



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.
James Timothy Shelnut, Respondent
Docket No. E2011-02

Order on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On February 23, 2011, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against James Timothy Shelnut (“Shelnut”) who holds a Massachusetts non-resident individual insurance producer license.¹ The Division alleges that Shelnut failed to notify timely the Division of administrative actions against him in other states and that the circumstances of those actions and Shelnut’s failure to report these matters support revocation of his producer license pursuant to the provisions of G.L. c. 175, §162R, (a)(1), (a)(2), (a)(3) and §162V (a). It also alleges that Shelnut’s actions violate M.G.L. c. 176D, §2. The Division asks for revocation of Shelnut’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 February 24, 2011, advising Shelnut that a prehearing conference would take place on March 29, 2011 and that a hearing on the OTSC

¹ Shelnut is also known as J. Timothy Shelnut.

would be held on April 12, 2011, 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 Shelnut 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 Shelnut 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 February 24, the Division sent the Notice and OTSC by certified mail to respondent at his business and mailing address and his home address appearing on the Division's records: 601 North Belair Road, P. O. Box 211688, Augusta GA 30907 and 6 Retreat Drive, P. O. Box 211688, Augusta, GA 30907. Copies were also sent to him at each of those addresses by first class mail, postage prepaid. The post office returned the green card receipts for the certified mail sent to each address to the Division; those receipts indicated that the mailings were accepted on February 28. None of the regular first class mail was returned to the Division.

On March 29, a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Mary Lou Moran, Esq. appeared for the Division. No answer to the OTSC had been filed, and neither Shelnut nor any person representing him appeared at the conference. Ms. Moran reported that she had received no communication from the respondent or from any person purporting to represent him. On March 30, the Division filed its motion for summary decision. On April 1, I issued an order advising Shelnut to file any response to the motion by April 11, and stating that any argument on the motion would be heard on April 12, at the time set for the evidentiary hearing. Shelnut filed no response to the Division's motion and did not appear at the April 12 hearing. Ms. Moran 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. The OTSC and Notice were sent to Shelnut at the business and mailing and home addresses shown on the Division's licensing records. In addition to the receipts for certified mail indicating acceptance of the OTSC and Notice at each of Shelnut's addresses, the documents sent by first-class mail were not

returned to the Division. I conclude that Shelnut'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, Shelnut 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 James T. Shelnut was first licensed in Massachusetts as a non-resident individual insurance agent on March 17, 1999; that license was converted to a non-resident producer license pursuant to G.L. c. 175, §§162G, *et seq.*, on or about May 16, 2003.
2. The Division cancelled Shelnut's producer license effective June 30, 2003, for failure to renew, but relicensed him as a producer on January 20, 2004.
3. On April 30, 2008 Shelnut entered into a consent order with the State Ethics Commission of the State of Georgia in which he admitted violations of that state's Ethics in Government Act and agreed to pay a \$40,000 civil penalty. The violations consisted of making campaign contributions in excess of state-imposed limits and making such contributions through proxies.
4. Shelnut did not report the action taken by the Georgia State Ethics Commission to the Division within 30 days of its final disposition.
5. On November 4, 2008, Shelnut entered into a consent order with the Office of the Georgia Commissioner of Insurance pursuant to which his resident Georgia producer license was placed on probationary status for twelve months. The Georgia Commissioner of Insurance concluded that Shelnut had committed fraudulent or dishonest practices and shown a lack of trustworthiness or competence to act as an insurance licensee.
6. Shelnut did not report the Georgia administrative action to the Division within 30 days of its final disposition.
7. On or about February 25, 2009, Shelnut submitted an application for an insurance producer's license to the Colorado Division of Insurance. On April 6 of that year, the Colorado Division of Insurance notified Shelnut that he had failed to disclose on that application actions taken against his Alabama, New York and Washington State insurance licenses. It offered him the option of withdrawing his application and resubmitting an application that disclosed those

actions; it also advised him that if he failed to exercise that option his application would be denied.

8. On April 10, 2009 Shelnut agreed to withdraw his Colorado insurance producer application. As part of that agreement, he was informed that his withdrawal would be reported to the National Association of Insurance Commissioners.

9. On or about January 14, 2010, Shelnut submitted to the Division an electronic application to renew his Massachusetts insurance producer's license.

10. Question Two on the renewal application asks the applicant if, since the last renewal date, he or she has been involved in an administrative proceeding regarding any professional or occupational license. "Involved" is defined in the application as including, among other things, being placed on probation or withdrawing an application to avoid a denial of that application.

9. Shelnut answered No to Question Two on the renewal form.

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 three subsections of that statute as grounds for revocation of Shelnut's license: §162R (a)(1) which permits disciplinary action for "providing incorrect, misleading, incomplete or materially untrue information in the license application"; §162R (a)(2) which permits such action for violating any insurance laws or regulations, subpoena or order of the Commissioner or of another state's insurance commissioner; and §162R (a)(3), which permits such action for "obtaining or attempting to obtain a license through misrepresentation or fraud." By failing to report the Georgia administrative action that placed his license on probation and his withdrawal of his Colorado license application on his Massachusetts license renewal application, Shelnut provided incorrect, misleading, incomplete or materially untrue information to the Division and obtained his license through misrepresentation. His action fully supports revocation of his Massachusetts license.

The consent agreement with the Georgia Department of Insurance identifies the Georgia insurance statutes that underlie its disciplinary action and support a finding that Shelnut violated those statutes, an action that permits revocation of his license under §162R (a)(2).

G.L. c. 175, §162V (a) requires a Massachusetts licensed producer to report to the Commissioner any administrative action taken by another state within 30 days of the final disposition. The above findings of fact indicate that Shelnut failed to report the actions by the Georgia Ethics Commission and the Georgia Department of Insurance and the Colorado proceeding relating to his license application to the Division within 30 days of final disposition. His failure to do so violates Massachusetts law.² Those violations of §162V (a) are additional bases for revocation of Shelnut's license pursuant to G.L. c. 175, §162R (a)(2).

On this record, I find that Shelnut'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 Shelnut, by failing to report two administrative actions by other states relating to his insurance producer's license, and one administrative action based on violations of the Georgia ethics laws, committed three statutory violations. Compliance with the requirement to provide complete information on a license application is particularly important because state authorities rely on that information in making decisions about the applicant's eligibility for an initial or renewal license. The statutory obligation to report all administrative actions, whether or not they relate to the producer's license, may provide equally significant information on other issues that are relevant to licensing decisions. 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 James Timothy Shelnut by the Division are hereby revoked; and it is

FURTHER ORDERED: that James Timothy Shelnut shall return to the Division any licenses in his possession, custody or control; and it is

² Although the license application renewal form asks only for information on administrative actions relating to professional or occupational licenses or registrations, §162V (a) requires reporting of all administrative actions.

FURTHER ORDERED: that James Timothy Shelnut 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 James Timothy Shelnut 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 James Timothy Shelnut 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 22nd day of April 2011, in the office of the Commissioner of Insurance. A copy shall be sent to Shelnut 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.