for the Texas Department of Insurance filed exceptions to the Proposal for Decision issued on April 11, 2024. Respondent did not file a response. I have reviewed the exceptions, and I make the following changes to the PFD:

- Amend Finding of Fact No. 5 to read:** After reactivating Respondent's license on June 6, 2019, TDI received a "rap back" notification that Respondent had received deferred adjudication for the two felony offenses of theft of property \geq \$30k, 150k enhanced and exploitation of child/elderly/disabled.
- Amend Finding of Fact No. 18 to read:** Since her criminal cases, Respondent has maintained a record of good conduct and has been steadily employed.
- Amend Conclusion of Law No. 1 to read:** The Department has jurisdiction over this matter. Tex. Ins. Code §§ 82.051-.055, 2652.001, 2652.201,

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2652.203, 4005.102-.104; 28 Tex. Admin. Code §§1.501-.502; Tex. Occ. Code § 53.021-.023; Tex. Gov't Code ch. 2001.

4. **Amend Conclusion of Law No. 6 to read:** Respondent's felony deferred adjudications may be considered convictions for licensing purposes. Tex. Occ. Code § 53.021(a)(1), (d)(1)(B)(i), and (d)(2).
5. **Amend Conclusion of Law No. 8 to read:** Respondent is guilty of fraudulent or dishonest practices. Tex. Ins. Code § 2652.201(a)(5).
6. **Amend Conclusion of Law No. 9 to read:** The Department will consider the factors listed in Texas Occupations Code sections 53.022 and .023 in determining whether to revoke a license due to a criminal offense or fraudulent or dishonest conduct and will not allow the holder to maintain a license unless the mitigating factors outweigh the serious nature of the criminal offense or fraudulent or dishonest conduct when viewed in the light of the occupation being licensed. 28 Tex. Admin. Code § 1.502(g)-(h).

With the aforementioned changes, the PFD is ready for your review, and I recommend its adoption as modified.

ALJ Signature:



Megan Johnson,
Presiding Administrative Law Judge

CC: Service List