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Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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DANIEL R. JUDSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Redonda Lawrence Russell, Respondent
Docket No. E2015-09

Decision on Petitioner's Motion
For Summary Decision

Introduction and Procedural History

On October 8, 2015, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Redonda Lawrence Russell (“Russell”), a licensed Massachusetts non-resident insurance producer. The Division asserts that Russell has not been licensed in her home state, Texas, since June 23, 2013. It alleges that, in 2014, Russell pleaded guilty in the United States Federal Court for the Northern District of Texas to criminal charges of wire fraud in violation of 18 U.S.C. §1343. The Division further alleges that the Financial Industry Regulatory Authority (“FINRA”), in 2013, suspended Russell and barred her from association with any FINRA member. In addition, the Division alleges that in 2014 six other jurisdictions, Kentucky, North Dakota, West Virginia, Vermont, Maine and South Dakota revoked Russell’s insurance producer licenses, and that she voluntarily surrendered her Arkansas producer license following an investigation by the Arkansas Insurance Commissioner. The Division alleges that Russell did not report the criminal prosecution, the administrative actions in other states, or the FINRA suspension and bar to the Division within the time periods prescribed in M. G. L. c. 175, §162V (“§162V”).

The Division contends that the allegations in the OTSC support revocation of Russell's Massachusetts producer license pursuant to the provisions of M.G.L. c. 175, §162R (a)(6), (a)(8) and (a)(9) ("§162R (a)"). The Division also contends that Russell should be fined for by failing to report the administrative actions and the criminal prosecution to the Division on a timely basis as she is obligated to do so. The Division argues that Russell is ineligible to hold a non-resident producer license in Massachusetts because she does not have a resident producer license, as required by G.L. c. 175, §162N ("§162N"). In addition to revocation of Russell's license, the Division seeks orders that, among other things, require her to dispose of any insurance-related interests in Massachusetts, prohibit her from conducting any insurance business in the Commonwealth, and impose fines for the alleged violations.

Russell filed no answer or other response to the OTSC. On November 23, 2015, an order issued scheduling a status conference for December 11, 2015. Russell did not attend that conference, either in person or through a representative. On December 15, 2015, the Division filed a motion for entry of default and summary decision (the "Motion"). On January 4, 2016, an order issued scheduling a hearing on the Motion for January 19, 2016. Neither Russell nor any person representing her attended the hearing. Scott Peary, Esq. represented the Division; he reported that neither Russell nor any person representing her had contacted him about this matter.

Finding of Default

According to the certificate of service submitted with the OTSC, it was served it on Russell by United States mail sent, not to her address in Fort Worth, Texas on record with the Division, but to a federal correctional facility in Fort Worth where she was incarcerated. Included in the docket is a return receipt for certified mail addressed to Russell that was accepted at that correctional facility on October 14, 2015. The evidence supports a conclusion that the OTSC was served on Russell by certified mail. In its motion for summary decision, the Division indicates that it learned sometime between November 23 and early December, 2015 that Russell had been transferred from the Fort Worth facility to a different correctional facility located in Grand Prairie, Texas.¹ On December 3, 2015, the Division sent a second copy of the OTSC to Russell by certified mail addressed to her at that location. A receipt for certified mail

¹Attached to the Division's motion is an undated document from the federal Bureau of Prisons placing Russell at the Grand Prairie location. It does not show the date of transfer.

attached to the Motion as Exhibit 7 indicated that the second copy of the OTSC was delivered to Russell on December 7, 2015.

The Division states that because information from the Bureau of Prisons indicated that Russell was to be released on December 10, 2015, the Motion was served on Russell by United States mail sent to her address as shown on the Division's records, 775 Annette Drive, Fort Worth, Texas. At the hearing on January 19, 2016, the Division indicated that mail sent to that address had not been returned as undeliverable.

On the basis of the postal records, I conclude that the OTSC was served on Russell by certified mail and that she received the Motion. I conclude that service was sufficient and that Russell's failure to answer the OTSC or to respond to the Motion, and her failure to appear at the hearing warrant findings that she is in default.² By her default, Russell has waived her 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.

The record in this proceeding consists of the OTSC, the Motion for Summary Decision, and the exhibits attached to them. The exhibits attached to the OTSC consist of the criminal information filed against Russell in the United States District Court for the Northern District of Texas, records documenting the judgment in that proceeding, a report from FINRA on Russell's status with that organization as of November 10, 2014, and decisions or consent orders in administrative actions initiated against Russell by the states of Kentucky, Arkansas, North Dakota, West Virginia, Vermont, Maine and South Dakota. Attached to the Motion are copies of records relating to service on Russell by certified mail, records from the Bureau of Prisons documenting Russell's locations in its correctional facilities and a copy of the notice scheduling a status conference.

² M.G.L. c. 175, §174A, establishes a statutory process that determines when notice of a proposed revocation or suspension of a license is by law deemed sufficient. Service is to be made postpaid "by registered mail to the last business or residence of the licensee appearing on the records of the commissioner." For purposes of that statute, registered mail includes certified mail. M.G.L. c. 175, §162M (f) requires licensees to inform the commissioner of a change of address within 30 days of the change. The licensee bears the burden of ensuring that his or her address on the Division's records is correct. Rather than follow the statutory rules the Division, at the initiation of this proceeding, evidently learned that the respondent was in two different correctional facilities and served her there by certified mail. Ultimately, when it appeared that Respondent was no longer incarcerated, it served her at the address on record with the Division, but not by certified mail. The mail to that address was not returned. Taken as a whole, the evidence in the record is sufficient to demonstrate that Respondent received notice of this proceeding.

Findings of Fact

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

1. The Division first licensed Russell as an insurance producer on November 30, 2004.
2. On August 18, 2014, the United States Attorney for the Northern District of Texas filed a criminal information charging Russell with wire fraud in violation of 18 U.S.C. §1343, a felony.
3. The charge was based on actions taken by Russell that resulted in the conversion of over \$316,000 from client accounts to her personal bank accounts.
4. On August 25, 2014, Russell pleaded guilty to the charge of wire fraud; she was sentenced in December, 2014.
5. Russell did not report the criminal proceeding to the Division of Insurance.
6. On or about August 21, 2013, the Financial Industry Regulatory Authority ("FINRA") suspended Russell for her alleged failure to respond to a FINRA request for information.
7. Russell did not request termination of that suspension.
8. On or about December 2, 2013, FINRA barred Russell from association with any FINRA member in any capacity.
9. On February 12, 2014, the Kentucky Department of Insurance revoked Russell's Kentucky insurance producer license.
10. On February 19, 2014, the Arkansas Insurance Commissioner and Russell entered into a consent order pursuant to which she voluntarily surrendered her Arkansas insurance producer license. .
11. On February 20, 2014, Russell consented to the entry of an order by the Insurance Commissioner of North Dakota revoking her North Dakota insurance producer license.
12. On March 17, 2014, the Insurance Commissioner of West Virginia revoked Russell's West Virginia insurance producer license.
13. On April 16, 2014, the Acting Commissioner of the Vermont Department of Financial Regulation revoked Russell's Vermont insurance producer license.
14. On May 20, 2014, the Maine Superintendent of Insurance revoked Russell's Maine insurance producer license, as of June 25, 2014.
15. On May 18, 2014, Russell consented to the entry of an order by the Director of the South Dakota Division of Insurance revoking her South Dakota producer license as of May 27, 2014.
16. Russell failed to report the administrative actions by Kentucky, Arkansas, North Dakota, West Virginia, Vermont, Maine and South Dakota to the Division.

Analysis and Discussion

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. Russell has not contested the factual allegations in the OTSC or offered any defense to the Division's claims for relief. G. L. c. 175, §§162G through 162X set out, among other things, the requirements for obtaining and maintaining a Massachusetts insurance producer license.

Section §162R (a) specifies fourteen grounds on which the Commissioner may suspend or revoke a producer's license. The Division identifies §162R (a)(6), (a)(8) and (a)(9) as grounds for revocation of Russell's license, as well a failure to comply with §162V (a) and (b), a statute requiring her to report to the Commissioner any criminal prosecution in any jurisdiction and any administrative action taken against her by another jurisdiction.

Subsection 162R (a)(6) permits disciplinary action if the licensee has been convicted of a felony. Records from the United States District Court for the Northern District of Texas, attached as Exhibits 1 and 2 to the OTSC, fully support the Division's claim that Russell was convicted of a felony and I find that she is for that reason subject to disciplinary action.

Subsection 162R (a)(8) permits disciplinary action against a licensee for "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 does not allege that Russell engaged in activities in Massachusetts that would support discipline under subsection (a)(8); as support for argument that she is subject to discipline under that section it apparently relies on the federal information and on the grounds for revocation referred to in administrative decisions from other jurisdictions. I find that the actions described in the federal information to which Russell pleaded guilty fully support the Division's claim that Russell's actions support disciplinary action under §162R (a)(8.) She used her position with First Command Financial Services, an investment advisor and financial planner, to make changes to the investments and insurance policies of the firm's clients by obtaining their personal information and forging claims that resulted in taking loans from or liquidating their accounts. The disbursements from the client accounts were remitted electronically to Russell's personal bank accounts. Her unauthorized use of the clients' personal information to obtain funds from their accounts and the conversion of those funds to her personal use constitute fraud and demonstrate dishonesty, untrustworthiness and financial irresponsibility.³

Subsection 162R (a)(9) permits disciplinary action when an insurance producer's license has been revoked in another jurisdiction. The Kentucky, North Dakota, West Virginia, Vermont,

² With one possible exception, it is difficult to know the extent to which the other state administrative actions are based on events that occurred within their own jurisdiction, or on the content of notices sent to states by the Monumental Life Insurance Company informing them that Russell had been terminated for cause as an agent for the company. The Vermont order contains considerable detail about Russell's misconduct with respect to Monumental Life policies, but it is not clear whether the consumers involved were Vermont residents. The state administrative actions all predate the federal information and judgment. Subsection (a)(8) permits disciplinary action whether the relevant business was conducted in the state initiating the action or elsewhere.

Maine and South Dakota administrative actions that resulted in revocation of Russell's insurance producer license in each state fully support disciplinary action under that section.⁴

The number and nature of the grounds that the Division cites for taking disciplinary action against Russell fully warrant its request to revoke her Massachusetts insurance producer license. On this record, I find that, in addition to revocation of her license, Russell should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and should be required to dispose of any interests she may have in any insurance business in Massachusetts.

Section 162R (a) also permits the Commissioner to levy a civil penalty in accordance with Chapter 176D, §7 for the reasons that permit disciplinary action under §162R (a). Of the 14 statutory reasons for disciplining a licensee, 12 are based on actions that a licensee or applicant has affirmatively taken; the other two reasons permit disciplinary action based on actions taken against the license, either conviction of a felony (a)(6) or revocation, suspension or denial of a license by another jurisdiction (a)(9). It is reasonable to consider imposing a fine when the disciplinary action arises from the respondent's personal actions. I am not, however, persuaded that a fine is reasonable if the disciplinary action is based on an action taken elsewhere against the respondent. For that reason, I conclude that while the record fully supports revocation of Russell's license under (a)(6) and (a)(9), no fine should be imposed. The third ground, (a)(8) would support a fine; however, there is no evidence that Russell's fraudulent activities affected Massachusetts residents.

Sections 162V (a) and (b), require licensees to notify the Division of Insurance of any administrative actions in other jurisdictions or by another governmental agency in the Commonwealth or criminal prosecutions in any jurisdiction. The Division's allegations that Russell failed to comply with her statutory obligations to notify the Division of the criminal prosecution and of the administrative actions against her in Kentucky, Arkansas, North Dakota, West Virginia, Vermont, Maine and South Dakota are fully supported on the record. I therefore conclude that Russell violated §§ 162V (a) and (b).

The Division asks that Russell be fined as allowed under G. L. c. 175, §194. That statute prescribes a general penalty of \$500 if a person violates a provision of c. 175 for which no

⁴ The Arkansas Insurance Commissioner accepted Russell's voluntary surrender of her license and placed it on inactive status. Because Arkansas did not revoke or suspend her license, its action does not support discipline under §162R (a)(9).

specific penalty is provided. Section 162V does not provide specific penalties for failure to comply with the reporting requirements.⁵ Because Russell failed to report the administrative actions or criminal conviction to the Division in a timely manner, she remained licensed in Massachusetts as a producer for about a year and a half after the first administrative decision. I will therefore impose the maximum fine of \$500 for each of seven violations.⁶ Russell is hereby assessed a penalty of \$500 each for seven failures to report an administrative action or a conviction, for a total of \$3,500.

The Division alleges that Russell became ineligible for a Massachusetts producer license when she was no longer licensed in her home state, but provides no documentary support for the termination of her license in Texas. It seeks an order finding that she violated G.L. c. 175, §162N (“§162N”). Representations in the other state administrative decisions provide evidence of the expiration or nonrenewal of Russell’s Texas license and, on that basis, I conclude that Russell became ineligible for a Massachusetts nonresident producer license on or about June 23, 2013, as a result of the expiration and nonrenewal of her license in her home state of Texas.⁷ Section 162N does not provide for automatic revocation or suspension of a license by operation of law when the licensee is no longer eligible for appointment as a nonresident producer, nor does it require the licensee to report that he or she is no longer eligible. The Division has identified no legal basis for a finding that she violated §162N, and for that reason, I decline to make such a finding.⁸

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Redonda Russell by the Division are hereby revoked; and it is

FURTHER ORDERED: that Redonda Russell shall return to the Division any licenses in her possession, custody or control; and it is

⁵ Violations of §162V are not classified in §162R (a) as a ground for license revocation.

⁶ Because the Division does not claim that by failing to report the Arkansas administrative action Russell violated §162V (a), I will impose no fine for failure to report that action.

⁷ It appears that the Division took no action to terminate her Massachusetts license on that ground.

⁸ Even though Russell’s Massachusetts license had apparently expired, the Commissioner, pursuant to c. 175, §162R (e) retains the authority to enforce against a licensee the provisions of c. 175, §§162H through 162X and Chapter 176D.

FURTHER ORDERED: that Redonda Russell 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 Redonda Russell 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 it is

FURTHER ORDERED: that Redonda Russell shall pay a fine of Three Thousand Five Hundred (\$3,500) to the Division within 30 days of the entry of this order.

This decision has been filed this 16th day of February 2016, in the office of the Commissioner of Insurance. A copy shall be sent to Russell 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.