
Division of Insurance, Petitioner
v.
Thurston Gene Gilman, Respondent
Docket No. E2005-02

Order on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On March 16, 2005, the Massachusetts Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Thurston Gene Gilman (“Gilman”), a licensed individual insurance producer also known as T. Gene Gilman and Gene Gilman. The Division seeks orders that Gilman has violated the provisions of the Massachusetts insurance laws, specifically G.L. c. 175, §§162R (a)(2) and (a)(8), §162V (a), and §§174 and 175. It asks for revocation of his license, imposition of fines for the alleged violations of the above-identified statutes, and orders prohibiting him from engaging in the insurance business in Massachusetts and directing him to dispose of any interest he may have in any insurance business.

The Division alleges that Gilman was first licensed as an insurance agent on January 1, 1985, and as an insurance broker on June 17, 2002. His broker license was converted to a producer license on or about May 16, 2003; as of the date of the OTSC he held active appointments with three insurance companies. In addition to his individual license, the Division alleges that Gilman was associated with a series of corporate insurance agencies at various times between 1992 and 2004. Each of these agencies was

licensed to conduct business in Massachusetts; each had its license terminated or cancelled for non-renewal.¹

Further, the Division alleges, Financial Links Insurance is the name through which Financial Links, Inc., a North Carolina corporation, does business in Massachusetts. Gilman, it asserts, is the treasurer of Financial Links, Inc., and its Massachusetts registered agent. According to the OTSC, the National Association of Securities Dealers (“NASD”) fined Financial Links, Inc. in 2003 for violating an NASD rule, then suspended its NASD membership and ultimately expelled it for failure to pay fines and costs associated with the rule violation. The Division alleges that Gilman never notified the Division of the NASD actions. The Division further alleges that Gilman was the president, treasurer and clerk of the Gilman Agency, Inc., which was organized in 1989 and involuntarily dissolved on August 31, 1998. However, it asserts, Gilman failed to notify the Division of the corporate dissolution, and the corporation continued to file license renewal applications.

Finally, the Division alleges, Gilman provided financial services to the estate of Miriam Feinberg as its executor and as the trustee of a trust that she had established, and thereafter provided investment services to Mrs. Feinberg’s heirs. On or about November 2003, the heirs filed suit in the Middlesex Superior Court against Gilman, Financial Links Insurance and other entities alleging, among other things, conversion, fraud, breach of fiduciary duty, and negligent misrepresentation arising out of Gilman’s management of their investment accounts. The defendants, including Gilman were defaulted and, on June 24, the court entered judgment on their complaint for each of the plaintiffs against all of the defendants, including Gilman.

A Notice of Procedure (“Notice”) issued on March 16, 2005, which advised Gilman that a hearing on the OTSC would be held on April 28, 2005, at the offices of the Division, that a prehearing conference would take place on April 14, also at the Division, and that the hearing would be conducted pursuant to G.L. c. 30A and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00, *et seq.* The Notice advised Gilman to file an answer, pursuant to 801 CMR 1.01(6)(d), within twenty-one days of

¹ Beginning in 1992, Gilman was affiliated with the First Affiliated Insurance Agency of MA, Inc., a corporation whose name was changed in 1999 to the Fasi Insurance Agency of MA, Inc. From June 30, 1993 through December 3, 2003, the Division further alleges, Gilman was individually affiliated with the Gilman Insurance Agency, Inc. From July 29, 2003 through July 29, 2004, he was allegedly affiliated with Financial Links Insurance, which was licensed in Massachusetts as a non-resident producer.

receiving the OTSC and that, if he failed to do so, the Division might move for an order of default, summary decision or decision on the pleadings granting it the relief requested in the OTSC. It also notified Gilman that, if he failed to appear at the prehearing conference or hearing, an order of default, summary decision or decision on the pleadings might be entered against him. The Commissioner designated me as presiding officer for this proceeding.

On March 16, the Notice and OTSC were sent by certified mail to respondent at 11 Morse Road, both by certified mail and by regular first class mail, postage prepaid. On March 22, the Division filed a motion to amend the OTSC, together with the proposed OTSC, as amended. With these documents, it filed a certificate of service indicating that the amended OTSC and motion had been sent to Gilman by certified mail at 40 Miller Road, Newton Centre, and to him by first class mail at both the Miller Road address and at 11 Morse Road in Newtonville. An order issued on March 23, allowing the motion to amend, and requiring the respondent to file his answer to it by April 14.

On April 14, 2005, a prehearing conference was held, pursuant to 801 CMR 1.01(10)(a). Douglas Hale, Esq. appeared for the Division. Neither Gilman nor any person representing him appeared. Mr. Hale reported that the original OTSC sent by certified mail to Gilman at 11 Morse Road, the address shown on the Division's licensing records, had been returned to the Division, but that the first class mail had not been returned. The returned certified mail provided an address for Gilman at 40 Miller Street in Newton. With respect to service of the amended OTSC, Mr. Hale reported that the Post Office had returned to the Division both copies sent by regular first class mail, but that neither the copy sent by certified mail nor the green card had been returned. He further that he had received no communication from the respondent or from any person purporting to represent him, and that he would file a motion for summary decision. On April 20, the Division filed its motion, based on respondent's failure to file an answer to the initial or amended OTSC within the time prescribed by the Standard Adjudicatory Rules of Practice and Procedure. With the motion, it submitted a certificate of service noting that the motion had been sent to Gilman by first class mail at both the Morse and Miller Road addresses. On April 21, an order issued advising Gilman to file any response to the Division's motion by May 2, and stating that any argument on it would be heard on May 5, rather than on

April 28. The order was sent by first class mail, postage prepaid, to Gilman at the Morse and Miller Road addresses; both copies were returned.

Gilman did not appear at the hearing on the motion for summary decision. He filed no answer or other responsive pleading to the initial or to the amended OTSC, or to the Division's motion, and no attorney or other representative filed a notice of appearance on his behalf. At the May 5 hearing, Mr. Hale reported that, as of that date, the copy of the amended OTSC sent to Gilman by certified mail had still not been returned.

Finding of Default

On the basis of the record before me, I conclude that the Division took appropriate actions to ensure proper service, and that sufficient service was made. The initial and amended OTSC and Notice were sent to respondent at the address shown on the Division's licensing records. I conclude that Gilman's failure to answer either OTSC or to respond to the Division's motion for summary decision, and his failure to appear at the scheduled prehearing conference or at the hearing warrant findings that he is in default. By his default, Gilman 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 solely upon the amended OTSC.

Findings of Fact and Conclusions of Law

On the basis of the record before me, consisting of the amended OTSC and the exhibits attached thereto, I find the following facts:

1. Respondent Thurston Gene Gilman was first licensed as an individual insurance agent in Massachusetts on or about January 1, 1985, and was first licensed as an insurance broker on June 17, 2002. His broker's license was converted to Massachusetts insurance producer license on or about May 16, 2003.
2. On or about October 15, 1992, the Division issued a corporate insurance agent's license to First Affiliated Insurance Agency of MA, Inc. which, on or about February 12, 1999, changed its name to Fasi Insurance Agency of MA, Inc. ("Fasi Agency.") The Division issued a corporate broker's license to the Fasi Agency on or about February 12, 1999; that license was converted to a producer license on or about June 30, 2003, and was later terminated for non-renewal, effective June 30, 2004.

3. Gilman was affiliated with the First Affiliated Agency from October 15, 1992 until February 12, 1999.
4. The Gilman Insurance Agency, Inc. ("Gilman Agency"), was organized as a Massachusetts corporation on or about June 26, 1989, and was involuntarily dissolved on August 31, 1998. Gilman was the president, clerk and treasurer of the Gilman Agency and was associated individually with it from June 30, 1993 to December 3, 2003.
5. On or about December 3, 1992, the Division issued a corporate insurance broker license to the Gilman Agency; on or about June 10, 1996 it issued a corporate agent license to that same entity. The broker license was converted to a Massachusetts producer license on or about May 16, 2003 and was later cancelled for non-renewal, effective December 3, 2003.
6. Gilman failed to notify the Division that the Gilman Agency had been dissolved by the Secretary of the Commonwealth in August 1998 and, notwithstanding the fact that the Gilman Agency no longer existed as a corporation, continued to submit annual applications for renewal of its insurance licenses from December 1998 through December 2002.
7. On or about July 29, 2003, the Division issued a corporate non-resident insurance producer license to Financial Links, Inc., a North Carolina corporation registered and doing business in Massachusetts as Financial Links Insurance. That license was cancelled for non-renewal effective July 29, 2004.
8. Gilman was associated with Financial Links Insurance from July 29, 2003 to July 29, 2004. He was the treasurer of Financial Links, Inc. and its Massachusetts registered agent. Gilman's holding company, Commonwealth Financial Holdings, Inc., owns more than 75 percent of Financial Links, Inc.
9. On or about November 13, 2003, the National Association of Securities Dealers ("NASD") fined Financial Links, Inc. Five Thousand Dollars for violating a NASD conduct rule. Gilman failed to notify the Division of this action.
10. On or about March 11, 2004, the NASD suspended Financial Links, Inc.'s membership for failure to file information on a timely basis. Gilman failed to notify the Division of this action.
11. On or about March 26, 2004, the NASD expelled Financial Links, Inc. from membership for failure to pay the fine and costs associated with the action referenced above in Paragraph 9.
12. On or about May 8, 2001, the Division issued a corporate insurance broker license to Leeward Insurance Agency, LLD ("Leeward Agency"); that license

was converted to an insurance producer license on or about May 16, 2003 and terminated for non-renewal on November 26, 2003.

13. For almost twenty years, Gilman was the financial advisor to and stockbroker for Miriam Feinberg (“Mrs. Feinberg”), who died on May 19, 2002. Mrs. Feinberg held Gilman in a position of trust and confidence, naming him co-executor of her will and trustee of the Miriam A. Feinberg Trust. Gilman was also the trustee of the Walter Feinberg Non-Marital Trust, established by Mrs. Feinberg’s husband.
14. Upon Mrs. Feinberg’s death, Gilman advised her daughter, Deborah Mital, and four grandchildren, about the amounts they would receive from Mrs. Feinberg’s estate or from the Walter Feinberg Non-Marital Trust, and suggested that they continue to invest with him. In November 2002, the Feinberg grandchildren were each informed that their inheritance consisted in part of liquid assets and in part of an annuity that would mature within a year. Ms. Mital and her children agreed to the continued use of Gilman’s financial services.
15. Gilman sent letters to the Feinberg grandchildren early in December 2002, identifying Financial Links, Inc. as their “domestic broker dealer” and Arbor Securities, Limited (“Arbor”) as an “international broker dealer.” The letter also stated that the fees for stock transactions would range from fifteen to twenty dollars, and that funds invested in securities would be available within four business days. However, Gilman did not provide a fee schedule to the Feinberg grandchildren.
16. In February 2003, the Feinberg grandchildren began to receive statements from Gilman on Arbor letterhead.
17. In April 2003, one grandchild noticed a discrepancy of \$2,000 between his account and that of his brother. The discrepancy was reported to Gilman’s assistant, and was corrected on the next statement.
18. In June 2003, another grandchild noticed commission charges of \$125 per transaction for April and May stock purchases and sales. He called Gilman about the charges, but received no response.
19. As of late September 2003, none of the grandchildren had received a statement for four months. They called Gilman but were unable to reach him until October 3. Gilman told one of the grandchildren that the statements were late because he had lost support staff and was having difficulty with new accounting procedures, and that statements would be sent to each grandchild the following

week. He communicated to each grandchild the value of his or her account as of August 31, 2003.

20. Because efforts to reach Gilman by telephone on October 6 and 7 were unsuccessful, one grandchild called Financial Links, Inc. and spoke with its president. Shortly thereafter, Gilman called another grandchild expressing concern about the call to Financial Links, Inc. and distress because it appeared to him that the grandchildren no longer trusted him.
21. Three of the grandchildren requested that Gilman close their accounts immediately and return their funds; Gilman agreed to close the accounts, but told two of the grandchildren that it would take four to six weeks for them to receive their money. By letters dated October 21, 2003, Gilman acknowledged receipt of the three grandchildren's requests for redemption of their accounts, identified the balance in each account, and stated that the proceeds would be forwarded "immediately thereafter."
22. On November 10, 2003, the fourth grandchild sent Gilman a written request to liquidate his account. He received no response from Gilman.
23. Ms. Mital received statements from Arbor for January, March and May 2003, but none thereafter. In October 2003, Gilman and his wife visited Ms. Mital and her husband in New Mexico; at that time Gilman gave her a statement dated August 31, 2003. Reassured by Gilman's visit, Ms. Mital took no action at that time to cancel her relationship with him.
24. On November 10, 2003, Ms. Mital demanded that Gilman liquidate and close her account. She received no communication from Gilman thereafter.
25. Communications from Arbor to Ms. Mital and the Feinberg grandchildren showed a return address on West Georgia Street in Vancouver, British Columbia. However, upon inquiry, the British Columbia Securities Commission had no listing or registration for Arbor Securities, Limited, and no such business was located at the West Georgia Street address.
26. Gilman sent one of the Feinberg grandchildren a form showing an address for Arbor in Nassau, Bahamas. Upon inquiry, the Securities Commission of the Bahamas had no record that Arbor was licensed or registered there.

27. Gilman's check to the United States Internal Revenue Service to pay the estate tax on Mrs. Feinberg's estate was returned for insufficient funds, and was thereafter replaced.
28. On or about November 24, 2003, Ms. Mital and the Feinberg grandchildren filed a suit against Gilman and three corporate entities in the Superior Court for Middlesex County, alleging breach of fiduciary duty, conversion, fraud, conspiracy, negligent misrepresentation, failure to account for financial transactions, and violations of the Massachusetts Consumer Protection Act, G. L. c. 93A, and seeking an accounting and money judgments for all funds or assets that Gilman had purportedly invested on the plaintiffs' behalf.²
29. On June 21, 2004, a default judgment was entered against Gilman and the three corporate entities for a total in excess of \$1.6 million. Although the damages were imposed jointly and severally, the judgment has not been satisfied.
30. On or about March 17, 2005, a criminal indictment was returned against Gilman in the United States District Court for Massachusetts. The indictment alleges, in brief, that Gilman, as an investment advisor, had represented to investors who entrusted funds to him that the funds would be invested for their benefit in domestic securities that would preserve their capital and provide safe and reasonable returns on their investments. However, contrary to those representations, Gilman defrauded the investors by transferring their funds from investment accounts at Arbor, among other entities, to accounts that he controlled and using the funds for his own purposes. Further, it alleges, Gilman fabricated, or caused to be fabricated, account statements that falsely represented account balances and other information, and sent them to investors to persuade them that their funds were safe and secure.
31. Also on March 17, 2005, the United States Securities and Exchange Commission ("SEC") filed a complaint against Gilman, Financial Links, Inc. and Arbor alleging violations of the Securities Act of 1933, the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder, and the Investment Advisers Act of 1940. According to the SEC complaint, Arbor is an unregistered broker-dealer established and controlled by Gilman, and operated from an office in Needham, Massachusetts. The complaint alleges that

² The three corporations are Financial Links, Inc., Arbor Securities, Ltd. and Commonwealth Financial Holdings, Inc.

defendants solicited funds from investors, misrepresenting to them that they would be invested in the stock of publicly traded United States companies. However, Gilman's son, with Gilman's knowledge, commingled investor funds and transferred them to foreign and domestic brokerage accounts in Arbor's name, including accounts at Financial Links, Inc. Customer funds were transferred to Gilman, his son, and to private start-up companies that Gilman owned and controlled. To conceal these transfers Gilman's son, with Gilman's knowledge generated and sent to customers fictitious account statements that misrepresented the customer's holdings, cash balances, and account transactions.

The Division's Arguments

The Division argues that, on these facts, two subsections of G.L. c. 175, §162R (a) support revocation of Gilman's producer license and the imposition of fines, as well as the other relief sought in the amended OTSC. Subsection (a)(2), in pertinent part, permits revocation for "violating any insurance laws or regulations." Subsection (a)(8) allows revocation for "using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere."

With respect to §162R (a) (2), the Division states that, pursuant to G. L. c. 175, §174, every officer or director specified in the license of a corporate licensee is personally liable for any violation of the insurance laws, even though the violation is done in the name of or on behalf of the corporation. It takes the position that Gilman, by virtue of his individual association with the Gilman Agency and his status as its corporate officer, was therefore responsible for notifying the Division that the Secretary of State had dissolved the corporation. Further, it asserts, after dissolution of the Gilman Agency, Gilman continued to apply for and receive corporate insurance licenses in its name, and continued to conduct insurance business in Massachusetts in its name. The Division argues that Gilman's failure to notify the Division of the dissolution of the Gilman Agency, his continued renewals of its corporate license, and his continued conduct of business in that name are violations of G.L. c. 175, §174.

In addition, the Division argues that Gilman, because of his association with Financial Links Insurance, and his position as treasurer of Financial Links, Inc. and its

registered agent in Massachusetts, was responsible for informing the Division of the NASD actions against Financial Links, Inc. Failure to report those actions, the Division argues, is also a violation of G.L. c. 175, §174.

With respect to §162R (a)(8), the Division argues that Gilman used fraudulent, coercive or dishonest practices and/or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of his business. Even though his conduct may not have occurred in the business of insurance, the Division asserts, license revocation has been found to be appropriate when a licensee misappropriated funds as a trustee, a credit union official, or in connection with a real estate transaction.

Discussion and Analysis

The Division asserts five claims against Gilman, alleging that he violated G.L. c. 175, §§162R, 162V, 174 and 175. I find that the record supports the Division's allegations that Gilman violated G.L. c. 175, §174. That conclusion, as well as the additional findings of fact above, demonstrates that the Commissioner has cause to revoke Gilman's producer license under §162R (a)(2) and §162R (a)(8).

The Division's claims for violations of G.L. c. 175, §174 arise from Gilman's status as an officer of a corporation holding a producer license. Under that statute, a license issued to a corporation shall specify the officers and directors who may act thereunder in the name of the corporation; the section also makes every officer or director specified in the license personally liable for violations of the insurance laws, even if the act is done in the name of and on behalf of the corporation. I find it reasonable to conclude that Gilman, as the person holding all statutory offices of the Gilman Agency, was specified on its corporate license as the person authorized to act thereunder in the name and on behalf of the corporation. As the specified person, he was therefore responsible for any violations of the insurance laws. I find that Gilman, by his failure to report the dissolution of the corporation, his multiple renewals of the Gilman Agency license, and the conduct of any business in the corporate name, violated G.L. c. 175, §174. Those violations support the Division's claim that Gilman's producer license should be revoked

pursuant to §162R (a)(2).³ The Division alleges that Gilman's receipt of corporate insurance licenses for the Gilman Agency after its dissolution violated G. L. c. 175, §175, which imposes a penalty for holding oneself out as an insurance producer without being licensed to do so, or carrying on business in a name other than that stated on that license. The record contains no specific factual allegations addressing Gilman's conduct of an insurance business through the corporate entity. Because Gilman held individual licenses throughout the time period in which the allegations in the amended OTSC occurred, I am unable to draw any conclusion on whether his sales activities violated §175.

I find that the record fully supports the Division's claim that Gilman's producer license should be revoked for violations of G. L. c. 175, §162R (a)(8). Gilman's activities in connection with his administration of Mrs. Feinberg's estate and his provision of financial services to the Feinberg grandchildren demonstrate that he used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth, thereby violating G. L. c. 175, §162R (a)(8). The statute does not require that the activities supporting an action against a licensee arise specifically in connection with the business of insurance; it is consistent with prior Division policy supporting the denial of insurance licenses to those who have engaged in dishonest practices in connection with other financial transactions.⁴

I conclude that the Commissioner has cause under both sections (a)(2) and (a)(8) of c. 175, §162R to revoke Gilman's insurance producer license. Further, on this record, I

³ With respect to the Division's allegation that Gilman also violated G.L. c. 175, §174 by failing to report the NASD actions against Financial Links, Inc., the amended OTSC alleges that Gilman was affiliated with Financial Links Insurance and was its treasurer and Massachusetts registered agent, but includes no additional information on his relationship to that entity. The facts before me do not indicate that Gilman was specified on the corporate license issued to Financial Links, Inc. Further, G.L. c. 175, §174 does not require reporting to the Division of an administrative action against the licensee. For those reasons, I am unable to conclude that Gilman's failure to report the NASD actions against Financial Links, Inc. to the Division violated G.L. c. 175, §174. I am also unable to conclude that Gilman's actions violated G.L. c. 175, §162V (a), as alleged in the amended OTSC. That section requires a producer to report an administrative action taken against the producer in another jurisdiction, or an action taken by another government agency in Massachusetts, within thirty days of disposition of the action. However, the NASD administrative action was not taken against Gilman, and the DOI does not allege that it was brought in Massachusetts. As noted above, because the record does not identify Gilman as a specified person on the Financial Links, Inc. license, I am unable to conclude that he was obligated to report actions against Financial Links, Inc. under §162V (a).

⁴ The cases that the Division cites in its memorandum indicate that wrongdoing in non-insurance related business transactions has long been sufficient reason to deny an application for an insurance license.

conclude that, in addition to revocation of Gilman's insurance producer license, he should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and that he should be required to dispose of any interest he may have in any insurance business, in whatever format that business is conducted.

G.L. c. 175, §162(a) permits the Commissioner, in addition to license revocation, to impose civil penalties for violations of that section in accordance with c. 176D, §7. Chapter 176D, §7 in turn permits the Commissioner, if she determines that a person subject to the statute has engaged in an unfair or deceptive act or practice, to impose a fine of up to \$1,000 for each violation. The Division alleges that Gilman failed to report dissolution of the Gilman Agency and thereafter filed five license applications on its behalf. On this record, I find that Gilman's actions constituted deceptive acts, and that he violated G.L. c. 175, §174 six times. I will therefore impose a fine of Six Thousand Dollars (\$6,000) for those violations.

With respect to the Feinberg estate, the exhibits appended to the amended OTSC indicate that the distributions to the Feinberg grandchildren consisted in part of the proceeds of an annuity. However, no allegations of wrongdoing were made in connection with that annuity. The statements of account attached to the grandchildren's affidavits do not report investments in insurance policies or annuities.⁵ The overall record of the Feinberg transactions persuades me that Gilman's business practices support license revocation for violations of G.L. c. 175, §162(a)(8), as they would support a decision to deny him a license. However, because that record does not link the transactions to specific violations of the insurance laws, I will impose no additional fines for those transactions.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Thurston Gene Gilman or T. Gene Gilman by the Division of Insurance, and any appointments based on his status as a licensed producer, are hereby revoked; and it is

FURTHER ORDERED: that Thurston Gene Gilman shall return to the Division any licenses in his possession, custody or control; and it is

⁵ I make no finding on the accuracy of the information in those statements.

FURTHER ORDERED: that Thurston Gene Gilman shall be removed as a specified person from any insurance license issued to a corporation, partnership, limited liability company, or any other entity holding a Massachusetts producer license; and it is

FURTHER ORDERED: that Thurston Gene Gilman shall dispose of any interest as proprietor, partner, stockholder, officer or employee of any licensed producer; and it is

FURTHER ORDERED: that Thurston Gene Gilman is, from the date of this order, prohibited from acting as an insurance producer in Massachusetts; and it is

FURTHER ORDERED: that within thirty days of the date of this order Thurston Gene Gilman shall pay a fine of Six Thousand Dollars (\$6,000) to the Division of Insurance.

This decision has been filed this 17th day of May 2005, in the office of the Commissioner of Insurance. A copy shall be sent to Thurston Gene Gilman by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

Jean F. Farrington
Presiding Officer

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