



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.
Golf Marketing Worldwide, L.L.C. and Kevin Kolenda and Andrew Lambie¹,
Respondents
Docket No. E2005-24

Order on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On November 8, 2005 the Massachusetts Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Golf Marketing Worldwide, L.L.C. ("Golf") and Kevin Kolenda ("Kolenda"). Kolenda is Golf's president and marketing representative. The Division alleges that Golf offers products to event sponsors, i.e., golf and tournament sponsors, for events in which there is a prize for the occurrence of a specified event, such as a hole in one. Golf gives a premium quote based on information that the sponsor provides to Golf, and if the specified event occurs then Golf pays the prize. The Division alleges that Golf, in serving as guarantor for the prizes at these events issued 31 insurance contracts, and that the Division has not approved either the products that Golf is selling or the contracts involved therein. The Division further asserts that Massachusetts has never issued any insurance licenses to Golf or Kolenda. From or about February 1, 2001 to October 2, 2001 Golf provided thirty (30) such insurance contracts in

¹ The Division filed a request for a withdrawal of action as to Andrew Lambie on December 14, 2005. The Division and Mr. Lambie entered into a settlement agreement on October 16, 2002 regarding the same subject matter as the allegations set forth in the Order to Show Cause. For this reason, this order will not address Mr. Lambie as a respondent.

Massachusetts for various sporting events in the Commonwealth and one insurance contract in Massachusetts for an event in New York. On or about September 21, 2001 the Connecticut Insurance Department issued a cease and desist order to Golf and Kolenda for improperly engaging in an insurance business, operating a prize indemnification business, and for offering hole-in-one and prize insurance coverage. After a determination that they were selling an insurance product and issuing insurance contracts without a license, the North Carolina Department of Insurance also issued a cease and desist order against Golf and Kolenda on or about December 18, 2003.

The Division seeks orders that Golf and Kolenda have engaged in the unauthorized sale of insurance in violation of G.L. c. 175, §3; represented themselves as licensed to sell insurance despite being unlicensed in violation of G.L. c. 175, §175; and engaged in unfair and deceptive trade practices in violation of G.L. c. 176D, §2. Accordingly, the Division seeks 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 14, advising Golf and Kolenda that a prehearing conference would take place on December 15 at the offices of the Division, a hearing on the OTSC would be held on December 29, 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 Golf and Kolenda to file an answer pursuant to 801 CMR 1.01(6)(d) and that, if they 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 Golf and Kolenda that, if they failed to appear at the prehearing conference or hearing, an order of default, summary decision or decision on the pleadings might be entered against them. The Commissioner designated me as presiding officer for this proceeding.

On November 15, the Division sent the Notice and OTSC by certified and first class mail to the respondents at the home and business address as it appears on the Division's records: 1 Timberline Road, Norwalk, CT 06854-3814. Golf and Kolenda filed no answer or other responsive pleading to the OTSC. On December 14, in response to Kolenda's request made in the course of conversation with Douglas Hale, Esq., counsel

for the Division, the prehearing conference and hearing were subsequently rescheduled to December 29, 2005 and January 17, 2006, respectively.

On December 29, a prehearing conference was held, pursuant to 801 CMR 1.01(10)(a). Douglas Hale, Esq. appeared for the Division. Neither Golf nor Kolenda nor any person representing them appeared. Mr. Hale reported that he had not heard from Golf or Kolenda or any person representing them since December 14th.

The Division filed a motion for summary decision with memorandum on December 29, which it served on respondent by first class mail. Golf and Kolenda filed no response to the Division's motion. At the hearing on January 17, neither Golf nor Kolenda nor any representative for them appeared, and Mr. Hale stated that he had received no communications from them since the previous conversation on December 14th.

Finding of Default

Although no receipt for certified mail was submitted in this proceeding, Counsel for the Division reported on a conversation with Kolenda which took place on December 14th in which Kolenda requested a change in the dates specified in the Notice of Procedure. For that reason, it can be presumed that Golf and Kolenda received adequate notice of this proceeding. On the basis of the record before me, I conclude that Golf's and Kolenda's failure to answer the OTSC or to respond to the Division's motion, and their failure to appear at the scheduled prehearing conference and at the hearing warrant findings that they are in default. By their default, Golf and Kolenda have waived their 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 OTSC.

Findings of Fact and Conclusions of Law

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

1. Kolenda is Golf's president and marketing representative;
2. Golf offers products to event sponsors, i.e., golf and tournament sponsors, for events in which there is a prize for the occurrence of a specified event, such as a hole in one;
3. Golf gives a premium quote based on information that the sponsor provides to Golf, and if the specified event occurs, Golf pays the prize;

4. By serving as guarantor for the prize at these events, Golf issued insurance contracts within the meaning of G.L. c. 175, §3;
5. The Division has not approved either the products that Golf is selling or the contracts involved therein;
6. Neither Golf nor Kolenda has been licensed by the Division to sell insurance in the Commonwealth;
7. From February 1, 2001 to October 2, 2001 Golf provided thirty (30) such insurance contracts in Massachusetts for various sporting events in the Commonwealth and one insurance contract in Massachusetts for an event in New York;
8. On September 21, 2001 the Connecticut Insurance Department issued a cease and desist order to Golf and Kolenda for improperly engaging in an insurance business, operating a prize indemnification business, and for offering hole-in-one and prize insurance coverage; and
9. After a determination that they were selling an insurance product and issuing insurance contracts without a license, the North Carolina Department of Insurance issued a cease and desist order against Golf and Kolenda on December 18, 2003.

The grounds for the Division's motion for summary decision are respondents' failure to file an answer to the OTSC within the time prescribed by the Standard Adjudicatory Rules of Practice and Procedure and their failure to appear at the scheduled prehearing conference. It is undisputed that Golf and Kolenda failed to respond to the OTSC or to the Division's motion, and that they failed to appear in this proceeding.

I conclude that the facts alleged in the OTSC are sufficient to support a finding that Golf and Kolenda sold unauthorized insurance in violation of G.L. c. 175, §3. I further find that the sale of unauthorized insurance products is an unfair and deceptive practice and constitutes a violation of G.L. c. 176D, §2. G.L. c. 176D, §7 permits the Commissioner to impose fines for violations of c. 176D.

I find, on this record, that Golf Marketing Worldwide, L.L.C. and Kevin Kolenda sold thirty-one (31) contracts for unauthorized insurance products, and therefore should be fined \$1000 per violation, resulting in a total fine of \$31,000. I conclude that in this

matter it is appropriate to impose the maximum fine because the sale of unauthorized insurance products is a serious offense which adversely affects consumers.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That Golf Marketing Worldwide, L.L.C. and Kevin Kolenda are, 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;

FURTHER ORDERED: That Golf Marketing Worldwide, L.L.C. and Kevin Kolenda cease and desist from selling any insurance product and engaging in unfair and deceptive trade practices, including, but not limited to, charging consumers premiums, and providing guarantees for prizes at golf and tournament events in the Commonwealth of Massachusetts; and it is

FURTHER ORDERED: That Golf Marketing Worldwide, L.L.C. and Kevin Kolenda shall pay a fine of Thirty One Thousand Dollars (\$31,000) 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 Golf and Kolenda 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.

