
Division of Insurance, Petitioner

v.

Lisa Sue Mize, Respondent

Docket No. E2009-03

Order on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On February 20, 2009, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Lisa Sue Mize (“Mize”) who, until September 26, 2006, held a Massachusetts non-resident individual insurance producer license. The Division alleges that Mize failed to report her criminal history on two applications for a Massachusetts producer license and failed to notify the Division of administrative actions revoking insurance licenses issued to her by seven other jurisdictions and decisions by two other jurisdictions to deny her an insurance license. It asserts that her actions violate G.L. c. 175, §162V (a) and c. 176D, §2, and support revocation of her Massachusetts producer license pursuant to the provisions of G.L. c. 175, §162R (a)(1), (a)(2), (a)(3) and (a)(9). The Divisions asks for revocation of Mize’s license, entry of a cease and desist order, and orders requiring her to dispose of any insurance-related interests in Massachusetts, prohibiting her from conducting any insurance business in the Commonwealth, and imposing fines for the alleged violations.

A Notice of Procedure (“Notice”) was issued on February 24, 2009, advising Mize that a prehearing conference would take place on March 25, 2009 and that a hearing on the OTSC would be held on April 8, 2009, 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 Adjudatory Rules of Practice and Procedure, 801 CMR 1.00, *et seq.* The Notice advised Mize 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 Mize 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 February 25, the Division sent the Notice and OTSC by certified mail to respondent at her business, home and mailing address appearing on the Division's records: 403 Morrison Circle, Summersville, West Virginia 26651. Copies were also sent to Mize at that address by first-class mail, postage prepaid. The post office returned the certified and first class mail sent to Mize at the address shown on the Division's records, with the notation that it was unable to forward them.

Mize failed to file an answer or other response to the OTSC. On March 25, a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Robert Kelly, Esq. appeared for the Division. Neither Mize nor any person representing her appeared. Mr. Kelly reported that he had received no communication from the respondent or from any person purporting to represent her. On March 25, the Division filed its motion for summary decision. On that same date, I issued an order issued advising Mize to file any response to the motion by April 6, and stating that any argument on the motion would be heard on April 8 at 10:00 a.m., the time set for the evidentiary hearing. Mize filed no response to the Division's motion and did not appear at the April 8 hearing. Mr. Kelly confirmed at that hearing that neither the respondent nor any person representing her had communicated with the Division. He reported that the post office had returned the motion for summary decision addressed to Mize at the address on the Division's records.

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 Mize at the address she provided on her producer license application which was

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.

incorporated into the Division's licensing database.² I conclude that Mize'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, Mize 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. That record consists of the OTSC and copies of the following documents attached to it as exhibits: 1) records relating to a 1994 criminal case against Mize; 2) Mize's uniform application for a Massachusetts non-resident individual producer license dated September 20, 2003; 3) Mize's amended uniform application for a Massachusetts non-resident individual producer license dated March 14, 2005; 4) an order against Mize issued by the Office of the Insurance Commissioner for the State of Washington; 5) an order against Mize issued by the Commissioner of Insurance of the State of Wisconsin; 6) an order against Mize issued by the Division of Insurance of South Dakota; 7) an order against Mize issued by the Insurance Department of the State of Connecticut; 8) an order against Mize issued by the Indiana Commissioner of Insurance; 9) an order against Mize issued by the Bureau of Insurance of the Commonwealth of Virginia; 10) an order against Mize issued by the Bureau of Insurance of the State of Maine; 11) an order against Mize issued by the Department of Insurance of the State of Ohio; and 12) an order against Mize issued by the Department of Commerce of the State of Minnesota.

Findings of Fact

On the basis of that record, I find the following facts:

1. Respondent Lisa Sue Mize submitted a uniform application for a Massachusetts non-resident individual insurance producer license to the Division on or about October 27, 2003.
2. Mize submitted an amended uniform application for a Massachusetts non-resident individual insurance producer license to the Division on or about March 14, 2005.
3. Mize's Massachusetts non-resident individual insurance producer license was terminated, effective September 26, 2006, for failure to renew.
4. Question 1 on the background information page of the uniform application for non-resident insurance producer licenses asks if the applicant has ever been convicted of, or is

² Pursuant to G.L. c. 175, §162M (f) a licensee must inform the Commissioner of a change of address within 30 days of the change.

currently charged with, committing a crime. Mize answered "no" to that question on both her initial (2003) and amended (2005) applications.

5. Records from the Circuit Court of Nicholas County, West Virginia attached to the OTSC demonstrate that in August 1993 Lisa McCutcheon pleaded guilty to being an accessory after the fact to grand larceny, and was sentenced by the court on May 13, 1994.

6. The date of birth and the social security number of Lisa McCutcheon shown on the West Virginia Court records are the same as those of Lisa Mize shown on the applications for a Massachusetts non-resident insurance producer license.

7. Lisa Mize and the Lisa McCutcheon who pleaded guilty to criminal charges in West Virginia in August 1993 are the same individual.

8. Question 2 on the background information page of the uniform application for a non-resident insurance producer license asks if the applicant, or any business in which that person was an owner, partner, officer or director has ever been involved in an administrative proceeding regarding any professional or occupational license. Mize answered "no" to that question on both her initial (2003) and amended (2005) applications.

9. On January 18, 2005, the insurance commissioner of the State of Washington issued an order revoking the insurance agent's license it had issued to Mize because she did not report her criminal history on her license application.

10. On August 23, 2005 the Wisconsin Commissioner of Insurance issued a decision affirming the denial of Mize's application to expand her Wisconsin license as an intermediary for life, accident and health insurance to include property and casualty insurance.

11. On August 25, 2005, the South Dakota Division of Insurance affirmed a May 27, 2005 decision denying Mize's application for a South Dakota insurance producer's license.

12. On August 29, 2005, the Insurance Department of the State of Connecticut revoked Mize's insurance producer license.

13. On October 14, 2005, the Indiana Department of Insurance permanently revoked Mize's Indiana insurance agent license.

14. On January 19, 2006 the State Corporation Commission of the Commonwealth of Virginia revoked Mize's agent license to transact insurance business in Virginia and issued an order voiding the appointments issued under that license.

15. On January 19, 2006, the Bureau of Insurance in the State of Maine issued an order revoking Mize's Maine producer license with life and health authority and denying her pending application for a non-resident insurance producer license with property and casualty authority.

16. On February 13, 2006, the Department of Insurance in the State of Ohio issued an order revoking Mize's Ohio agent license.

17. On February 17, 2006, the Minnesota Department of Commerce revoked Mize's Minnesota insurance license.

Analysis and Conclusions of Law

Pursuant to G.L. c. 175, §162R (e) the Commissioner retains the authority to enforce the provisions of and to impose any remedies authorized by G.L. c. 175, §§162H through 162X, and the provisions of G.L. c. 176D against any person charged with a violation of those statutes even though the person's license has lapsed by operation 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 have found 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, and I find that it is entitled to prevail as a matter of law.

The Massachusetts Insurance Producer Licensing statute, G.L. c. 175, §§162G through 162X sets out the requirements for obtaining and maintaining a Massachusetts insurance producer license. G.L. c. 175, §162R (a) specifies fourteen grounds on which the Commissioner may suspend or revoke a producer's license. The Division identifies subsections (a)(1), (a)(2), (a)(3) and (a)(9) as those which provide grounds for revocation of Mize's license. Subsection (a)(1) permits revocation for providing incorrect, misleading, incomplete or materially untrue information in the license application; (a)(2) for violating insurance laws, regulations, subpoena or order of the Commissioner or of another state's insurance commissioner; (a)(3) for obtaining or attempting to obtain a license through misrepresentation or fraud; and (a)(9) 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 revocation for violating G.L. c. 175, §162V (a).

The facts fully support revocation of Mize's license under each of the cited subsections of §162R (a). Her failure to provide information on her criminal history on two uniform license applications and her failure to disclose a January 18, 2005 administrative action by the State of

Washington on a her amended 2005 uniform license application support revocation of her license under §§162R (a)(1) and (a)(3). Subsection 162R (a)(9) permits revocation if an insurance producer has had a license denied, suspended or revoked in any other state. The revocation of Mize's insurance licenses by the States of Washington, Connecticut, Indiana, Maine, Ohio and Minnesota and by the Commonwealth of Virginia, and the denial of her license applications by Wisconsin, South Dakota and Maine permit 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 administrative action taken by another state within 30 days of its final disposition. The uniform application specifies that an administrative action that must be reported includes an action to revoke or suspend a license as well as the denial of a license application. Mize failed to report any of the actions taken against her in other jurisdictions to the Commissioner. Her violations of §162V (a) are an additional basis for revocation of her license pursuant to G.L. c. 175, §162R (a)(2).³

On this record, I find that Mize'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 Mize's failure to report her criminal history on two uniform applications, her failure to report the license revocation by the State of Washington on her amended 2005 application, and her subsequent failure to notify the Division of the final disposition of administrative actions against her in nine other jurisdictions constitute twelve statutory violations. Because Mize failed to comply with her affirmative obligations under the licensing statutes, I impose the maximum fine for each of those violations.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Lisa Sue Mize by the Division are hereby revoked; and it is

³ The return of all mail addressed to Mize at the address listed on the Division's database suggests that she failed, as well, to comply with G.L. c. 175, §162M (f), which requires a licensee to inform the Commissioner of a change of address within 30 days of the change.

FURTHER ORDERED: that Lisa Sue Mize shall return to the Division any licenses in her possession, custody or control; and it is

FURTHER ORDERED: that Lisa Sue Mize 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 Lisa Sue Mize 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 Lisa Sue Mize shall pay a fine of Twelve Thousand (\$12,000) to the Division within 30 days of the entry of this order.

This decision has been filed this 13th day of April 2009, in the office of the Commissioner of Insurance. A copy shall be sent to Mize 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.