



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

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ACTING COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Annette Toms Dickenson, Respondent
Docket No. E2009-20

Order On Petitioner's Motion for Summary Decision

Introduction and Procedural History

On July 21, 2009, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Annette Toms Dickenson ("Dickenson") who is licensed as a Massachusetts non-resident individual insurance producer license. The Division alleges that Dickenson failed to report her criminal history on her application for a Massachusetts producer license and failed to notify the Division of an administrative action against her by the Idaho Department of Insurance. It asserts that her actions violate Massachusetts law and support revocation of her Massachusetts producer license pursuant to the provisions of G.L. c. 175, §162R (a)(1), (a)(2), (a)(3) and (a)(9), §162V (a) and c. 176D, §2. It asks for revocation of Dickenson's license and seeks orders requiring her to dispose of any insurance-related interests in Massachusetts, prohibiting her from conducting any insurance business in the Commonwealth, and imposing fines for the alleged violations.

A Notice of Procedure ("Notice") was issued on July 23, 2009, advising Dickenson that a prehearing conference would take place on September 2, 2009 and that a hearing on the OTSC would be held on September 16, 2009, both at the offices of the Division. It

further advised her 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 Dickenson to file an answer pursuant to 801 CMR 1.01(6)(d) and that, if she 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 Dickenson that, if she failed to appear at the prehearing conference or hearing, an order of default, summary decision or decision on the pleadings might be entered against her. The Commissioner of Insurance ("Commissioner") designated me as presiding officer for this proceeding.

On July 23, the Division sent copies of the Notice and OTSC by certified mail to respondent at her business and mailing address appearing on the Division's records: 3645 Thirlane Road, Roanoke Virginia 24019. A copy of each document was also sent by first-class mail, postage prepaid, to Dickenson at both the business and mailing address and at her home address, 132 Middleton Street, Roanoke Virginia 24019. The certified and first class mail sent to Dickenson at the business and mailing address were accepted by an individual at that address, who subsequently returned them to the Division.¹ The documents sent by first class mail to Dickenson's home address were not returned.

Dickenson failed to file an answer or other response to the OTSC. On September 2, a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Douglas Hale, Esq. appeared for the Division. Neither Dickenson nor any person representing her appeared. Mr. Hale reported that he had received no communication from the respondent or from any person purporting to represent her. On September 2, the Division filed its motion for summary decision. On the same date, I issued an order advising Dickenson to file any response to the motion by September 14, and stating that any argument on the motion would be heard on September 16, 2:00 p.m., the time initially set for the evidentiary hearing. Dickenson filed no response to the Division's motion and did not appear at the September 16 hearing. At that hearing Mary Lou Moran, Esq. represented the Division in place of Mr. Hale. She confirmed at that hearing that neither the respondent nor any person representing her had communicated with the Division.

¹ The Post Office returned a signed green card to the Division, indicating that the certified mail was accepted at the Thirlane Road address. The signature of the person who accepted it is undecipherable. The actual documents sent to that address were subsequently returned to 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 first-class mail sent to Dickenson's home address, as shown on the Division's records, was not returned. I conclude that Dickenson's failure to answer the OTSC or to respond to the Division's motion, and her failure to appear at the prehearing conference or at the hearing warrant findings that she is in default. By her default, Dickenson has waived her 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 copies of the following documents attached to it as exhibits: A) Dickenson's application for a Massachusetts individual insurance producer license dated July 30, 2007; B) Statement of Issues from the California Department of Insurance dated November 28, 2007, ordering Dickenson to present evidence to the Insurance Commissioner that she is qualified to hold a California license to act as a life insurance agent; C) Special Notice of Defense dated December 6, 2007 executed by A.T. Dickenson to the California Department of Insurance; D) Order from the California Department of Insurance dated April 29, 2008, denying Dickenson an unrestricted license to act as an accident and health insurance agent but allowing her to hold a restricted license; and E) Order from the Idaho Department of Insurance dated September 9, 2008 revoking Dickenson's Idaho non-resident insurance producer license.

Findings of Fact

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

1. Respondent Dickenson submitted to the Division an application for an individual insurance producer license dated July 30, 2007. On that application, she stated that she had in the past used the name Phyllis Annette Toms.

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.

2. Dickenson answered "No" to Question One in the background information section of the application, which asks if the applicant has ever been convicted or is currently charged with, committing a crime.
3. Effective August 22, 2007, the Division licensed Dickenson as a non-resident insurance producer.
4. On November 28, 2007, the California Department of Insurance issued to Dickenson a Statement of Issues relating to her application for a license to act as a life insurance agent in California. The statement, among other things, alleged that in 2002 Dickenson, using the name Phyllis A. Toms, was convicted in the Criminal Court of Roanoke County, Virginia upon a plea of guilty of embezzlement.
5. On December 6, 2007, in response to the Statement of Issues, Dickenson executed a Special Notice of Defense. In that notice she admitted to the allegations in that Statement.
6. On September 9, 2008, the Idaho Department of Insurance revoked Dickenson's Idaho insurance producer license because she failed to disclose the Virginia conviction on her application for that license.
7. Dickenson did not report the Idaho administrative action to the Division.

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 find that respondent's failure to comply with the directives in the Notice warrant a finding that she is in default. No genuine issue of fact has been raised in connection with the Division's claims. I find that it is entitled to prevail as a matter of law.

G.L. c. 175, §162R (a) ("§162R (a)") specifies fourteen grounds on which the Commissioner may suspend or revoke a producer's license. The Division identifies four subsections of §162R (a) as grounds for revocation of Dickenson's license: 1) (a)(1), providing incorrect, misleading, incomplete or materially untrue information in the license application; 2) (a)(2), in pertinent part, violating any insurance laws or regulation, subpoena or order of the Commissioner or of another state's insurance commissioner; 3)

(a)(3), obtaining or attempting to obtain a license through misrepresentation or fraud; and 4) (a)(9), having an insurance producer license denied, suspended or revoked in any other state. I find that the record fully supports each of these grounds for revocation.

I conclude, based on the above findings of fact, that Dickenson failed to report her criminal history on her application for a Massachusetts insurance producer license and therefore provided incorrect, misleading, incomplete or materially untrue information to the Division. That fact supports revocation of her license on the grounds set out in §162R (a)(1) and (a)(3). I find, further, pursuant to G.L. c. 176D, §§2 and 6, that Dickenson's failure to include complete information on the application is an unfair or deceptive practice, and therefore supports revocation of her license pursuant to §162R (a)(2). That ground is further supported by Dickenson's failure to comply with Idaho insurance producer licensing law. The revocation of Dickenson's Idaho insurance producer license permits the Commissioner to revoke her Massachusetts license under §162R (a)(9).

G.L. c. 175, §162V (a) requires a Massachusetts licensed producer to report to the Commissioner any disciplinary action taken by another state within 30 days of the final disposition. The above findings of fact indicate that Dickenson did not report the Idaho administrative action to the Division. Her violation of §162V (a) is an additional basis for revocation of her license pursuant to §162R (a)(2).

On this record, I find that Dickenson's Massachusetts producer license should be revoked, that she should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and that she should be required to dispose of any interest she 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 Dickenson, by omitting information relating to her 2002 conviction from her producer license application and failing to report an administrative action by another state, committed two statutory violations. Dickenson's failure to report her conviction on her application for a Massachusetts insurance license and failure to report the Idaho administrative action are serious offenses that directly affect her qualifications for a Massachusetts producer license and the Division's ability to evaluate her application. I therefore 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 Annette Toms Dickenson by the Division are hereby revoked; and it is

FURTHER ORDERED: that Annette Toms Dickenson shall return to the Division any licenses in her possession, custody or control; and it is

FURTHER ORDERED: that Annette Toms Dickenson 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 Annette Toms Dickenson 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 Annette Toms Dickenson 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 25th day of September 2009, in the office of the Commissioner of Insurance. A copy shall be sent to Dickenson 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.