



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

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JOSEPH G. MURPHY
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Paul R. Cooper, Respondent

Docket No. E2010-10

Order on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On June 21, 2010, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Paul R. Cooper (“Cooper”) who holds a Massachusetts non-resident individual insurance producer license. The Division alleges that Cooper failed to notify timely the Division of administrative actions against him in other states and that the circumstances of those actions and Cooper’s failure to report these matters support revocation of his producer license pursuant to the provisions of G.L. c. 175, §162R, (a)(2), and §162V (a). It asks for revocation of Cooper’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 23, 2010, advising Cooper that a prehearing conference would take place on July 20, 2010 and that a hearing on the OTSC would be held on August 3, 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 Adjudatory Rules of Practice and Procedure, 801 CMR 1.00, *et seq.* The Notice advised Cooper 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 Cooper 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 designated me as presiding officer for this proceeding.

On June 24, the Division sent the Notice and OTSC by certified mail to respondent at his home and mailing address and his business address appearing on the Division's records: 3766 Tupelo Lane, Apt. #1707, San Antonio, TX 78229-2213 and 9800 Fredericksburg Road, San Antonio, TX 789288. Copies were also sent to him at each of those addresses by first-class mail, postage prepaid. The post office returned the green card receipt for the certified mail sent to the business address to the Division on July 6.¹ As of July 20, 2010 the certified mail receipt for the documents sent to Cooper's home and mailing address had not been returned. None of the regular first-class mail was returned.

On July 20, a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Robert J. Kelly, Esq. appeared for the Division. Neither Cooper nor any person representing him appeared. Mr. Kelly reported that he had received no communication from the respondent or from any person purporting to represent him. On July 20, the Division filed its motion for summary decision. On that same date, I issued an order advising Cooper to file any response to the motion by August 2, and stating that any argument on the motion would be heard on August 3 at 10:00 a.m., the time set for the evidentiary hearing. Cooper filed no response to the Division's motion and did not appear at the August 3 hearing. Mr. Kelly confirmed 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 OTSC and Notice were sent to Cooper at the business and mailing addresses shown on the Division's licensing records. In addition to the receipt for certified mail indicating acceptance of the OTSC and

¹ The receipt did not include the specific date on which the certified mail was accepted.

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.

Notice at Cooper's business address, the documents sent by first-class mail were not returned to the Division. I conclude that Cooper'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, Cooper 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.

Findings of Fact

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

1. Respondent Paul R. Cooper was first licensed in Massachusetts as a non-resident individual insurance producer on or about July 21, 2005.
2. By letter dated November 20, 2007, the Connecticut Insurance Department notified Cooper that his financial institution had not honored a check for \$80 that Cooper had sent to the State of Connecticut.
3. The letter ordered Cooper to replace the check with a money order and that, if he did not do so within 15 days of receiving the Insurance Department's letter, as required under the Connecticut General Statutes, his license would be revoked.
4. By letter dated May 14, 2010, the Connecticut Insurance Department notified the Division that it had revoked Coopers' Connecticut insurance license on January 8, 2008.
5. Cooper did not notify the Division of the Connecticut administrative action within 30 days of its final disposition.
6. By order dated January 9, 2008, the Insurance Commissioner for the state of Delaware suspended Cooper's Delaware insurance producer's license for a year for failing to report the final disposition of an administrative action taken against him in another jurisdiction within the 30-day time period prescribed by Delaware law.
7. Cooper failed to notify the Division of the Delaware administrative action.
8. On or about September 30, 2008 the South Dakota Division of Insurance entered into a consent order with Cooper to resolve a matter arising from his failure to report the 2007

Connecticut administrative action to South Dakota within the 30-day time period prescribed by South Dakota law.³

9. Cooper timely notified the Division of the South Dakota administrative action.

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 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) specifies fourteen grounds on which the Commissioner may suspend or revoke a producer's license. The Division identifies one subsection of that statute as grounds for revocation of Cooper's license: §162R (a)(2) which, in pertinent part, permits disciplinary action for violating any insurance laws or regulation, subpoena or order of the Commissioner or of another state's insurance commissioner. I conclude, based on the above findings of fact, that Cooper failed to comply with the insurance laws of Connecticut, Delaware and South Dakota, and that such failure is grounds for the revocation of his Massachusetts insurance producer's license.

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 Cooper failed to report the revocation of his Connecticut license within 30 days of the date of revocation and did not report the Delaware suspension in timely fashion.⁴ Cooper's failure to report the Connecticut and Delaware administrative actions within the time specified by §162V (a) violates Massachusetts law. Those two violations of §162V (a) are additional bases for revocation of Cooper's license pursuant to G.L. c. 175, §162R (a)(2).

³ The South Dakota consent order is between that state's Division of Insurance and Paul R. Cooper, Jr. The address given in the order, however, is identical to that for Paul Cooper, the respondent in the Delaware action.

⁴ The Connecticut letter further reports that Cooper replaced the dishonored check in May 2008, and that his license was reinstated on June 17, 2008. Cooper subsequently failed to pay his 2009 renewal fee, resulting in cancellation of his license for non-renewal on October 18, 2009. Delaware agreed to waive the suspension of Cooper's license upon payment of a fine of \$200. The consent order does not indicate whether Cooper paid the fine. In any event, neither the later reinstatement nor waiver of the suspension would relieve Cooper of his obligation to report these administrative actions to the Division.

On this record, I find that Cooper's 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. 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. I find that Cooper, by failing to report two administrative actions by other states, committed two statutory violations. Compliance with the notification requirement is important because it alerts state licensing authorities of issues that could potentially affect residents of their states. 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 Paul R. Cooper by the Division are hereby revoked; and it is

FURTHER ORDERED: that Paul R. Cooper shall return to the Division any licenses in his possession, custody or control; and it is

FURTHER ORDERED: that Paul R. Cooper 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 Paul R. Cooper 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 Paul R. Cooper 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 17th day of August 2010, in the office of the Commissioner of Insurance. A copy shall be sent to Cooper 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.