
Division of Insurance, Petitioner

v.

John Mark Feeney, Respondent

Docket No. E2005-19

Order on Petitioner's Motion for Decision on the Pleadings

Introduction and Procedural History

On October 6, 2005 the Massachusetts Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against John Mark Feeney (“Feeney”), who is currently licensed as a non-resident Massachusetts insurance producer. The Division seeks orders that Feeney has violated G.L. c. 175, §162R (a) (2). 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 Feeney as an insurance producer on or about October 30, 2003, and that he currently holds two active appointments to represent insurance companies. The Division alleges that, on or about May 28, 2004, Feeney entered into a stipulation with the New York Insurance Department regarding his failure to disclose on his New York agent’s license application that he was fined in 1997 by the Illinois Department of Insurance. Further, the Division alleges that Feeney did not report this administrative action to the Division within 30 days.

A Notice of Procedure (“Notice”), issued on October 12, advising Feeney that a prehearing conference would occur on November 21 at the offices of the Division, a hearing on the OTSC would be held on December 6, 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 Feeney 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 Feeney 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 12, the Division sent the Notice and OTSC by certified and first class mail to respondent at his business and mailing addresses as they appear on the Division's records: 918 South Thurlow St., Hinsdale, Ill. 60521 and One North Franklin, Chicago, Ill. 60606. The certified mail was returned because the forwarding time had expired. Feeney filed no answer or other responsive pleading.

On November 21, a prehearing conference was held, pursuant to 801 CMR 1.01(10)(a). Douglas Perry, Esq. appeared for the Division. Neither Feeney nor any person representing him appeared. Mr. Perry reported that he had not heard from Feeney or any person representing him.

The Division filed a motion for a decision on the pleadings after the prehearing conference, which it served on respondent by first class mail. An order issued on November 23 advising Feeney to file any response to the motion by November 30 and stated that any argument on the motion would be heard on December 6, at the time initially set for an evidentiary hearing. Feeney filed no response to the Division's motion. At the hearing on December 6, Mr. Perry stated that he had received no communications from the respondent or any person representing him. Neither Feeney nor any representative on his behalf appeared at the December 6 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 and business address shown on the Division's licensing records. I conclude that Feeney'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,

Feeney 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 Feeney was first licensed in Massachusetts as a producer on October 30, 2003.
2. On May 28, 2004, Feeney entered into a stipulation with the New York Insurance Department regarding his failure to disclose on his agent's license application that he was fined in 1997 by the Illinois Department of Insurance.
3. Feeney failed to report this administrative action to the Division within 30 days.

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 Feeney 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, even in another 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, I conclude that the facts alleged in the OTSC are sufficient to support revocation of Feeney's Massachusetts producer license pursuant to §162R (a)(2). By failing to report the New York administrative action to the Division, Feeney also violated G.L. c. 175, §162V(a).

I find, on this record, that the Massachusetts producer license issued to John Mark Feeney should be revoked for one violation of § 162R(a)(2) , and that he should be fined \$1,000 for failure to comply with G.L. c. 175, §162V(a).

ORDERS

Accordingly, after due notice, hearing and consideration it is

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

FURTHER ORDERED: That John Mark Feeney shall return to the Massachusetts Division of Insurance any licenses in his possession, custody or control; and it is

FURTHER ORDERED: That John Mark Feeney 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 John Mark Feeney 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 John Mark Feeney shall pay a fine of One Thousand Dollars (\$1,000) 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 Feeney 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.