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Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Steven Andrew Gilman, Respondent
Docket No. E2007-09

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 Steven Andrew Gilman ("Gilman"), who was, until August 20, 2000, licensed as a Massachusetts insurance broker.¹ The Division alleges that Gilman misappropriated clients' funds. The Division seeks orders that Gilman has violated the provisions of the Massachusetts insurance laws, specifically M.G.L. c. 175, §166 by not maintaining the qualifications of trustworthiness, competence, and suitability, and M.G.L. c. 175, §162R(a)(8) by using fraudulent, coercive or dishonest practices, or demonstrating untrustworthiness in the conduct of business in the Commonwealth or elsewhere. It asks for revocation of his license, imposition of fines for the alleged violations of M.G.L. c. 175, §162R(a)(8) and c. 176D, such fines to be paid within 30 days from the date ordered, and orders prohibiting him from engaging in the insurance business in Massachusetts, directing him to dispose of any interest he may have in any insurance business, requiring him to submit any and

¹ His license was cancelled for non-renewal effective August 22, 2000, and had not been renewed.

all Massachusetts insurance licenses in his possession to the Division, and cease and desist from conduct alleged in the OTSC.

The Division alleges that Gilman was first licensed as an insurance broker on August 22, 1997. It asserts that his license was cancelled for non-renewal effective August 22, 2000, and has not been renewed. On June 19, 2006, the United States District Court of Massachusetts entered a default judgment against Gilman in *Securities and Exchange Commission v. T. Gene Gilman, Steven A. Gilman, Arbor Securities, LTD., and Financial Links, Inc., and Tradetek, LTD., and Commonwealth Financial Holdings, Inc.*, Civil Action No. 05-10512-REK, for soliciting approximately \$20 million and misappropriating at least \$14 million from approximately 40 people who invested funds with Arbor Securities, LTD between December 1998 and October 2003. The Division alleges that Gilman was licensed as a Massachusetts insurance broker for a portion of the time period reflected in the Default Judgment; Gilman served as the Manager, Secretary, and President of Arbor Securities at all relevant times.

A Notice of Procedure (“Notice”) was issued on July 25, 2007, advising Gilman that a hearing on the OTSC would be held on September 19, 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 Gilman 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 Gilman that a pre-hearing conference would take place on August 29, 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 25, 2007, the Notice and OTSC were sent by certified and first-class mail to Gilman’s business address, which Division’s records list as 599 Tremont Street, Boston, Massachusetts 02118. A copy was sent by certified and first-class mail to 67 Ford Street, San Francisco, California 94114, the mailing address indicated on the Default Judgment from the United States District Court, District of Massachusetts dated April 26, 2005. The Domestic Return Receipt, signed by an individual with the name “Gilman,” on July 30, 2007, was received

by the Division on August 2, 2007. The Division did not receive an answer or other responsive pleadings to the OTSC from Gilman or any person representing him.

On August 29, 2007, a pre-hearing conference took place, pursuant to 801 CMR 1.01 (10)(a). Douglas Hale, Esq. appeared for the Division. Neither Gilman nor any person representing him appeared. Mr. Hale reported that he had received no communication from Gilman 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 August 30, 2007, advising Gilman to file any response to the motion by September 12, 2007; September 19, 2007, was set as the date for any argument on the motion. On September 7, 2007, a copy of the order, sent to Gilman's California address, by first-class mail, was returned to the Division; a yellow sticker was affixed to the envelope, by the United States Postal Service, with the notation "forward time had expired and return to sender." The California address was the same address at which a "Gilman" signed for mail the previous month. Gilman filed no response to the Division's motion and did not appear at the September 19, 2007 hearing. At that hearing, Mr. Hale reported that he received no communication from Gilman or from any person representing him in this matter.

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.² The OTSC and Notice were sent to Gilman at an address utilized by the United States District Court District of Massachusetts in 2005. Further, it is believed that Gilman personally signed the Domestic Return Receipt that reflected the California address based on the fact that an individual with his name signed for letter. I conclude that Gilman'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, Gilman 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.

² I note that the 67 Ford Street, San Francisco, California 94114 is the Respondent's mailing address as evidenced by his signature on the Return Receipt card. Pursuant to M.G.L. c. 175, §162M(f), a licensee is required to report any change of address to the Commissioner within thirty (30) days. Failure to do so is a violation of the insurance laws. This is the second instance the licensee has not reported a change of address.

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:

1. Respondent Steven Andrew Gilman was first licensed by the Division as a Massachusetts insurance broker on or about August 22, 1997. His license was cancelled for non-renewal effective August 22, 2000, and has not been renewed.
2. Between December 1998 and October 2003, Gilman, along with T. Gene Gilman, solicited approximately \$20 million and misappropriated at least \$14 million from approximately 40 people who invested funds with Arbor Securities, LTD., (“Arbor Securities”) which was established and controlled by T. Gene Gilman.
3. T. Gene Gilman operated Arbor Securities from an office in Needham, Massachusetts.
4. Instead of establishing individual accounts and investing clients’ funds in public companies as represented, Gilman, on behalf of Arbor Securities and with the knowledge of T. Gene Gilman, commingled and transferred customer funds into several foreign and domestic bank and brokerage accounts in the name of Arbor Securities.
5. In order to conceal these transfers, Gilman, on behalf of Arbor Securities and at the request of T. Gene Gilman, generated and sent to customers fictitious account statements that purported to identify specific stocks held in their individual brokerage accounts at Arbor Securities.
6. The false account statements contained material omissions in that they failed to indicate that customer funds had been transferred to Gilman and others, failed to accurately identify the stocks that were actually held and traded in Arbor Securities’ various brokerage accounts, and did not reveal the cash balances in those accounts or in Arbor Securities’ various bank accounts.
7. Gilman is the son of T. Gene Gilman, and was at all relevant times the Manager, Secretary, and President of Arbor Securities.

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.

The Division seeks relief under M.G.L. c. 175, §166 and M.G.L. c. 175, §162R(a)(8). M.G.L. c. 175, §166 requires that Gilman maintain the qualifications of trustworthiness, competence, and suitability required of all insurance brokers. It also gives the Commissioner authority to revoke Gilman's license. This statute was repealed in 2002, and the new producer statute, M.G.L. c. 175, §162R, was enacted with an effective date of January 1, 2003. Although Gilman was licensed under M.G.L. c. 175, §166, because it was repealed, this action shall proceed under the current statute, M.G.L. c. 175, §162R.

M.G.L. c. 175, §162R(e) gives the Commissioner the authority to enforce the provisions of and impose any penalty or remedy authorized by sections 162H to 162X, inclusive, and chapter 176D against any person who is under investigation for or charged with a violation of those statutes, even if the person's license or registration has been surrendered or has lapsed by operation of law. I conclude that the cancellation of Gilman's license for non-renewal does not limit the Division's authority to pursue its administrative action against him.

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. M.G.L. c. 175, §162R(a)(8), permits revocation of a license for "using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere." M.G.L. c. 175, §166, the statute under which Gilman was licensed, requires that all brokers maintain the qualifications of trustworthiness, competence, and suitability. The standard that is required pursuant to §162R(a)(8) is essentially the same as that under §166 except that under §162R(a)(8), the qualifications or practices must occur in the conduct of business. The SEC civil action filed

against Gilman involves dishonest practices in the conduct of business in the Commonwealth. The conduct at issue, misappropriating at least \$14 million from approximately 40 people who invested funds with Arbor occurred between December 1998 and October 2003, a portion of that time in which Gilman was a licensed insurance broker, supports a determination that Gilman violated M.G.L. c. 175, §162R(a)(8) and that it is appropriate to revoke his license.

Pursuant to M.G.L. c. 175, §166B, whenever the commissioner revokes a license in accordance with the provisions of section 162R, it may also be ordered that the person whose license has been revoked to dispose of any and all interests as proprietor, stockholder, officer or employee of any licensed producer in Massachusetts. The Division requests said relief and I find that it is warranted in this matter. I conclude that Gilman shall be prohibited from directly or indirectly transacting any insurance business or acquiring any insurance business in the Commonwealth of Massachusetts in any capacity.

M.G.L. c. 175, §162R(a) permits the Commissioner to levy civil penalties in accordance with c. 176D, §7. On this record, I find a fine is not warranted. M.G.L. c. 176D specifically addresses unfair methods of competition and unfair and deceptive acts and practices in the business of insurance. There have not been any facts presented, by the Division, that indicate Gilman was involved in the business of insurance. On the record before me, I conclude that his conduct related to the securities business and I cannot impose a fine.

ORDERS

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

ORDERED: That any and all licenses issued to Steven Andrew Gilman by the Massachusetts Division of Insurance are hereby revoked; and it is

FURTHER ORDERED: that Steven Andrew Gilman shall return to the Division any licenses in his possession, custody, or control; and it is

FURTHER ORDERED: that Steven Andrew Gilman shall dispose of any and all interests as proprietor, stockholder, officer or employee of any licensed producer in Massachusetts; and it is

FURTHER ORDERED: that Steven Andrew Gilman 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 Steven Andrew Gilman shall cease and desist from the conduct that gave rise to the Order to Show Cause, and it is

This decision has been filed this ____ day of October 2007 in the office of the Commissioner of Insurance. A copy shall be sent to Steven Andrew Gilman by certified mail, return receipt requested, to his business address, which Division's records list as 599 Tremont Street, Boston, Massachusetts 02118, and 67 Ford Street, San Francisco, California 94114, the same address where a person with the name "Gilman" previously signed for mail, as well as by regular first class mail, postage prepaid.

Tesha M. Scolaro
Presiding Officer

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