
Division of Insurance, Petitioner

v.

Terrel Y. Bruce, Respondent

Docket No. E2008-13

Order on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On June 11, 2008, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Terrel Y. Bruce (“Bruce”) who holds a Massachusetts non-resident individual insurance producer license.¹ The Division alleges that Bruce failed timely to notify the Division of her criminal history and of administrative actions against her in other states and that Bruce’s criminal history, the circumstances of the administrative actions, and her failure to report these matters support revocation of her producer license pursuant to the provisions of G.L. c. 175, §162R (a)(1), (a)(2), (a)(3), (a)(6) and (a)(9), and §162V (a). It asks for revocation of Bruce’s license and seeks orders requiring her to dispose of any insurance-related interests in Massachusetts and prohibiting her from conducting any insurance business in the Commonwealth, and imposition of fines for the alleged violations.

A Notice of Procedure (“Notice”) was issued on June 12, 2008, advising Bruce that a prehearing conference would take place on July 15, 2008 and that a hearing on the OTSC would be held on July 31, 2008, both at the offices of the Division. It further advised her that the hearing would be conducted pursuant to G.L. c. 30A and the Standard Adjudicatory Rules of

¹ G.L. c. 175, §162R (e) authorizes the Commissioner of Insurance to enforce the provisions of the licensing statutes, and to impose remedies or penalties pursuant to those statutes, and to G.L. c. 176D, even if a respondent’s license has lapsed by operation of law.

Practice and Procedure, 801 CMR 1.00, *et seq.* The Notice advised Bruce to file an answer pursuant to 801 CMR 1.01(6)(d) and that, if she failed to do so, the Division might move for an order of default, summary decision or decision on the pleadings granting it the relief requested in the OTSC. It also notified Bruce that, if she failed to appear at the prehearing conference or hearing, an order of default, summary decision or decision on the pleadings might be entered against her. The Commissioner designated me as presiding officer for this proceeding.

On June 16, the Division sent the Notice and OTSC by certified mail to respondent at her business and mailing addresses appearing on the Division's records: 11880 College Blvd., Suite 300, Overland Park, KS 66210 and 12235 S. Sycamore Street, Olathe, KA 66062. It also sent a copy to Bruce at 16624 West 147th Street, Olathe, KS 66062, an address shown on documents sent to Bruce by the Kansas Insurance Department. Copies were also sent to her at each of those addresses by first-class mail, postage prepaid. The post office returned the certified mail sent to the addresses shown on the Division's records, with the notation that it was unclaimed. The certified mail sent to the 147th Street address was returned to the Division marked undeliverable. None of the regular first-class mail was returned.

On July 15, a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Mary Lou Moran, Esq. appeared for the Division. Neither Bruce nor any person representing her appeared. Ms. Moran reported that she had received no communication from the respondent or from any person purporting to represent her. On July 18, the Division filed its motion for summary decision. On that same date, I issued an order advising Bruce to file any response to the motion by July 29, and stating that any argument on the motion would be heard on July 31 at 10:00 a.m., the time set for the evidentiary hearing. Ms. Bruce filed no response to the Division's motion and did not appear at the July 31 hearing. Ms. Moran confirmed that neither the respondent nor any person representing her had communicated with the Division.

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

² I note that G.L. c. 175, §174A provides that notices of hearings in matters involving revocation of licenses "shall be deemed sufficient when sent postpaid by registered mail to the last business or residence address of the licensee appearing on the records of the commissioner. . . ." This section, however, does not require that notices of hearing must be sent by registered mail; nor does it provide that registered mail is the only method of service, which may be found to be sufficient.

were sent to Bruce at the business and mailing addresses provided by her on her producer license application and subsequently incorporated into the Division's licensing records, as well as to a third address from the Kansas Department of Insurance. The first-class mail was not returned to the Division. I conclude that Bruce's failure to answer the OTSC or to respond to the Division's motion, and her failure to appear at the prehearing conference or at the hearing warrant findings that she is in default. By her default, Bruce has waived her right to proceed further with an evidentiary hearing in this case and I may consider the Division's motion for summary decision based on the record.

Findings of Fact

On the basis of the record, consisting of the OTSC, I find the following facts:

1. Respondent Terrel Y. Bruce was first licensed in Massachusetts as a non-resident individual insurance producer on or about January 10, 2007.
2. On or about March 4, 1993, in the Sedgwick County District Court in Wichita, Kansas, Bruce, under the name of Terrel Y. Charles, pleaded guilty to ten counts of forgery, a felony under Kansas law.
3. On or about September 22, 2006, Bruce submitted an application for an insurance license to the Kansas Department of Insurance. She failed to disclose the 1993 felony conviction on that application, as required.
4. On or about November 2, 2006, Bruce applied for and received an insurance license from the Bureau of Licensing of the Florida Department of Financial Services. Bruce failed to disclose the 1993 Kansas felony conviction on the license application, as required.
5. On or about November 11, 2006, Bruce submitted an application for a non-resident producer license to the Division. She failed to disclose the 1993 Kansas felony conviction on the application. The Division granted Bruce a license on or about January 10, 2007.
6. On or about June 18, 2007, Bruce entered into a consent order with Florida in which she acknowledged her failure to disclose the felony convictions on her license application. Bruce agreed to a \$750 penalty.
7. By letter dated August 30, 2007, Bruce informed the Division of the Florida administrative action against her license and the 1993 Kansas felony convictions.
8. In September 2007 Kansas learned of the Florida administrative action against Bruce's license. After an investigation, it advised Bruce that because of the felony convictions she was

required to file an *Application for Written Consent to Engage in the Business of Insurance* pursuant to 18 U.S.C. §§1033 and 1034 (a "1033 Application"). Bruce failed to file a completed 1033 Application in Kansas.

9. Kansas revoked Bruce's insurance license, effective March 6, 2008, for multiple violations of the Kansas insurance laws and regulations, including failure to comply with 18 U.S.C. §§1033 and 1034.

10. As of June 11, 2008 Bruce had failed to inform the Division of the revocation of her Kansas insurance license.

Analysis and Conclusions of Law

801 CMR 1.01 (7) (h) allows a party, when he or she 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, to file a motion for summary decision, with or without supporting affidavits. The Division bases its motion for summary decision on respondent's failure to file an answer to the OTSC and failure to appear at the scheduled prehearing conference. I find that respondent's failure to comply with the directives in the Notice warrant a finding that she is in default. No genuine issue of fact has been raised in connection with the Division's claims. I find that it is entitled to prevail as a matter of law.

G.L. c. 175, §162R (a) specifies fourteen grounds on which the Commissioner may suspend or revoke a producer's license. The Division identifies five subsections of that statute as grounds for revocation of Bruce's license: 1) §162R (a)(1), "providing incorrect, misleading, incomplete or materially untrue information in the license application"; 2) §162R (a)(2), in pertinent part, violating any insurance laws or regulation, subpoena or order of the Commissioner or of another state's insurance commissioner; 3) §162R (a)(3), "obtaining or attempting to obtain a license through misrepresentation or fraud"; 4) §162R (a)(6), "having been convicted of a felony"; and 5) §162R (a)(9), having an insurance producer license denied, suspended or revoked in any other state. I find that the record fully supports each of these grounds for revocation.³

I conclude, based on the above findings of fact, that Bruce failed to report her criminal history on her application for a Massachusetts insurance producer license and therefore provided incorrect, misleading, incomplete or materially untrue information to the Division. Those facts support revocation of her license on the grounds set out in G.L. c. 175, §162R (a)(1) and (a)(3). I find, further, pursuant to G.L. c. 176D, §§2 and 6, that Bruce's failure to include complete

³ G. L. c. 175, §162R (a)(3), also provides for revocation for "obtaining or attempting to obtain a license through misrepresentation or fraud."

information on the application is an unfair or deceptive practice, and supports revocation of her license pursuant to §162R (a)(2). That ground is further supported by Bruce's failure to comply with Kansas and Florida insurance producer licensing laws. Bruce's guilty plea to ten felony counts in Kansas in 1993 supports revocation pursuant to §162R (a)(6), and the revocation of her insurance licenses by Florida and Kansas permits the Commissioner to revoke her Massachusetts license under §162R (a)(9).

G.L. c. 175, §162V (a) requires a Massachusetts licensed producer to report to the Commissioner any disciplinary action taken by another state within 30 days of the final disposition. The above findings of fact indicate that Bruce settled an administrative action initiated by the Florida Department of Financial Services in June 2007, but did not report that action to the Division until August 2007. As of June 11, 2008 she had not reported the March 2008 revocation of her Kansas license to the Division.⁴ I find that Bruce's failure to report the outcome of the Florida administrative action within the time specified by §162V (a) and her failure to report the Kansas revocation violate Massachusetts law. Her two violations of §162V (a) are an additional basis for revocation of her license pursuant to G.L. c. 175, §162R (a)(2).

On this record, I find that Bruce's license should be revoked, that she should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and that she should be required to dispose of any interest she may have in any insurance business in Massachusetts. G. L. c.175, §162R (a) also permits the Commissioner to levy a civil penalty in accordance with G. L. c. 176D, §7 for violations of the insurance laws and regulations. The maximum penalty permitted under G. L. c. 176D, §7 is \$1,000 per violation. I find that Bruce, by omitting information relating to her 1993 felony convictions from her producer license application and failing to report two administrative actions by other states, committed three statutory violations. Bruce's failure to report her felony convictions on her application for a Massachusetts insurance license and failure to report the Kansas administrative action are serious offenses that directly affect her qualifications for a Massachusetts producer license and the Division's ability to evaluate her application. I therefore impose the maximum fine for each of those violations. Bruce reported the Florida administrative action on a delayed basis, within six weeks after the time period set by statute. I therefore impose a \$500 fine for that violation.

ORDERS

Accordingly, after due notice, hearing and consideration it is

⁴ The Division stated at the prehearing conference and the hearing that it had received no communications from Ms. Bruce. I conclude, therefore, that she did not attempt to cure her failure by reporting the revocation subsequent to the filing of the OTSC.

ORDERED: That any and all insurance producer licenses issued to Terrel Y. Bruce by the Division are hereby revoked; and it is

FURTHER ORDERED: that Terrel Y. Bruce shall return to the Division any licenses in her possession, custody or control; and it is

FURTHER ORDERED: that Terrel Y. Bruce is, from the date of this order, prohibited from directly or indirectly transacting any insurance business or acquiring, in any capacity whatsoever, any insurance business in the Commonwealth of Massachusetts; and it is

FURTHER ORDERED: that Terrel Y. Bruce shall comply with the provisions of G.L. c. 175, §166B and dispose of any and all interests in Massachusetts as proprietor, partner, stockholder, officer or employee of any licensed insurance producer; and it is

FURTHER ORDERED: that Terrel Y. Bruce shall pay a fine of Two Thousand Five Hundred Dollars (\$2,500) to the Division within 30 days of the entry of this order.

This decision has been filed this 6th day of August 2008, in the office of the Commissioner of Insurance. A copy shall be sent to Bruce by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

Jean F. Farrington
Presiding Officer

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