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

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**Division of Insurance, Petitioner**  
**v.**  
**Victor A. Lindsey, Respondent**  
**Docket No. E2007-11**

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

***Introduction and Procedural History***

On November 19, 2007, the Massachusetts Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Victor A. Lindsey ("Lindsey"), who is currently licensed as a non-resident insurance producer. The Division seeks orders that Lindsey has violated the provisions of the Massachusetts insurance laws, specifically M.G.L. c. 175, §162V(a), failing to notify the Division of administrative actions in another jurisdiction or by another governmental agency in the commonwealth within 30 days of the final disposition of the matter; 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; M.G.L. c. 176D, §2, committing an unfair or deceptive act or practice in the business of insurance in Massachusetts; M.G.L. c. 175, §162R(a)(2), violating any insurance laws, or violating any regulation, subpoena or order of the commissioner or of another state's insurance commissioner; M.G.L. c. 175, §162R(a)(9), having an insurance producer license or its

equivalent, denied, suspended, revoked in any state, province, district, or territory. 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, an order prohibiting the direct or indirect transaction of insurance business or the acquisition of any insurance business in Massachusetts, and imposition of fines for the alleged violations.

The Division alleges that Lindsey was first licensed as a non-resident producer on or about July 3, 2006. This license is active. It asserts that Lindsey failed to disclose on his Massachusetts application that he had been involved in prior administrative proceedings in Indiana and Alabama. The Division, further alleges, that after Lindsey was licensed by the Division, he failed to report his administrative action in South Dakota to the Division within 30 days of disposition.

A Notice of Procedure ("Notice") was issued on November 29, 2007, advising Lindsey that a hearing on the OTSC would be held on January 24, 2008, at the offices of the Division, a pre-hearing conference would take place on January 7, 2008, and the hearing 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 Lindsey 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 could move for an order of default, summary decision, or decision on the pleadings granting it relief requested in the OTSC. It also notified Lindsey that, 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 designated me as presiding officer for this proceeding.

On November 30, 2007, the Notice and OTSC were sent by certified mail to Lindsey's residential and business address, which Division's records list as 21614 Marjorie Avenue, Torrance, California 90503. The Domestic Return Receipt was signed, on December 10, 2007, by an individual who identified himself as an agent for Lindsey, and was received by the Division on December 18, 2007. A copy also was

sent to his business, and residence address, by first-class mail, postage prepaid. It was not returned to the Division.

On January 7, 2008, a pre-hearing conference took place, pursuant to 801 CMR 1.01 (10)(a). Neither Lindsey nor any person representing him appeared. Ms. Moran reported that she had received no communication from Lindsey or any person purporting to represent him, and stated that she would file a Motion for Summary Decision. On January 9, 2008, an order was issued directing the Division to file its Motion for Summary Decision by March 3, 2008, and setting a hearing for March 19, 2008, at 10 a.m., for argument on the Division's Motion for Summary Decision. On February 6, 2008, the Division filed its Motion for Summary Decision. An Order was issued on February 6, 2008, advising Lindsey to file any response to the motion by March 10, 2008, and setting March 19, 2008, as a date for any argument on the motion. A hearing was held on March 19, 2008. Lindsey neither filed a response to the Division's motion nor appeared at the March 19, 2008 hearing. At that hearing, Ms. Moran reported that she received no communication from Lindsey or from any person representing him in this matter.

***Finding of Default***

On the basis of the record before me, I conclude the Division took appropriate actions to ensure proper service, and that sufficient service was made. The OTSC and Notice were sent to Lindsey at the address shown on the Division's licensing records. The Domestic Return Receipt was signed and the first class mailing was not returned. I conclude that Lindsey'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. Lindsey has 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:

1. Lindsey submitted a Uniform Application for Individual Insurance Producer License ("Application") to the Division on or about June 13, 2006. Lindsey signed the Application under the penalties of perjury.
2. Respondent Victor A. Lindsey was first licensed by the Division on July 3, 2006. His non-resident Insurance Producer License remains active; he currently holds no active appointments.
3. On or about April 22, 2005, the Indiana Department of Insurance denied Lindsey's application for a non-resident producer license for failure to meet requirements of licensure pursuant to the Indiana Code, specifically, Lindsey's resident license in California had been issued on a restricted basis.
4. On or about May 18, 2005, Lindsey entered into a settlement agreement and order with the Alabama Insurance Department arising out of allegations that Lindsey provided misinformation on a license application submitted to the Department.
5. Lindsey failed to disclose on his Massachusetts application the disposition of administrative actions in Indiana or Alabama.
6. On or about August 15, 2006, the South Dakota Division of Insurance denied Lindsey's application for a non-resident insurance producer license.
7. Lindsey failed to notify the Massachusetts Commissioner of Insurance of the South Dakota administrative proceeding within 30 days of disposition.

***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 issue 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. 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. 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, to support the relief it seeks. Lindsey provided incorrect and untrue information by failing to disclose administrative actions against him by the Indiana and Alabama Departments of Insurance, and obtained his license through his misrepresentation to the Division. Truthfulness on an application is imperative for the purpose of determining eligibility for licensure. I conclude that the findings of fact support a determination that Lindsey violated M.G.L. c. 175, §162R(a)(1) and M.G.L. c. 175, §162R(a)(3).

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 Lindsey's failure to provide correct information on his license application is an unfair and deceptive practice in the business of insurance.

The Division seeks relief under M.G.L. c. 175, §162V(a), which mandates that a producer notify the Division of administrative actions in another jurisdiction or by another governmental agency in the commonwealth within 30 days of the final disposition of the matter. I find that Lindsey did not notify the Division of his administrative action in South Dakota within 30 days of final disposition of such action.<sup>1</sup>

I find that these violations support revocation of Lindsey's license. Pursuant to M.G.L. c. 175, §162R(a), the Commissioner may levy civil penalties in accordance with c. 176D, §7. I find that the maximum fine should be imposed on Lindsey for each violation of the statute, resulting in a fine of Three Thousand Dollars (\$3,000).

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<sup>1</sup> The Division asserts that Lindsey violated M.G.L. 162R(a)(2) and M.G.L. 162R(a)(9). Pursuant to M.G.L. 162R(a)(2), a producer is subject disciplinary action for violating any insurance laws, or violating any regulation, subpoena or order of the commissioner or of another state's insurance commissioner. M.G.L. 162R(a)(9) permits the Commissioner to take disciplinary action if a person's producer license or its equivalent is denied, suspended, or revoked in any other state, province, district, or territory. Lindsey was denied an insurance producer license in Indiana and South Dakota. I conclude that Lindsey's actions violate the statute.

## ORDERS

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

**ORDERED:** That any and all licenses issued to Victor A. Lindsey by the Massachusetts Division of Insurance are hereby revoked; and it is

**FURTHER ORDERED:** that Victor A. Lindsey shall return to the Division any licenses in his possession, custody, or control; and it is

**FURTHER ORDERED:** that Victor A. Lindsey 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 Victor A. Lindsey 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 Victor A. Lindsey shall cease and desist from the conduct that gave rise to the Order to Show Cause, and it is

**FURTHER ORDERED:** that Victor A. Lindsey shall pay a fine of Three Thousand (\$3,000) to the Division of Insurance within 30 days of issuance of this order.

This decision has been filed this \_\_\_\_ day of April 2008 in the office of the Commissioner of Insurance. A copy shall be sent to Victor A. Lindsey 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.