



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.
Carlo F. Oldenburg, Respondent

Docket No. E2009-07

Order and Decision on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On April 2, 2009, the Massachusetts Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Carlo F. Oldenburg (“Oldenburg”), who first was licensed as a resident individual insurance producer in March 2005, and whose license was terminated in August 2007 for failure to renew it.

The Division alleges that Oldenburg was convicted of two felonies in May 2007 and failed to report to the Commissioner in a timely manner any information regarding these criminal prosecutions. As a result of these actions, the Division sought sanctions against Oldenburg pursuant to M.G.L. c. 175, §§ 162R(a)(6), -(7) and -(8) and 162V(b). The Division asks for orders to 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”) issued on April 3, 2009, advising Oldenburg that a prehearing conference would take place on May 6, 2009, and a hearing on the OTSC would be held on May 28, 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 Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00 *et seq.* The Notice advised Oldenburg to file an answer to the OTSC within 21 days of the day he received it 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 Oldenburg 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 April 6, 2009, the Division served the Notice and OTSC by certified mail and by first-class mail, postage prepaid, to Oldenburg at his business address appearing in the Division’s records: 175 Dwight Road, Longmeadow, Massachusetts 01106. It also served the Notice and OTSC by certified mail and by first-class mail, postage prepaid, to Oldenburg at his mailing address appearing in the Division’s records: 15 Avondale Avenue, West Springfield, Massachusetts 01089.

On May 6, 2009, a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Robert J. Kelly, Esq., appeared for the Division. Oldenburg did not attend the prehearing conference, nor did any person on his behalf. Oldenburg, also, did not file an answer to the OTSC. Attorney Kelly stated that the Division had received back, marked as undeliverable as addressed and unable to be forwarded, both the certified and first-class mailings of the Notice and OTSC that it had sent to Oldenburg’s addresses. Attorney Kelly reported that he had received no communication from Oldenburg or from any person purporting to represent him. Following the prehearing conference, the Division filed a written motion for summary decision (the “motion”).

On May 6, 2009, an order issued that advised Oldenburg to file any response to the Division’s motion by May 27, 2009, and further informed him that argument on the motion would be heard on May 28, 2009, at the time set in the Notice for the evidentiary hearing. The

order was mailed by the Hearings and Appeals office to Oldenburg at his business address and his mailing address by first-class mail, postage prepaid. The post to his mailing address was returned to the Hearings and Appeals office on May 14, 2009, marked undeliverable as addressed and unable to be forwarded. The Hearings and Appeals office has not received back the mailing to his business address.

On May 28, 2009, a hearing was held on the Division's motion. Neither Oldenburg nor any person representing him appeared. Oldenburg failed to file any response to the motion. Attorney Kelly stated that the Division had served its motion on Oldenburg, but had received back the certified and first-class mailings to his business and mailing addresses with statements that they were undeliverable as addressed and unable to be forwarded. Attorney Kelly again stated that neither Oldenburg nor anyone acting on his behalf ever had communicated with him.

Finding of Default

The Division took appropriate actions to ensure proper service on Oldenburg, and sufficient service was made. See M.G.L. c. 175, § 174A ("Notice of hearings . . . 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.").¹ Oldenburg'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 warrant finding that he is in default. By his default, Oldenburg 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 exhibit attached to it; a certified copy of Docket Number 0623CR012111, Springfield District Court, Springfield, Massachusetts.

Findings of Fact

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

1. Oldenburg first was licensed by the Division as a resident individual insurance producer on March 8, 2005.

¹ Pursuant to M.G.L. c. 175, § 162M(f), a licensee must inform the Commissioner of a change of address within 30 days of the change.

2. On February 1, 2007, a pre-hearing conference was held in Docket Number 0623CR012111, Springfield District Court, Springfield, Massachusetts (“Docket Number 0623CR012111”), in which Oldenburg was charged with one count of filing a false or fraudulent motor vehicle insurance claim, in violation of M.G.L. c. 266, § 111B, and two counts of larceny over \$250.00, in violation of M.G.L. c. 266, § 30(1).

3. Oldenburg did not report any information regarding his criminal prosecution to the Commissioner within 30 days of the initial pretrial hearing date in Docket Number 0623CR012111.

4. On May 3, 2007, Oldenburg pleaded guilty in Docket Number 0623CR012111 and was convicted of one count of filing a false or fraudulent motor vehicle insurance claim, in violation of M.G.L. c. 266, § 111B, and of one count of larceny over \$250.00, in violation of M.G.L. c. 266, § 30(1).

5. Oldenburg was sentenced on May 3, 2007, to one year in the House of Correction, suspended, and placed on probation through May 3, 2008, for filing a fraudulent motor vehicle insurance claim and for larceny over \$250.00; and ordered to pay restitution of \$3,882.48 for his larceny.

6. Oldenburg’s resident individual insurance producer license was terminated for failure to renew his insurance producer license effective August 4, 2007.

Analysis and Conclusions of Law

The Commissioner of Insurance ("Commissioner") maintains jurisdiction over Oldenburg even though currently he is not licensed in Massachusetts. M.G.L. c. 175, § 162R(e). 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. 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) authorizes the Commissioner to take disciplinary action against an insurance producer and levy a civil penalty in accordance with M.G.L. c. 176D, § 7 when he or she has committed certain acts. M.G.L. c. 175, § 162R(a)(6) authorizes sanctions when an insurance producer has been convicted of a felony. Oldenburg’s convictions in Docket Number

0623CR012111 constitute two convictions of a felony.² M.G.L. c. 175, § 162R(a)(7) authorizes sanctions when an insurance producer has admitted or has been found to have committed any insurance fraud. When Oldenburg pleaded guilty to filing a false or fraudulent motor vehicle insurance claim, he admitted and was found guilty of committing insurance fraud. M.G.L. c. 175, § 162R(a)(8) authorizes the Commissioner to take action against a licensee for “using fraudulent . . . or dishonest practices, or demonstrating . . . untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere.” The record does not indicate whether the insurance fraud for which Oldenburg was convicted was connected to his work as an insurance producer. In the context of the Commissioner’s oversight of professional licensing, however, no distinction should be drawn between (i) an insurance producer’s conduct in connection with transactions involving clients of the insurance business that he conducts by virtue of holding a producer license, (ii) his or her conduct of other business as a proprietor or employee, and (iii) his or her actions as an insurance policyholder. That the fraud occurs in connection with “personal” insurance or coverage of “personal” property does not mean that it has no connection with an individual’s “conduct of business.” To understand M.G.L. c. 175, § 162R(a)(8) differently effectively would permit an insurance licensee to engage with impunity in fraudulent practices with respect to insurance or to demonstrate untrustworthiness with respect to insurance if the insurance-related conduct arose only in connection with a policy issued to that licensee, or to a business entity with which he was associated.³ M.G.L. c. 175, §162R(a)(8) provides another cause for sanctioning Oldenburg.

² A crime punishable by imprisonment in state prison is a felony. M.G.L. c. 274, § 1. Conviction of filing a false or fraudulent motor vehicle insurance claim is punishable, *inter alia*, by not more than five years imprisonment in the state prison. M.G.L. c. 266, § 111B. Conviction of larceny over \$250.00 is punishable, *inter alia*, by not more than five years imprisonment in the state prison. M.G.L. c. 266, § 30(1).

³ The Division long ago rejected such a distinction. See, e.g., *Division of Insurance v. Kelly*, Docket No. E2004-08 (license revocation ordered when a producer made a false report of a crime to police officers and conspired to defraud his motor vehicle insurer by reporting that his leased automobile had been stolen); *Division of Insurance v. Molard*, Docket No. E96-01 (license revocation ordered for attempting to commit larceny over \$250 by false pretenses and for filing a motor vehicle insurance claim fraudulently claiming to have been a passenger in a vehicle that was involved in an accident); *Division of Insurance v. Marcotte and G. M. Insurance Agency*, Docket No. E93-10 (license revocation ordered for an insurance agent’s conviction for filing a false insurance report); *Vigliotti v. Division of Insurance*, Docket No. E87-35 (Division’s decision not to renew a broker’s license upheld where applicant was going to plead guilty to mail fraud for conspiring to defraud his motor vehicle insurer by reporting that his automobile had been stolen when in fact he had caused it to be delivered for crushing and disposal).

M.G.L. c. 175, § 162V(b) requires a insurance producer to report to the Commissioner within 30 days of the initial pretrial hearing date, any criminal prosecution of the producer taken in any jurisdiction.⁴ Oldenburg, then licensed, did not report any information regarding his criminal prosecution to the Commissioner within 30 days of the initial pretrial hearing date in Docket Number 0623CR012111, in violation of M.G.L. c. 175, § 162V(b). M.G.L. c. 175, § 162R(d) provides that, in addition to revocation of a license, a person may, after hearing, be subject to a civil penalty in accordance with M.G.L. c. 176D, § 7.

I find that Oldenburg has engaged in conduct that justifies revocation of his insurance license. I impose, furthermore, the maximum civil penalty authorized under M.G.L. c. 176D, § 7 for two violations of Massachusetts insurance laws.

ORDERS

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

1. Any and all insurance licenses issued to Carlo F. Oldenburg by the Division are hereby revoked;
2. Carlo F. Oldenburg shall submit to the Division any and all Massachusetts insurance licenses in his possession, custody or control;
3. Carlo F. Oldenburg 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. Carlo F. Oldenburg 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. Carlo F. Oldenburg shall cease and desist from the conduct complained of in the Division's Order to Show Cause; and
6. Carlo F. Oldenburg shall pay a civil penalty of Two Thousand Dollars (\$2,000) to the Division within 30 days of the entry of this order.

This Order and Decision has been filed this 6th day of July, 2009, in the office of the Commissioner of Insurance. A copy shall be sent to Carlo F. Oldenburg by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid, to his business address;

⁴ The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

175 Dwight Road, Longmeadow, Massachusetts 01106; and his mailing address; 15 Avondale Avenue, West Springfield, Massachusetts 01089.

Filed: July 6, 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.

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