



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.
Glen Dale Tucker, Jr., Respondent

Docket No. E2006-05

Order on Petitioner's Motion for Decision on the Pleadings

Introduction and Procedural History

On March 7, 2006 the Massachusetts Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Glen Dale Tucker, Jr. ("Tucker"). The Division alleges that Tucker received an agent license on or about December 7, 1999, which was converted into a producer license on or about June 16, 2003, and cancelled for nonrenewal on or about June 7, 2004. The Division alleges that on or about October 29, 2003, the Kentucky Department of Insurance levied a civil penalty against Tucker for failure to disclose a misdemeanor conviction on his license renewal application, and revoked his insurance license for failure to pay the civil penalty on or about March 2, 2004. The Division further alleges that on or about March 8, 2004, the California Department of Insurance revoked Tucker's insurance license based on the Kentucky action and that Tucker failed to notify the Division of these administrative actions within 30 days.

The Division seeks orders that Tucker has violated the order of another state's insurance Commissioner, a violation of G.L. c. 175, § 162R (a)(2); that his insurance producer license has been revoked by another state, a violation of G.L. c. 175, § 162R (a)(9); and that Tucker failed to report the Kentucky and California administrative actions to the Division, a violation of G.L. c. 175, § 162V (a). 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 March 8, advising Tucker that a prehearing conference would take place on April 4, at the offices of the Division, a hearing on the OTSC would be held on April 18, 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 Tucker 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 Tucker 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 March 9, the Division sent the Notice and OTSC by certified and first class mail to respondent at his business address as it appears on the Division's records: 300 8th St., Huntington, W.Va. 25701. The certified mail was refused and returned on March 13. The first class mail was not returned. Tucker filed no answer or other responsive pleading.

On April 4, a prehearing conference was held, pursuant to 801 CMR 1.01(10)(a). Douglas Perry, Esq., appeared for the Division. Neither Tucker nor any person representing him appeared. Mr. Perry reported that he had received no communication from the respondent or from any person purporting to represent him. On April 4, 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 Tucker's: failure to file an answer to the OTSC within the time prescribed by the Standard Adjudicatory Rules of Practice and Procedure; his failure to appear at the scheduled prehearing conference; his failure to respond to the OTSC or to the Division's motion; and his failure appear in this proceeding. An order was issued on April 4, advising Tucker to file any response to the

Division's motion by April 11, and stating that any argument on the motion would be heard on April 18. Tucker filed no response to the Division's motion.

At the hearing on April 18, Mr. Perry stated that he had received no communications from the respondent or any person representing him. Neither Tucker nor any representative for him appeared.

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 business address shown on the Division's licensing records. I conclude that Tucker'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, Tucker 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. Tucker received a Massachusetts agent license on December 7, 1999;
2. His agent license was converted into a producer license on June 16, 2003;
3. Tucker's producer license was terminated for nonrenewal on June 7, 2004;
4. On October 29, 2003, the Kentucky Department of Insurance levied a civil penalty against Tucker because he failed to disclose a West Virginia misdemeanor conviction on his license renewal application;
5. On March 2, 2004, the Kentucky Department of Insurance revoked Tucker's insurance license for failure to pay the civil penalty;
6. On March 8, 2004, the California Department of Insurance issued an order of summary revocation against Tucker based on the Kentucky administrative action; and
7. Tucker failed to notify the Division of these administrative actions within 30 days.

G.L. c. 175, §162R (a), in pertinent part, permits the Commissioner to 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 Tucker's Massachusetts producer license pursuant to G.L. c. 175, §§162R (a)(2) and (a)(9). I therefore revoke the Massachusetts producer license issued to Glen Dale Tucker and impose a fine of \$3,000 pursuant to G.L. c. 175, §162V(a), for failure to report three administrative actions.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Glen Dale Tucker by the Massachusetts Division of Insurance are hereby revoked; and it is

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

FURTHER ORDERED: That Glen Dale Tucker 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 Glen Dale Tucker 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 Glen Dale Tucker shall pay a fine of Three Thousand Dollars (\$3,000) to the Massachusetts Division of Insurance within 30 days.

This decision has been filed this 5th day of May 2006, in the office of the Commissioner of Insurance. A copy shall be sent to Tucker 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.