



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

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**Division of Insurance, Petitioner**  
**v.**  
**Salvatore Vincent Bottieri, Respondent**  
**Docket No. E2007-14**

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

***Introduction and Procedural History***

On December 12, 2007, the Massachusetts Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Salvatore Vincent Bottieri ("Bottieri"), who is currently licensed as a non-resident insurance producer. The Division seeks orders that Bottieri 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; and 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. 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 Bottieri was first licensed as a nonresident producer on or about May 8, 2006, and that this license remains active. It asserts that on March 24, 2006, Bottieri filed an application with the Division. He did not disclose on his application that there was a pending administrative action against him in California. The Division, further, alleges that after Bottieri was licensed by the Division, he failed to notify the Division of the administrative actions in California, Virginia, and South Dakota within 30 days of final disposition.

A Notice of Procedure ("Notice") was issued on December 17, 2007, advising Bottieri that a hearing on the OTSC would be held on February 5, 2008, at the offices of the Division, and a pre-hearing conference would take place on January 8, 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 Bottieri 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. It also notified Bottieri 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 the presiding officer for this proceeding.

On December 18, 2007, the Notice and OTSC were sent by certified mail to Bottieri's home address, which Division's records list as 2506 South 72<sup>nd</sup> Court, Apartment #5, Omaha, Nebraska 68174. The Notice and OTSC were returned by the post office on February 4, 2008, marked "unclaimed" with the following notations: First attempt to deliver December 22, 2007; Second attempt to deliver December 27, 2007. A copy was also sent to his residence and business address, which Division records list as 3301 Dodge Street, Omaha, Nebraska 68174, by first-class mail, postage prepaid. The mail to that address was not returned. The Division did not receive an answer or other responsive pleadings to the OTSC from Bottieri or any person representing him.

On January 8, 2008, a pre-hearing conference took place, pursuant to 801 CMR 1.01(10)(a). Jean Farrington, Esq. presided at the hearing due to my absence. Douglas Hale, Esq. appeared for the Division. Neither Bottieri nor any person representing him appeared. Mr. Hale reported that he had received no communication from Bottieri or any person purporting to represent him, and stated that he would file a Motion for Summary Decision. Later that day, the Division filed a Motion for Summary Decision and an Amended Certificate of Service. The Amended Certificate of Service was filed to correct a typographical error, Bottieri's residential zip code, in the original Certificate of Service. An Order was issued on February 4, 2008, advising Bottieri to file any response to the motion by February 25, 2008, and setting February 27, 2008, as a date for argument on the motion. The February 5, 2008, hearing date, listed in the Notice, was continued until February 27, 2008. On February 21, 2008, the Division received a response from Bottieri, dated February 11, 2008 ("Response"). Bottieri stated that he appreciates being notified of the proceeding, but that he has not practiced insurance in over two years, has not renewed and will not renew any licenses, and will not practice insurance again. A hearing was held on February 27, 2008. Bottieri did not appear at the hearing and Mr. Hale reported that he received no communication from Bottieri or from any person representing him in this matter other than the Response.

***Findings of Fact***

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

1. Respondent Bottieri was first licensed by the Division on or about May 8, 2006. His nonresident Producer License remains active; he does not hold any agent appointments at this time.
2. Bottieri submitted a Uniform Application for Individual Insurance Producer License ("Application") to the Division on or about March 24, 2006.
3. Bottieri answered "no" to Application Question 2: "Have you ever been involved in an administrative proceeding regarding any professional license?" The definition of "involved" included being named as a party to an administrative proceeding which is related to a professional or occupational license.

4. On June 29, 2005, Bottieri was named a party to a California Department of Insurance administrative action, alleging that Bottieri answered "no" to a criminal history question. He was convicted of a criminal offense in Nebraska in 2002.
5. On June 12, 2006, the California Department of Insurance adopted the proposed decision of the Administrative Law Judge to revoke Bottieri's Life Agent license.
6. Bottieri failed to notify the Division of the California action within 30 days.
7. On November 15, 2006, the Virginia State Corporation Commission Bureau of Insurance entered an Order revoking Bottieri's insurance agent license because Bottieri failed to notify Virginia of the California action within 30 days.
8. Bottieri failed to notify the Division of the Virginia action within 30 days.
9. On March 14, 2007, the South Dakota Department of Revenue and Regulation, Division of Insurance, issued an Order revoking Bottieri's nonresident insurance producer license because his Nebraska insurance license lapsed. Nebraska was his home state of domicile.
10. Bottieri failed to report the South Dakota action to the Division within 30 days.

***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. The Respondent did file a response to the Division's Motion for Summary Decision. However, he did not contest the allegations or offer any proof to refute the allegations in the Order to Show Cause. He merely stated that he does not practice insurance and does not ever intend again to practice insurance. 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. Bottieri provided incorrect and untrue information by failing to disclose his pending administrative action with the California Department of Insurance, and obtained his license through his misrepresentation to the Division. Truthfulness on an application is imperative to determine eligibility for licensure. I conclude that the findings of fact support a determination that Bottieri 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 Bottieri'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 Bottieri did not notify the Division of the three administrative actions in California, Virginia, and South Dakota within 30 days of final disposition.<sup>1</sup>

I find, on this record, these violations support revocation of Bottieri'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 Bottieri for each act that violated Massachusetts law. I impose a fine of Four Thousand Dollars (\$4,000).

## **ORDERS**

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

**ORDERED:** That any and all licenses issued to Salvatore Vincent Bottieri by the Massachusetts Division of Insurance are hereby revoked; and it is

**FURTHER ORDERED:** that Salvatore Vincent Bottieri shall return to the Division any licenses in his possession, custody, or control; and it is

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<sup>1</sup>The Division asserts that violation of M.G.L. c. 176D, §2 and M.G.L. c. 175, §162V(a) constitutes a violation of M.G.L. c. 175, §162R(a)(2). Pursuant to M.G.L. c. 175, §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. I conclude that Bottieri's actions violate the statute.

**FURTHER ORDERED:** that Salvatore Vincent Bottieri 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 Salvatore Vincent Bottieri 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 Salvatore Vincent Bottieri shall cease and desist from the conduct that gave rise to the Order to Show Cause, and it is

**FURTHER ORDERED:** that Salvatore Vincent Bottieri shall pay a fine of Four Thousand Hundred Dollars (\$4,000) to the Division of Insurance within 30 days of issuance of this order.

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