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DIVISION OF INSURANCE

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JOSEPH G. MURPHY
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Raymond P. Gerrior, Jr., Respondent
Docket No. E2010-03

Decision

On February 17, 2010, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Raymond Paul Gerrior, Jr. (“Gerrior”) who holds a Massachusetts insurance producer’s license and is appointed to represent several insurance companies. The Division alleges that Gerrior, on or about May 15, 2008, submitted to the Division’s Producer Licensing Department a letter dated May 12, 2008 that was purportedly signed by a representative of the Nationwide Insurance Company (“Nationwide”) licensing division (the “May 12 Letter”). The letter stated that Nationwide had appointed Gerrior as its agent on April 1, 1983. Nationwide, in subsequent correspondence, indicated that its representative did not sign the May 12 Letter.

The Division alleges that Gerrior submitted the May 12 Letter to support his position that he need not comply with the Division’s continuing education requirements for insurance licensees and that, by submitting a letter with a falsified signature, he engaged in conduct that supports revocation of his Massachusetts producer license pursuant to G.L. c. 175, §162R (a)(7) and (a)(8) (“§162R”). Those provisions permit the Commissioner of Insurance (“Commissioner”) to take disciplinary action if a licensee: 1) commits an unfair trade practice or fraud; or 2) engages in fraudulent, coercive or dishonest practices or demonstrates incompetence, untrustworthiness and financial irresponsibility in the conduct of business in the Commonwealth.

The Division claims also that Gerrior committed an unfair or deceptive act or practice in the business of insurance, in violation of G.L. c. 176D, §2 and §3(5)(b).

A Notice of Procedure (“Notice”) was issued on February 19, 2010, scheduling a prehearing conference for March 24, 2010 and a hearing for April 8, 2010. Gerrior filed an answer with supporting documents on March 22. Throughout this proceeding, Robert Kelly, Esq. has represented the Division and Gerrior has represented himself. At the conclusion of the prehearing conference, the parties expressed their intent to discuss settlement and agreed to hold a status conference on April 8. Although no settlement had been reached at that time, the parties indicated that they were continuing discussions. A third status conference took place on June 10. At that time, the parties reported that settlement was unlikely but that no facts were disputed. They agreed to develop a statement of undisputed facts and a joint list of documents to be entered as exhibits and, thereafter, to submit memoranda setting out their respective arguments. The statement of facts, document list, and memoranda were timely submitted.¹

Findings of Fact

Based on the joint statement and the documents, I make the following findings of fact.

1. Gerrior passed a multistate licensing examination for life insurance agents administered by the Educational Testing Service on January 22, 1983.
2. According to Division records, it licensed Gerrior as an insurance agent for the Nationwide Life Insurance Company (“Nationwide”) on or about May 24, 1983.
3. On or about September 24, 2002, the Division licensed Gerrior as an insurance broker.
4. On or about May 16, 2003, Gerrior’s licenses were converted to a resident producer license.
5. Gerrior is appointed as an agent by several insurance companies.
6. Gerrior was an appointed agent for Nationwide from May 24, 1983 through May 16, 2003; after the producer licensing statute was implemented he continued to hold an appointment to Nationwide as an agent from May 16-July 24, 2003 and from December 8, 2006 through June 20, 2008.

¹ The six documents on the list are: 1) Educational Testing Service report showing that Gerrior passed a licensing examination for life insurance agents; 2) continuing education requirement form dated September 1, 1994; 3) memorandum about continuing education requirement dated May 29, 1996; 4) Two-page FAX dated May 12, 2008 consisting of a cover memo to Jason Egan and a copy of a letter on Nationwide letterhead relating to the date on which Gerrior was appointed to Nationwide; 5) Letter dated June 4, 2008 from Nationwide to Lonnie Bond about the letter dated May 12, 2008 contained in Exhibit 4; and 6) an investigative report, dated December 9, 2009, describing a 2008 investigation of Gerrior by the Nationwide Internal Investigations Unit.

7. On January 5, 1983, the Legislature approved c. 665 of the Acts and Resolves of 1982, mandating continuing education for persons holding Massachusetts insurance licenses.
8. The statute provided that it would not apply to any person holding an insurance license prior to the effective date of the act.
9. The act became effective 90 days after it was passed, *i.e.*, April 4, 1983.
10. In April 1987, the Division promulgated a regulation relating to continuing education for insurance licensees, 211 CMR 50.00 *et seq.*
11. In 1994, the Lincoln National Life Insurance Company (“Lincoln National”) asked Gerrior to confirm that he was in compliance with the Massachusetts continuing education law; he responded that he was exempt from the requirement because he had initially been licensed before April 4, 1983.
12. In 1996, the Federal Kemper Insurance Company (“Federal Kemper”) notified Gerrior that he must inform it by June 11 about his continuing education activities in order to remain an agent for that company; the notice advised Gerrior that he was exempt from the requirement if he was licensed before April 4, 1983.
13. Gerrior responded to Federal Kemper that he was licensed before April 4, 1983.
14. Gerrior’s producer license was due to expire on June 10, 2008.
15. At some time prior to May 12, 2008, a vendor that maintains continuing education records under a contract with the Division notified Gerrior that he was required to meet continuing education requirements and that Division records indicated that he had not completed any continuing education credits.
16. Gerrior believed that he was licensed from the date he passed the insurance agent licensing examination in January 1983.
17. On May 12, 2008, Gerrior electronically transmitted to the Division’s Producer Licensing Department a document on what purported to be Nationwide letterhead and to be signed by Sheryl Janney, stating that Nationwide had appointed him as its agent on April 1, 1983.
18. On or about June 9, 2008, the Division’s Special Investigation Unit received a letter from Ms. Janney, dated June 4, 2008, in which she stated that she did not sign the May 12 Letter and had not authorized anyone to sign the letter on her behalf.
19. Nationwide transmitted to the Division, on or about December 9, 2009, a report of its internal investigation of the May 12 Letter.

20. According to that report, Gerrior admitted to creating the May 12 Letter and submitting it to the Division.
21. The report stated that, according to Nationwide's records, Gerrior was appointed with Nationwide on May 24, 1983.
22. On September 8, 2009, Gerrior, without admitting or denying the findings, settled a disciplinary action initiated against him by the Financial Industry Regulatory Authority ("FINRA") arising out of the creation of the May 12 Letter. As part of that settlement, Gerrior's individual securities broker license was suspended for 18 months.

Based Gerrior's oral and written statements, I make the following finding of fact:

23. Gerrior began work as a commissioned sales representative for Nationwide on April 1, 1983.²

Analysis and Conclusions of Law

G.L. c. 175, §162R (a) specifies fourteen grounds on which the Commissioner may suspend or revoke a producer's license. The two subsections of that statute which the Division cites as grounds for its action seeking to revoke Gerrior's license are: 1) §162R (a)(7), "admitting or being found to have committed any insurance unfair trade practice or fraud;" and 2) §162R (a)(8), "using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the Commonwealth or elsewhere."

The Division argues that Gerrior, by submitting deceptive information to the Division about the status of his continuing education credits, committed a fraud and, by signing Ms. Janney's name to the Nationwide letter, committed forgery. It contends that he attempted to circumvent the continuing education requirements by deceiving the Division about his status, rather than negotiating a solution, such as additional time to meet the requirements or reconsideration by the Division. The Division argues that it relied on the May 12 Letter in evaluating Gerrior's continuing education status. His actions, it asserts, call into question Gerrior's suitability to hold an insurance license and require a severe sanction to ensure public confidence in the regulatory process. It points out that truthfulness and accuracy in license applications is imperative, and that failure to provide such information is an unfair or deceptive practice in the business of insurance. Gerrior's actions, the Division argues, are sufficiently serious to support revocation of his license.

² The parties did not include this date in their joint statement of facts. I find credible Gerrior's statements relating to his start date in his answer and memorandum, and his oral statement at the prehearing conference; the Division did not challenge their accuracy.

Gerrior agrees that producers licensed after April 4, 1983 must meet continuing education requirements but contends that he is exempt from that requirement because he passed his Massachusetts life insurance agent licensing examination on January 22, 1983 and was licensed from that date.³ He points out that from 1983 to 2008 he was exempt from the continuing education requirements. Gerrior notes as well that, pursuant to 211 CMR 50.00, a Sponsor is responsible for monitoring a licensee's participation in a course of study. He contends that Nationwide was his Sponsor and that it failed to monitor his continuing education participation and to supervise him properly. He argues that he began working for Nationwide as of April 1, 1983, and that the purpose of the May 12 Letter was to correct an inaccurate appointment letter dated October 24, 1983 from Nationwide.⁴

The Division's two claims for violations of c. 175, §162R address different aspects of the May 12 Letter. The first claim in the OTSC focuses on the substantive content of that document, and seeks relief under §162(a)(7), the statutory provision that allows the Commissioner to "place on probation, suspend, revoke or refuse to issue or renew a producer's license" for admitting or being found to have committed fraud. Section 162R (a)(7) does not further define fraud; the Division offers in its memorandum a definition from Black's Law Dictionary.⁵ In Massachusetts, the Supreme Judicial Court has defined common-law fraud as follows:

"To recover for that intentional fraudulent conduct of which the plaintiff complains, he must allege and prove that the defendant made a false representation of a material fact with knowledge of its falsity for the purpose of inducing the plaintiff to act thereon, and that the plaintiff relied upon the representation as true and acted upon its to his damage." *Barrett Associates, Inc. v. Aronson*, 346 Mass. 150 (1963).⁶

Applying the standard articulated in those sources to the facts in this case, I conclude that Gerrior's statement about his appointment date in the May 12 Letter, although unquestionably inaccurate in light of the Division's licensing records, did not rise to the level of intentional misrepresentation that would support a finding that he committed fraud. The date of Gerrior's initial license is a material fact for purposes of determining the applicability of continuing education requirements to him. I am not persuaded that Gerrior knew that January 22, 1983 was

³ Gerrior attached to his answer copies of two applications for an insurance agent's license seeking appointment to Nationwide and to the People's Life Insurance Company, both dated January 31, 1983. He began work for Nationwide on April 1, 1983; the record contains no reference to the start date of any work for People's Life.

⁴ That letter, a copy of which was attached to Gerrior's answer, informed him that Massachusetts had approved his life-only agent appointment to Nationwide. It did not identify the date of that approval.

⁵ That definition is "an intentional false representation of a matter of fact which deceives and is intended to deceive another so that he shall act upon it to his legal injury."

⁶ The facts of that case involved an offer to purchase stock; the definition has been adopted in subsequent cases alleging fraud in connection with other transactions. See, for example, *Fordyce v. Town of Hanover*, 457 Mass. 248 (2010), involving the public bidding process and the administrative actions of a town's prequalification committee.

not his licensing date. Gerrior states in his answer and memorandum, and stated at the prehearing conference, that he began work as a sales representative for Nationwide on April 1, 1983. He thus had some basis on which to consider himself to be licensed before April 4, 1983.

In addition, the documents demonstrate that Gerrior did not adopt this position in response to being advised in 2008, twenty-five years after he was first licensed, that he was required to meet continuing education requirements. To the contrary, they show that for many years Gerrior believed, albeit incorrectly, that he was licensed before the effective date of §177E and is therefore exempt from its continuing education requirements. He expressly conveyed that position in 1994 and 1996 to two insurance companies who requested a statement of compliance; neither apparently challenged his point of view.⁷ Nationwide, Gerrior's employer for over two decades beginning in 1983, at least tacitly supported his position; it evidently did not require him to obtain continuing education credits and renewed his agent appointment continuously, even after he was licensed as a producer rather than an agent.⁸ Throughout this proceeding, as well, Gerrior has steadfastly asserted his position on the date of his initial license, both at the prehearing conference and in his written submissions. It was not a new position reached in 2008 in response to the Division's vendor.

Even if Gerrior had adopted his position only in response to the notice from the Division's vendor, both the dictionary and common law definitions of fraud require the complaining party to have relied on the representation as true and acted upon it to its detriment. No evidence in the record indicates that the Division accepted the May 12 Letter and renewed Gerrior's license. To the contrary, it suggests that the Division questioned the document and contacted Nationwide soon after receiving it; Ms. Janney's letter responding to an inquiry from the Division is dated June 4, 2008.

I conclude that Gerrior's position, even if incorrect, reflects a longstanding belief that predates the May 12 Letter by over a decade and, for purposes of determining fraudulent conduct in 2008, cannot reasonably be characterized as a knowingly false statement. In addition, there is no evidence that it caused any regulatory authority to exempt him from continuing education

⁷ Although the record provides little other specific information about Gerrior's licensing history, the OTSC describes him as appointed to a number of companies; no participant in the licensing process appears to have raised continuing education requirements as a bar to appointments and license renewals during the twenty-five year period from 1983-2008.

⁸ Nationwide was surely in an excellent position to identify its agents who needed to comply with continuing education requirements and to ensure that they did so.

requirements. For those reasons, I find that the facts do not support disciplinary action pursuant to §162(a)(7).

The second claim in the OTSC focuses on the creation of the May 12 Letter, and seeks relief under §162R (a)(8), a statutory section that permits disciplinary actions against a licensee who has demonstrated incompetence or untrustworthiness in the conduct of business in the Commonwealth. Gerrior does not dispute that, when Nationwide did not provide written confirmation supporting his position on his appointment date, he created and submitted to the Division a letter purporting to come from the company. Gerrior's chosen resolution demonstrates untrustworthiness in the context of a business relationship. That his self-help attempt was unsuccessful does not mitigate the seriousness of his action, and I find that the record fully supports disciplinary action based on §162R (a)(8). To Gerrior's credit, despite his ardent defense of his misguided view of the date on which he was licensed, he took full responsibility for his actions at the prehearing conference and admitted that he should not have sent the May 12 Letter. He affirms in his memorandum that he "overstepped the bounds."

The remedies available for a violation of §162R are license suspension, revocation and imposition of a fine as permitted under G.L. c. 176D, §7. The seriousness of submitting a letter purporting to come from Nationwide is mitigated to some extent by the fact that the May 12 Letter appears to reflect the date on which Gerrior began to work for Nationwide. Gerrior has admitted responsibility and expressed regret for his action. For those reasons, I conclude that license suspension, rather than revocation, is appropriate.⁹ I therefore order the suspension of any Massachusetts producer license issued to Gerrior for a period of 18 months from the date of this order.¹⁰

In addition to suspension, and in recognition of the seriousness of Gerrior's creation of the May 12 Letter, he is ordered to pay the maximum fine of One Thousand Dollars (\$1,000) to the Division within 30 days of the date of this decision.

⁹ The Division also claims that Gerrior's creation of the May 12 Letter violated G.L. c. 176D, §§2 and 3(5)(b). Gerrior has been found to have committed a single act that specifically violated c. 175, §162R and been disciplined under that statute. A finding pursuant to c. 176D, §6 that his act is also a deceptive act in the business of insurance does not affect the penalty. The scope of c. 176D, §3(5)(b) was discussed at length in *Division of Insurance v. Larocque*, Docket No. E2000-02, 15-19. Even if the May 12 Letter might be within that scope, a finding on that claim would not alter the remedy. Chapter 176D, §7 prescribes license suspension as the remedy for violations of c. 176D, §3, unless a person has repeatedly violated the statute. This proceeding is based on a single incident.

¹⁰ This proceeding ultimately concerns compliance with the continuing education requirements mandated by G.L. c. 175, §177E ("§177E"). The OTSC did not assert any claims relating to that statute. This decision makes no findings and draws no conclusions on any issue related to Gerrior's compliance with the statutory mandate for continuing education.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Raymond P. Gerrior, Jr. by the Division of Insurance are hereby suspended for eighteen months from the date of this decision; and it is

FURTHER ORDERED: that Raymond P. Gerrior, Jr., within ten days of this decision, shall notify each insurance company that has appointed him as its agent of this suspension; and it is

FURTHER ORDERED: that Raymond P. Gerrior, Jr. 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 eighth day of December 2010, in the office of the Commissioner of Insurance. A copy shall be sent to Gerrior 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.