



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

JOSEPH G. MURPHY
ACTING COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

John R. Braz Insurance Agency, Inc. and Joanne C. Braz, Respondents

Docket No. E2009-14

Order and Decision on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On May 29, 2009, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against the John R. Braz Insurance Agency, Inc. (“the Braz Agency”) and Joanne C. Braz (“Braz;” collectively “the Respondents”). The Division alleges that the Braz Agency committed 30 violations of M.G.L. c. 175, § 175, and engaged in 30 unfair or deceptive acts or practices in the business of insurance, in violation of M.G.L. c. 176D, § 2. It also alleges that, by violating these statutes, the Braz Agency violated M.G.L. c. 175, § 162R(a)(2). The Division alleges that Braz is individually liable under M.G.L. c. 175, § 174, for the violations by the Braz Agency.

A Notice of Procedure (“Notice”) was issued on June 2, 2009, advising the Respondents that a prehearing conference would take place on July 7, 2009, and a hearing on the OTSC would be held on August 18, 2009, both at the offices of the Division. It further advised them 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 each of the Respondents to file an answer to the OTSC within 21 days of receipt and that upon failure 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 the Respondents that failure to appear at the

prehearing conference or hearing could mean that an order of default, summary decision or decision on the pleadings might be entered.

On June 3, 2009, the Division by certified mail and by first-class mail, postage prepaid, sent the Notice and OTSC to the Braz Agency at its business and mailing address as listed in the records of the Division: 228 Rhode Island Avenue, Fall River, Massachusetts 02724. The mailings were returned to the Division, marked “Forwarding Order Expired.”

On June 3, 2009, the Division by certified mail and by first-class mail, postage prepaid, sent the Notice and OTSC to Braz at three addresses: her business address (228 Rhode Island Avenue, Fall River, Massachusetts 02724) and mailing address (15 Fir Avenue, Tiverton, Rhode Island 02878) as listed in the records of the Division, and at 901 Eastern Avenue, Fall River, Massachusetts 02723. The certified mailing to 15 Fir Avenue was accepted and signed-for, and the first class mailing to this address was not returned to the Division. The certified mailing to 901 Eastern Avenue was refused; the first class mailing to this address was not returned to the Division. The mailings to 228 Rhode Island Avenue were returned to the Division, marked “Forwarding Order Expired.”

A prehearing conference was held pursuant to 801 CMR 1.01(10)(a) on July 7, 2009. Robert J. Kelly, Esq., appeared for the Division. Braz did not attend the prehearing conference, nor did any person on her behalf. No one attended the hearing on behalf of the Braz Agency. Neither Braz nor the Braz Agency filed an answer to the OTSC. Attorney Kelly reported that he had received no communication from Braz or the Braz Agency or from any person purporting to represent either of them.

The Division filed a written motion for summary decision following the prehearing conference (the “motion”). See 801 CMR 1.01(7)(h). An order issued on July 8, 2009, that advised the Braz Agency and Braz to file any response to the motion by August 14, 2009, and further informed them that argument on the motion would be heard on August 18, 2009.

A hearing on the motion was held on August 18, 2009. Mary Lou Moran, Esq., appeared for the Division. Neither of the Respondents, nor any person representing either of them, appeared at the hearing. Neither Braz nor the Braz Agency filed a response to the motion. Attorney Moran stated that the Division had received no communication from the Respondents or anyone acting on behalf of either of them. She also stated that the Division mailed its motion

to the Respondents by first class mail, postage prepaid, to 15 Fir Avenue, Tiverton, Rhode Island 02878 and 901 Eastern Avenue, Fall River, MA 02723. Neither mailing was returned to the Division.

Finding of Default

The Division took appropriate actions to ensure proper service, and sufficient service was made. See M.G.L. c. 175, § 174A. The Respondents' failure to answer the OTSC or to respond to the Division's motion, and their failure to appear at the prehearing conference or at the hearing on the motion, warrant finding that they are in default. By their defaults, the Respondents have waived their right to proceed further with an evidentiary hearing and I may consider the motion for summary decision based solely upon the OTSC and the exhibits attached to it: (A) Request for Information from the Division dated June 13, 2007; (B) Facsimile dated July 25, 2007, from Braz to Jesse McSweeney of the Division; (C) the Braz Agency's Massachusetts Corporation Annual Reports for 1999, 2000, 2001 and 2002; Statement of Appointment of Registered Agent dated January 3, 2005; and Filing Results and the Braz Agency Summary Screen from the Office of the Secretary of the Commonwealth; (D) the Braz Agency's Uniform Application for Business Entity Insurance License/Registration dated April 26, 2007.

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. Braz first was licensed as a non-resident individual insurance agent on December 2, 1988; as a non-resident individual insurance broker on June 17, 2002, and as a non-resident individual insurance producer on May 16, 2003.
2. Braz's license remains active, but currently she has no agent appointments.
3. The Braz Agency was organized under the laws of the Commonwealth of Massachusetts on February 8, 1962.
4. The Braz Agency first was licensed as a resident corporate insurance broker on February 19, 1962; as a resident corporate insurance agent on January 25, 1990, and as a resident business entity insurance producer on May 16, 2003.
5. Braz has been an officer and director of the Braz Agency since 1999.

6. The Braz Agency's resident business entity insurance producer license was terminated for failure to renew effective April 7, 2007.

7. On April 26, 2007, the Braz Agency submitted to the Division a business entity insurance producer license application signed by Braz, who was listed as president of the Braz Agency and designated/responsible licensed producer.

8. The Braz Agency produced 30 Massachusetts insurance policies between April 7, 2007, and May 3, 2007, during which time it was not licensed in Massachusetts as a business entity insurance producer.

9. The Braz Agency was dissolved involuntarily on May 31, 2007; it is not an active corporation at present.

Analysis and Conclusions of Law

The Commissioner of Insurance ("Commissioner") maintains jurisdiction over the Braz Agency even though currently it 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.

The Braz Agency engaged in 30 unfair or deceptive acts or practices in the business of insurance, in violation of M.G.L. c. 176D, § 2, when it produced 30 Massachusetts insurance policies between April 7, 2007, and May 3, 2007, during which time it was not licensed in Massachusetts as a business entity insurance producer.¹ Engaging in the business of insurance while unlicensed is a serious infraction that strikes at the heart of the requirement of insurance licensure and violates a crucial protection provided by the legislature to the consumers of insurance products. See *Deluty v. Commissioner of Insurance*, 7 Mass. App. Ct. 88 (1979). As president of and the designated/responsible licensed producer for the Braz Agency at the time of these violations, Braz is individually liable under M.G.L. c. 175, § 174, for the Braz Agency's

¹ The OTSC and record are silent about the significance, if any, of the May 3, 2007, date. Why Mr. McSweeney of the Division asked the Respondents about the number of policies produced by the Braz Agency between April 7, 2007, and May 3, 2007, is not stated in his correspondence to the Respondents and is not apparent from it or the other exhibits attached to the OTSC. The Braz Agency was dissolved involuntarily on May 31, 2007.

violations of M.G.L. c. 176D, § 2. I decline to impose fines under M.G.L. c. 175, § 175, or M.G.L. c. 175, § 162R(a)(2).

The sequence of events suggests some mitigation of fines is appropriate. The first of the Respondents' 30 violations of M.G.L. c. 176D, § 2, occurred on April 7, 2007, the effective date of the termination of the Braz Agency's business entity insurance producer license for failure to renew. Nineteen days later, on April 26, the Braz Agency submitted to the Division a business entity insurance producer license application.² The Braz Agency was dissolved involuntarily on May 31, four weeks after the last of the 30 policies was produced on May 3. Braz was individually licensed as a Massachusetts insurance producer during the period when the 30 policies were produced between April 7 and May 3. While not intending to condone sloppy compliance with corporate licensure requirements, or inattention to the obligations of doing business through the corporate form, these circumstances, impartially considered, recommend moderation in imposing fines. I therefore impose a civil penalty authorized under M.G.L. c. 176D, § 7, of \$100.00 for each of the 30 violations of M.G.L. c. 176D, § 2.

ORDERS

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

1. The John R. Braz Insurance Agency, Inc. and Joanne C. Braz shall cease and desist from the conduct complained of in the Division's Order to Show Cause;
2. For 30 violations of M.G.L. c. 176D, § 2, the John R. Braz Insurance Agency, Inc. and Joanne C. Braz shall pay a fine of Three Thousand Dollars (\$3,000.00) to the Division within 30 days of the entry of this Order and Decision;
3. If the fine ordered by this Order and Decision is not paid within 30 days of the entry of this Order and Decision, any and all insurance licenses issued by the Division to the John R. Braz Insurance Agency, Inc. and Joanne C. Braz shall be suspended until the fine is paid; and
4. If the fine ordered by this Order and Decision is not paid within 60 days of the entry of this Order and Decision, any and all insurance licenses issued by the Division to the John R. Braz Insurance Agency, Inc. and Joanne C. Braz shall be revoked.

² The OTSC and record are silent about what action, if any, the Division took with respect to this business entity insurance producer license application.

This Order and Decision has been filed this 19th day of November, 2009, in the office of the Commissioner of Insurance. A copy shall be sent to Joanne C. Braz and the John R. Braz Insurance Agency, Inc. c/o Joanne C. Braz by certified mail, return receipt requested, and by regular first class mail, postage prepaid, to 15 Fir Avenue, Tiverton, Rhode Island 02878 and 901 Eastern Avenue, Fall River, Massachusetts 02723.

Filed: November 19, 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.

Joanne Braz
John R. Braz Insurance Agency, Inc. c/o Joanne C. Braz
15 Fir Avenue
Tiverton, R.I. 02878

Joanne Braz
John R. Braz Insurance Agency, Inc. c/o Joanne C. Braz
901 Eastern Avenue
Fall River, MA 02723

Robert J. Kelly, Esq.
Mary Lou Moran, Esq.
Division of Insurance
One South Station
Boston, MA 02110-2208