



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

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DIRECTOR

NONNIE S. BURNES
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

John Christopher Sweeney, Respondent

Docket No. E2008-12

Order on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On May 28, 2008, the Massachusetts Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against John Christopher Sweeney ("Sweeney"), a Massachusetts licensed insurance producer. The Division alleges that Sweeney violated the Massachusetts insurance laws, specifically M.G.L. c. 175, §162V(a) ("§162V(a)"), by failing to notify the Division of an administrative action in another jurisdiction within 30 days of the final disposition of the matter. It asserts, as well, that his action constitutes a violation of G.L. c. 175, §162R(a)(2) ("§162R(a)(2)"), which permits actions against a licensee for violating any insurance law, or violating any regulation, subpoena or order of the commissioner. The Division further alleges that Sweeney failed to comply with the terms of a settlement agreement that he entered into with the Division in January 2006, thereby violating M.G.L. c.176D, §2, which prohibits engaging in unfair methods of competition or unfair or deceptive acts or practices in the business of insurance.

The Division asks for revocation of Sweeney's producer license and seeks orders requiring him to cease and desist from the conduct alleged in the OTSC, to dispose of any interest he may have in any insurance-related business, and to submit any and all

Massachusetts insurance licenses in his possession to the Division. It also requests an order prohibiting Sweeney from 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.

A Notice of Procedure ("Notice") was issued on May 28, 2008, advising Sweeney that a hearing on the OTSC would be held on July 22, 2008, at the offices of the Division, and a pre-hearing conference would take place on July 1, 2008. 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 Sweeney 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 may move for an order of default, summary decision, or decision on the pleadings granting it relief requested in the OTSC. It also notified Sweeney that, if he failed to appear at the pre-hearing conference or hearing, an order of default, summary decision, or decision on the pleadings could be entered against him. The Commissioner designated me as the presiding officer for this proceeding.

On May 28, 2008, the Notice and OTSC were sent by certified mail to Sweeney's residential and mailing address, shown on the Division's records as 1200 Hull Street, Apt. C, Chesapeake, VA 23324. On June 18, the Division filed the certified mail return receipt it had received from the United States Postal Service, which bore John Sweeney's signature and the date June 13, 2008.¹

On July 1, 2008, a pre-hearing conference took place pursuant to 801 CMR 1.01(10)(a). Douglas Hale, Esq. appeared for the Division. Neither Sweeney nor any person representing him appeared. Because Sweeney was served less than three weeks before the scheduled prehearing conference, I issued an order continuing the conference to July 15, 2008, and the evidentiary hearing from July 22 to a later date to be set at the prehearing conference. On July 15, Robert Kelly, Esq. appeared for the Division in place of Mr. Hale. As of that date, neither Sweeney himself nor any person representing him had filed with the Division an answer to the OTSC or other responsive pleading. Mr. Kelly reported that he and Mr. Hale had received no communication from Sweeney or any

¹ Copies were also sent to Sweeney's residential address and to his business address, shown on the Division's records as 2809 S. Lynnhaven Road, Suite 250, Virginia Beach, Virginia 23452., by first-class mail, postage prepaid. These mailings were not returned.

person purporting to represent him, and that the Division would file its motion for summary decision later that day. I issued an order on July 15, advising Sweeney to file any response to the motion by July 28 and setting July 31 as the date for argument on the motion.² Sweeney did not file a response to the Division's motion and failed to appear at the July 31 hearing. Mr. Kelly reported that he had received no communication from Sweeney or from any person representing him in this matter.

Finding of Default

On the basis of the record before me, I find that Sweeney received proper service of the OTSC and Notice. I conclude that Sweeney's failure to answer the OTSC or to respond to the Division's motion, and his failure to appear at the prehearing conference or at the hearing warrant findings that he is in default. By his default, Sweeney 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 exhibits attached thereto.

Findings of Fact

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

1. The Division first licensed Sweeney as a non-resident insurance producer on or about June 29, 2005.
2. On August 12, 2005, the Kentucky Office of Insurance issued an Agreed Order of Probation in an administrative action against Sweeney.
3. Sweeney failed to report the Kentucky administrative action to the Division within 30 days of final disposition.
4. On January 18, 2006, Sweeney entered into a Settlement Agreement (the "January 6 Agreement") with the Division in which he agreed to cease and desist from further violating §162V(a), and paid a civil penalty.³

² On July 17, I received a telephone call from Mr. Sweeney, who had received the order relating to the motion for summary decision. I explained the procedure for responding to a motion, and advised him to address any questions relating to the substance of the proceeding to Mr. Kelly.

³ Exhibits A and B to the OTSC are the January 6 Agreement and a letter from Douglas Perry, Esq., a former member of the Division's legal staff, alleging that Sweeney had failed to notify the Division of an administrative action by the state of Kentucky. The Division offered to settle the matter without formal administrative action if Sweeney executed an agreement to cease and desist from further violations of §162V (a) and paid a \$250 penalty.

5. On February 16, 2006, the Commissioner of Commerce in Minnesota suspended Sweeney's Minnesota non-resident producer license based on allegations that Sweeney had pleaded guilty to one count of "Obtaining Drugs, Procuring Administration of Controlled Substances, etc. by Fraud, Deceit, or Forgery," in violation of two provisions of the Minnesota statutes, §§45.027 and 60K.43,(6) (2004). The Commissioner's order further provided that Sweeney's Minnesota license would be revoked on August 1, 2006, unless he met two conditions: completion of probation and reduction of the felony charge to a misdemeanor.⁴

6. Sweeney failed to notify the Division of the Minnesota administrative action within 30 days of its 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 issues of fact relating to a claim and that he or she is entitled to prevail as a matter of law. The Division bases its motion for summary decision on Sweeney's failure to file an answer to the OTSC and to appear at the scheduled pre-hearing conference. Sweeney did not file a response to the Division's motion. No genuine issue of fact has been raised in connection with the Division's claims, and I find that the Division is entitled to prevail as a matter of law.

The Division seeks relief under §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 Sweeney failed to notify the Division of his administrative action in Minnesota within 30 days of the final disposition of that action and therefore violated §162V(a). The Division asserts that Sweeney's violation of §162V(a), and of the Minnesota statutes violate §162R(a)(2).⁵ Pursuant to §162R(a)(2), a producer is subject to disciplinary action for violating any insurance laws, or violating any regulation, subpoena or order of the commissioner or of another state's insurance commissioner. On this record, I find that

⁴ Although the record contains no information on the ultimate disposition of Sweeney's Minnesota license, I find that the suspension is an event that he was obligated to report under §162V (a).

⁵ The immediate effect of the Minnesota action, suspension of Sweeney's license, would have been, pursuant to §162R (a)(9), an additional ground for suspension or revocation of Sweeney's Massachusetts license.

Sweeney's violation of §162V (a) supports revocation of his license pursuant to §162R(a)(2).⁶

Pursuant to §162R(a), the Commissioner may levy civil penalties in accordance with c. 176D, §7. The maximum fine permitted by that statute is One Thousand Dollars per violation. Because Sweeney's violation relates directly to his eligibility for a Massachusetts insurance license, I will impose the maximum fine for his violation. I therefore order Sweeney to pay a fine of One Thousand Dollars (\$1,000).⁷

ORDERS

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

ORDERED: That any and all licenses issued to John Christopher Sweeney by the Massachusetts Division of Insurance are hereby revoked; and it is

FURTHER ORDERED: that John Christopher Sweeney shall return to the Division any licenses in his possession, custody, or control; and it is

FURTHER ORDERED: that John Christopher Sweeney shall comply with the provisions 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 John Christopher Sweeney 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 John Christopher Sweeney shall cease and desist from the conduct that gave rise to the Order to Show Cause, and it is

FURTHER ORDERED: that John Christopher Sweeney shall pay a fine of One Thousand Dollars (\$1,000) to the Division of Insurance within 30 days of the issuance of this order.

⁶ The Minnesota administrative action against Sweeney was apparently based on a violation, classed as a felony, of that state's controlled substance laws. Exhibit C to the OTSC, a copy of the Minnesota order, is insufficient to prove that Sweeney violated any Minnesota insurance law.

⁷ The Division argues that Sweeney's violation of the provision in the January 6 Agreement requiring him to cease and desist from violating §162V(a) is an unfair or deceptive practice that violates G.L. c. 176D, §2. Sweeney's failure to report the Minnesota administrative action amply supports revocation of his license, without regard to his obligations under the January 6 Agreement. I therefore do not need to make a finding on this issue.

This decision has been filed this 22nd day of August 2008 in the office of the Commissioner of Insurance. A copy shall be sent to Sweeney by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

Jean F. Farrington
Presiding Officer

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