



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

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Division of Insurance, Petitioner
v.
Sestatic Insurance Agency, Inc. and Moses E. Kadiri, Respondents
Docket No. E2009-22

Order on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On December 1, 2009, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against the Respondents Sestatic Insurance Agency, Inc. (“Sestatic”) and Moses E. Kadiri (“Kadiri”), Sestatic’s sole officer and director, and the person designated to act for Sestatic on its corporate license. Neither Sestatic nor Kadiri currently holds a Massachusetts insurance producer’s license; Sestatic’s license was cancelled for non-renewal as of September 25, 2007 and Kadiri’s was cancelled for that reason effective June 6, 2008. The Division alleges that, in 2006 and early 2007, while both Respondents were licensed, they engaged in a series of improper practices in connection with the purchase of property insurance through the Massachusetts Property Insurance Underwriting Association (“MPIUA”), also known as the Fair Plan.¹ The Division argues that such practices violated G.L. c. 175, §162R (a)(4) and (a)(8), as well as G.L. c. 176D, §§2 and 3 (1)(a). It asks for revocation of the licenses issued to Sestatic

¹ The alleged actions include accepting premium checks from the Complainants but failing to transfer the funds to the MPIUA on a timely basis, issuing insurance binders without authority to do so, submitting applications to the MPIUA that the Complainants had not signed, misrepresenting insurance premiums, and issuing checks that were dishonored by Respondents’ bank.

and Kadiri and seeks orders requiring them to cease and desist from the conduct alleged in the OTSC and to dispose of any insurance-related interests in Massachusetts. In addition the Division requests an order prohibiting Respondents from conducting any insurance business in the Commonwealth, and imposing fines for the alleged violations.

A Notice of Procedure ("Notice") was issued on December 1, 2009, advising Respondents that a prehearing conference would take place on December 28 and that a hearing on the OTSC would be held on January 12, 2010, both at the offices of the Division. It further advised them 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 Respondents to file an answer pursuant to 801 CMR 1.01(6)(d) and that, if they 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 Respondents that, if they failed to appear at the prehearing conference or hearing, an order of default, summary decision or decision on the pleadings might be entered against them. The Commissioner designated me as presiding officer for this proceeding.

On December 1, 2009 the Division sent the Notice and OTSC by certified mail to Kadiri, individually and as president of Sestatic, at 390 Main Street, Suite 712, Worcester, MA, the business and mailing address appearing on the Division's licensing records. A copy of each document was also sent to Kadiri by first class mail, postage prepaid, at that address and at three additional addresses in Worcester: 82 Ledgecrest Drive, which is shown as Kadiri's residential address on the Division's licensing records, 500 Main Street, Suite 150, and 14 First Street. On December 14, the Division filed a certificate of service received, stating that the post office had returned the certified mail and first class mail sent to the 390 and 500 Main Street addresses with the notation that they were undeliverable and that there was no forwarding address. The Division further noted that the mail sent to 82 Ledgecrest Drive and 14 First Street had not been returned, and that it had received a communication from Kadiri dated December 2, 2009, which indicated that he had actually received the OTSC.

Respondents failed to file an answer as required by 801 CMR 1.01 (6)(d)(1) or any motion under 801 CMR 1.01 (7) in response to the OTSC. On December 28, 2009 a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Douglas Hale, Esq. appeared for the Division. Neither Kadiri nor any person representing Respondents appeared. Mr. Hale reported

that, other than Kadiri's December 2, 2009 letter, he had received no communication from the Respondents or from any person purporting to represent them. On December 28, 2009, the Division filed its motion for summary decision. On that same date, I issued an order advising Respondents to file any response to the motion by January 8, 2010, and stating that any argument on the motion would be heard on January 12 at 10:00 a.m. Respondents filed no response to the Division's motion and did not appear at the January 12 hearing. Mr. Hale confirmed at that hearing that neither the Respondents nor any person representing them 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 OTSC and Notice were sent to Respondents at the addresses shown on the Division's licensing records and on Sestatic's incorporation documents filed with the Corporations Division of the Secretary of the Commonwealth. Those addresses also appear on documents relating to the business transactions underlying the OTSC that were attached as exhibits to it. The December 2, 2009 letter from Kadiri to Attorney Hale indicates that he received the OTSC. Because Kadiri's letter does not respond to the allegations of the OTSC, it does not constitute an answer to the OTSC.³ I conclude that 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, warrant findings that they are in default. By their default, Respondents have waived their 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.

Findings of Fact

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

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 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 Kadiri's letter referred to a "request for restitution" in the amount of \$752, stated that he was not feeling well, and that he had not renewed his insurance licenses.

1. Sestatic was first licensed in Massachusetts as a business entity insurance producer on September, 27, 2005. Sestatic's producer license was cancelled for non-renewal effective September 27, 2007.

2. Kadiri was first licensed as a Massachusetts insurance producer on September 21, 2005; his license was cancelled for non-renewal effective June 6, 2008.

3. At all relevant times, Kadiri was the sole officer and director of Sestatic and the sole designated producer on Sestatic's business entity producer license.

4. In December 2006, the Division's Consumer Service Section ("CSS") received a complaint from two consumers (the "Complainants") who, on August 17 and 23, 2006, had given checks totaling \$952 to Sestatic as premium for a homeowners' insurance policy on property in Worcester that they purchased on August 31. Kadiri handled the transaction on behalf of Sestatic.

5. Kadiri gave the Complainants a binder, dated August 17, 2006, identifying the "MA Fair Plan" as the insurance company that would issue the policy.

6. Early in December, 2006, the Complainants received a bill from the MPIUA showing a balance of \$606 due on the insurance policy premium. They then contacted the MPIUA and learned that Kadiri had transferred to the MPIUA \$200 of the \$952 that the Complainants had given Sestatic in August.

7. The Complainants also attempted to contact Sestatic by telephone and were told that the telephone was disconnected; they also learned that the agency had moved its office. They thereafter went to both Sestatic offices and to Kadiri's home but were unable to locate him.

8. The MPIUA, to which the CSS had forwarded a copy of the consumers' complaint, responded to it by letter dated January 24, 2007. The MPIUA reported that the annual premium for the policy was \$800 and that it received a first payment of \$200 from Sestatic on November 16, 2006. The Complainants made a second payment in January 2007, and the MPIUA received a \$600 payment from Sestatic on January 24, 2007. Attached to the MPIUA's response were copies of two applications for insurance on the Complainants' property identifying Sestatic as the licensed broker on the policy, a Proof of Insurance dated October 30, 2006, an invoice of even date to Sestatic for the initial premium, an invoice dated November 29 to the Complainants showing \$606 due, an invoice dated January 4, 2007, indicating that the policy would be cancelled for non-payment unless a payment was made by January 17, and copies of internal documents showing payment transactions.

9. On December 22, 2008, the Complainants advised the Division that they had not signed either of the applications for homeowners' insurance that the MPIUA had received from Sestatic, and that they had not authorized anyone to sign for them.

10. On April 27, 2009, the MPIUA provided additional information to the Division about its procedures for writing homeowners' coverage. It stated that the MPIUA does not issue insurance binders and that no producer is authorized to bind MPIUA policies. A producer submits an application to the MPIUA; if the MPIUA approves the application it returns a Proof of Insurance to the producer showing the coverage and annual premium. It then sends the producer an invoice showing two options: payment in full or a four installment plan that includes installment plan fees. Selection of the full payment option requires payment within 15 days of the date coverage is bound. The April 27 letter reported that Sestatic's January 24, 2007 payment to the MPIUA was for a total of \$902, that the bank had dishonored the check and that on February 7, 2007 the MPIUA received a check from Sestatic for \$952, in payment for the Complainants' policy. That payment, combined with the \$200 payment in November 2006, resulted in a premium overpayment; the overpayment was returned to the Complainants by a check sent to them in February 2007 in care of Sestatic.

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 Respondents' failure to file an answer to the OTSC and failure to appear at the scheduled prehearing conference. I have found that Respondents' failure to comply with the directives in the Notice warrant a finding that they are 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.

Pursuant to G.L. c. 175, §162R (e) the Division retains jurisdiction over Sestatic and Kadiri, even though neither is currently licensed as an insurance producer. Pursuant to G.L. c. 175, §174, an officer and director specified on an insurance producer's license issued to a corporation license is personally liable for any violation of the insurance laws, even though the acts constituting the violation are done in the name and in behalf of the corporation. As the sole person named on Sestatic's license, Kadiri is fully responsible for its actions. The acts that underlie the OTSC will therefore be attributed to both Respondents, and Respondents will be jointly and severably liable for any civil financial penalties imposed for violations of the insurance laws.

The Massachusetts Insurance Producer Licensing statute, G.L. c. 175, §§162G through 162X, among other things sets out 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 subsections §162R (a)(4) and (8) as grounds for revocation of Respondents' licenses. Subsection (a)(4), in pertinent part, permits revocation for "improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business." Subsection (a)(8) supports disciplinary against a licensee who has engaged in "fraudulent, coercive or dishonest practices", or demonstrat[ed] "incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere." The record demonstrates that Respondents' received funds from the Complainants in August 2006 to cover the premium for homeowners' insurance on property they were purchasing. It further shows that the Complainants' payments were more than sufficient to cover the full premium for the MPIUA policy. Nevertheless, Respondents transferred only a portion of those payments to the MPIUA in November 2006, and held the remainder until January 2007.⁴ I find that Respondents' retention of these funds demonstrates that they improperly withheld money received in the course of doing insurance business, a practice that supports disciplinary action under §162R (a)(4).

The record also demonstrates a series of improper acts with respect to the transaction in question. Respondents accepted funds from the Complainants in August 2006, but failed to submit applications promptly to the MPIUA. The applications that Respondents eventually submitted, in October 2006, were not signed by the Complainants. Meanwhile Respondents, without authority to do so, represented to the Complainants that coverage had been bound with the MPIUA. The funds Respondents received in August exceeded the correct premium by more than \$150, perhaps inferring that Respondents failed to contact the insurer for a quotation. The check that Respondents sent to the MPIUA on January 24, 2007 was dishonored for insufficient funds in their bank account. On this record, taken as a whole, I find that Respondents' actions are uncontroverted evidence of incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth and fully support disciplinary action under §162R (a)(8).⁵

⁴ Had the premium been paid in full in November 2006, the Complainants would not have been billed for installment fees.

⁵ Respondents' failure to apply for the coverage promptly and its submission of application forms that were not signed by the insured could have had serious consequences for the Complainants in the event of a claim. The failure to transfer the Complainants' premium payment promptly to the MPIUA led it to issue the Complainants a notice of cancellation for non-payment of premium.

The Division further characterizes Respondents' failure to quote the correct premium for the Complainants' policy and to remit their premium payments in a timely manner, and their submission of application forms without the Complainants' knowledge as unfair or deceptive practices in the business of insurance that are prohibited under G.L. c. 176D, §2. It also argues that Respondents, by representing to the Complainants a premium for the MPIUA policy that was higher than the actual premium ultimately charged, made a statement that misrepresented the "benefits, advantages, conditions or terms of an insurance policy, in violation of G.L. c. 176D, §3 (1)(a). The Division's claims under G.L. c. 176D relate to the same set of acts alleged in the OTSC that I find fully support disciplinary action under G.L. c. 175, §162R (a). G. L. c. 175, §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. Because the Division's substantive claims and the relief that it seeks can be fully granted under G.L. c. 175, §162R (a), I need make no further findings on claims that the Respondents' acts also violate G.L. c. 176D.

I find that Respondents' licenses should be revoked, that they should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and that they should be required to dispose of any interests they may have in any insurance business in Massachusetts. I find that their actions constitute five distinct violations of G.L. c. 175, §162R (a)(4) and (a)(9). The potential for serious consequences to the consumer as a result of those violations warrants imposition of the maximum fine of \$1,000 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 the Sestatic Insurance Agency, Inc. by the Division are hereby revoked; and it is

FURTHER ORDERED: that any and all insurance producer licenses issued to Moses E. Kadiri by the Division are hereby revoked; and it is

FURTHER ORDERED: that the Sestatic Insurance Agency, Inc. shall return to the Division any licenses in its possession, custody or control; and it is

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

FURTHER ORDERED: that the Sestatic Insurance Agency, Inc. and Moses E. Kadiri are, 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 Moses E. Kadiri 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 the Sestatic Insurance Agency and Moses E. Kadiri shall pay a fine of Five Thousand Dollars (\$5,000) to the Division within 30 days of the entry of this order.

This decision has been filed this 27th day of January 2010, in the office of the Commissioner of Insurance. A copy shall be sent to the Sestatic Insurance Agency, Inc. and Moses E. Kadiri 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.