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DANIEL R. JUDSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Keely Grimes, Respondent

Docket No. E2015-02

Order and Decision

Introduction and Procedural History

On July 14, 2015, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Keely Grimes (“Grimes”). The Division asserted several causes for discipline against Grimes under Massachusetts General Laws Chapter (“Chapter”) 175 and Chapter 176D.

The Division alleges that Grimes in her response to Background Question 2 on her 2014 application for a non-resident individual insurance producer license failed to disclose a Wisconsin administrative action. The Division charges that Grimes thereby provided incorrect, misleading, incomplete, or materially untrue information in her license application “in violation” of Chapter 175, § 162R(a)(1);¹ obtained her license through misrepresentation or fraud, a basis for discipline under Chapter 175, § 162R(a)(3); and committed an unfair or deceptive act or practice in the business of insurance, a basis for discipline under Chapter 176D, § 2.

¹ The substance of the Division’s allegation of a “violation” is that this action by Grimes constitutes a cause for disciplining her pursuant to § 162R(a)(1). *See Division of Insurance v. Lester Williams*, Docket No. E2012-10 (The Presiding Officer observed that it was imprecise for the OTSC to allege that Williams “violated” § 162R(a)(2) because this provision is the second of 14 “causes” that are listed in Chapter 175, § 162R(a), as possible grounds for disciplining licensees.).

The Division uses the language of “violation” for another charge that it makes in the OTSC. In that case also the substance of the Division’s allegation is that the complained of action by Grimes constitutes a cause for disciplining her pursuant to the subsection of Chapter 175, § 162R(a) that is specified by the Division.

The Commissioner of Insurance (“Commissioner”) designated me to be Presiding Officer for the proceeding on the OTSC.

On July 14, 2015, Robert J. Kelly, Esq., counsel for the Division, mailed the OTSC, with a Notice of Action from the Hearings and Appeals Docket Clerk (“Docket Clerk”), to Grimes at her current address appearing on the records of the Commissioner. Grimes did not file an Answer to the OTSC.

On August 18, 2015, the Division filed Petitioner’s Motion for Summary Decision (“Motion”). See 801 Code of Massachusetts Regulations 1.01(7)(h).

On August 19, 2015, I issued an Order and Notice of Hearing (“Order”), which the Docket Clerk sent, postage paid, by certified mail, return receipt requested, and by regular U. S. mail to Grimes at her current address appearing on the records of the Commissioner. Grimes was notified that the Motion would come on for hearing on September 22, 2015, and that the hearing would be conducted in accordance with Chapter 30A and the Formal Rules of the Standard Adjudicatory Rules of Practice and Procedure, 801 Code of Massachusetts Regulations 1.01, *et seq.* Grimes was ordered to file any written responses to the Motion no later than September 22, 2015. Grimes further was advised that failure to respond to the Motion or to appear at the hearing could result in the entry of an order of default against her and the entry of a summary decision or decision on the pleadings granting the relief requested in the OTSC that was filed by the Division on July 14, 2015.

The envelope containing the copy of the Order that was sent to Grimes’s address by certified mail was returned to the Docket Clerk on September 21, 2015. The envelope had the following label pasted on it: “RETURN TO SENDER – UNCLAIMED – UNABLE TO FORWARD.” The envelope containing the copy of the Order that was sent to Grimes’s address by regular U. S. mail, postage prepaid, has not been returned to the Docket Clerk to date.

Grimes did not file a response to the Motion and did not attend the hearing that was held on September 22, 2015. The Division requested action on its Motion.

Finding of Default

The Division took appropriate actions to ensure proper service, and sufficient service was made. Section 162M(f) of Chapter 175 requires Massachusetts insurance producers and agencies to inform the Commissioner of a change of address within 30 days of the change. The OTSC

and Notice of Action were sent by mail to Grimes at her current address then-appearing on the records of the Commissioner. *See* 801 CMR 1.01(4)(c) (“Notice of actions and other communications from the adjudicating Agency, or its designee, shall be presumed to be received upon the day of hand-delivery or, if mailed, three days after deposit in the U.S. mail.”).

The Order was sent, postage paid, by regular U. S. mail and by certified mail to Grimes at her current address then-appearing on the records of the Commissioner. This was sufficient notice of the hearing on the Motion. *See* Chapter 175, § 174A; Chapter 4, § 7.

The failure of Grimes to answer the OTSC or to respond to the Division’s Motion, and the failure of Grimes to appear at the hearing on the Motion, warrant finding that Grimes is in default. By this default, Grimes has waived the right to proceed further with an evidentiary hearing and I may consider the Motion and the merits of the matter based solely upon the OTSC and the exhibits attached to it. *See Division of Insurance v. John Clark Daly*, Docket No. E93-2 (The Presiding Officer may accept the allegations contained in an OTSC as true if there is no Answer to the OTSC.). No genuine issue of fact has been raised in connection with the Division’s claims, and I find that it is entitled to prevail as a matter of law.

Findings of Fact

On the basis of the record, consisting of the OTSC and the exhibits attached to it, I find the following facts:

1. Grimes was licensed by the Division as a non-resident individual insurance producer on July 10, 2014, and her license remains active.
2. At all times pertinent to this proceeding the following address has appeared on the records of the Commissioner as Grimes’s current address: 1182 11th Street, Unit 17, West Des Moines, IA 50265.
3. On November 29, 2011, Grimes was denied a permanent individual intermediary agent insurance license by the Wisconsin Office of the Commissioner of Insurance.
4. Grimes submitted to the Division a Uniform Application for Individual Producer License dated May 23, 2014 (“application”).
5. Background Question 2 on the application asked whether the applicant had ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration.

6. Background Question 2 on the application defined “involved” as including having a license application denied.

7. Grimes answered “No” to Background Question 2 on the application.

8. The Division issued Grimes a non-resident individual insurance producer license on July 10, 2014.

Analysis and Conclusions of Law

On the basis of the record, consisting of the OTSC and the exhibits attached to it, and the Findings of Fact as set forth above, I make the following Conclusions of Law.

By failing to disclose the Wisconsin administrative action in her answer to Background Question 2 on her application, Grimes thereby:

(1) provided incorrect, misleading, incomplete or materially untrue information in the license application and subjected herself to discipline pursuant to Chapter 175, § 162R(a)(1);

(2) obtained a license through misrepresentation or fraud and subjected herself to discipline pursuant to Chapter 175, § 162R(a)(3); and

(3) committed an unfair or deceptive act or practice in the business of insurance and subjected herself to discipline pursuant to Chapter 176D, § 2.

Discipline

Chapter 175, § 162R(a), authorizes the Commissioner to place an insurance producer on probation, to suspend or revoke a producer’s license, or to levy on her a civil penalty in accordance with Chapter 176D, § 7, or to take any combination of these actions, for 14 enumerated causes. Chapter 176D, § 2, provides that no person shall engage in the Commonwealth in any an unfair or deceptive act or practice in the business of insurance and Chapter 176D, § 7 provides for a civil penalty.

Although Grimes has made herself subject to discipline under three different statutory provisions; Chapter 175, § 162R(a)(1) and § 162R(a)(3), and Chapter 176D, § 2, the basis for all three causes for discipline is the same: not telling the truth on her application filed with the Division. I therefore do not impose cumulative discipline under each statutory section.

Not telling the truth on an application for an insurance license is a serious divergence from the behavior justifiably expected of a Massachusetts insurance licensee. I therefore revoke

all of Grimes's Massachusetts insurance licenses and assess a civil penalty of \$1,000.00 pursuant to Chapter 175, § 162R(a)(1) and § 162R(a)(3), and Chapter 176D, §§ 2 and 7.

ORDERS

After due notice, hearing and consideration, it is hereby ORDERED:

1. That Keely Grimes shall cease and desist from the conduct complained of in the Order to Show Cause filed on July 14, 2015;

2. That any and all insurance licenses issued to Keely Grimes by the Massachusetts Division of Insurance are hereby revoked;

3. That Keely Grimes shall return to the Massachusetts Division of Insurance any licenses in her possession, custody or control;

4. That Keely Grimes is, from the date of this order and decision, prohibited from directly or indirectly transacting any insurance business or acquiring, in any capacity whatsoever, any insurance business in the Commonwealth of Massachusetts;

5. That Keely Grimes shall comply with the provisions of Chapter 175, § 166B, and dispose of any and all interests in Massachusetts as proprietor, partner, stockholder, officer or employee of any licensed insurance producer; and

6. That Keely Grimes shall pay to the Massachusetts Division of Insurance **within 30 days of the entry of this Order and Decision** a civil penalty of **One Thousand Dollars (\$1,000.00)** pursuant to Chapter 175, § 162R(a)(1) and § 162R(a)(3), and Chapter 176D, § 2 and § 7.

A copy of this **Order and Decision** shall be sent by the Docket Clerk by regular first class mail, postage paid, to Keely Grimes at 1182 11th Street, Unit 17, West Des Moines, IA 50265.

Filed: December 17, 2015

Stephen M. Sumner
Presiding Officer

This decision may be appealed to the Commissioner of Insurance pursuant to Massachusetts General Laws Chapter 26, § 7.

Order and Decision
Division of Insurance v. Keely Grimes, Docket No. E2015-02

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