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GARY D. ANDERSON
ACTING COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Robert Allen Christian, Respondent
Docket No. E2016-14

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

Introduction and Procedural History

On November 17, 2016, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Robert Allen Christian ("Christian") who was on that date, a licensed Massachusetts non-resident insurance producer.¹ The Division alleges that Christian failed to report administrative actions against him by the states of North Dakota, South Dakota, Washington, Maine, and Michigan that resulted in revocation of his insurance producer licenses in those jurisdictions. The Division contends that Christian, by failing to timely report those actions, violated M.G.L. c. 175, §162V (a). The Division further contends that these allegations support revocation of Christian'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 Christian 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 17, 2016, the Division served the OTSC and a Notice of Action on Christian by the United States Postal Service ("USPS") certified mail addressed to him at the

¹ According to Division licensing records, Christian's non-resident producer license was terminated for non-renewal on November 19, 2016, two days after service of the OTSC.

mailing, residential, and business addresses on file in the Division's licensing records. On December 20, 2016, the Division again served the OTSC and a Notice of Action on Christian by USPS regular first-class mail to the mailing, residential, and business addresses on file. Christian filed no answer or other response to the OTSC. On January 11, 2017, the Division filed a motion for summary decision in its favor against Christian for failure to answer the OTSC. I issued an order on January 26, 2017 instructing Christian to file any written response to the Division's motion by February 22, 2017 and scheduling a hearing on the motion for February 24, 2017.

Christian 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 February 24, 2017. Matthew Burke, Esq. represented the Division at the hearing. He stated that he had not been contacted about this matter by Christian or by any person purporting to represent him. He confirmed that the OTSC and Notice of Action served on Christian by certified mail was returned to the Division on December 19, 2016. He also confirmed that the OTSC and Notice of Action served by regular first-class mail was returned on January 3, 2017.

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 Christian did not renew his non-resident producer license in 2016, 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 Christian by both first-class mail and certified mail to the residential and business addresses on file at the Division. 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 Christian'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, Christian 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) Consent Order from the North Dakota State Corporation Commission, dated May 28, 2014 and "Voluntary Surrender of Insurance Agent or Consultant License Authority" signed by Christian and dated July 8, 2014; B) Order Revoking License from State of Washington Office of the Insurance Commissioner, dated September 3, 2014; C) Order Accepting Stipulation from the State of Michigan Department of Insurance and Financial Services, dated October 3, 2014, and "Stipulation to Entry of Order" signed by Christian and dated September 25, 2014; D) Final Decision from the South Dakota Department of Labor and Regulation Division of Insurance dated February 26, 2015; E) License Revocation Order from the State of Maine Department of Professional and Financial Regulation Bureau of Insurance, dated July 8, 2015. Attached to the Division's Motion for Summary Decision is a copy of Christian'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 first licensed Christian as a non-resident insurance producer on or about January 17, 2014.
2. According to the Division's licensing records, Christian's Massachusetts insurance producer license terminated automatically for non-renewal on November 19, 2016.
3. On May 28, 2014, the North Dakota State Corporation Commission revoked Christian's North Dakota insurance producer license. Christian signed a consent order and settlement agreement wherein he agreed to surrender his North Dakota insurance producer license.
4. On September 3, 2014, the State of Washington Office of the Insurance Commissioner revoked Christian's Washington insurance producer license effective September 18, 2014.
5. On October 3, 2014, the State of Michigan Department of Insurance and Financial Services revoked Christian's Michigan insurance producer license. Christian signed a stipulation agreeing to the revocation of his Michigan insurance producer license.
6. On February 26, 2015, the South Dakota Division of Insurance revoked Christian's insurance producer license.
7. On April 22, 2015, the South Dakota Division of Insurance revoked Christian's South Dakota insurance producer license.
8. On July 8, 2015, the State of Maine Bureau of Insurance revoked Christian's Maine insurance producer license effective August 14, 2015.

9. Christian did not report to the Division the administrative actions by North Dakota, South Dakota, Washington, Maine, and Michigan 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. Christian 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 Christian's license, as well 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, Christian failed to notify the Division of the administrative actions against him in North Dakota, South Dakota, Washington, Maine, and Michigan as he is required to do under M.G.L. c. 175, §162V(a). The record fully supports the Division's claim that Christian 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 Christian's insurance producer licenses in North Dakota, South Dakota, Washington, Maine, and Michigan 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 Christian fully warrant its request to revoke his Massachusetts producer license. On this record, I find that, in addition to revocation of his license, Christian 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 §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 Christian's violations of M.G.L. c. 175, §162V(a). For violations of law that are not listed as grounds for disciplinary action under §162R (a), M.G. L. c. 175, §194 permits a fine of not more than \$500 per violation.² The Division's requests, if allowed, would impose two fines, derived from two statutory sources, upon Christian. 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 Christian's failure to notify the Division of administrative actions against his insurance producer license in five other jurisdictions. Because there is no evidence that the violation of insurance laws in other jurisdictions pursuant to §162R (a)(2) and (a)(9) affected Massachusetts residents, I will impose no additional fines based on those activities.³

Christian, by failing to report five administrative actions against him, committed five 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. The record shows that Christian signed a settlement agreement wherein he agreed to surrender his North Dakota insurance producer license; he was therefore fully aware of the first license revocation on May 28, 2014. Because failure to report administrative actions by other jurisdictions limits the Division's capacity to protect Massachusetts consumers through oversight of its licensees, 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 Christian'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

² 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."

³ The record does not indicate that Christian violated any other Massachusetts insurance law or regulation that supports discipline under §162R (a)(2) and (a)(9).

ORDERED: That any insurance producer license issued to Robert Allen Christian by the Division is hereby revoked; and it is

FURTHER ORDERED: that Robert Allen Christian shall return to the Division any license in his possession, custody or control; and it is

FURTHER ORDERED: that Robert Allen Christian 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

FURTHER ORDERED: that Robert Allen Christian 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 Robert Allen Christian shall pay a fine of Two Thousand Five Hundred Dollars (\$2,500) 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 Robert Allen Christian by regular first class mail, postage prepaid.

Kristina A. Gasson
Presiding Officer

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