



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

1000 Washington Street, Suite 810 • Boston, MA 02118-6200
(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
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Dana Brett Polk, Respondent
Docket No. E2010-05

Order On Petitioner's Motion for Summary Decision

Introduction and Procedural History

On April 6, 2010, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Dana Brett Polk (“Polk”) who was licensed, until November 6, 2009, as a Massachusetts non-resident individual insurance producer. The Division alleges that Polk failed to notify the Division of an administrative action against him by the Commonwealth of Virginia and failed to notify it on a timely basis of administrative actions by the states of Utah and Indiana. 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)(2) and (a)(9), §162V (a) and c. 176D, §2. It asks for revocation of Polk’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 April 7, 2010, advising Polk that a prehearing conference would take place on May 7, 2010 and that a hearing on the OTSC would be held on May 24, 2010, 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 Polk to file an answer pursuant to 801 CMR 1.01(6)(d) 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 Polk 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 April 7, the Division sent copies of the Notice and OTSC by certified mail to respondent at the residence and mailing address shown in the Division's licensing records: 6119 Yocum Street, P. O. Box 33019, Philadelphia, Pennsylvania 19142. A copy of each document was also sent by first-class mail, postage prepaid, to Polk at that residence and mailing address and at his business address shown in the Division's licensing records: 897 12th Street, Hammonton, New Jersey 08037. The certified mail sent to Polk at the mailing address was returned to the Division, stamped "unclaimed." None of the documents sent by first class mail was returned to the Division.

Polk failed to file an answer or other response to the OTSC. On May 7, a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Mary Lou Moran, Esq. appeared for the Division, substituting for Douglas Hale, Esq. Neither Polk nor any person representing him appeared. Ms. Moran reported that Mr. Hale had received no communication from the respondent or from any person purporting to represent him. On May 7, the Division filed its motion for summary decision. On the same date, I issued an order advising Polk to file any response to the motion by May 22, and stating that any argument on the motion would be heard on May 24 at 10:00 a.m., the time initially set for the evidentiary hearing. Polk filed no response to the Division's motion and did not appear at the May 24 hearing. At that hearing Ms. Moran again represented the Division in place of Mr. Hale. She 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.¹ The first-class mail sent to Polk's home and mailing address and to his business address, all as shown on the Division's records, was not returned. I conclude that Polk'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 findings that he is in default. By his default, Polk 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 copies of the following documents attached to it as exhibits: A) Order dated November 21, 2007 from the State Corporation Commission of the Commonwealth of Virginia revoking Polk's Virginia insurance license; B) Order dated February 26, 2009 from the Utah Department of insurance revoking Polk's Utah insurance license; and C) Orders dated August 8, 2008 and May 14, 2009 from the Indiana Commissioner of Insurance, first imposing a fine on Polk for failure to report administrative actions to that state and subsequently revoking his license and increasing the amount of the fine.

Findings of Fact

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

1. Polk was first licensed in Massachusetts as an insurance agent on or about April 21, 1997. He has held no agent licenses since December 26, 2001.
2. Polk was first licensed in Massachusetts as a non-resident insurance producer on September 24, 2003.
3. The Division cancelled Polk's Massachusetts non-resident producer license on November 6, 2009, at Polk's request.
4. On November 21, 2007, the State Corporation Commission of the Commonwealth of Virginia issued an order revoking Polk's Virginia insurance license.

¹ 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.

5. The Virginia order identifies specific actions by Polk that violated the insurance laws of Virginia.
6. According to Division records, Polk did not notify the Division of the Virginia license revocation.
7. On February 26, 2009, the Utah Insurance Department issued an order revoking Polk's non-resident Utah insurance license.
8. The Division, according to its records, did not receive notice of the Utah license revocation until June 30, 2009.
9. On May 14, 2009, the Indiana Department of Insurance entered an order against Polk revoking his Indiana non-resident insurance license and imposing a fine.
10. Attached to the Indiana order are an agreement that Polk entered into with the Indiana Department of Insurance in August 2008, in which he admitted that he had violated the insurance laws of Indiana, and an order from the Indiana Commissioner, dated August 8, 2008, fining Polk for those violations.
11. The May 14, 2009 Indiana order states that Polk failed to comply with the Indiana Commissioner's August 8, 2008 order.
12. The Division, according to its records, did not receive notice of the Indiana license revocation until June 30, 2009.

Analysis and Conclusions of Law

G.L. c. 175, §162R (e) authorizes the Commissioner of Insurance to enforce the provisions of the licensing statutes and to impose remedies or penalties pursuant to those statutes, even if a respondent no longer holds an active license. 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 he 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 two subsections of §162R (a) as grounds for revocation of Polk's license: 1) (a)(2), in pertinent

part, violating any insurance laws or regulation, subpoena or order of the Commissioner or of another state's insurance commissioner; and 2) (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 Polk violated the insurance laws of Virginia and Indiana, as well as an order of the Indiana insurance commissioner. Those findings permit revocation of his Massachusetts insurance producer's license pursuant to §162R (a)(2). The revocation of Polk's insurance producer licenses by Virginia, Utah and Indiana permits the Commissioner to revoke his 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 Polk did not report the Virginia, Utah or Indiana administrative actions to the Division within the statutory time frame. His violation of §162V (a) is an additional basis for revocation of his license pursuant to §162R (a)(2).

On this record, I find that Polk'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 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 Polk, by failing to report three administrative actions by other states, committed three statutory violations. Polk's failure to report license revocations in compliance with his statutory obligations is a serious offense that directly affects his qualifications for a Massachusetts producer license. 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 Dana Brett Polk by the Division are hereby revoked; and it is

FURTHER ORDERED: that Dana Brett Polk shall return to the Division any licenses in his possession, custody or control; and it is

FURTHER ORDERED: that Dana Brett Polk 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 Dana Brett Polk 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 Dana Brett Polk shall pay a fine of Three Thousand Dollars (\$3,000) to the Division within 30 days of the entry of this order.

This decision has been filed this 7th day of June 2010, in the office of the Commissioner of Insurance. A copy shall be sent to Polk 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.