



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

One South Station • Boston, MA 02110-2208
(617) 521-7794 • FAX (617) 521-7475
TTY/TDD (617) 521-7490
<http://www.mass.gov/doi>

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

JANICE S. TATARKA
DIRECTOR, CONSUMER AFFAIRS
AND BUSINESS REGULATION

JULIANNE M. BOWLER
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Richard M. O'Connell, Respondent

Docket No. E2006-06

Order on Petitioner's Motion for Decision on the Pleadings

Introduction and Procedural History

On April 10, 2006 the Massachusetts Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Richard M. O'Connell ("O'Connell"), who was licensed as a broker on or about October 14, 1994 and as an agent on or about January 2, 1998. His broker's license was cancelled for non-renewal on or about June 14, 1998, and his agent's license was terminated on or about June 30, 1998. The Division alleges that on or about December 17, 2001, O'Connell misrepresented the status of his broker's license in an employment agreement. The Division further alleges that on or about January 1, 2003, O'Connell altered a resident individual producer license issued by the Division, to include his name, an actual Division licensee's number, and a false serial number. It further alleges that on or about January 18, 2005 O'Connell presented the altered license to a new employer as proof of his licensed producer status, and thereafter, until February 24, 2006, represented himself as a licensed insurance producer. The Division alleges that O'Connell signed 37 insurance applications as the producer of record and received commissions on those sales. It alleges that on or about January 25, 2006, O'Connell admitted to the Division that he altered a producer's license to show his name as a producer.

The Division seeks orders that O'Connell: has violated the insurance laws, specifically G.L. c. 175, §162R(a)(2); has committed unfair trade practices or fraud in violation of G.L. c. 175, §162R(a)(7); has used unfair, dishonest, and deceptive practices in the conduct of business in violation of G.L. c. 175, §162R(a)(8) and 176D, §2; has sold, solicited or negotiated insurance while unlicensed in violation of G.L. c. 175, §162I; and has represented or held himself out as licensed without a license in violation of G.L. c. 175, §175. It asks for findings on the allegations set forth in the OTSC and an order revoking O'Connell's license and requiring O'Connell to cease and desist from the alleged conduct. It also seeks an order requiring the submission of all insurance licenses to the Division and 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 the 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 April 11, advising O'Connell that a prehearing conference would take place on May 8 at the offices of the Division, a hearing on the OTSC would be held on May 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 O'Connell 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 O'Connell 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 April 12, the Division sent the Notice and OTSC by certified and first class mail to the Respondent at his mailing address as it appears on the Division's records: 52 Reservoir St., Brockton, MA 02401. O'Connell signed for the certified mail on April 14, but the first class mail was returned on April 14 to the Division. O'Connell filed no answer or other responsive pleading.

On May 8 a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Douglas Perry, Esq., appeared for the Division. Neither O'Connell 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. After the prehearing conference, 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 the 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. An order was issued on May 11, advising O'Connell to file any response to the Division's motion by May 19, and stating that any argument on the motion would be heard on May 22. The order was sent by first class mail. O'Connell filed no response to the Division's motion.

Neither O'Connell nor any representative for him appeared at the May 22 hearing. Mr. Perry stated that he had received from O'Connell a faxed copy of a settlement agreement dated May 21, 2006. However, because the agreement deadline was April 10, 2006, Mr. Perry stated that he would neither accept it, nor execute a consent agreement or withdraw the OTSC but instead rely on his motion for a decision on the pleadings. He submitted a copy of the letter that he sent to O'Connell declining to accept the agreement.¹

Finding of Default

On the basis of the record before me, I conclude that proper and sufficient service was made on the Respondent. The OTSC and Notice were sent to the Respondent at the mailing address shown on the Division's licensing records. I conclude that O'Connell'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, O'Connell 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 A copy of the settlement agreement was not submitted into the record, and would, in any event, be outside the purview of this hearing.

1. O'Connell received a broker license on October 14, 1994, which was canceled on June 14, 1998 for non-renewal;
2. O'Connell had an agent license from January 21, 1998 to June 30, 1998.
3. On or about December 17, 2001, O'Connell misrepresented in an employment agreement that he had an insurance broker's license;
4. On or about January 1, 2003, O'Connell altered a Division of Insurance resident individual producer license to include his name, an actual Division licensee's license number, and a false serial number;
5. On or about January 18, 2005 O'Connell got a new job and presented the altered license to his new employer as proof of his licensed status;
6. From on or about January 18, 2005 through February 24, 2006, O'Connell improperly represented himself as a licensed insurance producer. He signed 37 insurance applications as the producer of record and received commissions on those sales; and,
7. On or about January 25, 2006, O'Connell admitted to the Division that he altered a producer's license to show his name as a licensed producer.

I find that O'Connell has violated G.L. c. 175, §162R(a)(2) by: holding himself out as licensed in violation of G.L. c. 175, §175; violated G.L. c. 175, §162R(a)(3) by altering a license and thereby obtaining a license through misrepresentation; violated G.L. c. 175, §162R(a)(7) by altering a license and selling insurance while unlicensed; violated G.L. c. 175, §162R (a)(8) and 176D, §2 by presenting an altered license to his employer, an unfair, dishonest, and deceptive practice in the conduct of business; and violated G.L. c. 175, §162I by selling, soliciting or negotiating insurance while unlicensed.

G.L. c. 176D, §7, in pertinent part, permits the Commissioner to order an insurance producer to cease and desist from any unfair or deceptive trade practices and to impose penalties of up to \$1,000 for violating any insurance laws under G.L. c. 175, §162R.

The Division requests revocation, even though O'Connell does not hold a license issued by the Division; but nonetheless, at this time, it is important to revoke O'Connell's license in order to protect the public, provide other states with notification of his conduct, and eliminate any opportunity for O'Connell to renew his license. *See Division of Insurance v. William J. Degnan*, E93-11 at 3. On this record, I order that any licenses issued to

O'Connell be revoked, and for O'Connell to immediately cease and desist from the activities alleged in the OTSC. O'Connell is ordered to return to the Division any licenses in his possession, custody or control that were either issued by the Division or altered by O'Connell. O'Connell's sale of 37 insurance policies while unlicensed is a very serious violation of G.L. c. 175, §162R(a)(2) and merits the imposition of the maximum fine. Therefore, pursuant to G.L. c. 176D, §7, I impose a fine of \$37, 000.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Richard M. O'Connell by the Massachusetts Division of Insurance are hereby revoked; and it is

FURTHER ORDERED: That Richard M. O'Connell shall cease and desist from the conduct alleged in the OTSC; and it is

FURTHER ORDERED: That Richard M. O'Connell shall return to the Massachusetts Division of Insurance any insurance licenses in his possession, custody or control; and it is

FURTHER ORDERED: That Richard M. O'Connell 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 Richard M. O'Connell 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 Richard M. O'Connell shall pay a fine of Thirty Seven Thousand Dollars (\$37,000) to the Massachusetts Division of Insurance within 30 days.

This decision has been filed this 11th day of July 2006, in the office of the Commissioner of Insurance. A copy shall be sent to O'Connell 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.