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**Office of Consumer Affairs and Business Regulation**  
**DIVISION OF INSURANCE**

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**Division of Insurance, Petitioner**  
**v.**  
**Thomas Joseph Cavalari, Respondent**  
**Docket No. E2007-07**

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**Order on Petitioner's Motion for Summary Decision**

***Introduction and Procedural History***

On July 16, 2007, the Massachusetts Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Thomas Joseph Cavalari ("Cavalari"), who is currently licensed as a Massachusetts individual insurance producer. The Division alleges that Cavalari provided false information on his application for licensure. The Division seeks orders that Cavalari has violated the provisions of the Massachusetts insurance laws, specifically M.G.L. c. 175 §162R(a)(1), providing incorrect, misleading, incomplete or materially untrue information in his application; M.G.L. c. 175 §162R(a)(3), obtaining a license through misrepresentation or fraud; and M.G.L. c. 176D §2, committing an unfair or deceptive act or practice in the business of insurance. It asks for revocation of all licenses granted to him by the Division, an order requiring him to dispose of any interest he may have in any insurance-related business, an order to submit any and all Massachusetts insurance licenses in his possession to the Division, and imposition of fines for the alleged violations.

The Division alleges that Cavalari was first licensed as an individual producer on December 28, 2005, and currently holds three agent appointments. It asserts that on December 28, 2005, the Division received Cavalari's application which was signed by him under the penalties of perjury on November 7, 2005. Cavalari answered "no" to Question 1 (one) on the application, which asks if the applicant has "ever been convicted of, or are currently charged with, committing a crime, whether or not adjudication was withheld." The application defines the term "crime" as including misdemeanors and the term "convicted" as including a plea of guilty.

On or about April 3, 2006, the Division was notified in writing by the Respondent, that he pled guilty, on January 30, 1997, to driving under the influence of alcohol and purchase of alcohol by a minor in Pennsylvania. The statements also notified the Division of an August 20, 1999 conviction for two charges of driving under the influence of alcohol in Pennsylvania.

A Notice of Procedure ("Notice") was issued on July 26, 2007, advising Cavalari that a hearing on the OTSC would be held on September 18, 2007, at the offices of the Division which would be conducted pursuant to M.G.L c. 30A and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00, *et. seq.* The Notice advised Cavalari to file an answer pursuant to 801 CMR 1.01(6)(d) within 21 days of his receipt of the Notice and that, if he failed to file an answer, the Division might move for an order of default, summary decision, or decision on the pleadings granting it relief requested in the OTSC. The Notice also notified Cavalari that a pre-hearing conference would take place on August 30, 2007, and if he failed to appear at the pre-hearing conference or hearing, an order of default, summary decision, or decision on the pleadings might be entered against him. The Commissioner initially designated Stephen M. Sumner, Esq. as presiding officer for this proceeding; in August 2007, I was designated as his successor in this matter.

On July 26, 2007, the Notice and OTSC were sent by certified mail to Cavalari's business address, which the Division's records list as 14415 S. 50 Street, #150, Phoenix, Arizona 85044. The Domestic Return Receipt, signed by A. Hollingshead, was received by the Division on August 1, 2007. A copy was sent, by first-class mail, postage prepaid, to Cavalari's residential address, which the Division's records list as 4192 East Jasper Drive, Higley, Arizona 85236. The mail to that address was not returned. The Division did not receive an answer or other responsive pleadings to the OTSC from Cavalari or any person representing him.

On August 30, 2007, a pre-hearing conference took place, pursuant to 801 CMR 1.01 (10)(a). Jean F. Farrington, Esq. presided at the hearing due to my absence. Douglas Hale, Esq. appeared for the Division. Neither Cavalari nor any person representing him appeared. Mr. Hale reported that he had received no communication from Cavalari or any person purporting to represent him, and stated that he would file a Motion for Summary Decision. Mr. Hale subsequently filed a Motion for Summary Decision and an Order was issued on September 10, 2007, advising Cavalari to file a response to the motion by September 17, 2007; September 18, 2007, was set as the date for any argument on the motion.<sup>1</sup> On September 17, 2007, a copy of the order sent to Cavalari's business address by first-class mail, was returned to the Division with the notation "return to sender," his address "blacked out" by an ink marker, and an arrow drawn from the "blacked out" address to the Division's return address.<sup>2</sup> Cavalari filed no response to the Division's motion and did not appear at the September 18, 2007 hearing. At that hearing, Mr. Hale reported that he received no communication from Cavalari or from any person representing him in this matter at any time.

### ***Finding of Default***

On the basis of the record before me, I conclude that the Division took appropriate actions to ensure proper service, and that sufficient service was made. The OTSC and Notice were sent to Cavalari at the address shown on the Division's licensing records. Further, the Domestic Return Receipt was signed for, at his business address, and returned to the Division. The first class mailings were not returned. I conclude that Cavalari's failure to answer the OTSC or to respond to the Division's motion, and his failure to appear at the scheduled pre-hearing conference or at the hearing, either *pro se* or through counsel or other personal representative, warrant findings that he is in default. By his default, Cavalari waived his right to proceed further with an evidentiary hearing in this case and I may consider the Division's *Motion for Summary Decision* based solely upon the OTSC and the documents attached to it.

### ***Findings of Fact***

On the basis of the record before me, consisting of the OTSC and the exhibits to it, I find the following facts:

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<sup>1</sup>The order permitted Cavalari to file his response by facsimile due to time constraints.

<sup>2</sup>Typically when the United States Postal Service returns mail to the sender, a machine generated yellow label is affixed to the envelope with an explanation for the return of the object; an ink stamp representing a hand pointing to the return address and a notation for the reason for return is also standard.

1. Respondent Thomas Joseph Cavalari was first licensed by the Division on December 28, 2005. His Massachusetts Individual Insurance Producer License remains active; he currently holds three (3) agent appointments.
2. Cavalari submitted a Uniform Application for Individual Insurance Producer License ("Application") to the Division on or about December 28, 2005. Cavalari signed the Application under the penalties of perjury on November 7, 2005.
3. Cavalari answered "no" to Application Question 1: "Have you ever been convicted of, or are currently charged with, committing a crime, whether or not adjudication was withheld?" The term "crime" is defined in the Application to include misdemeanors. The term "convicted" is defined in the Application to include a plea of guilty.
4. On or about April 3, 2006, the Division received written statements from Cavalari with enclosures.
5. In his written statements, Cavalari provided information that on January 30, 1997, he pled guilty to driving under the influence and purchasing alcohol by a minor in Luzerne County, Pennsylvania. He provided supporting documentation reflecting his convictions.
6. In his written statements, Cavalari provided information that on August 20, 1999, he pled guilty to two charges of driving under the influence of alcohol in Luzerne County, Pennsylvania. He provided supporting documentation for these convictions.

***Analysis and Conclusions of Law***

801 CMR 1.01(7)(h) authorizes a party to file a Motion for Summary Decision, with or without supporting affidavits, when the party is of the opinion that there is no genuine issues of fact relating to a claim and that he or she is entitled to prevail as a matter of law. The Division's Motion for Summary Decision notes that the Respondent failed to file an answer to the OTSC and failed to appear at the scheduled pre-hearing conference. As noted above, Respondent's failure to comply with the directives in the Notice warrant a finding that he is in default. No genuine issue of fact has been raised in connection with the Division's claims. I find that the Division is entitled to prevail as a matter of law.

M.G.L. c. 175, §162R(a) identifies grounds on which the Commissioner may, among other things, revoke a producer's license and levy civil penalties in accordance with M.G.L. c. 176D, §7. To support the relief it seeks, the Division relies on M.G.L. c. 175, §162R(a)(1), providing incorrect, misleading, incomplete or materially untrue information in the license application, and M.G.L. c. 175, §162R(a)(3), obtaining or attempting to obtain a license through misrepresentation or fraud. Cavalari provided incorrect and untrue information by failing to disclose his criminal history, and obtained his license through his misrepresentation to the Division. Although he later provided information disclosing his convictions, it was not until he had obtained a license. Truthfulness on an application is imperative to determine who is an eligible candidate for licensure. I conclude that the findings of fact support a determination that Cavalari violated M.G.L. c. 175, §162R(a)(1) and M.G.L. c. 175, §162R(a)(3) and that it is appropriate to revoke his license.

The Division cites to M.G.L. c. 176D, §2, no person shall engage in this commonwealth in any trade practice which is an unfair method of competition or an unfair or deceptive act or trade practice, seeking relief in this matter. I find Cavalari's failure to provide correct information on his license application is an unfair and deceptive practice in the business of insurance, further warranting revocation of his license.

Pursuant to M.G.L. c. 175, §162R(a), the Commissioner may levy civil penalties in accordance with c. 176D, §7. On this record, I find that a Five Hundred Dollar (\$500) fine should be imposed on Cavalari for each violation of the statute. I impose a fine of One Thousand Five Hundred Dollars (\$1,500).

## **ORDERS**

Accordingly, after due notice, hearing, and consideration, it is

**ORDERED:** That any and all licenses issued to Thomas Joseph Cavalari by the Massachusetts Division of Insurance are hereby revoked; and it is

**FURTHER ORDERED:** that Thomas Joseph Cavalari shall return to the Division any licenses in his possession, custody, or control; and it is

**FURTHER ORDERED:** that Thomas Joseph Cavalari shall comply with the provision of M.G.L. c. 175, §166B and dispose of any and all interests as proprietor, stockholder, officer or employee of any licensed producer in Massachusetts; and it is

**FURTHER ORDERED:** that Thomas Joseph Cavalari is, from the date of this order, prohibited from directly or indirectly transacting any insurance business or acquiring any insurance business in the Commonwealth of Massachusetts in any capacity, and it is

**FURTHER ORDERED:** that Thomas Joseph Cavalari shall cease and desist from the conduct that gave rise to the Order to Show Cause, and it is

**FURTHER ORDERED:** that Thomas Joseph Cavalari shall pay a fine of One Thousand Five Hundred Dollars (\$1,500) to the Division of Insurance within 30 days of issuance of this order.

This decision has been filed this twentieth day of September 2007 in the office of the Commissioner of Insurance. A copy shall be sent to Thomas Joseph Cavalari by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

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Tesha M. Scolaro  
Presiding Officer

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