



COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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JOSEPH G. MURPHY
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Brian E. Pineau, Respondent

Docket No. E2012-07

Order On Petitioner's Motion for Summary Decision

On September 21, 2012, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Brian E. Pineau ("Pineau"), a licensed Massachusetts resident individual insurance producer. The Division alleges that Pineau falsely listed the dates of birth of applicants for annuities on their applications, and that such misrepresentations constituted violations of Massachusetts General Laws Chapter ("Chapter") 175, §162R (a)(5) and (a)(8).

Those statutes permit disciplinary action against a producer for, respectively, "intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance," and "using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere." The Division seeks revocation of Pineau's license and orders requiring him to dispose of any insurance-related interests in Massachusetts, prohibiting him from conducting any insurance business in the Commonwealth, and imposing fines for the alleged violations.

A Notice of Procedure ("Notice") was issued on September 20, 2012, advising Pineau that a prehearing conference would take place on October 19, 2012 and that a hearing on the OTSC would be held on November 9, 2012, both at the offices of the Division. The Notice further advised him that the hearing would be conducted pursuant to Chapter 30A and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00, *et seq.* It advised Pineau to file an answer pursuant to 801 CMR 1.01(6)(d) and that, if he failed to do so, the Division might move for an order of default, summary decision or decision on the pleadings granting it the relief requested in the OTSC. It also informed Pineau that, if he failed to appear at the prehearing conference or hearing, an order of default, summary decision or decision on the pleadings might be entered against him. The Commissioner of Insurance ("Commissioner") designated me as presiding officer for this proceeding.

The Division served Pineau by mailing copies of the Notice and OTSC by certified mail to him at 33 Pond Avenue, Brookline, MA 02445, an address he provided to the Division in correspondence that the Division received on May 21, 2012.¹ Copies of the OTSC and Notice were also sent by first-class mail, postage prepaid, to Pineau at that address. The certified mail was returned to the Division with the note that it was unclaimed. The first-class mail was not returned to the Division.

Pineau failed to file an answer or other response to the OTSC. On October 19, 2012, a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Mary Lou Moran, Esq. appeared for the Division. Neither Pineau nor any person representing him appeared. Ms. Moran reported that she had received no communication from the respondent or from any person purporting to represent him. Following the prehearing conference, the Division filed its motion for summary decision. On the same date, I issued an order advising Pineau to file any response to the motion by November 7, 2012, and stating that any argument on the motion would be heard on November 9, 2012, at 10:00 a.m., the time initially set for the evidentiary hearing. Pineau filed no response to the Division's motion and did not appear at the November 9, 2012 hearing. At that hearing, Ms. Moran stated that neither the respondent nor any person representing him had communicated with her.

¹ According to counsel for the Division, a Division investigator received the correspondence.

Finding of Default

On the basis of the record before me, I conclude that the Division took appropriate actions to ensure proper service, and that sufficient service was made. Even though the documents sent to Pineau by certified mail were returned marked unclaimed, the first-class mail sent to at the same address, one that Pineau provided to the Division, was not returned. I conclude that Pineau's failure to appear at the prehearing conference or at the hearing support a finding that he is in default.

By his default, Pineau has waived his right to proceed further with an evidentiary hearing in this case and I may consider the Division's motion for summary decision based on the record. That record consists of the OTSC and the documents attached to it as Exhibit A (Complaint dated May 9, 2012, filed by the Financial Industry Regulatory Authority ("FINRA") against Pineau) and Exhibit B (Decision on FINRA's complaint, dated September 7, 2012.)

Findings of Fact

On the basis of the record, I find the following facts:

1. Pineau was first licensed by the Massachusetts Division of Insurance on or about February 25, 1999.²
2. Pineau currently holds an insurance producer's license and has three appointments as an insurance agent.
3. Pineau was first registered with the National Association of Securities Dealers ("NASD") as a general securities representative on or about March 14, 1996 and was subsequently registered in that capacity with the FINRA.³
4. Pineau was registered as a representative associated with Investment Professionals, Inc. ("IPI"), a FINRA member, from March 10, 2008 through May 31, 2011.⁴

² The OTSC does not specify whether Pineau was initially licensed as an insurance agent, pursuant to Chapter 175, §163 or an insurance broker pursuant to Chapter 175, §166. In any event, on or about May 16, 2003, pursuant to Chapter 106 of the Acts and Resolves of 2002, both types of license were automatically cancelled and converted to an insurance producer license.

³ FINRA, created in 2007 by the consolidation of NASD with the member regulation function of the New York Stock Exchange, is the administrative authority responsible for licensing registered representatives and initiating disciplinary action against its licensees.

⁴ Pineau terminated his registration with IPI effective May 31, 2011.

5. Through IPI, Pineau sold annuity products issued by the Symetra Life Insurance Company ("Symetra.")
6. On or about March 2, 2011, two consumers to whom Pineau had sold an annuity advised Symetra that Pineau had incorrectly listed their respective birth dates on the annuity application, in each case indicating that they were born ten years later than their actual dates of birth.
7. Symetra investigated other applications for annuities that Pineau had submitted through IPI and discovered that on a number of occasions he had misrepresented the purchaser's correct age.
8. On or about May 9, 2012, the FINRA Department of Enforcement instituted a disciplinary proceeding against Pineau, alleging that, without the knowledge or consent of the customers, he had falsified information on 12 applications for Symetra annuities submitted to IPI.
9. The misrepresentations resulted in 1) increased commissions that Pineau received on the annuity business; and 2) purchases of annuities by applicants who, under the issuer's rules, by reason of their true age were ineligible to purchase the product.⁵
10. FINRA argued that Pineau's actions violated FINRA rules against submitting false documents to receive unwarranted commissions and falsification of applications relating to the sale of variable annuities that created inaccuracies in records that IPI is required to make and preserve.
11. Pineau did not answer or otherwise respond to FINRA's complaint, nor did he respond to FINRA's motion for Entry of Default Decision.
12. The FINRA hearing officer, in her September 7, 2012 Decision in the FINRA Department of Enforcement proceeding against Pineau, found that Pineau was in default and that the factual allegations in the complaint were deemed admitted.
13. Pineau did not appeal the FINRA September 7, 2012 decision.

⁵ Pineau's commissions varied depending on the age of the customer when the annuity was purchased; for younger purchasers the commission was higher.

Analysis and Conclusions of Law

801 CMR 1.01 (7)(h) allows a party, when he or she is of the opinion that there is no genuine issue of fact relating to a claim, and that he or she is entitled to prevail as a matter of law, to file a motion for summary decision, with or without supporting affidavits. The Division bases its motion for summary decision on respondent's failure to file an answer to the OTSC and failure to appear at the scheduled prehearing conference. I find that respondent's failure to comply with the directives in the Notice warrant a finding that he is in default. No genuine issue of fact has been raised in connection with the Division's claims. I find that it is entitled to prevail as a matter of law.

Chapter 175, §162R (a) allows the Commissioner to initiate disciplinary action against a producer, to revoke an insurance producer's license and to level civil penalties for a series of reasons. Subsections (a)(5) and (a)(8), respectively, authorize actions for "intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance," and "using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere."

I conclude that the above findings of fact relating to Pineau's misrepresentation of his customers' birth dates on applications for annuities fully support the Division's claims and its request for relief. On this record, I find that Pineau's Massachusetts producer license should be revoked, that he should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and that he should be required to dispose of any interests he may have in any insurance business in Massachusetts.

As noted above, Chapter 175, §162R (a) permits the Commissioner to levy a civil penalty in a disciplinary action. The maximum amount of the penalty, \$1,000 per violation, is that set out in Chapter 176D, §7. Counsel for the Division confirmed, at the hearing, that the two applicants for annuities identified by name in the OTSC are Massachusetts residents.⁶ Because a producer's misrepresentation of information on a consumer's application for insurance is a serious violation, I will impose the maximum fine on Pineau.

⁶ Although the FINRA decision concludes that Pineau falsified information relating to twelve individual applicants for annuities, the Division's OTSC identified only two by name. At the hearing, counsel for the Division confirmed that both are Massachusetts residents.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued by the Division to Brian E. Pineau are hereby revoked; and it is

FURTHER ORDERED that Brian E. Pineau shall return to the Division any licenses in his possession, custody or control; and it is

FURTHER ORDERED that Brian E. Pineau is, from the date of this order, prohibited from directly or indirectly transacting any insurance business or acquiring, in any capacity whatsoever, any insurance business in the Commonwealth of Massachusetts; and it is

FURTHER ORDERED that Brian E. Pineau shall comply with the provisions of G.L. c. 175, §166B and dispose of any and all interests in Massachusetts as proprietor, partner, stockholder, officer or employee of any licensed insurance producer; and it is

FURTHER ORDERED that Brian E. Pineau shall pay a fine of Two Thousand Dollars (\$2,000) to the Division within 30 days of the entry of this order.

This decision has been filed this 18th day of January 2013, in the office of the Commissioner of Insurance. A copy shall be sent to Pineau by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

Jean F. Farrington
Presiding Officer

Pursuant to Chapter 26, §7, this decision may be appealed to the Commissioner of Insurance.