



COMMONWEALTH OF MASSACHUSETTS
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.
Eleasar Fraga, Respondent
Docket No. E2009-04

Order On Petitioner's Motion for Summary Decision

Introduction and Procedural History

On February 27, 2009, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Eleasar Fraga ("Fraga") who, until June 8, 2008, held a Massachusetts non-resident individual insurance producer license. The Division alleges that Fraga failed to report his criminal history on an application for a Massachusetts transitional insurance producer license and failed to notify the Division of an administrative action against him in the Commonwealth of Virginia. It asserts that his actions violate Massachusetts law and support revocation of his Massachusetts producer license pursuant to the provisions of G.L. c. 175, §162R (a)(1), (a)(2), (a)(3) and (a)(9), and §162V (a). It asks for revocation of Fraga's license and seeks orders requiring him to dispose of any insurance-related interests in Massachusetts, prohibiting him from conducting any insurance business in the Commonwealth, and imposing fines for the alleged violations.

A Notice of Procedure ("Notice") was issued on March 3, 2009, advising Fraga that a prehearing conference would take place on April 9, 2009 and that a hearing on the OTSC would be held on April 23, 2009, both at the offices of the Division. It further

advised him 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 Fraga to file an answer pursuant to 801 CMR 1.01(6)(d) and that, if he 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 Fraga 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 March 4, the Division sent copies of the Notice and OTSC by certified mail to respondent at his business and mailing address appearing on the Division's records: 12 Northpoint Drive, Streator, IL61364 and to his home address, 3609 N. Monroe Street, Streator, IL 61364. Copies also were sent to Fraga at each of those addresses by first-class mail, postage prepaid. The post office returned the certified mail sent to Fraga's business address. For the certified mail sent to Fraga's home address, the post office returned a green card indicating that Fraga had received it on March 6, 2009.

Fraga failed to file an answer or other response to the OTSC. On April 9, a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Robert Kelly, Esq. appeared for the Division. Neither Fraga nor any person representing him appeared. Mr. Kelly reported that he had received no communication from the respondent or from any person purporting to represent him. On April 9, the Division filed its motion for summary decision. I issued an order advising Fraga to file any response to the motion by April 22, and stating that any argument on the motion would be heard on April 24 at 10:00 a.m., one day later than the time initially set for the evidentiary hearing. Fraga filed no response to the Division's motion and did not appear at the April 24 hearing. Mr. Kelly confirmed at that hearing that neither the respondent nor any person representing him 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.¹ The certified mail

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

receipt that the post office returned to the Division confirms that Fraga received notice of this proceeding. I conclude that Fraga'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, Fraga 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 on the record. That record consists of the OTSC and copies of the following documents attached to it as exhibits: A) Court records from the Circuit Court of the 13th Judicial Circuit of the State of Illinois documenting Fraga's guilty plea to charges of possession of drug paraphernalia in violation of the Illinois Compiled Statutes; B) Fraga's application for a Massachusetts Transitional Individual Producer License; C) Order against Fraga issued by the Insurance Commissioner of the State of Pennsylvania; D) Order against Fraga issued by the State of California Division of Insurance; E) Order against Fraga issued by the State of Kentucky Office of Insurance; F) Order against Fraga issued by the State Corporation Commission of the Commonwealth of Virginia.

Findings of Fact

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

1. Respondent Eleasar Fraga was first licensed in Massachusetts as a non-resident individual insurance agent on May 8, 2001.
2. Fraga's agent license was converted to a non-resident individual producer's license on May 16, 2003, pursuant to G.L. c. 175, §162H *et seq.*
3. Fraga submitted to the Division an application for a transitional individual producer license dated May 8, 2003. On that application, he answered "No" to a question that asked, in pertinent part, if he had ever been convicted of committing a crime.
4. On August 20, 1999, in the Circuit Court for Lasalle County, Ottawa, Illinois, Fraga pleaded guilty to two criminal charges, one for possession of drug paraphernalia.
5. Fraga's Massachusetts producer license was terminated, effective June 8, 2008, for failure to renew.

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 December 19, 2005, the Pennsylvania Insurance Commissioner issued an order revoking Fraga's Pennsylvania insurance producer license for failure to disclose his criminal history on his application for a Pennsylvania insurance license.

6. On April 13, 2006, the California Department of Insurance revoked Fraga's California producer license because of the Pennsylvania action.

7. On July 26, 2006, Fraga executed an agreed-upon order with the Kentucky Office of Insurance to settle allegations that he failed to report his criminal history on his 2001 application for a Kentucky insurance license. Fraga agreed to pay a fine of \$250.

8. Fraga notified the Division of the actions taken by the insurance regulatory authorities in Pennsylvania, California and Kentucky.

9. On August 11, 2006 the Bureau of Insurance in the State Corporation Commission of the Commonwealth of Virginia revoked Fraga's Virginia insurance license for failure to report to it in timely fashion the administrative action taken by Pennsylvania.

10. Fraga did not report the Virginia administrative action to the Division.

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 the Massachusetts Insurance Producer Licensing Statute, 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 he 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.

G.L. c. 175, §§162G through 162X sets out, among other things, 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 §162R (a)(1), (a)(2), (a)(3) and (a)(9) as grounds for revocation of Fraga's license. G. L. c. 175. §162V(a)(1) requires a

producer to report to the Commissioner any administrative action taken against him or her in another jurisdiction within 30 days of the final disposition of the matter.

Subsection 162R (a)(1) permits revocation if a licensee provided incorrect, misleading, incomplete or materially untrue information on the license application. By failing to report his criminal history on his May 8, 2003 application, Fraga incorrectly answered a question on the application, thus providing materially untrue information to the Division. Subsection 162R (a)(2), in pertinent part, permits revocation for violating any insurance laws or regulation, subpoena or order of the Commissioner or of another state's insurance commissioner. Fraga's failure to respond to the Notice constitutes a violation of orders issued in this proceeding. Subsection 162R (a)(3) permits revocation if a person obtained or attempted to obtain a license through misrepresentation or fraud. The misrepresentation of Fraga's criminal history on his May 8, 2003 application violates both this subsection and subsection (a)(1). Subsection 162R (a)(9) permits revocation if an insurance producer has had a license denied, suspended or revoked in any other state. Virginia's revocation of Fraga's insurance license therefore permits the Commissioner to revoke his 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 its final disposition. Fraga was the respondent in an administrative action initiated by the Virginia Department of Insurance that resulted in revocation of his license on or about August 11, 2006, but did not report that action to the Commissioner within 30 days. His violation of §162V (a) is an additional basis for revocation of his license pursuant to G.L. c. 175, §162R (a)(2).

On this record, I find that Fraga's license should be revoked, that he should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and that he should be required to dispose of any interest he may have in any insurance business in Massachusetts. 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 Fraga, by failing to report his criminal history on his application for a Massachusetts producer license and the administrative action by the Commonwealth of Virginia, committed two statutory violations. Because he failed to comply with his 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 Eleasar Fraga by the Division are hereby revoked; and it is

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

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

This decision has been filed this 6th day of May 2009, in the office of the Commissioner of Insurance. A copy shall be sent to Fraga 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.