



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.

Roberto Ettorre, Respondent

Docket No. E2009-08

Order On Petitioner's Motion for Summary Decision

Introduction and Procedural History

On April 9, 2009, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Roberto Ettorre ("Ettorre") who, until July 27, 2008, held a Massachusetts non-resident individual insurance producer license. The Division alleges that Ettorre failed to report his criminal history on his application for a Massachusetts producer license and failed to notify the Division of an administrative action against him by insurance regulators in the state of Georgia. 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 Ettorre's license and seeks orders requiring him to cease and desist from the conduct that forms the basis of the OTSC and 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 April 10, 2009, advising Ettorre that a prehearing conference would take place on May 12, 2009 and that a hearing on the OTSC would be held on May 27, 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 Ettore to file an answer within twenty-one days of receiving the OTSC, 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 Ettore 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 April 13, the Division sent copies of the Notice and OTSC by certified mail to respondent at his business and mailing addresses as they appear on the Division's records: 30 Roseleah Avenue, Plainville, CT 06062; 210 Woodford Avenue, Plainville, CT 06062, and 200 Executive Boulevard, Southington, CT 06489.¹ A copy of each document was also sent by first-class mail, postage prepaid, to Ettore at each of these addresses. On April 15, the Division received from the United States Post Office a signed green card indicating receipt of the certified mail sent to the Roseleah Avenue address. The documents sent to Woodford Avenue were ultimately returned to the Division, marked undeliverable, but those sent to 200 Executive Boulevard were not returned.

Ettore failed to file an answer or other response to the OTSC. On May 12, a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Mary Lou Moran, Esq. appeared for the Division. Neither Ettore nor any person representing him appeared. Ms. Moran reported that she had received no communication from the respondent or from any person purporting to represent him. On May 14, the Division filed its motion for summary decision. On that same date, I issued an order advising Ettore to file any response to the motion by May 26, and stating that any argument on the motion would be heard on May 27 at 2:00 p.m., the date and time initially set for the evidentiary hearing. Ettore filed no response to the Division's motion. In my absence, Stephen M. Sumner, Esq. presided over the May 27 hearing. Ms. Moran confirmed at that hearing that Ettore had received the Division's motion for summary decision and that neither the respondent nor any person representing him had communicated with the Division in response to the motion.

¹ The Division's licensee data base, CLARIS, showed 30 Roseleah Avenue as Ettore's business, residential and mailing address. His producer application, submitted to the Division in 2007, showed Woodford Avenue as a residential and mailing address and 200 Executive Boulevard as a business address.

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.² I conclude that Ettore'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, Ettore 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, which consists of the OTSC.

Findings of Fact

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

1. On July 12, 2007, respondent Roberto Ettore submitted to the Division of Insurance an application for a non-resident producer license dated May 31, 2007.³
2. Ettore answered "no" to the question on the license application form that asks if the applicant has ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime.
3. On or about February 22, 2007, Ettore was charged with felony credit card theft, illegal use of a credit card, forgery, larceny and criminal impersonation in the Superior Court for the State of Connecticut, Hartford Judicial District (the "February 22 Proceeding.")
4. On July 12, 2007, the Division licensed Ettore as a Massachusetts non-resident individual insurance producer.
5. On or about May 31, 2007, Ettore filed an application for a Georgia non-resident producer license with the Georgia Department of Insurance.
6. Ettore answered "no" to the question on the Georgia license application that asked about his criminal record.

² I note that G.L. c. 175, §174A provides that hearing notices 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.

³ Although the facts set out in the OTSC allege that the application was filed on May 12, 2007, some two and a half weeks before it was signed, the Division's certificate of service identifies July 12, 2007 as the filing date. It is reasonable to accept July 12 as the date on which the application was filed.

7. The Georgia Department of Insurance issued Ettore a non-resident insurance producer license on May 31, 2007.

8. On or about August 7, 2007, the Superior Court for the State of Connecticut, Hartford Judicial District, found that Ettore had completed a rehabilitation program and paid court-ordered restitution imposed in the February 22 Proceeding, and dismissed the "remaining charges."

9. In a license renewal application filed with the Georgia Department of Insurance on October 30, 2007, Ettore reported that he had been charged in the February 22 Proceeding, and that he had admitted to committing the crime of credit card theft.

10. On February 26, 2008, Ettore and the Georgia Department of Insurance entered into a consent agreement under which his producer license was suspended for one year, beginning March 7, 2008, to be followed by a one-year probationary period, to begin on March 7, 2009.

11. Ettore failed to report the administrative action by the Georgia Department of Insurance to the Division within 30 days of the final disposition of the matter.

12. The Division cancelled Ettore's non-resident producer license, at his request, on or about July 27, 2008.

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 been surrendered. 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 set 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. 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. The Division identifies subsections §162R (a)(1), (a)(2), (a)(3) and (a)(9) and §162V (a)(1) as grounds for revocation of Ettore's license.

Subsection 162R (a)(1) permits license revocation if an applicant has provided incorrect, misleading, incomplete or materially untrue information in the license application. Subsection (a)(3) permits revocation if the applicant is found to have obtained a license through misrepresentation or fraud. Ettore provided materially untrue information about his criminal history on his producer license application, and obtained a license through his misrepresentation. Subsection 162R (a)(2), in pertinent part, allows revocation for violating any insurance laws or regulation, subpoena or order of the Commissioner or of another state's insurance commissioner. Ettore's failure to respond to the Notice constitutes a violation of orders issued in this proceeding. Subsection 162R (a)(9) permits revocation if an insurance producer has had a license denied, suspended or revoked in any other state. The Georgia Insurance Department's action suspending Ettore's insurance license therefore permits the Commissioner to revoke his Massachusetts license under §162R (a)(9).

Ettore was the subject of an administrative action initiated by the state of Georgia. He did not report that action to the Commissioner within 30 days of its disposition. Ettore's 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 Ettore'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 Ettore, by failing to report his criminal history on his Massachusetts producer license application and later failing to report the Georgia administrative action, committed two statutory violations. Because he failed to comply with his affirmative obligations under the licensing process, 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 Roberto Ettore by the Division are hereby revoked; and it is

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

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

This decision has been filed this 4th day of June 2009, in the office of the Commissioner of Insurance. A copy shall be sent to Ettore 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.