
Division of Insurance, Petitioner
v.
James Douglas McKinney, Jr., Respondent

Docket No. E2005-15

Order on the 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 James Douglas McKinney, Jr. (“McKinney”), who is currently licensed as a non-resident Massachusetts insurance producer. The Division seeks orders that McKinney 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 to surrender any all insurance licenses in his possession to the Division, and imposition of fines for the alleged violations.

The Division states in the OTSC that Massachusetts first licensed McKinney as an insurance producer on July 2, 2003, and states that he currently holds no active appointments to represent insurance companies. The Division alleges that, on or about August 8, 2003, the state of North Carolina denied McKinney’s application for a non-resident insurance license because he had a tax delinquency and child-support arrears. Wisconsin denied him a permanent individual intermediary agent’s insurance license on or about October 1, 2003 because he did not respond to an information request about his tax and child-support issues. On

or about April 20, 2004, Wisconsin denied him a permanent individual agent's insurance license for failure to report Wisconsin's 2003 denial of his agent's license. McKinney's license was revoked in Virginia on or about August 26, 2004 because he did not notify them of the actions that revoked or denied him an insurance license in North Carolina and Wisconsin. Further, the Division alleges, McKinney did not report these administrative actions to the Division within 30 days of the final disposition of the matter.

A Notice of Procedure ("Notice"), issued on October 4, advising McKinney that a prehearing conference would take place on November 2 at the offices of the Division, a hearing on the OTSC would be held on November 15, 2005, also at the Division, and that the proceeding 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 McKinney 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 McKinney 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: 3670 Riverbed Lane, #1, Caledonia, MI 49316. The post office returned to the Division a signed green receipt for certified mail that showed a delivery date of October 21, 2005. McKinney filed no answer or other responsive pleading.

On November 2, a prehearing conference was held, pursuant to 801 CMR 1.01(10)(a). Douglas Perry, Esq. appeared for the Division. Neither McKinney nor any person representing him appeared. Mr. Perry reported that he had received no communication from the respondent or from any person purporting to represent him. The Division filed a motion for a decision on the pleadings, which it served on respondent by first class mail. An order issued on November 3, advising McKinney to file any response to the motion by November 9, stated that any argument on the motion would be heard on November 15, at the time initially set for an evidentiary hearing. McKinney filed no response to the Division's motion. The copy of the order sent to McKinney was returned on November 14 because the forwarding time for his new address had expired. At the hearing on November 15, Mr. Perry stated that he had received no communications from the

respondent or any person representing him. Neither McKinney nor any representative of his appeared at the November 15 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, and were signed for by a person at that address. I conclude that McKinney'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, McKinney 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 McKinney was first licensed in Massachusetts as a producer on or about July 2, 2003.

2. On or about August 8, 2003, the state of North Carolina denied McKinney's application for a non-resident insurance license because he had a tax delinquency and child-support arrears. Wisconsin denied him a permanent individual intermediary agent's insurance license on or about October 1, 2003 because he did not respond to an information request about his tax and child-support issues. On or about April 20, 2004, Wisconsin denied him a permanent individual agent's insurance license for failure to report the denial of his agent's license by Wisconsin in October of 2003. McKinney's license was revoked in Virginia on or about August 26, 2004 because he did not notify them of the actions that revoked or denied him an insurance license in North Carolina and Wisconsin.

3. McKinney failed to report the license revocations and application denials to the Commissioner within 30 days of its final disposition as required by M.G.L. c. 175, §162V(a).

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 McKinney 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 and the OTSC, I conclude that there is sufficient support for the revocation of McKinney's Massachusetts producer license pursuant to §162R (a)(2) and (9). By failing to report his license revocation to the Commissioner, McKinney also violated G.L. c. 175, §162V(a).

I find, on this record, that the Massachusetts producer license issued to James Douglas McKinney, Jr. should be revoked for four violations of §162R(a)(2) and (9), and that he should be fined \$4,000 for failure to comply with G.L. c. 175, §162V(a). The maximum fine is \$1000 for each violation.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to James Douglas McKinney, Jr., by the Massachusetts Division of Insurance are hereby revoked; and it is

FURTHER ORDERED: that James Douglas McKinney, Jr., shall return to the Massachusetts Division of Insurance any licenses in his possession, custody or control; and it is

FURTHER ORDERED: that James Douglas McKinney, Jr., 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 James Douglas McKinney, Jr. 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 James Douglas McKinney, Jr. shall pay a fine of Four Thousand Dollars (\$4,000) to the Massachusetts Division of Insurance within 30 days.

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

Amma A. Kokro, Esq.
Presiding Officer

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