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Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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SECRETARY OF HOUSING AND
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BARBARA ANTHONY
UNDERSECRETARY

JOSEPH G. MURPHY
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Kevin E. Brown, Respondent

Docket No. E2009-15

Order On Petitioner's Motion for Summary Decision

Introduction and Procedural History

On June 9, 2009, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Kevin E. Brown (“Brown”) who is licensed as a Massachusetts non-resident individual insurance producer. The Division alleges that Brown failed to notify the Division of an administrative action in North Carolina which denied Brown’s application for an insurance license in that state. 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)(9), and §162V (a). The Division asks for revocation of Brown’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 June 11, 2009, advising Brown that a prehearing conference would take place on July 14 and that a hearing on the OTSC would be held on July 28, 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 Brown to file an answer pursuant to 801 CMR 1.01(6)(d) within 30 days of receiving the OTSC 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 Brown 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 June 16, the Division sent copies of the Notice and OTSC by certified mail to respondent at his residential and mailing address appearing on the Division's records: 1734 Lenwood Avenue, Green Bay, Wisconsin 54303.¹ Copies also were sent to Brown at that address by first-class mail, postage prepaid. The post office returned a green card indicating that Brown had received the certified mail on June 19. The first class mail was not returned to the Division.

Brown failed to file an answer or other response to the OTSC. The scheduled prehearing conference was held on July 14, pursuant to 801 CMR 1.01(10)(a). Mary Lou Moran, Esq. appeared for the Division. Neither Brown 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 July 16, the Division filed a motion for summary decision. On July 20, I issued an order advising Brown to file any response to the motion by July 31, and stating that any argument on the motion would be heard on August 4 at 10:00 a.m. Brown filed no response to the Division's motion and did not appear at the August 4 hearing. Ms. Moran 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.² The certified mail

¹ Although the Certificate of Service states that the documents were sent to respondent on April 16, the certificate itself is dated June 16, a date which is consistent with service after the Notice of Procedure was issued.

² 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 Brown received notice of this proceeding. I find that Brown'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 a finding that he is in default. By his default, Brown 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 the following documents attached to it as exhibits: A) letter dated April 15, 2008 from the North Carolina Department of Insurance to Brown; B) notice dated July 29, 2008 from the Insurance Licensing Services of America, Inc. ("ILSA") to the Division; and C) letter dated July 10, 2008, to the "Department of Insurance, Agent Licensing" from Kevin E. Brown.

Findings of Fact

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

1. Respondent Brown was first licensed in Massachusetts as a non-resident individual insurance agent effective May 1, 2008.
2. By letter dated April 15, 2008, the North Carolina Department of Insurance notified Brown that it had denied his application for an insurance producer's license. The letter advised Brown that he could request a hearing on the denial within 30 days and that the decision would become final if he failed to do so.
3. On July 10, 2008, Brown addressed a letter to "Department of Insurance, Agent Licensing" with the salutation "To Whom It May Concern" reporting that North Carolina had denied his request for a non-resident license and that he had submitted a new application which, as of that date, had not been approved or denied. Brown also wrote that he did not know that the North Carolina denial was an administrative action that required notification to other states.
4. By electronic transmission dated July 29, 2008, ILSA notified the Division that the North Carolina denial of Brown's license application had not been reported to the Division. Brown's July 10, 2008, letter was included with ILSA's communication.
5. ILSA characterized the failure to report the denial as an unfortunate oversight.

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.

Analysis and Conclusions 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 and has raised no genuine issue of material fact relating to the Division's claims.

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. The Division identifies subsection §162R (a)(9), which permits revocation if an insurance producer has had a license denied, suspended or revoked in any other state, as grounds for revocation of Brown's license. North Carolina's April 15, 2008 letter denying Brown's license application, by its terms, became final on May 15, unless Brown sought a hearing on that action. Brown's failure to file an answer or otherwise notify the Division of any such hearing permits an inference that the denial did become final; that inference is supported by Brown's statement in his July 10 generic letter to "Department of Insurance" that he "reapplied" for a North Carolina license. I find that the evidence supports revocation of Brown's Massachusetts license under §162R (a)(9).³

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. Brown's generic letter of July 10, 2008, was dated more than 30 days after the North Carolina action. He failed to notify the Division directly of that action, but instead sent it to a third party, which forwarded it to the Division on July 29. On these facts, I find that the North Carolina action was untimely reported to the Division. Failure to comply with the statutory reporting requirement supports revocation of Brown's license for violating §162V (a)(1).

On this record, I find that Brown's Massachusetts producer 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

³ Although Brown stated that he "reapplied" for a North Carolina license, he neither responded to the OTSC nor contacted counsel for the Division about any decision on a subsequent application. In any event, approval of a later application would not obviate the need to report the April 15, 2008 denial.

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 Brown, by failing to report an administrative action by another state, committed one statutory violation. His failure to report the North Carolina administrative action on a timely basis is a serious offense that directly affects his qualifications for a Massachusetts producer license. I therefore impose the maximum fine for that violation.

ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That any and all insurance producer licenses issued to Kevin E. Brown by the Division are hereby revoked; and it is

FURTHER ORDERED: that Kevin E. Brown shall return to the Division any licenses in his possession, custody or control; and it is

FURTHER ORDERED: that Kevin E. Brown 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 Kevin E. Brown 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 Kevin E. Brown shall pay a fine of One Thousand Dollars (\$1,000) to the Division within 30 days of the entry of this order.

This decision has been filed this 8th day of March 2010, in the office of the Commissioner of Insurance. A copy shall be sent to Brown by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

Jean F. Farrington
Presiding Officer

Pursuant to G.L. c. 26, §7, this decision may be appealed to the Commissioner of Insurance.