



COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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JULIANNE M. BOWLER
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Desmond Frederick Primus, Respondent

Docket No. E2005-23

Order on Petitioner's Motion for Decision on the Pleadings

Introduction and Procedural History

On November 3, 2005 the Massachusetts Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Desmond Frederick Primus ("Primus"). Primus was licensed as an insurance agent on or about July 1, 1998. He had held three company appointments, which were canceled on or about 1999. He received a producer license on or about October 22, 2003. The Division asserts that due to his failure to report a Wisconsin administrative action to the Virginia State Corporation Commission, Virginia revoked his Virginia insurance license. The Division alleges that Primus failed to report the Virginia administrative action to the Division within 30 days of the final disposition. The Division seeks orders that Primus has violated the insurance laws of another state resulting in the revocation of his license, a violation of G.L. c. 175, §162R(a)(2) and (9). It alleges that he failed to report the administrative action of another state to the Division, in violation of G.L. c. 175, §162V(a). It seeks the revocation of his Massachusetts' license, the imposition of fines for the alleged violations, and an order that fines be paid within 30 days.

A Notice of Procedure ("Notice"), issued on November 3, advising Primus that a prehearing conference would take place on December 8 at the offices of the Division, a

hearing on the OTSC would be held on December 22, 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 Primus 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 Primus 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 November 4, the Division sent the Notice and OTSC by certified and first class mail to the respondent at the home and business addresses as they appear on the Division's records: 13005 Silver Maple Court, Bowie, MD 20715 and 2901 Telestar Court, 3rd Floor, Falls Church, VA 22042. The postal service returned a receipt for the Notice and OTSC sent by first class mail. Primus filed no answer or other responsive pleading to the OTSC.

On December 8, a prehearing conference was held, pursuant to 801 CMR 1.01(10)(a). Mr. Douglas Perry, Esq. appeared for the Division. Neither Primus nor any person representing him appeared.

The Division filed a motion for a decision on the pleadings on December 6, which it served on respondent by first class mail. On December 20, an order advising Primus to file a response to the Division's motion by December 28 and notifying him that the hearing was scheduled for January 9 was sent by first class mail. The hearing date was changed to provide Primus with time to file a response. The mailed copy of the order was returned by the postal service. Primus filed no response to the Division's motion. At the hearing on January 9, neither Primus nor any representative for him appeared. Mr. Perry, Counsel for the Division, indicated at the January 9 hearing conference that no mail had been returned.

Finding of Default

On the basis of the record before me, I conclude that there was adequate service of process and that Primus' 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, Primus 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. Primus was licensed as a Massachusetts insurance agent on July 1, 1998;
2. Primus had three agent licenses canceled in 1999;
3. Primus received a Massachusetts producer license on October 22, 2003.
4. On April 28, 2005 the Virginia State Corporation Commission revoked Primus' insurance license based on an administrative action that took place in Wisconsin in August, 2004;
5. Primus failed to report this administrative action to the Division within 30 days as required under 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 Primus failed to respond to the OTSC or to the Division's motion, and that he did not appear in this proceeding.

I conclude that the facts alleged in the OTSC are sufficient to support a finding that Primus' insurance license was revoked by another state and that he failed to report it to the Division in violation of G.L. c. 175, §162R(a)(2) and (9) and §162V(a), and to impose fines for the violations.

Violations of these statutes can result in suspension or revocation of a producer's license. These violations constitute one act and should be fined \$1000.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Desmond Frederick Primus by the Massachusetts Division of Insurance are hereby revoked; and it is

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

FURTHER ORDERED: That Desmond Frederick Primus 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 Desmond Frederick Primus 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 Desmond Frederick Primus 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 27th day of February, 2006, in the office of the Commissioner of Insurance. A copy shall be sent to Primus 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 within three (3) days.