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**Division of Insurance, Petitioner**  
**v.**  
**Russell John Garcia, Respondent**

**Docket No. E2005-14**

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**Order on Petitioner's Motion for Decision on the Pleadings**

***Introduction and Procedural History***

On September 28, 2005 the Massachusetts Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Russell John Garcia (“Garcia”), who is currently licensed as a non-resident Massachusetts insurance producer. The Division seeks orders that Garcia has violated G.L. c. 175, §§162R (a) (2) and (9). It asks for revocation of his license, an order requiring him to dispose of any insurance-related interests in Massachusetts, and imposition of fines for the alleged violations.

The Division states in the OTSC that Massachusetts first licensed Garcia as an insurance producer on or about September 18, 2003, and states that he currently holds three active appointments to represent insurance companies. The Division alleges that, on or about December 31, 2002 North Carolina denied Garcia a non-resident property/liability insurance agent license because of a child support arrearage. Virginia revoked his insurance agent license on about July 23, 2004 because he did not inform Virginia of the denial of his North Carolina license. Kansas revoked his non-resident agent license because of the denial of his license by North Carolina and the revocation of his license by Virginia on or about September 27, 2004. Further, it alleges, Garcia did not report these administrative actions to the Division within 30 days of a final disposition.

A Notice of Procedure (“Notice”), issued on October 4, advising Garcia that a prehearing conference would take place on October 31 at the offices of the Division, a hearing on the OTSC would be held on November 14, 2005, also at the Division, and that the proceeding would be conducted pursuant to G.L. c. 30A and the Standard Adjudatory Rules of Practice and Procedure, 801 CMR 1.00, *et seq.* The Notice advised Garcia to file an answer pursuant to 801 CMR 1.01(6)(d) 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 Garcia 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 October 4, the Division sent the Notice and OTSC by certified mail to respondent at his mailing address as it appears on the Division’s records: 922 Stonewall Lane, Fredericksburg, VA 22407. The certified mail was signed for on October 11. The signature on the green certified mail form is illegible. Garcia filed no answer or other responsive pleading.

On October 31, a prehearing conference was held, pursuant to 801 CMR 1.01(10)(a). Douglas Perry, Esq. appeared for the Division. Neither Garcia nor any person representing him appeared. Mr. Perry reported that he had been communicating with Garcia since January of 2005 in an effort to settle this matter. There was no indication that Mr. Garcia or anyone representing him had expressed an inability to attend the hearing.

The Division filed a motion for a decision on the pleadings, which it served on respondent by first class mail. An order issued on October 31 advising Garcia to file any response to the motion by November 10, stating that any argument on the motion would be heard on November 14, at the time initially set for an evidentiary hearing. Garcia filed no response to the Division’s motion. At the hearing on November 14, Mr. Perry stated that he had received no communications from the respondent or any person representing him. Neither Garcia nor any representative of his appeared at the November 14 hearing.

***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 OTSC and Notice

were sent to respondent at the mailing address shown on the Division's licensing records. I conclude that Garcia's failure to answer the OTSC or to respond to the Division's motion, and his failure to appear at the scheduled prehearing conference and at the hearing warrant findings that he is in default. By his default, Garcia has waived his right to proceed further with an evidentiary hearing in this case and I may consider the Division's motion for a decision on the pleadings based solely upon the OTSC.

***Findings of Fact and Conclusions of Law***

On the record before me, consisting of the OTSC, I find the following facts:

1. Respondent Garcia was first licensed in Massachusetts as a producer on October 31, 2003.
2. His application for an insurance license was denied by North Carolina on December 31, 2002 because he owed child support. Virginia revoked his license on July 23, 2004 because he did not notify them of the denial of his application by North Carolina. Kansas revoked his license on September 27, 2004 because he did not notify them of the denial by North Carolina or the revocation by Virginia.
3. Garcia failed to report these administrative actions to the Division within 30 days of their final disposition.

The grounds for the Division's motion are respondent's failure to file an answer to the OTSC within the time prescribed by the Standard Adjudicatory Rules of Practice and Procedure and his failure to appear at the scheduled prehearing conference. It is undisputed that Garcia failed to respond to the OTSC or to the Division's motion, and that he did not appear in this proceeding.

G.L. c. 175, §162R (a), in pertinent part, permits the Commissioner to suspend or revoke an insurance producer's license and to levy civil penalties in accordance with G.L. c. 176D, §7 for reasons that include violating any insurance laws, and revocation of a producer's license by any other state. G.L. c. 175, §162V(a) requires a producer to report to the Commissioner any disciplinary action taken by another state.

On the basis of these findings of fact, I conclude based on the findings of fact and the OTSC that there is sufficient support for revocation of Garcia's Massachusetts producer license pursuant to §162R (a)(2) and (9). By failing to report his license revocation to the Division, Garcia also violated G.L. c. 175, §162V(a).

I find, on this record, that the Massachusetts producer license issued to Russell John Garcia should be revoked for three violations of §162R(a)(2) and (9), and that he should be fined \$3,000 for failure to comply with G.L. c. 175, §162V(a). The maximum fine is \$1000 per violation.

## **ORDERS**

Accordingly, after due notice, hearing and consideration it is

**ORDERED:** That any and all insurance producer licenses issued to Russell John Garcia by the Massachusetts Division of Insurance are hereby revoked; and it is

**FURTHER ORDERED:** that Russell John Garcia shall return to the Massachusetts Division of Insurance any licenses in his possession, custody or control; and it is

**FURTHER ORDERED:** that Russell John Garcia 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 Russell John Garcia shall comply with the provisions of G.L. c. 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 Russell John Garcia shall pay a fine of Three Thousand Dollars (\$3,000) to the Massachusetts Division of Insurance within 30 days.

This decision has been filed this 3<sup>rd</sup> day of January 2005, in the office of the Commissioner of Insurance. A copy shall be sent to Garcia by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

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Amma A. Kokro, Esq.  
Presiding Officer

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