



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

DANIEL R. JUDSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Emma M. Moreau, Respondent

Docket No. E2015-014

**Order on Motion for Entry of Default and
Summary Decision**

On October 27, 2015 the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Emma M. Moreau (“Moreau”), who was licensed as a Massachusetts insurance producer on or about December 17, 2013. The Division alleges that Moreau failed to report to the Division administrative actions taken against her as an insurance producer by the states of California and Virginia. The Division further alleges that the state of Delaware revoked her producer license on or about September 25, 2015.

The Division contends that Moreau’s failure to report the California, Virginia and Delaware administrative actions constitute violations of M.G.L. c. 175, §162V (a) (“§162V (a)”). It asks that her license be revoked and that orders issue requiring Moreau to dispose of any insurance-related interests in Massachusetts, prohibiting her from conducting any insurance business in the Commonwealth, and imposing a fine for the alleged violations.

On December 2, 2015 the Division filed a motion for an entry of default against Moreau and for summary decision in its favor (the “Motion”). An order, issued on December 3, instructed Moreau to file any written response to the Motion by December 14, 2015 and scheduled a hearing on the Motion for December 18, 2015. Moreau filed

no written response to the Division's Motion. Neither she nor any person purporting to represent her appeared at the hearing on December 18, 2015. Scott Peary, Esq. represented the Division at the hearing. He stated that he neither Moreau nor any person purporting to represent her had contacted him about this matter.

Finding of Default

The Division requests a finding that Moreau is in default based on her failure to respond to the OTSC and a Notice of Action. Its Motion states that it served those documents on Moreau by certified United States mail addressed to her at the mailing, residential and business addresses in Minnesota that are contained in the Division's records.¹ Attached to the Motion is a copy of a receipt for certified mail sent to Moreau in Plymouth, Minnesota indicating that she received it on October 29, 2015. The certificate of service attached to the Division's Motion indicates that on December 2, 2015, it was sent by certified mail to Moreau in Plymouth, Minnesota.

The representation in the motion about the manner of service of the OTSC is inconsistent with the information in the Certificate of Service attached to the OTSC, which describes service by United States mail, postage prepaid, rather than by certified mail. At the December 18, 2015 hearing, Division counsel confirmed that both the OTSC and the Motion for Summary decision had been served by certified mail on Moreau at her address in Plymouth, Minnesota and that the Division had received a return card from the United States Postal Service indicating that she had received the motion for summary decision on December 7, 2015. At the hearing, the Division agreed to submit as an additional exhibit to the Motion a copy of the receipt for the December 2, 2015 certified mail.

On the basis of these documents, I conclude that the Division obtained proper service on Moreau. Both the OTSC and the Motion were served on her by certified mail; the signed receipts for those sent to the Plymouth, Minnesota confirm receipt. I conclude that service was sufficient and that Moreau's failure to answer the OTSC, to respond to

¹ A copy of the Division's licensing record for Moreau contains two addresses, one in Minneapolis, described as her residential address, and one in Plymouth, Minnesota described as her business and mailing address. The OTSC incorrectly refers to the Plymouth address as her residential and mailing address. I am persuaded that this error is not fatal to service on Moreau.

the Motion, or to appear at the hearing *pro se* or through a representative warrant a finding that she is in default.

Motion for Summary Decision

By her default, Moreau 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. That record consists of the OTSC and the following exhibits attached to it: A) Print-out of Moreau's licensing record from the Division; B) Order from the California Department of Insurance, dated March 28, 2014, denying Moreau an unrestricted California insurance producer license and issuing her a restricted license; C) Order from the Virginia State Corporation Commission, dated October 27, 2014, revoking Moreau's Virginia insurance producer license; D) Copy of proposed settlement letter, dated May 11, 2015, from the Division to Moreau; E) Documents from the National Association of Insurance Commissioners ("NAIC") License Services and Regulatory Information Reporting System ("RIRS") indicating that the State of Delaware revoked Moreau's Delaware insurance producer license on September 25, 2015.

The Division asserts that Moreau violated §162V (a) by failing to notify the Division of the California, Virginia and Delaware actions within 30 days. The Division argues in its Motion that if the Respondent does not answer the OTSC, the Presiding Officer may accept the allegations in the OTSC as true. On the basis of my review of the documentary evidence submitted by the Division to support the OTSC I find the following facts and reach the following conclusions.

Findings of Fact

1. The Division of Insurance issued a non-resident producer license to Moreau on December 18, 2014.²

² The OTSC states that Moreau was licensed as a resident insurance producer on or about December 17, 2013. As shown on her licensing record, Moreau is both a resident of Minnesota and has her place of business in that state; for those reasons, pursuant to M.G.L. c. 175, §162H, Minnesota is her "Home State." She is therefore eligible only for a Massachusetts nonresident producer license. Although the OTSC is factually incorrect, I am persuaded that the error is not material to the Division's action.

2. On March 28, 2014 the California Department of Insurance issued a decision captioned *In the Matter of the Application of Emma Margaret Moreau* that ordered the Department to issue a restricted license to Moreau.
3. On October 27, 2014, the Virginia State Corporation issued an order revoking Moreau's Virginia insurance producer license for the stated reason that she had failed to report an administrative action taken against her by the State of California.
4. On May 11, 2015, the Division of Insurance sent a letter to Moreau offering to settle matters allegedly arising out of an investigation conducted by the Division's Special Investigation Unit.
5. On September 25, 2015, the Delaware Insurance Department revoked Moreau's insurance producer license in that state.

Analysis and Discussion

For the following reasons, I conclude that the OTSC and the documentary evidence do not support all of the claims asserted by the Division, that Moreau failed to notify the Division of administrative actions taken against her in other jurisdictions. The applicable statute, §162V (a), in relevant part, requires a producer to report to the commissioner [of insurance] any administrative action taken against the producer in another jurisdictionwithin 30 days of the final disposition of the matter.”

The Division, to support its contention that Moreau was obligated to report an action in California, submitted a copy of an order issued by the California Department of Insurance on March 28, 2014. That order is captioned *In the Matter of the Application of Emma Margaret Moreau* and instructed the California Department to issue Moreau a restricted producer license. I am not persuaded that §162V (a) required Moreau to report this action to the Division. The statute defines a reportable administrative action as one “taken against the producer.” The caption in the California Order suggests that the dispute arose in connection with a license application, not from an administrative action initiated by the California Department of Insurance.

Although neither c. 175, §162H nor §162V (a) defines “administrative action,” Background Question 2 on the NAIC standard application for an individual producer

license is instructive on what an applicant must report as an “administrative action” on that form. The question asks if the applicant has ever been “involved” as a party to an administrative proceeding; it defines “involved” as, among other things, having a license application denied. Similarly, M.G.L. c. 175, §162R (a)(9) identifies, as a basis for disciplinary action against a Massachusetts licensee, having a license “denied, suspended or revoked” in any other jurisdiction. The outcome of the California proceeding resulted in Moreau’s retention of a California producer license, not a denial. On this record, I find that the evidence does not support the Division’s claim that, with respect to the California proceeding, Moreau violated §162V (a).

To support its allegation that Moreau violated §162V (a) because she failed to report revocation of her Virginia producer license, the Division submits a copy of an order from the Virginia Corporation Commission dated October 27, 2014. I find that the document is satisfactory evidence that the Virginia action was reportable, and that nothing in the record contradicts the Division’s allegation that Moreau did not report it. I therefore find that the evidence supports the Division’s claim that, with respect to the Virginia revocation, Moreau violated §162V (a).

With respect to the Delaware action, the OTSC alleges that Delaware revoked Moreau’s producer license on September 25, 2015, but does not allege that Moreau failed to report it to the Division. The failure to report, however, is the basis for the Division’s claim that Moreau violated §162V (a). Absent notice to a respondent of the specific facts on which the Division bases its claim of a statutory violation, the Division’s claim that Moreau violated the statute must be denied.

The OTSC alleges that the Division sent a settlement letter to Moreau on or about May 11, 2015 and that she did not respond to it. The Division does not, however, assert that her failure to do so is grounds for any claim against her and does not contend that the letter is relevant to any aspect of the OTSC. Article IV, Rule 408, of the Massachusetts Guide to Evidence prohibits the use of settlement offers to prove or disprove the validity

of a disputed claim. The May 11, 2015 letter is therefore not admissible as evidence of any action by Moreau.³

Conclusion

On this record, I find that Moreau failed to report the revocation of her Virginia Insurance producer license to the Division of Insurance as she is required to do pursuant to §162V (a). That section prescribes no penalty for failing to comply with the reporting requirement. The Division asks for imposition of a \$500 fine under M.G.L. c. 175, §194, the statute prescribing that as the maximum penalty when a person has violated any provision of chapter 175 that does not specifically include a penalty. Because Moreau should have satisfied her statutory obligation almost a year before the Division filed its OTSC, I find that it is appropriate to impose the maximum fine.

The Division also requests relief including revocation of Moreau's license, cancellation of any appointments as an agent for an insurance company, and orders to return her Massachusetts insurance license to the Division, to dispose of any interests in a Massachusetts insurance business, and prohibiting her from directly or indirectly transacting any insurance business in Massachusetts. The grounds for revoking an insurance license are set out in M.G.L. c. 175, §162R (a)(1) through (14). The OTSC does not link Moreau's failure to report the Virginia license revocation to any of those grounds and therefore does not establish a factual foundation for revoking her license. The Division's requests for revocation and for an order to return any Massachusetts license are therefore denied. With respect to cancellation of any appointments Moreau may have, the OTSC alleges no facts that would support such a request and it is denied.⁴ The OTSC also seeks relief permitted by M.G.L. c. 175, §166B that, in brief, prohibits a person whose license has been revoked from owning or engaging in the insurance business in Massachusetts. That relief, however, is available only when a person's license is revoked and therefore must be denied in this proceeding.

³ It is not clear why the OTSC did not include claims that the record supports disciplinary action under c. 175 §162R (a)(1), (a)(2), (a)(3) and (a)(9) as alleged in the Division's May 11, 2015 letter to Moreau.

⁴ Although the OTSC's requests for relief include cancellation of agent appointments, it does not allege that Moreau has any such appointments; her licensing records indicate that her appointments were cancelled in 2013.

Orders

Accordingly, after due notice, hearing and consideration, for the reasons set forth above, the Division's Motion for Summary decision is Allowed with respect to its Second Claim and Denied with respect to the First and Third Claims.

It is further ordered that Emma M. Moreau shall pay a fine of Five Hundred Dollars (\$500) to the Division within 30 days of the entry of this order.

This decision has been filed this 15th day of April 2016, in the office of the Commissioner of Insurance. A copy shall be sent to Emma M. Moreau 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.