



CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

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

1000 Washington Street • Suite 810 • Boston, MA 02118-6200
(617) 521-7794 • FAX (617) 521-7475
<http://www.mass.gov/doi>

JAY ASH
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

JOHN C. CHAPMAN
UNDERSECRETARY

GARY D. ANDERSON
ACTING COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Benjamin V. Fistel, Respondent
Docket No. E2016-13

**Decision and Order on Petitioner's Motion
for Entry of Default and Summary Decision**

Introduction and Procedural History

On November 10, 2016, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Benjamin V. Fistel ("Fistel") who was, until September 23, 2015, a licensed Massachusetts non-resident insurance producer. The Division alleges that Fistel failed to report administrative actions against him by the Commonwealth of Virginia and the states of Vermont, Wisconsin, Delaware, Wyoming, South Dakota, and Maine that resulted in revocation of his insurance producer licenses in those jurisdictions. The Division contends that Fistel, by failing timely to report those actions, violated M.G.L. c. 175, §162V (a). The Division further contends that these allegations support revocation of Fistel's Massachusetts producer license pursuant to the provisions of M.G.L. c. 175, §162R (a)(2) and (a)(9). In addition to license revocation, the Division seeks a cease and desist order and orders requiring Fistel to dispose of any insurance-related interests in Massachusetts, prohibiting him from conducting any insurance business in Massachusetts, and imposing fines for the alleged violations.

On November 10, 2016, the Division served the OTSC and a Notice of Action on Fistel by the United States Postal Service ("USPS") certified mail to the business and residential addresses on file in the Division's licensing records. On December 8, 2016, the Division again served the OTSC and a Notice of Action on Fistel by USPS regular first-class mail to Fistel's

business and residential addresses. Fistel filed no answer or other response to the OTSC. On December 30, 2016, the Division filed a motion for summary decision in its favor against Fistel for failure to answer the OTSC. I issued an order on January 3, 2017 instructing Fistel to file any written response to the Division's motion by January 18, 2017 and scheduling a hearing on the motion for January 20, 2017.

Fistel did not respond to the Division's motion for summary decision. Neither he nor any person purporting to represent him appeared at the hearing on January 20, 2017. Matthew Burke, Esq. represented the Division at the hearing. He stated that he had not been contacted about this matter by Fistel or by any person purporting to represent him. Attorney Burke confirmed that the OTSC and Notice of Action sent to Fistel's business address by certified and first class mail was returned by USPS as non-deliverable and that the OTSC and Notice of Action served on Fistel by certified and first-class mail at his residential address was not returned by USPS.

Pursuant to M.G.L. c. 175, §162R (e) the Commissioner of Insurance retains the authority to enforce the provisions of and impose penalties or remedies against a person charged with violations of M.G.L. c. 175, §§162H through 162X even if the person's license has lapsed by operation of law. Therefore, although Fistel did not renew his non-resident producer license in 2015, he is still subject to disciplinary action by the Division.

Finding of Default

On the basis of the record before me, I conclude that the Division took appropriate actions to ensure proper service. The OTSC was served on Fistel by both first-class mail and certified mail to his residential and business addresses. USPS returned the certified and first-class mail sent to the business address, but not to the residential address. M.G.L. c. 175, §174A states that notices of hearings seeking revocations of producer licenses are deemed sufficient when sent postpaid by registered mail to the last business or residence address of the licensee appearing on the records of the commissioner. For purposes of giving notice, M. G. L. c. 4, §7, Clause 44 provides that certified mail is equivalent to registered mail. I conclude that service was sufficient and that Fistel's failure to answer the OTSC, to respond to the Division's motion, or to appear at the hearing warrant a finding that he is in default.

By his default, Fistel 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, the Motion for Summary Decision, and the following exhibits attached to the OTSC: A) Default Judgment and Order from the State of Vermont Department of Financial Regulation, dated March 14, 2014; B) Order from the Commonwealth of Virginia State Corporation Commission, date stamped May 9, 2014; C) Final Decision and Order from the State of Wisconsin Office of the Commissioner of Insurance, dated June 9, 2014; D) Final Order and Decision from the Insurance Department of the State of Delaware, dated December 9, 2014; E) Official record from the Wyoming Insurance Department, dated April 6, 2015; F) Final Decision from the South Dakota Division of Insurance, dated April 22, 2015; and G) License Revocation Order from the State of Maine Bureau of Insurance, dated May 12, 2015. Attached to the Division's Motion for Summary Decision is a copy of Fistel's licensing record at the Division.

Findings of Fact

Based on my review of the record, I make the following findings of fact.

1. The Division most recently licensed Fistel as a non-resident insurance producer on or about May 17, 2013.
2. According to the Division's licensing records, Fistel's Massachusetts insurance producer license terminated automatically for non-renewal on September 23, 2015.
3. On March 14, 2014, the State of Vermont Department of Financial Regulation revoked Fistel's Vermont insurance producer license.
4. On or about May 9, 2014, the Commonwealth of Virginia Corporation Commission revoked Fistel's Virginia insurance producer license.
5. On June 9, 2014, the State of Wisconsin Office of the Commissioner of Insurance revoked Fistel's Wisconsin insurance intermediary agent's license.
6. On December 9, 2014, the Insurance Department of the State of Delaware revoked Fistel's Delaware insurance producer license.
7. On April 2, 2015, the Wyoming Insurance Department revoked Fistel's insurance agent/broker license.
8. On April 22, 2015, the South Dakota Division of Insurance revoked Fistel's South Dakota insurance producer license.
9. On May 12, 2015, the State of Maine Bureau of Insurance revoked Fistel's Maine insurance producer license.
10. Fistel did not report to the Division the administrative actions by Vermont, Virginia, Wisconsin, Delaware, Wyoming, South Dakota, and Maine that resulted in the revocation of his producer licenses in those jurisdictions.

Analysis and Conclusions of Law

801 CMR 1.01(7)(h) permits a party to move for summary decision when, in its opinion, there is no genuine issue of fact relating to a claim and it is entitled to prevail as a matter of law.

Fistel has not contested the factual allegations in the OTSC or offered any defense to the Division's claims for relief. M.G.L. c. 175, §§162G through 162X describe the requirements for obtaining and maintaining a Massachusetts insurance producer license. M.G.L c. 175, §162R (a) specifies 14 grounds on which the Commissioner may initiate disciplinary action against a licensed producer. The Division identifies subsections §162R (a)(2) and (a)(9) as grounds for revocation of Fistel's license, as well as a failure to comply with M.G.L c. 175, §162V(a), a statute requiring a producer to report to the Commissioner any administrative action taken against him by another jurisdiction within 30 days of the final disposition of the matter.

Subsection 162R (a)(2), in pertinent part, supports disciplinary action for violating any insurance laws or regulation, subpoena or order of the Commissioner or of another state's insurance commissioner. Here, Fistel failed to notify the Division of the administrative actions against him in Vermont, Virginia, Wisconsin, Delaware, Wyoming, South Dakota, and Maine as he is required to do under M.G.L c. 175, §162V(a). The record fully supports the Division's claim that Fistel violated a Massachusetts insurance law and is therefore subject to discipline under subsection (a)(2).

Subsection 162R (a)(9) supports disciplinary action when an insurance producer's license has been revoked by another jurisdiction. The administrative actions that resulted in revocation of Fistel's insurance producer licenses in Vermont, Virginia, Wisconsin, Delaware, Wyoming, South Dakota, and Maine therefore support revocation of his Massachusetts license under subsection (a)(9).

The number and the seriousness of the grounds the Division cites for taking disciplinary action against Fistel fully warrant its request to revoke his Massachusetts producer license. On this record, I find that, in addition to revocation of his license, Fistel should be prohibited from transacting any insurance business or acquiring, in any capacity whatsoever in Massachusetts, any insurance business in Massachusetts and shall dispose of any interests he may have in any insurance business in Massachusetts.

M.G.L c. 175, §162R (a) also permits the Commissioner to levy a civil penalty in accordance with M.G.L c. 176D, §7 for actions that support disciplinary action against a producer under M.G.L c. §162R (a). The maximum penalty permitted under M.G.L c.176D, §7 is \$1,000 per violation. The Division also requests fines for each of Fistel's violations of M.G.L c. 175, §162V(a). For violations of law that are not listed as grounds for disciplinary action under

M.G.L. c. 175, §162R (a), M.G. L. c. 175, §194 permits a fine of not more than \$500 per violation.¹ The Division's requests, if allowed, would impose two fines, derived from two statutory sources, upon Fistel. I am not persuaded, however, that in these circumstances it is appropriate to impose fines as permitted under M.G.L. c. 176D, §7. The OTSC is based primarily on undisputed facts relating to Fistel's failure to notify the Division of administrative actions against his insurance producer license in seven other jurisdictions. Because there is no evidence that the violation of insurance laws in other jurisdictions pursuant to M.G.L. c. 175, §162R (a)(2) and (a)(9) affected Massachusetts residents, I will impose no additional fines based on those activities.²

Fistel, by failing to report seven administrative actions against him, committed seven violations of M.G.L. c. 175, §162V(a). Failure to report administrative actions by other jurisdictions limits the Division's capacity to protect Massachusetts consumers through oversight of its licensees. Because these actions constitute serious violations of the insurance laws, in addition to license revocation for the reasons set out in M.G.L. c. 175, §162R (a)(2) and (a)(9), I will impose the maximum \$500 fine for each of Fistel's failures to report an administrative action.

For the reasons set forth above, the Division's Motion for Summary Decision is hereby allowed.

ORDERS

Accordingly, after due notice, hearing, and consideration it is

ORDERED: That any insurance producer license issued to Benjamin V. Fistel by the Division is hereby revoked; and it is

FURTHER ORDERED: that Benjamin V. Fistel shall return to the Division any license in his possession, custody or control; and it is

FURTHER ORDERED: that Benjamin V. Fistel 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 Massachusetts; and it is

¹ That section specifically states that "[w]hoever violates any provision of this chapter, the penalty whereof is not specifically provided herein, shall be punished by a fine of not more than five hundred dollars."

² The record does not indicate that Fistel violated any other Massachusetts insurance law or regulation that supports discipline under M.G.L. c. 175, §162R (a)(2) and (a)(9).

FURTHER ORDERED: that Benjamin V. Fistel shall comply with the provisions of M.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 Benjamin V. Fistel shall pay a fine of Three Thousand Five Hundred Dollars (\$3,500) to the Division within 30 days of the date of this decision and order.

This decision has been filed this 31st day of May 2017, in the office of the Commissioner of Insurance. A copy shall be sent to Benjamin V. Fistel by regular first class mail, postage prepaid.

Kristina A. Gasson
Presiding Officer

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