



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.
Jeffrey T. Gargaro, Respondent

Docket No. E2005-25

Order on Petitioner's Motion for Decision on the Pleadings

Introduction and Procedural History

On December 5, 2005 the Massachusetts Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Jeffrey T. Gargaro ("Gargaro"), who is currently not licensed as a Massachusetts insurance producer. Gargaro received an agent license on or about May 19, 1999. It was converted into a producer license on or about May 16, 2003 and canceled for non-renewal on or about June 30, 2003. The Division alleges in the OTSC that on or about February 1, 2002, Gargaro voluntarily agreed to the revocation of his Minnesota securities agent license in a Consent Order with the Minnesota Commissioner of Commerce. In a separate Consent Order on or about February 1, 2002, he agreed to the revocation of his Minnesota insurance agent license. It is further alleged that on or about March 12, 2003 Gargaro signed a National Association of Securities Dealers, Inc. ("NASD") Acceptance, Waiver and Consent which barred him from any association with any NASD member in any capacity. He also consented to an NASD Agreement which charged him with converting \$12,907 in political funds to his personal use.

The Division seeks orders that Gargaro has shown financial irresponsibility in the conduct of insurance business in violation of G.L. c. 175, § 162R (a)(8) and that his insurance producer license or its equivalent has been revoked or suspended by another

state in violation of G.L. c. 175, § 162R (a)(9). It asks for findings on the allegations set forth in the OTSC and an order revoking his license and requiring the disposition of any and all insurance interests in the Commonwealth in accordance with G.L. c.175, §166B. The Division further seeks an order requiring submission of all insurance licenses to the Division; prohibition of any direct or indirect transaction or acquisition of insurance business in any capacity; the imposition of fines; and an order that all fines be paid in 30 days.

A Notice of Procedure ("Notice"), was issued on December 15, advising Gargaro that a prehearing conference would take place on January 5 at the offices of the Division, a hearing on the OTSC would be held on January 19, 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 Gargaro 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 Gargaro 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 December 15, the Division sent the Notice and OTSC by certified and first class mail to respondent at his mailing address as it appears on the Division's records: 1833 111th Avenue, NE, Minneapolis, MN 55449. The post office attempted delivery of the certified mail at Gargaro's address, but it was unclaimed and returned to sender. The first class mail was also returned. Gargaro filed no answer or other responsive pleading.

On January 5, a prehearing conference was held, pursuant to 801 CMR 1.01(10)(a). Mr. Robert Kelly, Esq., appeared for the Division. Neither Gargaro nor any person representing him appeared. Mr. Kelly reported that he had received no communication from the respondent or from any person purporting to represent him. On January 12, the Division filed a motion for a decision on the pleadings, which it served on respondent by first class mail. The grounds for the Division's motion were 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 Gargaro failed to respond to the OTSC or to the Division's motion, and that he did not appear in this proceeding. An order was issued on January 17 advising Gargaro to file any response to the Division's motion by January 24, and stating that any argument on the motion would be heard on February 1. The order was sent by first class mail, but returned by the postal service. Gargaro filed no response to the Division's motion.

At the hearing on February 1, Mr. Kelly stated that he had received no communications from the respondent or any person representing him. He also stated that all mail sent to Gargaro for the past several months had been returned by the postal service. Neither Gargaro nor any representative of his appeared at the February 1 hearing.

Finding of Default

On the basis of the record before me, I conclude that the Division took appropriate actions to ensure that proper and sufficient service was made on the Respondent. The OTSC and Notice were sent to respondent at the mailing address shown on the Division's licensing records. I conclude that Gargaro'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 a finding that he is in default. By his default, Gargaro 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. Gargaro received an agent license on May 19, 1999.
2. It was converted into a producer license on May 16, 2003 and canceled on June 30, 2003 for non-renewal.
3. On February 1, 2002, Gargaro signed two separate Consent Orders with the Minnesota Commissioner of Commerce in which he consented to the revocation of his securities license and his insurance agent license.

4. On March 12, 2002 Gargaro signed a National Association of Securities Dealers (“NASD”) Acceptance, Waiver and Consent document which barred him from any association with any NASD member; he also agreed to an NASD Agreement which charged him with the conversion of \$12, 907 in political funds to his own use.

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.

On the basis of these findings and the OTSC, I conclude that there is sufficient support for revocation of Gargaro’s Massachusetts producer license pursuant to §162R (a)(8) and (a)(9). I therefore revoke the Massachusetts producer license issued to Jeffrey T. Gargaro and impose a fine of \$1,000 pursuant to G.L. c. 176D, §7.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Jeffrey T. Gargaro by the Massachusetts Division of Insurance are hereby revoked; and it is

FURTHER ORDERED: That Jeffrey T. Gargaro shall return to the Massachusetts Division of Insurance any licenses in his possession, custody or control; and it is

FURTHER ORDERED: That Jeffrey T. Gargaro 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 Jeffrey T. Gargaro 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 Jeffrey T. Gargaro 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 16th day of March 2006, in the office of the Commissioner of Insurance. A copy shall be sent to Gargaro 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.