



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>

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

JAY ASH
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

JOHN C. CHAPMAN
UNDERSECRETARY

DANIEL R. JUDSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Grace W. Smith, Respondent

Docket No. E2015-16

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

Introduction and Procedural History

On November 19, 2015, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Grace W. Smith ("Smith"), a licensed Massachusetts non-resident insurance producer. The Division alleges that Smith failed to report to the Division a criminal prosecution against her by the United States attorney in North Carolina and administrative actions against her by the North Dakota Insurance Department and the Nebraska Department of Insurance that resulted in revocation of her insurance producer licenses in those states. The Division contends that Smith, by failing timely to report those actions, violated M.G.L. c. 175, §162V (a) and (b).

The Division further contends that these allegations support revocation of Smith's Massachusetts producer license pursuant to the provisions of M.G.L. c. 175, §162R (a)(2), (a)(6) and (a)(9). In addition to license revocation, the Division seeks a cease and desist order and orders requiring Smith to dispose of any insurance-related interests in Massachusetts, prohibiting her from conducting any insurance business in the Commonwealth, and imposing fines for the alleged violations.

On November 19, 2015, The Division served the OTSC and a Notice of Action on Smith by first-class mail addressed to her at the residential and mailing address on file in the Division's licensing records. Smith filed no answer or other response to the OTSC. On December 14, 2015 the Division filed a motion for summary decision in its favor against Smith for failure to answer the OTSC. An order, issued on December 17, instructed Smith to file any written response to the Division's motion by December 29, 2015 and scheduled a hearing on the motion for January 8, 2016.

Smith did not respond to the Division's motion for summary decision. Neither she nor any person purporting to represent her appeared at the hearing on January 8, 2016. Matthew Burke, Esq. represented the Division at the hearing. He stated that he had not been contacted about this matter by Smith or by any person purporting to represent her. He confirmed that the OTSC served on Smith by first-class mail in November 2015 had not been returned by the United States Postal Service. Attorney Burke also reported that Smith was not served at the business address appearing in the Division's records because she had been terminated by that business.

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 Smith by first-class mail sent to her residential and mailing address, as shown on the Division's records. The United States Postal Service did not return the documents. Therefore, pursuant to 801 CMR 1.01 (4)(c), the OTSC and Notice of Action are presumed to be received three days after deposit in the United States mail. I conclude that service was sufficient and that Smith's failure to answer the OTSC, to respond to the Division's motion, or to appear at the hearing warrant a finding that she is in default.

By her default, Smith 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, the Motion for Summary Decision, and the following exhibits attached to the OTSC: A) Bill of Information filed by the United States Attorney for North Carolina on December 8, 2014 in the United States District Court for the Western District of North Carolina charging Smith with conversion between 1999 and 2014 of Social Security payments that were intended for her deceased mother; B) Entry and Acceptance of Smith's

Guilty Plea to the Bill of Information dated December 30, 2014; C) Entry of Judgment in United States of America v. Grace W. Smith dated August 5, 2015; D) Order from the North Dakota Insurance Department, dated September 24, 2015, revoking Smith's North Dakota insurance license; E) Order from the Nebraska Department of Insurance, dated September 30, 2015, adopting as its final order a Consent Order between Smith and the Nebraska Department of Insurance revoking her Nebraska insurance producer license. Attached as an exhibit to the Division's Motion for Summary Decision is a copy of Smith'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 Smith as a non-resident insurance producer on or about June 6, 2011.
2. According to the Division's licensing record, her license was renewed electronically on or about March 5, 2014.
3. On December 8, 2014, Smith was charged with conversion of payments made by the Social Security Administration to her mother after her mother's death.
4. Smith's offense was classified as a felony under federal law.
5. Smith pleaded guilty to the charges on December 30, 2014.
6. On September 24, 2015, the North Dakota Insurance Department revoked Smith's North Dakota insurance producer license.
7. On September 30, 2015, the Nebraska Department of Insurance adopted as its final order a consent agreement between the Nebraska Department of Insurance and Smith in which she agreed to the revocation of her Nebraska insurance producer license.
8. Smith did not report to the Division the criminal prosecution or the administrative actions by North Dakota and Nebraska that resulted in the revocation of her producer licenses in those states.

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. Smith 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)(2), (a)(6) and (a)(9) as grounds for revocation of Smith's license, as well a failure to comply with Chapter 175,

§162V(a), a statute requiring a producer to report to the Commissioner any criminal prosecutions and administrative proceedings relating to a license in any jurisdiction within specified time frames.

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. Smith failed to notify the Division of the administrative actions against her in North Dakota and Nebraska as she is required to do under G.L. c. 175, §162V(a). Smith also failed to notify the Division of the criminal prosecution initiated against her on December 8, 2014 in the United States District Court for the Western District of North Carolina, as she is required to do under G.L. c. 175, §162V(b). The record fully supports the Division's claim that Smith violated Massachusetts insurance law.

Subsection 162R (a)(6) permits revocation if a producer has been convicted of a felony. According to the cover sheet filed with the Bill of Information that initiated the 2014 criminal prosecution in the United States District Court, Smith had committed a felony. Exhibit C to the OTSC confirms that Smith pleaded guilty to the charges and was convicted. The record supports the Division's claim that Smith's license may be revoked pursuant to Subsection 162R (a)(6).

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 Smith's insurance producer licenses in North Dakota and Nebraska therefore support revocation of her Massachusetts license.

The number and the seriousness of the grounds relied on by the Division to support its disciplinary action fully warrant revocation of Smith's Massachusetts producer license. On this record, I find that, in addition to revocation of her license, Smith 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 she 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. Smith, by failing to report to the Division two administrative actions in other jurisdictions revoking her license,

committed two violations of c. 175, §162V(a). Her failure to report the criminal prosecution is a violation of c. 175, §162V(b). Because these actions constitute serious violations of the insurance laws, in addition to license revocation on grounds set out in c. 175, §162R (a)(2), (a)(6) and (a)(9) I will 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 insurance producer license issued to Grace W. Smith by the Division is hereby revoked; and it is

FURTHER ORDERED: that Grace W. Smith shall return to the Division any license in her possession, custody or control; and it is

FURTHER ORDERED: that Grace W. Smith 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 Grace W. Smith 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 Grace W. Smith 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 this 2nd day of February 2016, in the office of the Commissioner of Insurance. A copy shall be sent to Grace W. Smith 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.