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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.
Derek Anderson Siewert, Respondent
Docket No. E2015-05

Decision and Order on Petitioner's
Motion For Summary Decision

Introduction and Procedural History

On September 9, 2015, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Derek Anderson Siewert (“Siewert”), a licensed Massachusetts non-resident insurance producer. The Division alleges that on or about August 18, 2013 Siewert applied for a Massachusetts non-resident producer license; he answered “No” to the question on the application that asked if he had ever been a party to an administrative proceeding relating to a professional or occupational license. The Division alleges that, in fact, the Montana Department of Insurance, on or about May 18, 2010, had fined Siewert for violations of that state’s insurance code. The Division further alleges that on or about April 4, 2014, the Pennsylvania Insurance Department revoked Siewert’s Pennsylvania producer license and, on or about June 14, 2014, the California Department of Insurance revoked his California producer license. The Division contends that Siewert did not report either the Pennsylvania or California revocation to the Division within the thirty-day time frame prescribed by M.G.L. c. 175, §162V (a).

The Division contends that these allegations support revocation of Siewert’s Massachusetts producer license pursuant to the provisions of M.G.L. c. 175, §162R (a)(1), (a)(2),

(a)(8) and (a)(9) as well as M.G.L. c. 175, §162V (a) . In addition to license revocation, the Division seeks orders requiring Siewert 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.

On September 9, 2015, The Division served the OTSC and a Notice of Action on Siewert by first class mail, postage prepaid, addressed to him at the residential, business and mailing address on file in the Division's licensing records. Siewert filed no answer to the OTSC. On October 14, 2015 the Division filed motions for entry of default against Siewert for failure to answer the OTSC and for summary decision in its favor granting the relief requested in the OTSC. An order, issued on October 15, instructed Siewert to file any written response to the Division's motion by November 13, 2015, and scheduled a hearing on the motion for November 17. That order was sent to Siewert by certified mail to his address as shown on the Division's licensing records. On October 22, the Division received from the United States Post Office a green card receipt for certified mail that Siewert signed on October 19, 2015.

Siewert did not respond to the Division's motion for entry of default and summary decision. Neither Siewert nor any person purporting to represent him appeared at the hearing on November 17, 2014. Matthew Burke, Esq. represented the Division at the hearing. He stated that he had not been contacted about this matter by Siewert or by any person purporting to represent him. Shortly after the conclusion of the hearing, Mr. Burke advised me that an attorney representing Siewert left him a telephone message, that he did not receive before the hearing, indicating that Siewert would like to resolve the matter without a hearing. On December 7, 2015, the Division moved to extend further activity in this matter to allow the parties to resolve it. On December 8, 2015, I allowed the motion, with the provision that the parties file a consent decree by December 29, 2015. No consent decree was filed by that date, and no request submitted to extend the time for settling the matter.

Finding of Default

On October 14, 2015, the Division moved for entry of default and summary decision in this matter on the grounds that Siewert had failed to answer the OTSC or to communicate with counsel for the Division. At the November 17, 2015 hearing on that motion, the Division reiterated those grounds. Subsequently, Division counsel reported that counsel for Siewert had left a message for him on November 16, indicating that Siewert had contacted counsel on

November 13, 2015 and was interested in settling this matter. On December 7, 2015 the Division sought and was granted additional time to submit a consent decree, with a specific deadline of December 29, 2015. No consent decree was submitted, and no motion filed to enlarge the time for submitting one.

Default is appropriate when the respondent to an OTSC fails to file an answer or to respond to other orders issued by the Commissioner or his designee. Siewert filed no answer to the OTSC nor did he contact Division counsel. The record before me on November 17, 2015, fully supported a finding that Siewert was in default. According to the Division's December 7, 2015 motion, Siewert sought the assistance of counsel on November 13, 2015, some two months after he was served with the OTSC. His counsel, however, filed no notice of appearance and made no request for an enlargement of time to answer the OTSC or otherwise to avert entry of default. Neither did he comply with or seek to extend the timeframe in an order to submit a consent decree by a stated date. No pleadings or other documents have been filed on behalf of Siewert that contest the Division's stated grounds for entry of default.

The record before me at this time fully supports a finding that Siewert remains in default. By his default, Siewert 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 Decree and Final Order dated May 21, 2010, from the Montana Department of Insurance; B) Copy of Siewert's application for a Massachusetts producer license dated August 18, 2013; C) Copy of Consent Order dated April 4, 2014, from the Insurance Department of the Commonwealth of Pennsylvania; and D) Copy of Order of Summary Revocation dated June 18, 2014, from the California Department of Insurance.

Findings of Fact

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

1. The Division first licensed Siewert as a non-resident insurance producer on or about August 18, 2013.
2. Siewert, on his application for a producer license, answered "No" to Question 4, which, in relevant part, asks if the applicant has ever been a party in an administrative proceeding regarding any professional or occupational license.
3. On May 21, 2010, the Montana Department of Insurance issued a final order in an administrative proceeding to which Siewert was a party, imposing fines and proscribing him from engaging in the business of insurance in Montana without first obtaining a license to do so.

4. Siewert did not report that proceeding on his Massachusetts producer license application.
5. On April 4, 2014, the Insurance Department of the Commonwealth of Pennsylvania entered a final order and consent decree revoking Siewert's Pennsylvania producer license and ordering him to cease and desist from the sale of life insurance policies in violation of Pennsylvania law.
6. On June 18, 2014, the California Department of Insurance summarily revoked Siewert's California producer license for failure to report the Pennsylvania revocation to California and for engaging in conduct in Pennsylvania that would, under California law, constitute grounds for revocation of his California license.
7. Siewert did not report either the Pennsylvania or the California administrative proceeding to the Division.

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. Siewert 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 set out, among other things, the requirements for obtaining and maintaining a Massachusetts insurance producer license. Chapter 175, §162R (a) specifies fourteen grounds on which the Commissioner may initiate disciplinary action against a licensed producer. The Division identifies subsections §162R (a)(1), (a)(2), (a)(8) and (a)(9) as grounds for revocation of Siewert's license, as well a failure to comply with Chapter 175 §162V(a), a statute requiring a producer to report to the Commissioner any administrative proceeding relating to a license in any jurisdiction within 30 days of the final disposition.

Subsection 162R (a)(1) permits disciplinary action for providing "incorrect, misleading, incomplete or materially untrue" information on the license application. The record fully supports a conclusion that, by answering "no" to question 4 on his producer license application, Siewert provided incorrect and misleading information to the Division. Subsection 162R (a)(2), in pertinent part, permits revocation for violating any insurance laws or regulation, subpoena or order of the Commissioner or of another state's insurance commissioner. Siewert failed to notify the Division of the Pennsylvania and California administrative actions, as he is required to do under Chapter 175, §162V(a). The record fully supports the Division's claim that Siewert violated Massachusetts insurance law.

Subsection 162R (a)(8) permits revocation if a producer has used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business. I find that the actions underlying the Pennsylvania Department of Insurance administrative proceeding fully support the Division's assertion that Siewert's actions permit disciplinary action under Chapter 175, §162R (a)(8.) Siewert participated in a program that placed life insurance on the lives of union members through trusts that owned the policies but had no insurable interest in the union members. According to the Pennsylvania Department, Siewert did not ensure that the program complied with and was marketed in compliance with, Pennsylvania laws, that the nature of the plan was fully and accurately disclosed to the insureds, that it was adequately funded, or that an insurable interest existed between the trusts that owned the policies and the insureds. Siewert's participation in this program supports conclusions that he has engaged in dishonest practices and demonstrated incompetence and untrustworthiness in the conduct of business.

Subsection 162R (a)(9) supports disciplinary action when an insurance producer's license has been revoked in another jurisdiction. The administrative actions that resulted in revocation of Siewert's insurance producer licenses in Pennsylvania and California therefore support revocation of his Massachusetts license.

Providing incorrect answers to questions on a license application affects the Division's ability to carefully evaluate that application and to make decisions based on a complete record of relevant information. Similarly, failing to report administrative actions by other jurisdictions limits the Division's capacity effectively to protect Massachusetts consumers through oversight of its licensees. The Pennsylvania administrative action that led to revocation of Siewert's license was completed approximately eight and a half months after he obtained his Massachusetts insurance producer license, and the California license revocation ten months after he was licensed in Massachusetts. Siewert's failure to report these events to the Division on a timely basis allowed him to remain fully qualified for many months to sell insurance in Massachusetts and deprived the Division of an opportunity promptly to reassess his qualifications for licensure.

The number and the seriousness of the grounds relied on by the Division to support its disciplinary action fully warrant revocation of Siewert's license. On this record, I find that, in addition to revocation of his license, Siewert should be prohibited from transacting any insurance

business, directly or indirectly, in Massachusetts, and should be required to dispose of any interest he may have in any insurance business in Massachusetts.

Chapter 175, §162R (a) also permits the Commissioner to levy a civil penalty in accordance with Chapter 176D, §7 for violations of the insurance laws and regulations. The maximum penalty permitted under Chapter 176D, §7 is \$1,000 per violation. Siewert, by failing to report the Montana administrative action on his application, committed one such violation, and by failing to report the Pennsylvania and California administrative actions committed two violations of Chapter 175, §162V(a). Because these actions constitute serious violations of the insurance laws, I impose the maximum fine for each of them.

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 and all insurance producer licenses issued to Derek Anderson Siewert by the Division are hereby revoked; and it is

FURTHER ORDERED: that Derek Anderson Siewert shall return to the Division any licenses in his possession, custody or control; and it is

FURTHER ORDERED: that Derek Anderson Siewert 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 Derek Anderson Siewert 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 Derek Anderson Siewert shall pay a fine of Three Thousand (\$3,000) to the Division within 30 days of the entry of this order.

This decision has been filed in the office of the Commissioner of Insurance this 1st day of March, 2016. A copy shall be sent to Derek Anderson Siewert by regular first class mail, postage prepaid. As a courtesy, a copy shall also be sent to his counsel.

Jean F. Farrington
Presiding Officer

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