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Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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NONNIE S. BURNES
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

John W. Goff, Respondent

Docket No. E2008-17

Decision on Motion for Summary Decision

On August 25, 2008 the Massachusetts Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against John Wayne Goff (“Goff”), who was, until August 3, 2005, licensed as a non-resident insurance producer. The Division alleges that Goff was the target of administrative actions in the Commonwealth of Virginia and the states of Indiana, Alabama, Iowa and New York. It asserts that Goff violated 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 and G.L. c. 175, §162V(a), which requires a licensee to notify the Division of administrative actions within 30 days. The Division also asserts that, by having his insurance licenses suspended or revoked in other jurisdictions, Goff violated G.L. c. 175, §162R(a)(9) (“§162R(a)(9)”). The Division asks for revocation of all licenses issued to Goff and 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. The Division also seeks orders prohibiting Goff 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 September 3, 2008, advising Goff that a hearing on the OTSC would be held on November 5, 2008, at the offices of the Division, and a pre-hearing conference would take place on October 16, 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 Goff to file an answer pursuant to 801 CMR 1.01(6)(d) within 21 days of receiving 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 the relief requested in the OTSC. It also notified Goff 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 June 23, the Notice and OTSC were sent by certified mail to Goff’s mailing address, as shown on the Division’s records: 2185 Matthews Road, Pike Road, Alabama 36064. Copies also were sent by first class mail, postage prepaid, to Goff at the Matthews Road address, at 80 TechnaCenter Drive 241567, Montgomery, Alabama 36117 and at 2101 Allendale Road, Montgomery, Alabama 36111. The documents sent to Goff’s mailing address were returned, with the notation that the post office could not deliver them and was unable to forward them. The documents sent to the Allendale Road address were returned, but those sent to the TechnaCenter address were not returned. Goff filed no answer or other responsive pleading to the OTSC.

On October 16, 2008, a pre-hearing conference took place pursuant to 801 CMR 1.01(10)(a). Douglas Hale, Esq. appeared for the Division. Neither Goff nor any person representing him appeared. Mr. Hale reported that he had received no communication from Goff or any person purporting to represent him. On the same day, the Division filed a Motion for Summary Decision. I issued an order on October 16 advising Goff to file any response to the motion by November 6. The October 16 order also cancelled the November 5 hearing and stated that argument on the Division’s motion would be scheduled, if requested. Copies of the Motion and the October 16 Order were sent to Goff by first class mail. Goff filed no response to the Division’s motion and did not request a hearing.

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.¹ The OTSC and Notice were sent to Goff at the mailing and business addresses shown on the Division's licensing records, and another address that the Division had found by Internet search. The first-class mail to the business address was not returned to the Division. I conclude that Goff's failure to answer the OTSC or to respond to the Division's motion, and his failure to appear at the prehearing conference warrant findings that he is in default. By his default, Goff 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 exhibit attached to it, I find the following facts:

1. Respondent Goff was first licensed by the Division as an insurance agent on or about February 22, 1999.
2. On or about May 30, 2003, Goff's Massachusetts insurance agent's license was converted to an insurance producer license.
3. Goff's Massachusetts producer license terminated effective August 3, 2005, because he failed to renew it.
4. On December 15, 2004, the Commonwealth of Virginia, State Corporation Commission, revoked Goff's Virginia licenses to transact the business of insurance as an insurance agent, for his failure to report to it an administrative action taken against him in another state.
5. On January 20, 2005, the Indiana Department of Insurance suspended Goff's insurance license for failure to respond to a request for information from the Indiana Department.

¹ 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.

6. On March 31, 2005, Goff entered into a settlement agreement with the Alabama Department of Insurance in which he and The Goff Group, Inc. agreed to surrender their Alabama insurance producer licenses and to pay fines to the state of Alabama. The basis for the action was Goff's failure to respond in a timely manner to inquiries from the Alabama Department of Insurance.
7. On December 23, 2005, an administrative law judge in the Iowa Department of Inspections and Appeals issued an order on a statement of charges brought against Goff by the Iowa Insurance Division. The charges alleged that Goff failed to provide to it information on administrative actions in two other states and on a change of address. The order revoked Goff's non-resident Iowa insurance agent license and imposed a civil monetary penalty.
8. On May 30, 2006 the Superintendent of Insurance for the State of New York issued an order revoking all insurance licenses issued to Goff by the Insurance Department of the State of New York and denying any pending applications for such licenses. The stated grounds for revocation were Goff's failure to notify the Insurance Department of administrative actions taken against him in other jurisdictions.

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 he is in default. No genuine issue of fact has been raised in connection with the Division's allegations of fact.

Based on this record, I make the following conclusions of law. The Division seeks a revocation of Goff's licenses on three grounds. First, it claims that Goff violated §162V(a), which mandates that a producer notify the Division of an administrative action in another jurisdiction within 30 days of the final disposition of the matter. The Division does not allege, however, that Goff failed to notify the Division of any of the

administrative actions that form the basis for the OTSC. I am unable, therefore, to find that Goff violated §162V(a).

Second and third, the Division alleges that Goff's conduct violated §162R(a)(2), which permits the Commissioner to revoke or suspend a producer's license and impose fines if the licensee violated any insurance laws, regulations, subpoena or order of the commissioner or of another state's insurance commissioner, and §162R(a)(9), which permits revocation or suspension of a Massachusetts license if the person's insurance producer license has been denied, suspended or revoked in any other state. The allegations in the OTSC do not support a finding that Goff violated any Massachusetts insurance law or regulation, or any order of the Commissioner. A review of the exhibits to the OTSC indicates that the actions taken in Virginia, Indiana, Alabama, Iowa, and New York that resulted in the suspension or revocation of Goff's insurance licenses were each based on Goff's failure to respond to requests for information from the relevant insurance regulatory authority.

Pursuant to G.L. c. 175, §162R(e), the Commissioner retains authority to enforce the provisions of §162R even if the person's license has lapsed by operation of law. The OTSC alleges that Goff's Massachusetts insurance producer license expired on August 3, 2005 because he failed to renew it. Therefore he was not a licensed producer after that date. Three of the actions and decisions that are the basis for the OTSC were taken before August 3, 2005, the date on which Goff ceased to be licensed.² The facts about each of these actions support an inference that Goff failed to comply with orders issued by insurance commissioners of other jurisdictions; his license may therefore be revoked pursuant to §162R(a)(2). The undisputed facts that each of these states suspended or revoked Goff's insurance licenses fully support a conclusion that revocation of his Massachusetts license is permitted under §162R(a)(9). For the above reasons, I conclude that Goff's Massachusetts insurance license should be revoked.³

² The Iowa and New York actions occurred after that date. Decisions from other jurisdictions revoking Goff's insurance licenses that were issued after his Massachusetts license had lapsed support a conclusion that Goff, even after he was no longer licensed in Massachusetts, engaged in conduct that led to revocation of his licenses in other jurisdictions, a factor that is appropriately considered in any future licensing decisions.

³ Because the facts do not support a conclusion that Goff's conduct affected any Massachusetts consumer or violated any Massachusetts insurance law, no fine will be imposed.

ORDERS

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

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

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

FURTHER ORDERED: that John W. Goff 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 W. Goff 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 W. Goff shall cease and desist from the conduct that gave rise to the Order to Show Cause.

This decision has been filed this 19th day of November 2008 in the office of the Commissioner of Insurance. A copy shall be sent to Goff 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.