
Division of Insurance, Petitioner
v.
William T. Rowan & Rowan Insurance Agency, Inc., Respondents

Docket No. E2006-2

Decision and Order

Introduction and Procedural History

On December 5, 2005 the Massachusetts Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against William T. Rowan (“Rowan”) and the Rowan Insurance Agency (“Rowan Agency”). It alleges that Rowan received an agent license on or about November 1, 1976, which was converted into a producer license on or about May 16, 2003, and that the Rowan Agency was licensed as a corporate insurance broker on or about February 3, 1987, and as a corporate insurance agent on or about August 4, 1987. The Rowan Agency’s corporate broker license was converted to a producer license on or about May 16, 2003. Rowan, the Division alleges, was the president, treasurer, and secretary of Rowan Agency, and the only person named in the Division licensing records as a member of that agency. All producer licenses issued to Rowan and the Rowan Agency were canceled for non-renewal on June 30, 2003; neither entity is currently licensed. The Division also alleges that Rowan was licensed as an individual insurance broker from October 1996 to November 2002, and as an insurance advisor from July 31, 1998 to July 31, 2001.

The Division alleges that in 2002 the Rowan Agency issued three certificates of liability insurance to two Massachusetts businesses indicating that insurance had been placed with three insurers. The businesses issued checks to pay the premiums for the coverages. In accord with instructions from the Rowan Agency, some checks were

payable directly to the insurers and some to the Rowan Agency; all checks were delivered to the Rowan Agency. The Rowan Agency did not transfer the checks payable to the insurers to the companies. The checks written to the Rowan Agency were deposited in its bank account. None of the funds intended to pay premiums that were deposited in the Rowan Agency account were transferred to the insurers, and no policies were issued for the relevant time period. The Division further alleges that the Rowan Agency received two payments from a Massachusetts business to pay renewal premiums for its workers' compensation coverage; the checks were deposited in the Rowan Agency account but no premiums were transferred to the insurer and the policy was not renewed. The Division also alleges that the Rowan Agency received from at least two other Massachusetts businesses checks for the payment of insurance premiums on policies that the Rowan Agency was placing through another insurance broker. The Rowan agency failed to transfer those funds to the other insurance brokers. On one occasion, a check to the broker was returned for insufficient funds. A judgment obtained by one surplus lines broker for the amount due was not paid.

The Division alleges that Rowan bound coverage for his automobile with the Premier Insurance Company ("Premier") after the company had terminated his authority to place business with it and, further, failed to pay to Premier automobile insurance premiums for three separate one-year policy periods from 2000 to 2003. Finally, the Division alleges that on or about November 4, 2005 Rowan was convicted in the Quincy District Court of fifteen counts of violating G.L. c. 175, §170, which prohibits the knowing procurement by fraudulent representation of premium payment on any policy of insurance.¹

The Division seeks orders that Respondents' conduct violates five sections of G.L. c. 175, §162R(a), as follows: (2) violation of the insurance laws; (4) misappropriation or improper conversion of money received in insurance business; (5) misrepresentation of the terms of an insurance contract; (7) admission to or having been found guilty of unfair trade practices or fraud; and (8) using fraud, coercion, or dishonest practices and demonstrating financial irresponsibility in the conduct of business. It also asserts that Respondents fraudulently procured payment of insurance premiums in violation of G.L. c. 175, §170; and committed unfair and deceptive trade practices in violation of G.L. c. 176D, §2.

¹ Rowan was also convicted of sixteen counts of violating G.L. c. 266, §30, larceny over \$250.

The Division seeks revocation of licenses issued to Rowan and the Rowan Agency; and orders requiring the disposition of any and all insurance interests in the Commonwealth, and prohibiting Respondents from any direct or indirect transaction or acquisition of insurance business in any capacity. It also requests fines and a restitution order.

A Notice of Procedure (“Notice”), was issued on January 25, 2006 advising Rowan that a prehearing conference would take place on February 22 at the offices of the Division, that a hearing on the OTSC would be held on March 2, and that the proceeding would be conducted pursuant to G.L. c. 30A and the Standard Adjudatory Rules of Practice and Procedure, 801 CMR 1.00, *et seq.* The Notice advised Rowan 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 Rowan 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 initially designated Amma A. Kokro, Esq. as presiding officer for this proceeding; in July 2006 I was designated as her successor.²

On January 26, 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. On February 16, an answer was filed on behalf of Rowan and the Rowan Agency. The answer included a statement of mitigating circumstances. As an addendum to the answer, Rowan submitted a copy of an agreement entered into in September 2005 with the Attorney’s General’s Office to settle the criminal charges against him, and a copy of a check to the Probation Department of the Quincy District Court.

At the prehearing conference which took place on February 22, Douglas Hale, Esq., appeared for the Division and Paul J. Griffin, Esq., appeared for the Respondents. The parties agreed that no facts were in dispute and that fines were the only contested issue. Mr. Griffin stated that Rowan would not contest the conduct alleged in the OTSC. He also stated that he would provide an affidavit from Rowan addressing the mitigating factors attached to his answer.

² Ms. Kokro took a leave of absence in July 2006, after preparing the initial draft of this decision and order.

At the March 2 hearing, for the purpose of establishing the facts supporting its case, the Division submitted documents consisting of the OTSC and the exhibits attached to it.³ Mr. Griffin submitted an affidavit from Rowan, a letter from Assistant Attorney General John Compton, and a memorandum from the Attorney General to the Probation Department about the distribution of Rowan's restitution payments. He also put into evidence the copies of the plea agreement and the check dated October 31, 2005 payable to the Quincy Probation Department that were attached to Rowan's answer. The Division did not object to these exhibits. The following three witnesses testified: Thomas E. Sleeper and James J. Aiken, from Rowan's employer, InterContinental Insurance Brokers, LLC of Boston ("InterContinental"), and Lawrence Smith, Associate Pastor of Brookville Baptist Church ("Brookville") in Holbrook, MA. The Division was granted until March 17 to submit a post hearing memorandum. Rowan was given until March 31 to submit a reply memorandum. Both memoranda were timely submitted.

Summary of the Testimony

Mr. Sleeper, the CEO of InterContinental, testified that Rowan has been employed there since May 2003. His job responsibilities include marketing and servicing InterContinental clients. Mr. Sleeper testified that, at his initial interview, Rowan had informed him of his prior problems and the investigations by the Division and the Attorney General, and had kept InterContinental aware of the details of those investigations and the AG's criminal prosecution. Mr. Sleeper characterized Rowan as a forthcoming and prudent person who knows and understands the boundaries at InterContinental, and who has done everything he has been asked to do and kept the firm's reputation unblemished. He stated that Rowan is closely supervised and that he would retain Rowan without reservation if he is available. Mr. Sleeper described Rowan as an outstanding human being, who conducts himself well inside and outside the office, and who has been a model for other employees. Mr. Sleeper acknowledged that Rowan's issuance of false certificates of insurance and his failure to place insurance for Rowan Agency customers could have had "catastrophic effects" if those customers had made claims.

Mr. Aiken confirmed that Rowan had informed InterContinental about his difficulties and had never misrepresented them. He described Rowan as a model employee

³ The parties agreed on the record that although the Division submitted the entire OTSC, its evidentiary value was limited to the factual allegations therein, and that the Division's legal theories were excluded.

who is sensitive to clients and communicates well. Mr. Aiken stated that in his opinion Rowan conducts himself appropriately in business and meets InterContinental's standards requiring exemplary behavior from its employees.

Mr. Smith, the associate pastor of Brookville since 2004, spoke about Rowan's activities as a trustee and deacon in the church. He noted that in 2004 Rowan was a trustee, one of six people responsible for church finances. Mr. Smith believed that Rowan would have been a trustee for three years, beginning in 2002, but did not know what Rowan had done at the church before then. In 2006, Rowan was elected a deacon, a position in which he is considered an officer and spiritual leader of the church, responsible for oversight of the ministry and family matters. Mr. Smith testified that Rowan had been meeting with the senior pastor for some years before 2004, and that church members were aware of Rowan's problems and his efforts to deal with them. He stated that Rowan, by making restitution, admitting his actions, and taking steps toward personal leadership as a father and husband had complied with his Biblical responsibilities. Smith stated that Rowan has conducted himself well, shown incredible integrity, and enjoys a high level of respect from the congregation.

Findings of Fact

On the record before me, consisting of the factual allegations in the OTSC and the documents submitted by Rowan at the evidentiary hearing, I find that:

1. The Division licensed Rowan as an insurance agent on November 1, 1976, as an insurance broker on October 28, 1996, and as an insurance advisor on July 31, 1998. His insurance broker's license was cancelled for non-renewal on November 28, 2002, and his advisor's license was cancelled for the same reason on or about July 31, 2001.
2. Rowan's agent license was converted to a producer license on or about May 16, 2003, and was terminated for non-renewal effective June 30, 2003.
3. Rowan Agency was incorporated in Massachusetts on January 1, 1987. Rowan was the president, treasurer and secretary of the Rowan Agency, and the only individual member named on its license.
4. Rowan Agency was licensed as a corporate insurance broker on February 3, 1987 and as a corporate insurance agent on August 4, 1987. Its corporate

broker license was converted to a producer license on or about May 16, 2003, and was cancelled for non-renewal on June 30, 2003.

5. In November 2000 Rowan Agency entered into an agreement to place business through the Quaker Agency of MA, Inc. (“Quaker”), pursuant to which Rowan Agency was to transmit premiums to Quaker within a stated time period. Rowan Agency failed to transmit premiums in accordance with the agreement and Quaker recovered a judgment against Rowan in June 2001. In accordance with a subsequent court order, Rowan made three payments on the judgment; in 2002 Quaker obtained a second payment order from the court, with which Rowan failed to comply.
6. On December 3, 2002, Rowan executed a Certificate of Liability Insurance for MRJ, Inc. indicating that the Rowan Agency was the producer of general liability, workers’ compensation and liquor liability insurance covering the Hub Pub for a policy period beginning November 15, 2002 and terminating November 15, 2003. According to the certificate, the coverages were written by three different insurers. Rowan Agency sent invoices to MRJ, Inc. instructing it to issue checks for the deposit premiums. Two of the checks were to be written to the insurers and one to the Rowan Agency. As requested, MRJ, Inc. issued and sent the checks to the Rowan Agency. However, the checks to the insurers were never presented for payment to MRJ, Inc.’s bank. The check to the Rowan Agency was deposited in its bank account.
7. The insurers identified on the MRJ, Inc. Certificate of Liability Insurance wrote no coverage for MRJ, Inc. or the Hub Pub during the relevant time period.
8. On December 3, 2002, and on April 14, 2003, Rowan executed Certificates of Liability Insurance for Bosworth Place, Inc. indicating that the Rowan Agency was the producer of general liability, workers’ compensation and liquor liability insurance covering the Beantown Pub for a general liability and liquor liability policy period beginning November 15, 2002 and terminating November 15, 2003, and a workers compensation policy for a period beginning, variously, on

November 15, 2002 and April 1, 2004, and ending on April 1, 2003 or 2004.⁴

According to the certificate, the coverages were written by three different insurers. Rowan Agency sent invoices to Bosworth Place, Inc. instructing it to issue checks for the deposit premiums. Two of the checks were to be written to the insurers and one to the Rowan Agency. As requested, Bosworth Place, Inc. issued and sent the checks to the Rowan Agency. However, the checks to the insurers were never presented for payment to Bosworth Place, Inc.'s bank. The check to the Rowan Agency was deposited in its bank account.

9. The insurers identified on the Bosworth Place, Inc. Certificate of Liability Insurance wrote no coverage for Bosworth Place, Inc. or the Beantown Pub during the relevant time period.
10. Rowan and the Rowan Agency failed to transmit to two insurance companies checks payable to those companies for insurance premiums.
11. Rowan deposited into the Rowan Agency account checks payable to it that were intended to pay insurance premiums, but failed to transfer the funds to the respective insurance companies.
12. The Rowan Agency did not place any of the insurance identified on the Certificates of Liability Insurance issued in December 2002 and April 2003.
13. The Rowan Agency received two checks dated December 7, 2001 and March 1, 2002 from O'Lindy's Quincy Avenue Lanes, Inc. as payment of renewal premiums for insurance issued by the Gulf Insurance Company ("Gulf"). The checks were deposited into the Rowan Agency account and no payments were sent to Gulf. Gulf did not renew O'Lindy's insurance policy.
14. The Premier Insurance Company terminated the Rowan Agency's authority to write personal lines automobile and property insurance, effective September 1, 2002. The notice of termination stated that Premier would not accept new business on or after July 1, 2002. On August 6, 2002, Rowan submitted to Premier an application for insurance on a vehicle that he had purchased that day from the Rowan Agency. Premier advised the Division that as of February 4,

⁴ The policy periods for the workers compensation insurance coverage differ on the two certificates of insurance.

2004, Rowan owed it \$1,398 in back premiums for his automobile insurance for three policy periods, 2000-2001, 2001-2002 and 2002-2003.

15. Beginning in November 2000, the Rowan Agency sent invoices to Costello Dismantling Co., Inc. (“Costello”) for workers’ compensation insurance premiums on a policy that had been obtained through the Fremont Compensation Insurance Group (“Fremont”). The Rowan Agency received checks payable to it from Costello and deposited them in its bank account. In September 2001 Fremont advised the Rowan Agency of the outstanding balance on the Costello account. In November 2001 Fremont again notified Rowan and the Rowan Agency that it had not received payment on invoices for premiums due on the Costello account. It also noted that one check sent by the Rowan Agency had been returned unpaid for insufficient funds.
16. In November 2001, Fremont notified Rowan and the Rowan Agency of an outstanding balance due on insurance written for Lancaster Enterprises, Inc. (“Lancaster”) for the period from October 29, 1999 through October 29, 2000. The letter stated that Lancaster had sent checks for the insurance premiums to the Rowan Agency; copies of those checks indicated that they had been deposited in the Rowan Agency bank account.
17. Rowan Agency deposited premium payments from Costello and Lancaster into its bank account but failed to transfer those premium payments to Fremont.
18. Correspondence dated January 20, 2004 from an attorney for Rowan and the Rowan Agency indicated that at that time the Rowan Agency was indebted to International Excess & Treaty Managers, Inc., for amounts related to the MRJ, Inc. and Bosworth Place, Inc. accounts, to Fremont, to the Continental Agency of Rhode Island, to Risco, Inc., to Quaker, to Poseidon Enterprises, to O’Lindy’s, to Beth Israel Hospital, and to James Stearns Company and affiliated enterprises. Some of these debts had been the subject of litigation resulting in judgments against the Rowan Agency.
19. Correspondence from the Attorney General to Rowan’s counsel indicates that on at least sixteen different commercial accounts Rowan collected insurance

policy premiums but failed to transfer those premiums to insurance companies or other insurance brokers.

20. On September 30, 2005, Rowan entered into an agreement with the Attorney General relating to allegations of crimes of larceny and agent broker fraud. He agreed to offer unconditional guilty pleas in the Quincy District Court to sixteen counts of agent or broker fraud and to pay restitution in the amount of \$120,000. One-third of the restitution was to be paid upon sentencing and the remainder during the time Rowan was on probation. The court accepted Rowan's plea, imposed a suspended sentence to the house of correction, placed Rowan on supervised probation for three years, and ordered restitution.
21. Rowan paid the entire amount of restitution in November 2005. A memorandum to the Quincy District Court from the Attorney General indicates that those funds were to be distributed to thirteen entities.
22. Rowan accepts responsibility for his actions and cooperated with the investigators from the Insurance Fraud Bureau and the Attorney General.
23. Since May 2003 Rowan has been employed as a customer service representative at InterContinental; his employers wish to retain him as an employee.

Summary of the Arguments

The Division argues that, pursuant to G.L. c. 175, §162R(e), the Commissioner has authority to revoke Respondent's licenses, even though the licenses lapsed by operation of law in 2003. Further, it asserts, because Rowan was the sole officer and the only individual named on the Rowan Agency license, pursuant to G.L. c. 175, §174 he is personally liable for violations of the insurance laws even if the conduct constituting the violation was done in the name of or on behalf of the corporation.

The Division contends that Respondents' improperly withheld, misappropriated or converted money received in the insurance business on 21 occasions, in violation of c. 175, §162R(a)(4); misrepresented the terms of insurance policies on 17 occasions, in violation of c. 175, §162R(a)(5); committed unfair insurance trade practices or fraud on 21 occasions, in violation of c. 175, §162R(a)(7); and on an unspecified number of occasions used fraudulent, coercive or dishonest practices, or demonstrated incompetence,

untrustworthiness or financial irresponsibility in the conduct of business, in violation of c. 175, §162R(a)(8). It also asserts that on at least 15 occasions, Respondents fraudulently procured payment of insurance premiums in violation of G.L. c. 175, §170; and committed at least 21 separate unfair and deceptive trade practices in the business of insurance in violation of G.L. c. 176D, §2. Each of these violations of the insurance laws, the Division argues, supports its claim that Respondents violated c. 175, §162R(a)(2).

The Division argues that revocation of Respondents' insurance licenses and the right to renew those licenses is appropriate, pointing out that the Division has revoked licenses for conduct far less egregious than that of Rowan and the Rowan Agency. It notes Mr. Sleeper's testimony on the serious consequences that could occur as a result of Respondents' failure to place insurance for an entity. The Division argues that, on the facts of this case, Rowan's acceptance of responsibility for his prior acts is insufficient to justify imposition of a sanction less than revocation. It asserts that while willingness to accept responsibility is a factor in determining appropriate sanctions, the cases cited by Rowan do not support his position. It contends, as well, that Rowan accepted responsibility for his actions only after he was under investigation.

Further, the Division argues, Rowan's reliance on his involvement since 2002 with Brookville as evidence of his trustworthiness, is misplaced. It points out that in December of that year, and again in 2003, while Rowan was a member of Brookville, the Rowan Agency issued Certificates of Liability Insurance falsely indicating that insurance had been placed. During 2002, the Division notes, the Rowan Agency issued invoices and received premium payments from customers that were not transmitted to insurers. The evidence demonstrates, the Division contends, that even while Rowan was a Brookville trustee, he was engaging in the conduct underlying the OTSC. Further, the Division argues, that Rowan satisfied his agreed-upon restitution in a single payment is not a mitigating factor, because he simply repaid funds he should never have taken.

In support of the other relief that it requests, the Division asserts that pursuant to G.L. c. 175, §166B the Commissioner may order the respondent to dispose of any interest as "proprietor, partner, stockholder, officer or employee of any licensed insurance producer." It argues that the presiding officer does not have authority to allow Rowan to remain as an employee of an insurance producer, but that the prior approval of the

Commissioner is required in order for him to do so. The Division asserts that the provision of Rowan's plea agreement with the Attorney General that requires him to remain employed does not mean that the Division must allow him to be in the business of insurance. With respect to fines, the Division argues that it is not seeking fines pursuant to G.L. c. 175, §170 because Rowan has received a criminal sentence on those charges.

Respondents argue that their licenses should not be revoked because Rowan has accepted responsibility for his actions and paid restitution in full to the Rowan Agency customers. Rowan states that he had a substance abuse problem between 1999 and 2001 that led to financial difficulties and that he committed many acts that jeopardized his insurance business and put his clients at risk. During that period, he was also being treated for depression, and taking prescription drugs. Rowan states that prior to the events detailed in the OTSC he had no criminal convictions and no complaints regarding his insurance business.

Rowan states that he sought help for alcoholism and has not consumed alcohol since 2002. He is also active in Brookville, whose members are aware of his past problems. Rowan asserts that the Division's argument that some of the acts that gave rise to the OTSC occurred after Rowan had become a Brookville trustee is based on an incorrect conclusion drawn from Mr. Smith's testimony, and states that he did not become a trustee when he first joined the congregation in 2002. Rowan also notes that he did not apply for renewal of his insurance licenses, because he would have had to misrepresent himself on the applications, something he resolved, by 2002, not to do. He argues that consideration should be given to evidence that demonstrates that he has rehabilitated himself.

As additional factors that should mitigate sanctions for his misconduct, Rowan points to his full cooperation with Division investigators and with the Attorney General, and his current financial responsibilities. He notes that he willingly assisted the Attorney General in identifying the parties injured by his actions, and that his level of cooperation was identified as a factor that led to the prompt resolution of the criminal matter. Rowan's household consists of his wife, two of his three children, and his mother-in-law, whom he supports. As a result of borrowing money to meet his restitution obligation in a single payment, he states, he has put himself at considerable financial risk.

As further evidence that his license should not now be revoked, Rowan relies on the testimony of his employers about his conduct for the past three years, noting that InterContinental considers him a valuable employee and would like to keep him on. He asks that his license not be revoked so that he can continue his employment at InterContinental. Rowan points out that the agreement with the Attorney General's office prohibits him from seeking any insurance license during the period of his probation, which runs until November 2008. With respect to fines, Rowan asks that the Commissioner take into account the amount of restitution he has paid and the effect on his financial situation of imposing severe fines. He raises the question of whether imposition of fines in this administrative proceeding, might violate principles of double jeopardy.

Analysis and Discussion

Pursuant to G.L. c. 175, §162(R)(e), the Commissioner retains jurisdiction and authority to enforce the provisions of and impose any penalty or remedy authorized by G.L. c. 175, §§162H to 162X, and c. 176D, to enforce the insurance regulations and to discipline producers even if the person's license has been surrendered or has lapsed by operation of law. Although Respondents' are not currently licensed, their conduct violated the insurance laws and they are therefore subject to the Commissioner's authority to enforce those laws. Rowan, in his capacity as the president, treasurer, and secretary of the Rowan Agency, and the sole person named on its license is, under G.L. c. 175, §174, individually responsible for all acts committed through and in the name of Rowan Agency, and may be sanctioned for them.

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. I find that Respondents, by depositing checks payable to the Rowan Agency into its bank account and failing to transfer those funds to insurers or other insurance brokers, as appropriate, misappropriated or improperly converted money received in the insurance business, in violation of G.L. c. 175, §162R(a)(4). I find that Rowan has admitted to unfair trade practices or fraud, including failure to transfer premiums to insurers or other insurance brokers and issuance of false Certificates of Liability Insurance, actions which constitute violations of G.L. c. 175, §162R(a)(7). I find that Respondents' failure to obtain insurance for customers,

failure to pay court-imposed judgments, payment of premium with a check drawn on insufficient funds, placement of insurance without authority to do so and failure to pay premiums due on an insurance policy, as well as the actions that I find constitute violations of (a)(7), demonstrate that they have used fraud, coercion, or dishonest practices and demonstrated financial irresponsibility in the conduct of business in violation of G.L. c. 175, §162R(a)(8). Rowan's guilty plea to violations of G.L. c. 175, §170 further demonstrates that he has violated the insurance laws, and that his license and that of the Rowan Agency may therefore be revoked pursuant to G.L. c. 175, §162R(a)(2). I find that Respondents' actions are also unfair and deceptive trade practices prohibited by G.L. c. 176D, §2.⁵

The options available to the Commissioner under §162R include, in addition to fines, placing a licensee on probation and suspending or revoking a license. In this case, because Respondents have no licenses, probation and suspension are inherently inapplicable. Respondents argue that due to mitigating circumstances, Rowan's acknowledgement of responsibility and payment of restitution, their licenses should not be revoked. The seriousness of Respondents' conduct, however, places a heavy burden on them to persuade me that their licenses should not be revoked. Restitution, absent other evidence of rehabilitation, is not itself sufficient to justify allowing a respondent to retain a license. *See, Swartz v. Division of Insurance*, Docket No. E95-11. Respondents cite to no past Division decisions which have imposed any lesser sanction than revocation on a licensee whose misconduct involves acts such as misappropriation or conversion of premium payments from customers, and failure to place insurance, even when the respondent has expressed regret and accepted responsibility for his actions. *See, e.g., Division of Insurance v. Michael B. Doyle*, E93-4.⁶ The other cases that Rowan relies on to support the premise that admitting responsibility for misconduct are distinguishable

⁵ The Division alleges that, by issuing false certificates of insurance, mailing invoices for policies that had not been placed, and receiving checks for those policies, Respondents indicated that insurance was in place, and thereby misrepresented the terms of a insurance contract in violation of G.L. c. 175, §162R (a)(5). I conclude that these actions constitute business practices that violate c. 175, §162R (a)(7) and (8). However, because the record includes no evidence relating to any representations made to customers about the terms of any particular insurance policy, I am not persuaded that these actions should be found to violate subsection (a)(5) of the statute.

⁶ Doyle, at least four times, deposited client premium payments into his own account and failed to transfer them to insurers. Although he admitted that psychiatric problems had affected his judgment, repaid the converted funds and apologized to the victims, his license was revoked because of the gravity of his conduct.

from his circumstances. Unlike the events that gave rise to this action against Rowan and the Rowan Agency, none involved a series of violations over a period of time that exposed consumers to a substantial risk of harm.⁷

It is well established that one goal of the licensing process is to protect the public and to maintain consumer confidence that individuals who have patently violated the insurance laws are not permitted to hold licenses. *See, e.g., Division of Insurance v. David*, Docket No. E94-20, aff'd on appeal, 53 Mass. App., 162 (2001). Imposing a lesser sanction than license revocation on a respondent who has admitted to conduct that violates the insurance laws and, further, pleaded guilty to insurance fraud based on those acts would not enhance confidence in the Division's standards for retaining a license.

Rowan is to be commended for acknowledging his wrongdoing, dealing with his substance abuse problem, paying his restitution order promptly, and cooperating with the investigations into his business practices. However, after careful consideration of Rowan's arguments on mitigating circumstances, I conclude, on balance, that the record of past egregious misconduct supports revocation of the Respondents' producer licenses.

Rowan opposes revocation in large measure because of the Division's additional request for an order requiring Rowan to dispose of any interest as proprietor, partner, stockholder, officer or employee of any licensed insurance producer. He seeks to remain employed at InterContinental, and expresses concern about obtaining the Commissioner's approval to do so. The statutory language allows the Commissioner to enter orders requiring disposition of a respondent's business interests, but does not require that she do so, and allows her to approve continued employment in the insurance business of a person whose license has been revoked. I find it reasonable to enter an order requiring Rowan to dispose of any remaining interest in the Rowan Agency or any other insurance-related business enterprise in which he was engaged in any capacity before his current employment.⁸ However, pursuant to G.L. c. 175, §166B, as a result of the revocation of Rowan's license, he cannot be an employee of a licensed producer without the prior

⁷ For example, one case cited by Rowan as support for a lesser sanction, *Division of Insurance v. McDermott*, E94-3 is inapposite because the respondent had a license that could be suspended, and the case involved a single incident in a 19-year career as an insurance agent.

⁸ The exact nature of those business arrangements is unclear. In the mitigation statement added to his Answer, Rowan refers to financial difficulties with his business partners as well as his insurance business decisions.

approval of the Commissioner. Therefore, in order to remain employed at InterContinental, Rowan must first apply to the Commissioner for approval of his continued employment there.

Although Rowan seeks approval now of his continued employment, and his employers have expressed their desire to retain him, I am not persuaded that issues relating to Rowan's retention of his current job, and any conditions for doing so, should be addressed in this enforcement proceeding.⁹ The issues to be considered, such as the nature of the job duties and the employer's oversight of the individual respondent, inherently differ from those relating to a decision to revoke or deny a license. Further, the inquiry is, in essence, focusing on the future, rather than the past.¹⁰

The Division also seeks imposition of fines for Respondents' misconduct. The maximum fine for each violation of c. 175, §162R is \$1,000 per violation. Rowan argues that a "severe" fine would impose a financial burden on him because of his existing financial obligations.

In their answer, Respondents raised as an affirmative defense that "further sanctions" as requested by the Division would constitute double jeopardy. At the hearing, and in his post-hearing memorandum, Rowan asserts that the imposition of a fine in an administrative proceeding on a respondent who has paid a fine in a criminal proceeding arising out of the same course of conduct has been found to constitute double jeopardy, unless the fine is shown to have remedial value. Rowan, however, does not explain the applicability of that principle in this case. As a result of the criminal proceeding, Rowan was ordered to make restitution; neither the plea agreement nor the court records makes any reference to a fine. However, because the Division's requested order relating to restitution appears to be duplicative, it will not be allowed.

The documents attached to the OTSC demonstrate that the Rowan Agency issued three false certificates of liability insurance, and failed to transfer thirteen checks for premium payments to insurers or other brokers. One check transferring premiums was

⁹ Chapter 175, §166B not only prevents a person whose license has been revoked from being an employee of a producer without the prior approval of the Commissioner, but also subjects the license of a producer who employs such a person without that approval, to revocation or suspension.

¹⁰ The record, in any event, is insufficient to permit resolution of this issue. I note also that the Division addresses similar issues relating to participation in the insurance industry that arise under federal law through an Advisory Committee.

returned for insufficient funds. I find that each of these seventeen acts is a serious violation of the insurance laws and will therefore impose the maximum penalty of \$1,000 for each act.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: that any and all insurance producer licenses issued to William T. Rowan or the Rowan Insurance Agency, Inc. by the Massachusetts Division of Insurance are hereby revoked; and it is

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

FURTHER ORDERED: that William T. Rowan 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 William T. Rowan 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 William T. Rowan shall pay a fine of \$17,000 to the Massachusetts Division of Insurance within 60 days.

This decision has been filed this 2nd day of October 2006, in the office of the Commissioner of Insurance.

Jean F. Farrington, Esq.
Presiding Officer

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