



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.
Therese Ann Balducci, Respondent

Docket No. E2006-10

Order on Petitioner's Motion for Decision on the Pleadings

Introduction and Procedural History

On May 11, 2006 the Massachusetts Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Therese Ann Balducci, ("Balducci"). The Division states that Balducci received a non-resident Massachusetts producer license on or about March 1, 2005. The Division alleges that on or about March 4, 2005, the Virginia State Corporation Commission, Bureau of Insurance denied Balducci's non-resident insurance license application. The Division further alleges that on or about May 13, 2005, the Pennsylvania Insurance Department denied Balducci's non-resident insurance license application and that Balducci failed to notify the Division of these denials within 30 days.

The Division seeks orders: that Balducci has violated the insurance laws under G.L. c. 175, § 162R (a)(2); that her insurance producer license application has been denied by another state, a violation of G.L. c. 175, § 162R (a)(9); and that Balducci failed to report the Virginia and Pennsylvania 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 her 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 May 15, advising Balducci that a prehearing conference would take place on June 9, at the offices of the Division, a hearing on the OTSC would be held on June 23, 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 Balducci to file an answer pursuant to 801 CMR 1.01(6)(d) and that, if she 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 Balducci that, if she failed to appear at the prehearing conference or hearing, an order of default, summary decision or decision on the pleadings might be entered against her. The Commissioner designated me as presiding officer for this proceeding.

On May 16, the Division sent the Notice and OTSC by certified and first class mail to Respondent at her address as it appears on the Division's records: 166 Oakmont Drive, Elgin, Illinois 60123. The certified mail was signed on May 19 and returned to the Division on May 22. The first class mail was not returned. Balducci filed no answer or other responsive pleading.

On June 9, a prehearing conference was held, pursuant to 801 CMR 1.01(10)(a). Douglas Hale, Esq., appeared for the Division. Neither Balducci nor any person representing her appeared. Mr. Hale reported that he had received no communication from the respondent or from any person purporting to represent her. On June 9, the Division filed a motion for summary decision, which it served on respondent by first class mail. The grounds for the Division's motion were: Balducci's failure to file an answer to the OTSC within the time prescribed by the Standard Adjudicatory Rules of Practice and Procedure; her failure to appear at the scheduled prehearing conference; her failure to respond to the OTSC or to the Division's motion; and her failure to appear in this proceeding. An order was issued on June 12, advising Balducci to file any response to the Division's motion by June 16, and stating that any argument on the motion would be heard on June 23. Balducci filed no response to the Division's motion.

At the hearing on June 23, Mr. Hale stated that he had received no communications from the Respondent or any person representing her. Neither Balducci nor any representative for her appeared.

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 Respondent at the business address shown on the Division's licensing records. Furthermore, the evidence indicates that the Respondent received notice via certified mail. I conclude that Balducci's failure to answer the OTSC or to respond to the Division's motion, and her failure to appear at the scheduled prehearing conference and at the hearing warrant a finding that she is in default. By her default, Balducci has waived her 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. Balducci received a non-resident Massachusetts producer license on or about March 1, 2005;
2. On or about March 4, 2005, the Virginia State Corporation Commission, Bureau of Insurance denied Balducci's insurance license application
3. On or about May 13, 2005, the Pennsylvania Insurance Department denied Balducci's insurance license application;
4. Balducci 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.

On the basis of these findings and the OTSC, I conclude that there is sufficient support for the revocation of Balducci'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 Therese Ann Balducci and impose a fine of \$2,000 for failure to report two administrative actions as required under G.L. c. 175, §162(V)(a).

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Therese Ann Balducci by the Massachusetts Division of Insurance are hereby revoked; and it is

FURTHER ORDERED: That Therese Ann Balducci shall return to the Massachusetts Division of Insurance any licenses in her possession, custody or control; and it is

FURTHER ORDERED: That Therese Ann Balducci 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 Therese Ann Balducci 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 Therese Ann Balducci shall pay a fine of Two Thousand Dollars (\$2,000) to the Massachusetts Division of Insurance within 30 days.

This decision has been filed this 6th day of July 2006, in the office of the Commissioner of Insurance. A copy shall be sent to Balducci 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.

