

SOAH DOCKET NO. 466-18-4924

OCCC CASE NO. L18-00190

OFFICE OF CONSUMER CREDIT	§	IN THE
COMMISSIONER	§	
	§	
vs.	§	STATE OFFICE OF
	§	
HOLLIMON TRANSPORTATION	§	ADMINISTRATIVE HEARINGS
INC. D/B/A HOLLIMON	§	
TRANSPORTATION SERVICE	§	STATE OF TEXAS

FINAL ORDER

After fully reviewing and considering the record in this case, I hereby:

- (1) adopt the proposal for decision, dated October 22, 2018, written by Beth Bierman, Administrative Law Judge, and the findings of fact and conclusions of law contained therein;
- (2) overrule all requested orders and rulings, or findings of fact and conclusions of law that are inconsistent with the proposal for decision; and
- (3) order that the motor vehicle sales finance license application of Hollimon Transportation Inc. d/b/a Hollimon Transportation Service be DENIED.

SIGNED and ENTERED this 14<sup>th</sup> day of January, 2019.

LESLIE L. PETTIJOHN  
CONSUMER CREDIT COMMISSIONER

By: /s/ Juan V. Garcia  
Juan V. Garcia, pursuant to  
Delegation Order of March 4, 2015

## SERVICE LIST

On January 14, 2019, Juan V. Garcia, Director of Strategic Communications, Administration and Planning, Office of Consumer Credit Commissioner, sent this Final Order to:

Allen Hollimon  
6261 Richmond Ave., Suite A  
Houston, TX 77057  
(p) 713-294-9036  
ahollimon@ntwinvestigations.com

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested  
#91 7108 2133 3939 0802 8232

Keito Thomas Hurd  
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*ATTORNEY FOR HOLLIMON  
TRANSPORTATION*

Michael Rigby, General Counsel  
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*ATTORNEY FOR THE OFFICE OF  
CONSUMER CREDIT  
COMMISSIONER*

# State Office of Administrative Hearings



Lesli G. Ginn  
Chief Administrative Law Judge

October 22, 2018

Leslie L. Pettijohn, Commissioner  
Office of Consumer Credit Commissioner  
2601 N. Lamar Blvd.  
Austin, Texas 78705

**INTER-AGENCY**

**RE: Docket No. 466-18-4924; Office of Consumer Credit Commissioner v. Hollimon Transportation Inc. d/b/a Hollimon Transportation Service.**

Dear Ms. Pettijohn:

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 Tex. Admin. Code § 155.507, a SOAH rule that can be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

Beth Bierman  
Administrative Law Judge

BB/db

Enclosures:

cc: Michael Rigby, General Counsel, Office of Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, TX 78705 – **INTER-AGENCY**  
Keito Thomas Hurd, Attorney at Law, Hurd Law Firm, 11041 Shadow Creek Pkwy, Suite #121-2, Pearland, TX 77584- **REGULAR MAIL**

300 W. 15<sup>th</sup> Street, Suite 504, Austin, Texas 78701/P.O. Box 13025, Austin, Texas 78711-3025  
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**SOAH DOCKET NO. 466-18-4924  
OCCC CASE NO. L18-00190**

<b>OFFICE OF CONSUMER CREDIT COMMISSIONER, Petitioner</b>	§ § § § § § § § § §	<b>BEFORE THE STATE OFFICE</b>
v.		<b>OF</b>
<b>HOLLIMON TRANSPORTATION, INC., D/B/A HOLLIMON TRANSPORTATION SERVICE, Respondent</b>		<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

Hollimon Transportation, Inc., d/b/a Hollimon Transportation Service (Hollimon or Respondent), filed an application with the Office of Consumer Credit Commissioner (OCCC) on February 5, 2018, for a motor vehicle sales finance license (license). The OCCC’s staff (Staff) opposes the application based on Allen Gerard Hollimon’s criminal history.<sup>1</sup> Based on the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends denial of the application.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

There are no contested issues of notice or jurisdiction in this proceeding. Those matters are addressed solely in the findings of fact and conclusions of law.<sup>2</sup>

The hearing was convened on August 21, 2018, before ALJ Beth Bierman at the State Office of Administrative Hearings (SOAH), William P. Clements Building, 300 W. 15th Street, Fourth Floor, Austin, Texas. Associate General Counsel Michael Rigby represented Staff.

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<sup>1</sup> Mr. Hollimon is the sole owner and president of Hollimon. As such, the Office of Consumer Credit Commissioner (OCCC) may consider his criminal history in determining whether to approve the application. 7 Tex. Admin. Code § 84.613(d). In this Proposal for Decision, references to Mr. Hollimon and Respondent are used interchangeably.

<sup>2</sup> Staff filed an amended notice on August 14, 2018, seven days prior to the hearing. Respondent declined a continuance of the hearing. Tex. Gov’t Code § 2001.052(b).

Respondent appeared and was represented by attorney Keito Hurd. The record closed at the conclusion of the hearing.

## II. APPLICABLE LAW

The OCCC licenses and regulates non-depository lenders in the State of Texas, including motor vehicle sales finance licensees.<sup>3</sup> A retail installment transaction occurs when a retail buyer purchases a motor vehicle from a retail seller and agrees with the retail seller to pay part or all of the cash price in one or more deferred installments.<sup>4</sup> Sellers<sup>5</sup> and holders<sup>6</sup> of retail installment contracts are required to have a motor vehicle sales finance license.<sup>7</sup> An application for a motor vehicle sales finance license must be provided under oath, identify the applicant's principal parties in interest, and contain other information that the commissioner of the OCCC (Commissioner) requires.<sup>8</sup>

The Commissioner of the OCCC may not issue a license unless the Commissioner determines that the applicant demonstrates the financial responsibility, experience, character, and general fitness sufficient to command the confidence of the public and to warrant a belief that the business will be operated lawfully and fairly.<sup>9</sup> The OCCC considers the criminal history of the applicant's principal parties and obtains criminal history record information from the Texas Department of Public Safety and from the Federal Bureau of Investigation when conducting its review of character and fitness.<sup>10</sup>

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<sup>3</sup> Tex. Fin. Code § 14.101.

<sup>4</sup> Tex. Fin. Code § 348.001(7); 7 Tex. Admin. Code § 84.101(b)(1).

<sup>5</sup> "Seller" is a seller of a motor vehicle. The term is synonymous with the term "retail seller." 7 Tex. Admin. Code § 84.102(19).

<sup>6</sup> "Holder includes retail sellers as well as any person who subsequently purchases, acquires, or otherwise receives the retail installment sales contract. All holders are creditors." 7 Tex. Admin. Code § 84.102(9).

<sup>7</sup> Tex. Fin. Code § 348.501; 7 Tex. Admin. Code § 84.101(b).

<sup>8</sup> Tex. Fin. Code § 348.502.

<sup>9</sup> Tex. Fin. Code § 348.504(a)(1); 7 Tex. Admin. Code § 84.613(a), (d).

<sup>10</sup> 7 Tex. Admin. Code §§ 84.601(7)(A), 84.613(d).

The applicant is required to disclose all criminal history in the application. Failure to provide any required information may reflect negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information, including information about arrests, charges, indictments, and convictions of the applicant and its principal parties; letters of recommendation from prosecution, law enforcement, and correctional authorities; proof that the applicant has maintained a record of steady employment, has supported dependents, and has maintained a record of good conduct; and proof that the applicant paid all outstanding court costs, supervision fees, fines, and restitution.<sup>11</sup>

The OCCC may deny a license application if the applicant has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code Chapter 348, as provided by Texas Occupations Code §53.021(a)(1).<sup>12</sup>

Because originating, acquiring, or servicing retail installment sales contracts involves or may involve making representations to consumers regarding the terms of the contract, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, and collecting due amounts in a legal manner, the OCCC considers the following crimes to be directly related to the duties and responsibilities of a licensee and may be grounds for denial:

- (A) theft;
- (B) assault;
- (C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);
- (D) any offense that involves breach of trust or other fiduciary duty;
- (E) any criminal violation of a statute governing credit transactions or debt collection;

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<sup>11</sup> 7 Tex. Admin. Code § 84.613(b).

<sup>12</sup> 7 Tex. Admin. Code § 84.613(c).

- (F) failure to file a government report, filing a false government report, or tampering with a government record;
- (G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense; or
- (H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.<sup>13</sup>

In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC considers the following factors, as specified in Texas Occupations Code § 53.022:

- (A) the nature and seriousness of the crime;
- (B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (C) 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; and
- (D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.<sup>14</sup>

In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC considers the following factors, as specified in Texas Occupations Code § 53.023:

- (A) the extent and nature of the person's past criminal activity;
- (B) the age of the person when the crime was committed;
- (C) the amount of time that has elapsed since the person's last criminal activity;

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<sup>13</sup> 7 Tex. Admin. Code § 84.613(c)(1).

<sup>14</sup> 7 Tex. Admin. Code § 84.613(c)(2).

- (D) the conduct and work activity of the person before and after the criminal activity;
- (E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and
- (F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:
  - (i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
  - (ii) the sheriff or chief of police in the community where the person resides; and
  - (iii) other persons in contact with the convicted person.<sup>15</sup>

Finally, the OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including errors or incomplete information in the license application.<sup>16</sup>

Respondent has the burden to show that the application should be granted.<sup>17</sup>

### III. DISCUSSION

Mr. Hollimon testified for Respondent. Staff had 21 exhibits admitted into evidence and presented testimony from Chay Baker, a License and Permit Specialist II with the OCCC, and from Mirand Zepeda, the Licensing Manager for the OCCC. Mr. Hollimon was also called by Staff to testify.

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<sup>15</sup> 7 Tex. Admin. Code § 84.613(c)(3).

<sup>16</sup> 7 Tex. Admin. Code § 84.613(f).

<sup>17</sup> 7 Tex. Admin. Code § 9.25(c).



## A. Criminal History Background

The evidence shows that Mr. Hollimon has the following criminal history:

- On January 17, 2002, in Case No. 4:00CR00411-003 in the U.S. District Court, Southern District of Texas, Mr. Hollimon pleaded not guilty, but was convicted by a jury of one count of conspiracy to violate the laws of the United States with respect to bank fraud, under 18 U.S.C. § 317; and guilty of four counts of bank fraud and aiding and abetting, under 18 U.S.C. §§ 2 and 1344. Mr. Hollimon was sentenced to a term of 27 months' confinement in the United States Bureau of Prisons. He was ordered to pay restitution of \$147,500.00 to the three banks involved, and a fine of \$500. After his release from prison, Mr. Hollimon was on supervised release for five years. He was 30 years old at the time the offenses occurred in 2000.<sup>18</sup> Mr. Hollimon appealed his conviction, but the conviction was affirmed by the United States Court of Appeals for the Fifth Circuit on May 22, 2003.<sup>19</sup>
- On May 26, 2004, in Cause No. 04-102CR in the County Court of Robertson County, Texas, Mr. Hollimon pleaded guilty to attempted deceptive trade practice (a reduced charge from deceptive trade practice). The complaint against Respondent stated that Respondent, in the course of business as a sales person, intentionally and knowingly committed a deceptive practice by representing to the public that commodities ("Nokina" camera labeled as "Sony" brand, watches labeled as "Fossil" and "Seiko," and jewelry priced as the real item) were in fact not the items represented, marked, or labeled.

The court found that the evidence substantiated his guilt, but adjudication of his guilt was deferred and he was placed on probation for six months and ordered to pay a fine and costs. He was discharged from probation and the charges against him were dismissed on December 2, 2004. The offense occurred on or about February 8, 2004, when Mr. Hollimon was 33 years old.<sup>20</sup>

- On January 1, 2013, in Cause No. 177009501010 in the County Criminal Court at Law No. 6 of Harris County, Texas, Mr. Hollimon pleaded guilty and was convicted of violating the Private Security Act, a Class A misdemeanor, and sentenced to three days' confinement in the county jail, with two days' credit, and ordered to pay a \$300 fine. The offense was committed on April 8, 2011, when Mr. Hollimon was 41 years old. According to the complaint, Mr. Hollimon impersonated a security officer with the intent to induce a person to submit to

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<sup>18</sup> OCCC Ex. 11.

<sup>19</sup> OCCC Ex. 11 at 101-102.

<sup>20</sup> OCCC Ex. 12.

Mr. Hollimon's pretended authority and to rely upon Mr. Hollimon's pretended acts as a security officer, by ordering the person to comply with Mr. Hollimon's directions.<sup>21</sup>

- On August 10, 2011, Mr. Hollimon was charged with Assault by grabbing the complainant's arm. The offense was committed on August 10, 2011. The case was dismissed by request of the complainant on February 1, 2012.<sup>22</sup>
- On February 26, 2016, the Grand Jury for Fort Bend County, Texas, charged Mr. Hollimon with Assault of a Family Member, by pushing the family member and grabbing her neck with his hands. The Grand Jury also charged him with Impeding the Normal Breath or Circulation of Blood of the family member by applying pressure to her throat or neck with his hands. The offenses were committed on December 22, 2015. The charges were dismissed on March 3, 2017, because Mr. Hollimon "completed AMC," which is presumably a reference to anger-management counseling.<sup>23</sup>
- On March 4, 2016, the Fort Bend County District Attorney charged Mr. Hollimon with Interference with Emergency Request for Assistance by knowingly preventing or interfering with the ability of a family member to place an emergency telephone call or to request assistance from a law enforcement agency. The offense occurred on December 22, 2015. The charge was dismissed on February 23, 2017, because "AMC completed."<sup>24</sup>

## **B. Respondent's Testimony and Evidence**

Mr. Hollimon is the sole owner of Hollimon, which he said he established in 2016. He holds a dealer license issued by the Texas Department of Motor Vehicles, and buys and sells automobiles under that license. Mr. Hollimon testified that the motor vehicle sales finance license is an important part of the business of buying and selling automobiles because it allows him to finance a car purchase. According to Mr. Hollimon, he has already invested over \$1 million dollars into his dealership in Houston, Texas, the build-out for which cost several hundred thousand dollars. He stated he would go out of business without the OCCC license.

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<sup>21</sup> OCCC Ex. 13. This was the only criminal offense disclosed in Respondent's initial license application.

<sup>22</sup> OCCC Ex. 14. Staff did not rely on this offense—or the two subsequent offenses that occurred December 22, 2015—during the hearing. For this reason, and because the cases were also dismissed, the ALJ has not considered this conduct when deciding the issues in this case.

<sup>23</sup> OCCC Ex. 15.

<sup>24</sup> OCCC Ex. 16.

Mr. Hollimon stated he did not intend to mislead the OCCC about his past criminal convictions in his application. He said he did not fill out the personal questionnaire found in OCCC Exhibit 4, but he agreed that his signature was on the form. According to Mr. Hollimon, his personal assistant Maria filled out the form for him, although he did not know Maria's last name. Mr. Hollimon also denied that he submitted the personal questionnaire, but that Maria had submitted it to the OCCC for him. He said that Maria had asked him whether he had been arrested and he told her the answer was "Yes." The "No" answers to the questions about whether he had ever been charged, indicted, or convicted were wrong, he said, because Maria filled out those answers incorrectly. Mr. Hollimon said that there was a "language barrier" that affected the correctness of the answers. According to Mr. Hollimon, the application submitted to the OCCC contained the same information that was submitted for his application for a dealer license. He maintained that his intent was to be as forthcoming as possible, and when the OCCC asked for additional information, he forwarded additional information to the OCCC.

Mr. Hollimon identified Nationwide Investigations and Security, Inc. (Nationwide), listed on his application as one of his businesses, as a private security company. Mr. Hollimon initially testified that he was a part-owner of Nationwide, but changed his testimony and stated that he was no longer an owner, but that that Sonia Tims was the owner of Nationwide since October 2017.<sup>25</sup> He said that Ms. Sims still reports to him with regard to the operation of Nationwide and that he controls the day-to-day operations of Nationwide. Mr. Hollimon testified that Nationwide's security license was suspended because the insurance certificate was not forwarded to the Department of Public Safety's Private Security Program. The license was suspended six times from 2009 to 2014 for failure to maintain proof of liability insurance. He was not aware, he stated, that the certificate had not been forwarded by the insurance company to the Department of Public Safety.

Mr. Hollimon accepted responsibility for his past conduct, and noted that he had not had any "run ins" with the law for several years. Mr. Hollimon has had his dealers license for two

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<sup>25</sup> The ownership of Nationwide changed in October 2013. OCCC Ex. 21 at 194.

years, and he stated his company and employees are ready to go to work once he receives the license from the OCCC. He said he was a family man and hoped to be a good member of the community.

Mr. Hollimon did not provide any letters of recommendation from law enforcement. In his response to the OCCC's second request for information, Mr. Hollimon provided four letters of recommendation from customers that spoke highly of his business.<sup>26</sup> The letter writers did not indicate that they had knowledge of his criminal history. With the application, Mr. Hollimon also provided a summary of his qualifications, which included his work history and educational background.<sup>27</sup> That summary indicates that Mr. Hollimon has owned Nationwide, which provides security and investigative services in 16 states, since 1998. He has been the owner and president of Hollimon since 2005.

### **C. Staff Testimony and Evidence**

Mr. Baker reviews license applications for completeness of information by comparing the application with a checklist of requirements. If he discovers a deficiency, Mr. Baker requests additional information from the applicant. After his review, Mr. Baker recommends approval or denial of the license application. Mr. Baker's supervisor, Ms. Zepeda, then reviews his recommendation and either approves or denies the application. In this case, Mr. Baker recommended denial of Respondent's application and Ms. Zepeda agreed with his assessment.

Mr. Baker said that when Respondent's license application was filed on February 5, 2018, it included only one court document, which showed Mr. Hollimon's 2013 Class A misdemeanor conviction for violation of the Private Security Act.<sup>28</sup>

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<sup>26</sup> OCCC Ex. 8 at 77-80.

<sup>27</sup> OCCC Ex. 2 at 21.

<sup>28</sup> OCCC Ex. 2 at 22.

As part of the application process, Mr. Holliman submitted a personal affidavit attesting that his employment history, personal questionnaire, and accompanying statements of fact were true and correct.<sup>29</sup> In his personal questionnaire, Mr. Hollimon answered “Yes” to the question, “[h]ave you ever been arrested?” However, he answered “No” to the other questions, including questions asking whether he had ever been charged, indicted, or convicted for a violation of any law, and whether he had ever had any affiliation with a business that was refused a license, withdrew an application for a license to avoid refusal, or had its license or permit suspended, canceled or revoked.<sup>30</sup>

Mr. Baker explained that the OCCC sends an applicant a request for more information (termed an “Arrest Letter”) that requests additional information regarding criminal history in the event the review of the application reveals arrests by the principal party. Mr. Baker sent Respondent an Arrest Letter on February 27, 2018, asking that Mr. Hollimon provide additional information regarding the 2002 convictions related to conspiracy to commit bank fraud, bank fraud, and aiding and abetting; the 2004 deceptive trade practice violation; and the 2013 violation of the Private Security Act.<sup>31</sup>

Respondent responded to the Arrest Letter on March 28, 2018.<sup>32</sup> For the 2002 convictions related to bank fraud, the response stated “Mr. Hollimon had received a check from a person that was under a false identity, when the matter was investigated properly, these charges were dismissed.” The response also indicated that there was no record of the case, when that was not correct, as noted by Mr. Baker.

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<sup>29</sup> OCCC Ex. 4 at 26.

<sup>30</sup> OCCC Ex. 4 at 30.

<sup>31</sup> OCCC Ex. 5. The Arrest Letter initially listed ten incidents for which the OCCC was requesting information, but because there were no publicly available documents for seven of those ten incidents, only three incidents remained to be investigated by the OCCC. The information regarding the seven other incidents was redacted by the OCCC from its exhibits at the hearing. The remaining three incidents retained their original “incident numbers” in the documentation and in the testimony. Incident #5 involved the 2002 convictions for bank fraud, conspiracy to commit bank fraud, and aiding and abetting; Incident #7 involved the deceptive trade practice violation; and Incident #9 was the operation of the private security company without a license.

<sup>32</sup> OCCC Ex. 6.

With regard to the deceptive trade practice violation, Mr. Hollimon stated in the response that he did not have knowledge that the cameras were not what they purported to be. He had bought the cameras from a store for resale. While Mr. Holliman did provide to the OCCC an Order Dismissing Proceedings and Discharging Defendant with respect to this crime, he did not provide all the court records available for this case, stated Mr. Baker.<sup>33</sup>

Finally, the response stated that Mr. Hollimon was unaware that the insurance for his private security company had expired, which led to a violation of the Private Security Act and resulted in revocation of his license.<sup>34</sup> Mr. Hollimon provided a document to the OCCC entitled, "Misdemeanor Plea of Guilty/Nolo Contendere," but again did not provide all the court documents related to this violation, which included a motion and order amending the indictment, and the judgment of conviction by the court.<sup>35</sup> Based on these omissions or incorrect answers, Mr. Baker concluded that Mr. Hollimon was not truthful on the application when he answered "No" to the question of whether he had been charged, indicted, or convicted of a crime. Mr. Hollimon agreed that not all of Respondent's answers to the OCCC's first Arrest Letter were answered correctly. He agreed that not all of the charges related to the 2002 bank fraud were dismissed.

On April 4, 2018, Mr. Baker sent Mr. Hollimon a second Arrest Letter requesting more information regarding his criminal history.<sup>36</sup> Mr. Baker informed Mr. Hollimon that his prior response that there were no court records available for the 2002 bank-related convictions, along with other listed items, was insufficient.

On May 3, 2018, Mr. Hollimon responded to the second Arrest Letter.<sup>37</sup> The response indicated that Mr. Hollimon entered probation for the offenses related to bank fraud, which eventually led to a dismissal of the case against him. In fact, stated Mr. Baker, counts 1s, 12s,

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<sup>33</sup> OCCC Ex. 6 at 51; OCCC Ex. 12.

<sup>34</sup> OCCC Ex. 6 at 43.

<sup>35</sup> OCCC Ex. 6 at 52-53; OCCC Ex. 13.

<sup>36</sup> OCCC Ex. 7.

<sup>37</sup> OCCC Ex. 8.

15s, 17s, and 18s against Mr. Hollimon were not dismissed, as indicated by the Judgment entered by the court on January 17, 2002.<sup>38</sup> Mr. Baker again noted that Mr. Hollimon's answer in his application as to whether he had been indicted was not true. Mr. Baker also testified that Mr. Hollimon did not answer truthfully in his application when he indicated that he had not been convicted because Mr. Hollimon was convicted of the five remaining counts against him.

On June 4, 2018, Ms. Zepeda sent Respondent a denial letter that notified Respondent that the license application was denied on the grounds that Respondent failed to demonstrate the character and general fitness required under Texas Finance Code § 348.504.<sup>39</sup> Mr. Baker reiterated that Mr. Hollimon's criminal conduct was business-related, financial, and serious, and supported the denial. Respondent requested a hearing on the denial on June 26, 2018.<sup>40</sup>

Mr. Baker agreed that he had previously recommended licensure for applicants with a criminal history. However, he could not quantify how many of those applications for which he had recommended approval. Mr. Baker maintained that approval under those circumstances was not common. The fact that Mr. Hollimon owns a business is one factor in his favor, according to Mr. Baker. However, Mr. Baker believed it was unlikely that Mr. Hollimon would have made a mistake as to whether all the bank fraud-related convictions against him had been dismissed.

Ms. Zepeda is the Licensing Manager for the OCCC. She oversees the business licensing application process, among her other duties. Ms. Zepeda denied Respondent's license application. Ms. Zepeda testified that it was extremely rare to see these types of criminal charges, involving financial crimes, against a principal party and have the license application be granted by the OCCC.

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<sup>38</sup> OCCC Ex. 11 at 93-99.

<sup>39</sup> OCCC Ex. 9.

<sup>40</sup> OCCC Ex. 10.

#### IV. ANALYSIS

##### A. Character and General Fitness to Hold a Motor Vehicle Sales Finance License

Mr. Hollimon, as the principal party for Respondent, was convicted of crimes that would disqualify Respondent from receiving a motor vehicle finance licence. His 2002 convictions on five counts related to bank fraud, conspiracy to commit bank fraud, and aiding and abetting bank fraud are crimes that directly relate to the performance of duties of a licensee under 7 Texas Administrative Code § 84.613(c)(1)(C) and (H). As noted by Staff's witnesses, these were very serious, financially-related crimes that reflected negatively on Mr. Hollimon's ability, capacity, or fitness required to perform the duties and discharge the responsibilities of an OCCC licensee. Licensure would offer Mr. Hollimon, as the principal party for Respondent, the ability to engage in the same or similar criminal conduct given the nature of the business of financing the purchase and sale of motor vehicles through installment contracts.

Mr. Hollimon's 2004 conduct constituting deceptive trade practice is also directly related to the performance of duties of a licensee under 7 Texas Administrative Code § 84.613(c)(1)(C). Mr. Hollimon pleaded guilty, but adjudication of his guilt was deferred and he was placed on supervision. At the end of his supervision, Mr. Hollimon was discharged from probation and the charges against him were dismissed on December 2, 2004. Mr. Hollimon, however, was not convicted of this offense.

Under Texas Occupations Code § 53.021(c), a licensing authority may not consider a person to have been convicted of an offense if the person entered a plea of guilty; the judge deferred adjudication of guilt and placed the person on supervision; and at the end of the period of supervision, the judge dismissed the proceedings and discharged the person. However, Texas Occupations Code § 53.021(e)(2) provides that subsection § 53.021(c) does not apply if the person is an applicant for a license that authorizes the person to provide financial services in an industry regulated by a person listed in Texas Government Code § 411.0765(b)(18). The Commission of the OCCC is listed under that section of the Government Code. The OCCC,



however, does not have a rule that provides that the OCCC may consider a deferred adjudication for such an offense as a conviction. There is no statutory basis, therefore, for the OCCC to consider Mr. Hollimon's deferred adjudication for deceptive trade practice as a conviction.

Texas Occupations Code § 53.021(d) also does not permit the OCCC to consider Mr. Hollimon to have been convicted of deceptive trade practice because he was not charged with a crime described in Article 62.001(5) of the Texas Code of Criminal Procedure or charged with an offense other than one in Article 62.001(5) if the period of supervision has not been completed or was completed less than five years before the date Mr. Hollimon applied for the license. Further, conviction of the offense would not make Mr. Hollimon ineligible for a license by operation of law.

While the OCCC may not consider Mr. Hollimon to have been convicted of deceptive trade practice, the OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly.<sup>41</sup>

Mr. Hollimon's 2013 conviction for violation of the Private Security Act is not an offense that directly relates to the duties and responsibilities of a motor vehicle sales finance licensee. His conviction was also committed more than five years before the date Respondent applied for a license. Under Texas Occupations Code § 53.021(a), the OCCC may not deny the license application based solely on this conviction.

Even though some of Mr. Hollimon's criminal conduct, described above, is directly related to the performance of duties of a motor vehicle sales finance licensee, and would

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<sup>41</sup> 7 Tex. Admin. Code § 84.613(d).

otherwise prevent his licensure given the duties and responsibilities of a licensee, the applicable law requires that several factors be considered before rendering a decision.<sup>42</sup>

Mr. Hollimon's conviction for conspiracy to commit bank fraud, bank fraud, and aiding and abetting bank fraud occurred when he was approximately 30 years old. He was approximately 33 years old when he engaged in deceptive trade practice. Mr. Hollimon's conviction for violation of the Private Security Act occurred when he was 41 years old. So his criminal activity cannot be explained as youthful indiscretion. He has also demonstrated criminality over a number of years. Mr. Hollimon was first convicted in 2002. His last conviction was in 2013.

Mr. Hollimon testified that he has been gainfully employed before and after his criminal activity, and that he supports his family. The evidence also shows that he has been discharged from supervision and has paid all court-ordered fines or restitution. Mr. Hollimon provided letters of recommendation from customers to the OCCC, but did not provide any letters from law enforcement. He also did not provide any evidence of rehabilitative effort after his release from prison.

Given Mr. Hollimon's directly-related conviction for conspiracy to commit bank fraud, bank fraud, and aiding and abetting bank fraud, and considering the application as a whole, including his other criminal history, the ALJ finds that the application should be denied because Mr. Hollimon does not possess the financial responsibility, experience, character, and general fitness to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly.

#### **B. False Statements on Application for License**

The OCCC may also deny a license based on errors or incomplete information in the license application.<sup>43</sup> There is no doubt that the license application contained numerous errors

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<sup>42</sup> 7 Tex. Admin. Code § 84.613(c), (d).

regarding Mr. Hollimon's criminal history. The "No" answers to the questions regarding whether he had ever been charged, indicted, or convicted were clearly wrong. The description of the bank fraud case as having been dismissed was also erroneous because he was convicted of five separate counts. Mr. Hollimon also failed to provide all court documents related to the convictions related to bank fraud and the violation of the Private Security Act.

If it is true that Mr. Hollimon's staff prepared and filed the license application with the OCCC, it was still his responsibility, and not his staff's, to ensure that the information provided with the application was true and complete. The personal affidavit signed by Mr. Hollimon and provided with the application attested to the true and complete nature of the information provided therein, and warned him that providing false information could constitute a criminal offense. The OCCC may deny the license application on this basis.

#### V. FINDINGS OF FACT

1. On February 5, 2018, Hollimon Transportation, Inc., d/b/a Hollimon Transportation Service (Hollimon or Respondent), filed an application with the Office of Consumer Credit Commissioner (OCCC) for a motor vehicle sales finance license.
2. Alan Gerard Hollimon is the sole owner and president of Hollimon.
3. On January 17, 2002, in Case No. 4:00CR00411-003 in the U.S. District Court, Southern District of Texas, Mr. Hollimon pleaded not guilty, but was convicted by a jury of one count of conspiracy to violate the laws of the United States with respect to bank fraud, under 18 U.S.C. § 317; and of four counts of bank fraud and aiding and abetting bank fraud, under 18 U.S.C. §§ 2 and 1344. Mr. Hollimon was sentenced to a term of 27 months' confinement in the United States Bureau of Prisons. He was ordered to pay restitution of \$147,500.00 to the three banks involved, and a fine of \$500. After his release from prison, Mr. Hollimon was on supervised release for five years. He was 30 years old at the time the offenses occurred in 2000. Mr. Hollimon appealed his conviction, but the conviction was affirmed by the United States Court of Appeals for the Fifth Circuit on May 22, 2003.
4. On May 26, 2004, in Cause No. 04-102CR in the County Court of Robertson County, Texas, Mr. Hollimon pleaded guilty to attempted deceptive trade practice (a reduced charge from deceptive trade practice). The complaint against Respondent stated that

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<sup>43</sup> 7 Tex. Admin. Code § 84.613(f)(3).

Respondent, in the course of business as a sales person, intentionally and knowingly committed a deceptive practice by representing to the public that commodities (“Nokina” camera labeled as “Sony” brand, watches labeled as “Fossil” and “Seiko,” and jewelry priced as the real item) were in fact not the items represented, marked, or labeled. The court found that the evidence substantiated his guilt, but adjudication of his guilt was deferred and he was placed on probation for six months and ordered to pay a fine and costs. He was discharged from probation and the charges against him were dismissed on December 2, 2004. The offense occurred on or about February 8, 2004, when Mr. Hollimon was 33 years old.

5. On January 1, 2013, in Cause No. 177009501010 in the County Criminal Court at Law No. 6 of Harris County, Texas, Mr. Hollimon pleaded guilty and was convicted of violating the Private Security Act, a Class A misdemeanor, and sentenced to three days’ confinement in the county jail, with two days’ credit, and ordered to pay a \$300 fine. The offense was committed on April 8, 2011, when Mr. Hollimon was 41 years old. According to the complaint, Mr. Hollimon impersonated a security officer with the intent to induce a person to submit to Mr. Hollimon’s pretended authority and to rely upon Mr. Hollimon’s pretended acts as a security officer, by ordering the person to comply with Mr. Hollimon’s directions.
6. Mr. Hollimon answered incorrectly when he answered “No” to the questions in the application asking whether he had ever been charged, indicted, or convicted regarding a violation of any law.
7. In response to staff of the OCCC’s (Staff’s) request for information regarding the 2002 conviction for conspiracy to commit bank fraud, bank fraud, and aiding and abetting bank fraud, Mr. Hollimon answered incorrectly that the case against Mr. Hollimon had been dismissed and that there was no record of the case.
8. Mr. Hollimon failed to provide all court documents related to the convictions related to bank fraud and the violation of the Private Security Act.
9. On June 4, 2018, Staff of the OCCC sent Mr. Hollimon a Notice of Denial letter based on its conclusion that Mr. Hollimon failed to have the character and general fitness necessary to hold the license.
10. Mr. Hollimon requested a hearing on the denial on June 26, 2018.
11. Staff sent Respondent a notice of hearing on August 7, 2018. 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.

12. The hearing convened on August 21, 2018, before Administrative Law Judge Beth Bierman at the State Office of Administrative Hearings (SOAH), William P. Clements Building, 300 West 15th Street, Austin, Texas. Staff of the OCCC appeared and was represented by Staff Attorney Michael Rigby. Respondent appeared and was represented by attorney Keito Hurd.

## VI. CONCLUSIONS OF LAW

1. The OCCC licenses and regulates non-depository lenders in the State of Texas, including motor vehicle sales finance licensees, and has the authority to approve or deny a motor vehicle sales finance license. Tex. Fin. Code §§ 14.101, 348.504.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Notice of the hearing was provided as required. Tex. Gov't Code §§ 2001.051-.052.
4. As the party seeking affirmative relief in this case, Respondent bore the burden of proof. 7 Tex. Admin. Code § 9.25(c).
5. The OCCC may consider Mr. Hollimon's criminal history in determining whether to approve the application because Mr. Hollimon is the owner and president of Respondent. 7 Tex. Admin. Code §§ 84.601(7)(A), 84.613(d).
6. Sellers and holders of retail installment contracts for the purchase of vehicles are required to have a motor vehicle sales finance license. 7 Tex. Admin. Code §§ 84.101(b), 84.102(9), (19). Tex. Fin. Code § 348.501.
7. An application for a motor vehicle sales finance license must be provided under oath, identify the applicant's principal parties in interest, and contain other information that the commissioner of the OCCC (Commissioner) requires. Tex. Fin. Code § 348.502.
8. The Commissioner may not issue a license unless the Commissioner determines that the applicant demonstrates the financial responsibility, experience, character, and general fitness sufficient to command the confidence of the public and to warrant a belief that the business will be operated lawfully and fairly. Tex. Fin. Code § 348.504(a)(1); 7 Tex. Admin. Code § 84.613(a), (d).
9. The applicant is required to disclose all criminal history in the application. Failure to provide any required information may reflect negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information, including information about arrests, charges, indictments, and convictions of the applicant and its principal parties; letters of recommendation from prosecution, law

enforcement, and correctional authorities; proof that the applicant has maintained a record of steady employment, has supported dependents, and has maintained a record of good conduct; and paid all outstanding court costs, supervision fees, fines, and restitution. 7 Tex. Admin. Code § 84.613(b).

10. The OCCC may deny a license application if the applicant has been convicted of an offense that directly relates to the duties and responsibilities of a licensee. Tex. Occ. Code §53.021(a)(1); 7 Tex. Admin. Code § 84.613(c).
11. Because originating, acquiring, or servicing retail installment sales contracts involves or may involve making representations to consumers regarding the terms of the contract, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, and collecting due amounts in a legal manner, the OCCC considers the following crimes, among others, to be directly related to the duties and responsibilities of a licensee and may be grounds for denial: any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery); and any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit a listed, directly-related offense. 7 Tex. Admin. Code § 84.613(c)(1).
12. In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC considers the following factors, as specified in Texas Occupations Code §53.022: the nature and seriousness of the crime; the relationship of the crime to the purposes for requiring a license to engage in the occupation; 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; and the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee. 7 Tex. Admin. Code § 84.613(c)(2).
13. In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC considers the following factors, as specified in Texas Occupations Code § 53.023: 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 after release, or following the criminal activity if no time was served; and evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from law enforcement or others in contact with the applicant. 7 Tex. Admin. Code § 84.613(c)(3).
14. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including errors or incomplete information in the license application. 7 Tex. Admin. Code § 84.613(f).

15. Mr. Hollimon's 2002 conviction for bank fraud, conspiracy to commit bank fraud, and aiding and abetting bank fraud, were offenses that directly related to the duties and responsibilities of a motor vehicle sales finance licensee. 7 Tex. Admin. Code § 84.613(c)(1).
16. Respondent failed to demonstrate the financial responsibility necessary to command the confidence of the community and to warrant a determination that it would operate honestly, fairly, and efficiently as a motor vehicle sales finance licensee. Tex. Fin. Code § 348.504.
17. Respondent's application for a motor vehicle sales finance license should be denied.

SIGNED October 22, 2018.



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**BETH BIERMAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**