



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

One South Station • Boston, MA 02110-2208  
(617) 521-7794 • FAX (617) 521-7475  
TTY/TDD (617) 521-7490  
<http://www.mass.gov/doi>

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

GREGORY BIALECKI  
SECRETARY OF HOUSING AND  
ECONOMIC DEVELOPMENT

BARBARA ANTHONY  
UNDERSECRETARY

NONNIE S. BURNES  
COMMISSIONER OF INSURANCE

---

**Division of Insurance, Petitioner**

**v.**

**Philip C. Sandberg, Respondent**

**Docket No. E2009-05**

---

**Order and Decision on Petitioner's Motion for Summary Decision**

***Introduction and Procedural History***

On March 3, 2009, the Massachusetts Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Philip C. Sandberg (“Sandberg”), who currently holds a resident individual insurance producer license. The Division alleges that Sandberg did not forward to an insurer, Combined Insurance Company of America (“Combined”), all the premium payments he received from two insurance consumers, and that, by doing so, he violated M.G.L. c. 175, § 162R(a)(4) and -(8) and violated M.G.L. c. 176D, § 2 by engaging in unfair or deceptive acts or practices in the business of insurance. The Division asks for orders that revoke his insurance license, impose fines for the alleged violations, prohibit him from directly or indirectly transacting any insurance business or acquiring any insurance business in Massachusetts, and require him to cease and desist from the conduct alleged in the OTSC, dispose of any insurance-related interests in Massachusetts, and submit all Massachusetts insurance licenses in his possession to the Division.

A Notice of Procedure (“Notice”) was issued on March 4, 2009, advising Sandberg that a prehearing conference would take place on April 14, 2009, and a hearing on the OTSC would be

held on April 29, 2009, both at the offices of the Division. It further advised him that the hearing would be conducted pursuant to M.G.L. c. 30A and the Standard Adjudatory Rules of Practice and Procedure, 801 CMR 1.00 *et seq.* The Notice advised Sandberg 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 Sandberg 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.

On March 6, 2009, the Division sent the Notice and OTSC by certified mail and by first-class mail, postage prepaid, to Sandberg at his business, mailing and home address appearing in the Division's records: 68 Locust Street, Burlington, Massachusetts 01803. The Division received back the green certified mail receipt card, which was signed by Sandberg on March 7, 2009.

On April 14, 2009, a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Robert J. Kelly, Esq., appeared for the Division. Sandberg did not attend the prehearing conference, nor did any person on his behalf. Attorney Kelly reported that he had received no communication from Sandberg or from any person purporting to represent him. Following the prehearing conference, the Division filed a written motion for summary decision. See 801 CMR 1.01(7)(h).

On April 15, 2009, an order issued that advised Sandberg to file any response to the Division's motion by April 28, 2009, and further informed him that argument on the motion would be heard on April 29, 2009, at the time set in the Notice for the evidentiary hearing. Neither Sandberg nor any person representing him appeared at the April 29<sup>th</sup> hearing on the motion; Attorney Kelly again appeared for the Division. Attorney Kelly stated that neither Sandberg nor anyone acting on his behalf had communicated with him.

### ***Finding of Default***

The Division took appropriate actions to ensure proper service, and sufficient service was made. See M.G.L. c. 175, § 174A. Sandberg'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 on the Division's motion, although he received the OTSC and Notice, warrant finding that he is in

default. By his default, Sandberg has waived his right to proceed further with an evidentiary hearing and I may consider the Division's motion for summary decision based solely upon the OTSC and the exhibits attached to it, which include: A) 7E Agent Package Production Summary prepared by Richard E. Dupray, Sales Manager; B) letter dated January 4, 2008, from Kemberli King, Licensing Administrator for Combined, to Richard Kirkpatrick of the Division's Special Investigative Unit; C) letter dated October 19, 2007, from Ms. King to the Division and a letter dated January 12, 2009, from Ms. King to Attorney Kelly; D) Sandberg's signed, handwritten statement to Combined dated September 10, 2007; E) letter dated December 11, 2007, from Mr. Kirkpatrick to Sandberg; F) e-mail dated January 16, 2008, from Sandberg to Mr. Kirkpatrick.

***Findings of Fact***

On the basis of the record, consisting of the OTSC and the exhibits attached to it, I find the following facts:

1. Sandberg first was licensed by the Division as a resident individual insurance producer under M.G.L. c. 175, § 162H *et seq.* on August 16, 2007.
2. Sandberg currently holds a resident individual insurance producer license but has no active appointments.
3. Combined appointed Sandberg as its agent on August 17, 2007.
4. On or about August 20, 2007, Lincoln Clark ("Clark") delivered to Sandberg premium payments of \$222.50 (\$76.82 in cash and \$ 145.68 in checks) for Combined insurance policies F1150646, M3307489, M3078833 and P9242311.
5. On or about August 28, 2007, Nigel Colon ("Colon") delivered to Sandberg \$52.00 in cash as premium payment for renewal of his Combined insurance policy T0773028.
6. A 7E Agent Package Production Summary prepared by Richard E. Dupray, Sales Manager, lists the premium payments made by Clark and Colon to Sandberg for their Combined policies and shows that Sandberg remitted to Combined only \$200.00 of the \$274.50 in premium payments that he had received for these policies from these insurance consumers.<sup>1</sup>
7. Because of his misuse of policyholder monies, Combined terminated Sandberg's appointment for cause effective September 8, 2007.

---

<sup>1</sup> The record is silent concerning whether Combined cancelled some or all of the policies of Clark and Colon because it did not receive all of the premiums due for the policies.

8. Sandberg admitted in a signed, handwritten statement to Combined dated September 10, 2007, that he converted the outstanding \$74.50 premium payment he received as an agent for Combined to his own uses (“to help cover transportation, gas, costs which I used”) and owed Combined \$74.50.

9. Sandberg admitted in a January 14, 2008 e-mail to Richard Kirkpatrick of the Division’s Special Investigation Unit that he owes Combined \$74.50.

***Analysis and Conclusions of Law***

801 CMR 1.01(7)(h) allows a party to file a motion for summary decision, with or without supporting affidavits, when the party believes that there is no genuine issue of fact relating to a claim and that the party is entitled to prevail as a matter of law. The Division bases its motion for summary decision on Sandberg’s failure to file an answer to the OTSC and failure to appear at the scheduled prehearing conference. Sandberg’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.

M.G.L. c. 175, § 162R(a)(4) authorizes the Commissioner to revoke an insurance producer's license and levy a civil penalty in accordance with M.G.L. c. 176D, § 7 for improperly withholding, misappropriating or converting any monies received in the course of doing insurance business. By failing to remit all the insurance premium payments due Combined that were delivered to him as Combined’s agent by two insurance consumers, instead using the money for his own purposes, Sandberg converted monies received in the course of doing insurance business, in violation of M.G.L. c. 175, § 162R(a)(4).

M.G.L. c. 175, § 162R(a)(8) authorizes the Commissioner to revoke an insurance producer's license and levy a civil penalty in accordance with M.G.L. c. 176D, § 7 for using dishonest practices or demonstrating untrustworthiness or financial irresponsibility in the conduct of business in the Commonwealth. By failing to remit all the insurance premium payments due Combined that were delivered to him as Combined’s agent by two insurance consumers, instead using the money for his own purposes, Sandberg engaged in a dishonest practice and demonstrated untrustworthiness and financial irresponsibility in the conduct of business in the Commonwealth, in violation of M.G.L. c. 175, § 162R(a)(8).

M.G.L. c. 176D, § 2 proscribes unfair or deceptive acts or practices in the business of insurance. By failing to remit all the insurance premium payments due Combined that were delivered to him as Combined's agent by two insurance consumers, instead using the money for his own purposes, Sandberg engaged in unfair and deceptive acts and practices in the business of insurance, in violation of M.G.L. c. 176D, § 2.

I find, on this record, that the Massachusetts resident individual producer insurance license issued to Philip C. Sandberg should be revoked and that the other relief sought by the Division should be granted. Because Sandberg's conduct involves the misuse of consumer funds entrusted to him, I impose the maximum penalty authorized under M.G.L. c. 176D, § 7 for a violation of Massachusetts insurance laws and regulations.<sup>2</sup>

### **ORDERS**

After due notice, hearing and consideration, it is hereby ordered:

1. Any and all insurance licenses issued to Philip C. Sandberg by the Division are hereby revoked;
2. Philip C. Sandberg shall submit to the Division any and all Massachusetts insurance licenses in his possession, custody or control;
3. Philip C. Sandberg is, from the date of this order, prohibited, in any capacity whatsoever, from directly or indirectly transacting any insurance business or acquiring any insurance business in the Commonwealth of Massachusetts;
4. Philip C. Sandberg shall comply with the provisions of M.G.L. c. 175, § 166B and dispose of any and all interests as proprietor, partner, stockholder, officer or employee of any licensed insurance producer in Massachusetts;
5. Philip C. Sandberg shall cease and desist from the conduct complained of in the Division's Order to Show Cause; and
6. Philip C. Sandberg shall pay a fine of One Thousand Dollars (\$1,000) to the Division within 30 days of the entry of this order.

---

<sup>2</sup> The record supports finding that Sandberg acted in violation of Massachusetts insurance laws, but whether his conversion was connected with one or two insurance consumers is unclear. The record provides insufficient data to determine whether the entirety of the \$74.50 that Sandberg converted came into his possession from Clark, who delivered \$76.82 in cash to Sandberg as agent for Combined, or whether some of the converted money also originated from the \$52.00 in cash that was delivered to him as agent for Combined by Colon.

This Order and Decision has been filed this 11th day of May, 2009 in the office of the Commissioner of Insurance. A copy shall be sent to Philip C. Sandberg by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid, to his business, mailing and home address: 68 Locust Street, Burlington, Massachusetts 01803.

Filed: May 11, 2009

---

Stephen M. Sumner, Esq.  
Presiding Officer

This decision may be appealed to the Commissioner of Insurance pursuant to M.G.L. c. 26, § 7.