



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

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ECONOMIC DEVELOPMENT

NONNIE S. BURNES
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Gregg Thomas Rennie, Respondent
Docket No. E2009-02

Order on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On February 9, 2009 the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Gregg Thomas Rennie (“Rennie”), a licensed individual insurance producer. The Division alleges that Rennie was first licensed as an insurance agent and broker on December 22, 1992. Those licenses were converted to a producer license as of May 16, 2003. Rennie holds eleven appointments as an agent for insurance companies. On January 23, 2009 the Securities and Exchange Commission (“Commission”) filed a complaint against Rennie in the United States District Court for the District of Massachusetts (“District Court”) alleging, in brief, that he had advised Massachusetts residents to invest in non-existent investment vehicles and had converted to his own use funds given to him for investment, all in violation of the Securities Act of 1933, the Exchange Act of 1934, and the Investment Advisers Act of 1940. Attached to the Commission’s complaint were eight affidavits, four from individual Massachusetts residents who had transferred money to Rennie to invest, one from a former co-worker, and three from individuals who had investigated various aspects of Rennie’s activities. The Commission’s complaint and the OTSC identify transactions between Rennie and three of the four Massachusetts residents that specifically involve insurance.

The Division seeks orders that Rennie has violated the Massachusetts insurance laws, specifically G.L. c. 175, §§162R (a)(7), (a)(8), and (a)(9) and has engaged in unfair or deceptive acts or practices in the business of insurance in violation of G.L. c. 176D, §2. It asks for revocation of his license, imposition of fines, a cease and desist order and orders prohibiting

Rennie from engaging in the insurance business in Massachusetts, requiring him to dispose of any interest he may have in any insurance business, and requiring him to make restitution to consumers.

A Notice of Procedure (“Notice”), issued on February 10, 2009, advised Rennie that a hearing on the OTSC would be held on March 24, 2009, at the offices of the Division, that a prehearing conference would take place on March 10, also at the Division, and that the hearing would be conducted pursuant to G.L. c. 30A and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00, *et seq.* The Notice advised Rennie to file an answer pursuant to 801 CMR 1.01(6)(d) 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 Rennie that, if he failed to appear at the prehearing conference or hearing, an order of default, summary decision or decision on the pleadings might be entered against him. The Commissioner of Insurance (“Commissioner”) designated me as presiding officer for this proceeding.

On February 10, the Division sent the Notice and OTSC by certified mail to respondent at his business and mailing address as shown on the Division’s records: 15 Cottage Avenue, Apt. 301, Quincy, Massachusetts. Copies were also sent by first class mail to Rennie at the Cottage Street address as well as to his residential address, 44 Winslow Road, North Quincy, Massachusetts. On March 9, the Division submitted an affidavit stating that the United States Post Office had returned both the certified mail and the first-class mail addressed to Rennie at 15 Cottage Avenue with a note that they were not deliverable and that the Post Office was unable to forward them. The documents sent to Rennie at 44 Winslow Road were not returned. Rennie filed no answer or other responsive pleading to the OTSC.

On March 10, 2009, a prehearing conference was held, pursuant to 801 CMR 1.01(10)(a). Douglas Hale, Esq. appeared for the Division. Neither Rennie nor any person representing him appeared. Mr. Hale reported that he had received no communication from the respondent or from any person purporting to represent him. On behalf of the Division Mr. Hale filed a motion for summary decision, based on respondent’s failure to file an answer to the OTSC within the time prescribed by the Standard Adjudicatory Rules of Practice and Procedure and his failure to appear at the prehearing conference. On March 10, an order issued advising Rennie to file any response to the motion by March 20, and stating that any argument on the motion would be heard on March 24, the date set for an evidentiary hearing.

Rennie filed no answer to the OTSC and no opposition to the motion for summary decision. He did not appear at the March 24 hearing. No attorney or other representative filed a

notice of appearance on his behalf. Mr. Hale reported that he had received no communication from Rennie or from any person representing him in this matter.

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 respondent at Rennie's addresses as shown on the Division's licensing records. The documents sent to his residence by regular first class mail were not returned. I conclude that Rennie's failure to answer the OTSC or to respond to the Division's motion, and his failure to appear at the scheduled prehearing conference or at the hearing warrant findings that he is in default. By his default, Rennie 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 copies of documents, including affidavits, filed with the District Court on January 23, 2009, in a civil action brought by the Commission against Rennie, an order from the District Court, and an order from the Rhode Island Department of Business Regulation, I find the following:

1. Rennie was first licensed as an individual insurance agent and broker in Massachusetts on December 22, 1992. On May 16, 2003, his licenses were converted to a producer license to market health, life and variable lines of insurance. As of the date the Division filed the OTSC, Rennie's producer license was active and he had eleven active agent appointments.
2. On January 23, 2009, the Commission filed a civil suit against Rennie in the District Court, alleging that Rennie had engaged in activities that violated the Securities Act of 1933, the Exchange Act of 1934, and the Investment Advisers Act of 1940.
3. On January 23, 2009 the District Court (Woodlock, J.) entered a temporary restraining order enjoining Rennie from further violations of the Securities Act of 1933, the Exchange Act of 1934, and the Investment Advisers Act of 1940, and

¹ 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.

- entered additional orders that, among other things, froze Rennie's assets and ordered him to provide an accounting to the Commission.
4. Attached to the Commission's complaint is an affidavit of Massachusetts resident Jonathan S. Bruhm ("Bruhm"). Bruhm stated that Rennie contacted him in February 2007 and recommended that he liquidate his 401(k) account and invest the money with Boston Capital LLC in a short-term investment in a Federal Government Grant Loan that presented no risk to either investment gains or principal. Bruhm initially invested \$100,000 and received from Rennie a certificate memorializing his investment and copies of a prospectus and Form 10-Q for the Boston Capital Real Estate Investment Trust, Inc. Copies of the certificate, which bears the heading "Federal Housing Certificate, Boston Capital II LLC," the prospectus and the Form 10-Q are attached to Bruhm's affidavit. Bruhm further stated that: 1) in August 2007 and in February 2008 Rennie gave him checks which, he understood, represented interest earned for each of the six month periods since the initial investment; and 2) in February 2008, asked him whether he wanted to roll over his initial \$100,000 investment for a second year and whether he wanted to invest additional funds. Bruhm stated that he rolled over his initial investment and in April 2008 added \$90,000 to it. Bruhm stated that in late December 2008 or early January 2009, Rennie called him to ask if he still had the documents relating to the initial 2007 investment because Rennie needed to see them. Bruhm telephoned Rennie the next day and discovered that his telephone had been disconnected. Bruhm then called the Boston Capital Corporation to ask about his investment and was informed by a representative of Boston Capital Corporation that his investment certificate appeared to be a fake and that he appeared to have been involved in a scam.
 5. Attached to the Commission's complaint is the affidavit of Helen Connolly ("Connolly"), a Massachusetts resident who transferred a brokerage account to Rennie approximately 15 years ago. Connolly stated that she invested mostly in annuities and a life insurance policy through Rennie and that, in approximately March 2007, she told him that she needed funds to repair her house. She stated that Rennie advised her to cash an annuity with MFS/Sun Life Insurance Services and place it with Boston Capital II LLC for investment in a federal government housing certificate. Connolly further stated that she asked Rennie if there would be penalties for cashing her annuity and was told that she would recoup any losses by investing with Boston Capital. She subsequently cashed the annuity and, on April 10, 2007, gave Rennie \$69,554.67 to invest in Boston Capital. He delivered a contract regarding her investment to her on April 19, 2007. Connolly stated that she received

- checks from Rennie on June 20, 2007 and around May 8, 2008 which, she understood, represented distributions from the Boston Capital investment. In July 2008 Rennie asked Connolly to return the Boston Capital contract to him, stating that he would replace it. Connolly returned the Boston Capital contract, but Rennie did not replace it. In November 2008 he gave Connolly a one-page document that purported to be a statement from Boston Capital II LLC. A copy of the document is attached to her affidavit. Connolly further stated that in January 2009, following a telephone call from a former co-worker, she tried to contact Rennie to obtain information on her investments, particularly Boston Capital, and discovered that his cell phone was no longer in service. She left a message at his home. On January 12, 2009, Rennie called Connolly and stated that he could not disclose any information to her.
6. Attached to the Commission's complaint is the affidavit of Walter Fabian ("Fabian"), a Massachusetts resident. Fabian stated that in 2006, on Rennie's advice, he invested approximately \$500,000 in what Rennie represented to be short-term investments in Boston Capital. Exhibit A to Fabian's affidavit is a copy of a treasurer's check for \$30,000, payable to Boston Capital One, issued on Fabian's behalf in 2006. Fabian stated that Rennie thereafter sent him occasional statements showing what Fabian understood to be the current balance for those investments. In the summer or fall of 2008, at Rennie's request, Fabian returned the Boston Capital documents to him. Rennie gave Fabian a single account statement from Boston Capital II LLC indicating that on August 1, 2008 he had an investment balance of \$539,048. A copy of that statement is attached to Fabian's affidavit as Exhibit B. Rennie informed Fabian that he would be reinvesting that entire balance in a different six-month Boston Capital investment. In November 2008 Fabian asked Rennie for some interest payment on the Boston Capital investment, and was told it would not be available until March 2009. Rennie advised Fabian to obtain the funds he needed from a Symetra insurance annuity that Rennie stated that he had obtained for Fabian. Soon after, Rennie gave Fabian a check for \$30,000, stating that it came from the Symetra annuity. Fabian stated that recently he has been unable to contact Rennie because his phone numbers are disconnected.
 7. Attached to the Commission's complaint is an affidavit from Domenic Mancini, a Massachusetts resident. Mancini, in January 2002, gave Rennie a check for \$190,000 to invest in a Midland National Life Insurance Company index annuity. Mancini stated that in approximately July 2007, Rennie suggested that Mancini cash the Midland annuity and invest the proceeds in Ambit Funding. The value of the

Midland annuity had increased during the period 2002-2006, but did not continue to grow in 2007. Rennie told Mancini that the annuity would not grow any further because of the downturn in the stock market. Mancini was reluctant to cash the annuity because he would incur an early withdrawal penalty. Rennie assured Mancini that the Ambit Funding investment would cover the loss. Mancini therefore cashed the annuity and gave Rennie a check for \$155,000 payable to Ambit Funding. In October 2007 Mancini received \$100,000 as a distribution from his mother's estate. In January 2008 Rennie suggested that Mancini invest those funds with Boston Capital LLC, which would place them in short-term, no-risk investment vehicles. Based on Rennie's advice, on January 3, 2008, Mancini gave Rennie a check for \$100,000 for investment in Boston Capital. Mancini became concerned about his investments in Ambit Funding and Boston Capital in the fall of 2008. In late October or early November, Rennie contacted Mancini to collect the documents relating to his Ambit Funding investment, and stated that he would provide Mancini with statements about Boston Capital in December. Rennie never provided such statements; Mancini's unsuccessfully attempted in late December to contact Rennie and arrange a meeting to discuss his investments. In early January, Mancini tried to contact Rennie by telephone, and found out that his cell phone had been disconnected.

8. Attached to the Commission's complaint is the affidavit of Justin DiRito ("DiRito"), a service representative at the Boston Capital Corporation, a real estate investment company. DiRito conducted a search of Boston Capital Corporation records in response to requests from Bruhm and on behalf of Fabian. DiRito also stated that he received telephone calls from Rose Fallon and on behalf of James Casella, also seeking information on investments allegedly made with Boston Capital through Rennie. DiRito stated that the Boston Capital Corporation records contained no indication that Rennie had ever sold investments on its behalf or that funds from any of the individual named investors had been transferred to it.
9. Attached to the Commission's complaint is the affidavit of Keith M. Prive ("Prive"), a paralegal in its Boston Regional Office. Prive reported on his analysis of bank records reflecting Rennie's financial transactions during the period January 2007 through January 14, 2009. Prive stated that Rennie was the authorized signatory on an account named Boston Capital II and that the bank records indicated that some deposits into that account were contemporaneous with the dates and amounts of funds that affiants Bruhm, Connolly, Fabian and Mancini transferred to Rennie. Prive further stated that withdrawals from the Boston Capital II account included checks written to cash, to construction contractors, and to American Express.

10. On January 23, 2009, the Rhode Island Department of Business Regulation suspended Rennie's Rhode Island insurance producer license on an emergency basis because of the allegations in the civil suit that the Commission filed on January 23, 2009 in the District Court. The Rhode Island Department scheduled a hearing on the matter for February 9, 2009.

Discussion and Conclusions of Law

The Division bases its motion for summary decision on Rennie's failure to answer the OTSC and to appear at the pre-hearing conference.² It asks that its claims for relief be granted and that, as a basis for allowing those claims, the allegations in the OTSC be found as fact. G.L. c. 175, §162R (a) ("§162R (a)") identifies 14 grounds on which the Commissioner may, among other things, suspend, revoke or refuse to renew a producer's license and impose fines. The Division asserts that three subsections of §162R (a) support its action against Rennie. Subsection (a)(7), in pertinent part, permits such action for "admitting or being found to have committed any insurance unfair trade practice or fraud." Subsection (a)(8) permits such action for "using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere" and (a)(9) permits action against a licensee for "denial, suspension or revocation of an insurance producer license, or its equivalent, in any other state, province, district or territory." The Division also seeks an order that Rennie violated G.L. c. 176D, §2, which prohibits persons from engaging in unfair or deceptive practices in the business of insurance.

The Division's first claim alleges that Rennie, by inducing Connolly and Mancini to cash annuities, and to incur penalties for so doing, in order to allow Rennie to invest the funds in non-existent investments, committed an insurance unfair trade practice or fraud that supports revocation of his license under §162R (a)(7). Its third claim asserts that the actions underlying its first claim for relief are also violate G.L. c. 176D, §2. Each of these transactions required two steps: the customer was first induced to cash the annuity and the proceeds were then to be invested elsewhere. An inducement to purchase an annuity, an insurance product, or to cash it for replacement, specifically invokes regulation of insurance.³ A producer's placement of the proceeds in a non-insurance investment must comply with other statutory requirements. Determining whether advice to a customer to cash an annuity, even if it will involve financial

² Rennie's failure to respond to the OTSC is grounds both for entry of default and for a finding that he failed to obey an order of the Commissioner, an act that would support license revocation under §162R (a)(2). The Division did not include that violation as a basis for revocation of Rennie's license.

³ See, for example, 211 CMR 96.00, titled Consumer Protection in Annuity Transactions, and 211 CMR 54.00, regulating the waiver of surrender charges for annuities.

penalties, is unfair or fraudulent requires an analysis of the context of the transaction.⁴ Without more information on the options available to Connolly and Mancini, the statements that Rennie advised consumers to cash annuities would be insufficient to support a conclusion that such advice was, *ipso facto*, an unfair insurance practice.⁵ The Division, however, alleges that Rennie, in response to an explicit question from Connolly, did not provide information to her about penalties for cashing the annuity, but instead represented that the investment with Boston Capital would recoup any losses. I find that Rennie's failure to provide complete and accurate information to Connolly about the cost associated with cashing the annuity is an unfair insurance trade practice that supports revocation of Rennie's license under §162R (a)(7).

The Division's second claim seeks revocation of Rennie's license under §162R (a)(8), which supports an action against a person who has engaged in fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere. In support of its claim, the Division identifies a series of interactions with the four individuals whose affidavits are attached to the Commission's complaint. The alleged actions include misrepresentations about the degree of risk and the potential income associated with proposed investments, fraudulent inducement to invest money in a non-existent investment, providing a false prospectus, and the personal use of funds transmitted to Rennie for investment.⁶ The Division also relies on statements in DiRito's affidavit about his communications relating to two other individuals, Fallon and Casella, who allegedly gave money to Rennie to invest with Boston Capital. I find that the unchallenged allegations in the OTSC fully support a conclusion that Rennie has engaged in fraudulent, coercive or dishonest practices, and has demonstrated incompetence untrustworthiness and financial irresponsibility in the Commonwealth and that his license should be revoked pursuant to §162R (a)(8).

The Division's fourth claim identifies the emergency suspension of Rennie's Rhode Island insurance producer license as grounds under §162R (a)(9) for taking action against his Massachusetts license. A copy of the emergency order issued by the Rhode Island Department of Business Regulation is attached to the OTSC as Exhibit L. The order states that the emergency suspension, entered on January 27, would be followed by a full administrative hearing on February 9, 2009, at which the Rhode Island Department would consider both the suspension and the Department's request for revocation of Rennie's license. The Division did

⁴ The Division does not allege that advice to Fabian to cash in an annuity was an unfair or fraudulent transaction.

⁵ Connolly's affidavit does not affirmatively state that she would have incurred a penalty.

⁶ The Division alleges that Rennie induced Connolly and Mancini to cash annuities so that he could invest them in non-existent investments. According to Connolly's affidavit, Rennie informed her that he would invest the annuity proceeds with Boston Capital. Mancini's affidavit, however, refers to an investment of the annuity proceeds in Ambit Funding. The record contains no information on the status of that entity.

not seek to amend the OTSC or otherwise to supplement the information on the Rhode Island hearing. Absent evidence of the outcome of that full hearing, the January entry of an emergency order of suspension which specifically scheduled a later hearing is not sufficient to support the relief that the Division requested, revocation of Rennie's Massachusetts license under §162R (a)(9).⁷

G.L. c. 176D, §6 permits the Commissioner, by scheduling a hearing, to initiate a proceeding against any person who has engaged or is engaging in any unfair or deceptive act or practice, if such a proceeding would be in the interest of the public. The hearing gives the person an opportunity to be heard and to show cause why an order should not be entered requiring him to cease and desist from such practices. Rennie had an opportunity to appear and be heard on this matter, but failed to do so. I am therefore also entering a cease and desist order against him.

G. L. c175, §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 Rennie's failure to provide complete and accurate information to Connolly about the cost associated with cashing the annuity is an unfair insurance trade practice and will impose the maximum fine, \$1,000, for that violation. A number of the Division's allegations about the activities that support revocation of Rennie's license under §162R (a)(8) relate to transactions other than the business of insurance. On this record, however, it appears that Rennie made misrepresentations to Connolly about the investment of proceeds from her annuity, a statement that links an action that violates §162R (a)(8) to an insurance transaction. I will therefore impose a fine of \$1,000 for that violation.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Gregg Thomas Rennie by the Division of Insurance, and any appointments based on his status as a licensed producer, are revoked immediately; and it is

FURTHER ORDERED: that Gregg Thomas Rennie shall return to the Division any licenses in his possession, custody or control; and it is

FURTHER ORDERED: that from the date of this order Gregg Thomas Rennie is prohibited from acting as an insurance producer in Massachusetts unless or until he is duly licensed as a Massachusetts insurance producer; and it is

⁷ I make no finding on whether an "emergency" suspension in another jurisdiction would be grounds for a license suspension in Massachusetts.

FURTHER ORDERED: that within five days of this order Gregg Thomas Rennie shall notify each insurance company that has appointed him as its agent of the revocation, and shall provide a copy of each such notice to counsel for the Division; and it is

FURTHER ORDERED: that Gregg Thomas Rennie 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 Gregg Thomas Rennie shall cease and desist from the conduct that gave rise to the Order to Show Cause; and it is

FURTHER ORDERED: that Gregg Thomas Rennie shall pay a fine of Two Thousand (\$2,000) to the Division within 30 days of the entry of this order.

This order has been filed this 10th day of April 2009, in the office of the Commissioner of Insurance. A copy shall be sent to Rennie 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.