



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

Matthew David Lanza, Petitioner

v.

Division of Insurance, Respondent

Docket No. E2011-06

Decision and Order

I. Introduction and Procedural History

On May 23, 2011, Matthew D. Lanza (“Lanza”) applied to the Division of Insurance (“Division”) for a Massachusetts resident insurance producer license.¹ By letter dated July 29, 2011 (the “July 29 Letter”), the Division’s Director of Producer Licensing (“Director”) denied his application on the grounds that: 1) Lanza’s conduct in connection with the operation in Florida and Georgia of two risk purchasing groups for commercial motor vehicles (collectively, the “Florida Taxi Programs”) violated Massachusetts General Laws Chapter 175, §162R (a)(7) and (a)(8) (“Chapter 175, §162R”); 2) his Florida producer license had been revoked; and 3) Lanza had not presented sufficient evidence of

¹ Lanza was previously licensed as a Massachusetts insurance broker from 1990 until July 7, 2010. He agreed to the revocation of his license at that time as part of an agreement he entered into with the Division to settle its investigation of Lanza’s activities in Florida that led to revocation of his Florida insurance producer license. On July 14, 2010, Lanza applied, pursuant to Massachusetts General Laws c. 175, §166B, for permission to work in the insurance industry in Massachusetts in an unlicensed capacity. On December 6, 2010, the Commissioner gave Lanza permission to work in that capacity for six months, on a probationary basis, until June 31, 2011. On June 29, 2011, the Commissioner allowed him to continue to work in an unlicensed probationary status until December 31, 2011. On December 22, 2011, the Commissioner again permitted him to work in an unlicensed capacity until the later of 30 days after resolution of this proceeding or June 30, 2012.

rehabilitation to overcome the untrustworthiness demonstrated by his conduct in connection with the referenced out-of-state risk purchasing groups.² On August 26, 2011, Lanza appealed the Director's denial.

A notice of procedure, issued on August 29, 2011, scheduled a prehearing conference and evidentiary hearing; those dates were later continued. The Division timely filed its answer. At a prehearing conference on December 8, 2011, the parties submitted a stipulation (the "Stipulation") in which they agreed that credible records in the Division's files, including its investigation files, were sufficient to substantiate each factual allegation in the July 29 Letter, with the exception of statements made in the section titled "Insufficient Evidence of Rehabilitation." They stipulated that that section speaks for itself with respect to the factors that the Director considered in reaching her conclusion. An evidentiary hearing scheduled for January 13, 2012 was subsequently continued to January 25, 2012.

On January 24, 2012, Lanza announced that he had elected to waive an evidentiary hearing and to submit his appeal on the papers, stating that the parties anticipated filing within the next few days a final list of agreed upon exhibits and a list identifying exhibits as to which they would object. On January 25, 2012, I advised the parties that before submitting memoranda setting forth their respective arguments they must first agree on the contents of the evidentiary record, *i.e.*, the documents submitted with or otherwise relating to Lanza's application for a producer license, including materials "on file with the Massachusetts Division of Insurance" that he referred to on his application form, and any affidavits or other documents to which the other party did not object.

On March 20, 2012, at a prehearing conference, the parties agreed that they had seen each other's proposed exhibits but, rather than develop a common exhibit list, each would submit a memorandum together with copies of the documents relied upon to support their arguments. The proposed procedure was approved, and the parties timely submitted their respective memoranda and exhibits.

² Chapter 175, §162R (a)(7) permits the Commissioner to deny an application for an insurance producer license if the applicant has admitted or been found to have committed any insurance unfair trade practice or fraud; ¶(a)(8) permits such denial if the applicant has used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere;

II. The Parties' Documentary Exhibits

With his memorandum, Lanza submitted twenty exhibits marked A through T: his affidavit which, in brief, recounts his history in the insurance business; the July, 2010 settlement agreement between Lanza and the Division; the December 8, 2011 stipulation; the July 29 Letter; seven reference letters dated between March 29, 2009 and February 23, 2010; two letters to the Commissioner of Insurance ("Commissioner") requesting permission to work in the insurance industry in an unlicensed capacity; three letters from the Commissioner allowing him to work in that capacity for limited time periods; four letters relating to Lanza's 2011 producer license application; Lanza's 2011 producer license application; performance reports from his previous employment at an insurance agency; and correspondence relating to sealing his records at the Florida Division of Licensing and Legal Services.

The Division submitted with its memorandum exhibits marked 1 through 5 that include: the July 29 Letter; e-mail communications with the Florida Department of Financial Services about sealing Lanza's records; a 2006 affidavit from Stephen Beatty, Esq., counsel for Lumbermens Mutual Casualty Company, and attached documents relating to the provision of business automobile liability insurance to an organization established by Lanza; a CD-ROM of documents from the Division's investigatory file on Lanza; and depositions taken in connection with actions in Florida.³

III. Factual Background

The Division's memorandum reiterates the factual allegations in the July 29 Letter and provides some additional detail on the transportation insurance schemes that Lanza operated in Florida and Georgia that formed the basis for the Florida and Massachusetts administrative actions that resulted the loss of his producer licenses each of those states. Although in the Stipulation Lanza asserted that he denied some of the factual allegations in the July 29 Letter, he identified no specific facts and offered no evidence that would undercut the accuracy of the Director's statements. As noted above, Lanza conceded that there was sufficient credible evidence in the Division's files to substantiate each one of her factual allegations relating to the denial of his license application.

³ Although the Division listed Lanza's 2011 application as an exhibit, it did not actually submit a copy of the document with its memorandum. However, a copy of the application was submitted as Exhibit P to Lanza's memorandum. The Division also provided printed copies, marked Attachments A, B and C, of three depositions that were included electronically in Exhibit 5.

Lanza began working as an insurance producer in 1990 for Arthur J. Gallagher & Company of Massachusetts (“AJGMA”), a wholly owned subsidiary of Arthur J. Gallagher & Company, Inc. (“AJG”) (collectively, “Gallagher”) and, by 1999, was an area executive vice-president. In May, 1999, he created the first of the two Florida Taxi Programs, the Florida Taxi Program Purchasing Group, a self-insurance or self-funded liability insurance program for taxicabs and limousines in Florida and Georgia. Insurance agencies in both Florida and Georgia placed business with the purchasing group. Lanza did not obtain “first-dollar” insurance coverage for group members, but entered into a contract with the Wausau Insurance Company (the “Wausau Agreement”) pursuant to which it paid claims against purchasing group members and was reimbursed by Lanza up to an aggregate amount. Lanza set the premiums for the program and entered the purchasing group on Gallagher’s books as a client. He received premium payments transmitted by the Florida and Georgia agencies, took a commission from those payments, and placed the remaining funds in a bank account to pay accident claims. By identifying the purchasing group as a Gallagher client, he received credit from his employer for the business in the form of commissions and company bonuses.

Following termination of the Wausau Agreement in July, 2000, Lanza issued to purchasing group members fraudulent certificates of automobile insurance in Wausau’s name. Between July 21, 2000 and May 2001, some members of the purchasing group obtained excess liability insurance coverage from the Calibre One Insurance Company. However, claims made on that excess coverage were denied because the first-dollar coverage allegedly in place was fraudulent. In 2001, Wausau was made aware of the fraudulent certificates and investigated the matter. Lanza, without authority to do so, entered into an agreement with Wausau stating that Gallagher would be responsible for paying all costs and other expenses arising as a result of the fraudulent policies.

In April 2001, the second Florida Taxi Program, the Southern Transportation Association, Inc. (“STA”) was incorporated to, among other things, form a purchasing group to obtain motor vehicle liability insurance for its members. Lanza was its first and only director. Lanza failed to comply with statutes requiring him to notify the State of Florida and the Florida Department of Financial Services that STA intended to do business as a risk purchasing group. From May 21, 2001 to May 21, 2002, Lanza placed motor vehicle liability bonds for members of STA with the Lumbermen’s Mutual

Casualty Company, although bonds do not satisfy Florida statutory requirements for liability motor vehicle insurance.

Lanza created fraudulent insurance policies and issued to STA members fraudulent certificates of motor vehicle liability insurance in Lumbermen's name. The Florida and Georgia agencies that had placed coverage with the Florida Taxi Program Purchasing Group continued to collect premiums from taxi and limousine companies for insurance coverage through STA and send those premiums to Lanza at the Gallagher office in Massachusetts. Again, after collecting the premiums Lanza took a commission and deposited the remaining funds in a bank account to be used to pay claims against STA members.

For the period from August 21, 2002 through July 20, 2003, Lanza obtained legitimate commercial motor vehicle liability insurance for members of STA from the Arch Insurance Company. After that coverage expired, he continued to issue fraudulent certificates of insurance to members of STA until June 2004, when his scheme was uncovered in the course of a Gallagher audit. Gallagher terminated Lanza in June 2004 and filed suit against him in Florida. Both the Florida Attorney General and the Florida Department of Financial Services initiated proceedings against Lanza that resulted in fines, three years of probation, and loss of his Florida insurance licenses. The Division opened an investigation of Lanza in 2004, which was resolved in July 2010 when Lanza agreed to the revocation of his Massachusetts insurance producer license.⁴

IV. The Parties' Arguments

A. Lanza

Lanza argues in his memorandum that the standard applicable to review of a license denial is whether the Director's decision was reasonable, contending that in this case her decision was arbitrary, capricious and an abuse of discretion. He asserts that her conclusions that he failed to present evidence relating to his rehabilitation sufficient to overcome the evidence of untrustworthiness and that he was not suitable for licensure at this time should be overturned in light of evidence of his long and distinguished career in

⁴ Lanza evidently surrendered his Massachusetts producer license in 2008, in connection with the resolution of legal proceedings in Florida. Pursuant to Chapter 175, §162R (e) the Commissioner retains the authority to enforce the provisions of the Massachusetts insurance laws even if a person's license has been surrendered or lapsed by operation of law. The 2010 settlement between Lanza and the Division (Exhibit B to Lanza's memorandum) resulted in revocation of his Massachusetts license.

the insurance industry, the passage of time since the alleged misconduct and “uncontested” facts demonstrating trustworthiness and rehabilitation.

Lanza asserts that the July 29 Letter fails to reconcile the Director’s conclusion about his trustworthiness with the Commissioner’s decisions authorizing him to work in the insurance industry in an unlicensed capacity, pointing out that this authorization was renewed during the pendency of this appeal. Lanza argues that the Director’s decision on trustworthiness is arbitrary and capricious because it is inconsistent with the Commissioner’s determination that he was suitable to work with insureds.

Lanza also argues that the Director’s decision was unreasonable because she disregarded the content of references he provided from individuals, including employers and clients, who praised his ethics, trustworthiness, and knowledge. He asserts, in particular, that her decision was unreasonable because there was no evidence to contradict a letter from Lanza’s current employer about his performance for that agency.

Lanza contends that, during the approximately six years that the Division was investigating him it found no evidence of any improprieties other than those in Florida and Georgia, and made no allegations of misconduct involving any Massachusetts insured. He asserts that, considered in the context of his overall employment in the insurance industry, it is “undisputable” that any misconduct in Florida was the result of an “isolated and uncharacteristic lapse of judgment” in an otherwise unblemished career. Basing a license denial on conduct that occurred out of state some eight years ago and did not involve Massachusetts consumers is, Lanza contends, unreasonable and an abuse of discretion. He argues that the passage of time and his subsequent work in the industry, without any further allegations of impropriety, are sufficient to overcome any evidence of trustworthiness or irresponsibility based on those past acts.

As evidence of his rehabilitation, Lanza contends that he has acknowledged and accepted responsibility for any errors he has made, and complied with all requirements subsequently imposed by regulatory authorities, including substantial fines. He points out that no evidence contradicts his compliance with those obligations. As evidence of his good character and suitability to hold a producer license, he states that he made every effort to cooperate with the Division during its investigation. Further, he asserts, the Director’s decision is based on Lanza’s involvement with the Florida Taxi Programs, which ceased in 2004, and has no bearing on the state of his rehabilitation. He notes as

well that the Division renewed his producer license in 2005, during the time that the Florida Taxi Programs were under investigation.

As further evidence of his suitability to hold a producer license, Lanza points out that he has fulfilled the educational requirements for licensure and has enrolled in continuing education classes to obtain particular insurance designations, such as Certified Risk Manager and Certified Insurance Counselor.

B. The Division

The Division argues that the facts set forth in the July 29 Letter more than satisfy the statutory standards that underlie the Director's denial of Lanza's 2011 application and that substantial evidence also supports her conclusion that Lanza is not suitable to hold a producer's license. It contends that the Director considered the letters Lanza submitted in support of his application and determined that those letters did not demonstrate a sufficient level of Lanza's rehabilitation to overcome the overwhelming evidence of untrustworthiness. Further, the Division argues, any documents Lanza submitted that were prepared after July 29, 2011 were not before the Director and therefore should not be considered on appeal.

V. Analysis

Chapter 175, §162R (a) specifies fourteen grounds on which the Commissioner may deny an application for a producer's license. The subsections of that statute which the Division cites as grounds for its denial of Lanza's application are: 1) §162R (a)(7), admitting or being found to have committed any insurance unfair trade practice or fraud; 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; and 3) §162R (a)(9), having an insurance license revoked in another jurisdiction.

On appeal, Lanza has stipulated that the evidence in the Division's files is sufficient to substantiate the grounds for denying his application, although he continues to assert that he denies some of the factual allegations relating to the Florida Taxi Programs.⁵ According to Lanza's memorandum, the facts in the July 29 Letter are the same as those recited in the settlement agreement that he entered into with the Division in 2010.

⁵ Lanza does not specify which facts he contests and, in any event, indicates that he does not intend to litigate those allegations in this appeal.

Because Lanza chose not to challenge those facts, for the purpose of evaluating the reasonability of a licensing decision based on them, they are accepted as true.⁶

I find that the facts relating to Lanza's actions in connection with the Florida Taxi Programs amply support disciplinary action pursuant to §162R (a)(7) and §162R (a)(8). The facts fully support the Director's conclusion that Lanza's conduct justified denial of his license pursuant to §162R (a)(7) and (a)(8). It is undisputed that Florida law views Lanza's surrender of his Florida insurance license as the equivalent of revocation. The evidence therefore supports disciplinary action pursuant to §162R (a)(9).

For that reason, the sole issue on appeal is whether the Director correctly concluded that that the documentation Lanza offered to support his claim that he has how been rehabilitated was insufficient to outweigh the evidence that supported denial of his producer license application for failure to meet the required standard of trustworthiness. "Substantial evidence," in this context, means such evidence "as a reasonable mind might accept as adequate to support a conclusion." M.G.L. c. 30A, §1 (6); *Alsabti v. Board of Registration in Medicine*, 404 Mass. 547, 549 (1989); *David v. Commissioner of Insurance*, 53 Mass. App. 162, 165 (2001). Lanza cites no authority to support his contentions that the Director's conclusions were erroneous. His arguments fall into three broad categories: 1) general issues relating to license denials; 2) Division actions with respect to Lanza; and 3) issues of rehabilitation.

Lanza first points to the passage of time since the events surrounding the Florida Taxi Programs, arguing that it diminishes their significance as evidence of untrustworthiness. Although it is reasonable to consider the length of time between a license application and incidents that are relevant to the denial of that application, the passage of time is not the sole measure of the weight to be given to past misconduct. It must be balanced with considerations of the scope of the misconduct and the importance of the event in the context of industry standards. *See Alsabti*, 404 Mass. at 551. (Board of Registration in Medicine distinguished the isolated publication of a plagiarized article a decade before initiation of the disciplinary action from Alsabti's publication of a series of

⁶ Lanza apparently took the same position in his request to the Commissioner for permission to work in the insurance industry in an unlicensed capacity. The Commissioner, in his December 6, 2010 letter, noted that Lanza, with full knowledge and legal representation, had voluntarily entered into a settlement agreement with the Division to resolve its investigation of his activities, and that the only issue before the Commissioner was whether to permit him to work in an unlicensed capacity.

such articles, noting that his conduct could not be characterized as a short-lived lapse in judgment.)

Lanza does not contest the relevance of the Florida Taxi Programs to an assessment of his trustworthiness, nor does he assert that his involvement with those programs did not form an adequate basis for the administrative actions that resulted in revocation of his licenses. The facts show that the Florida Taxi Programs were initiated in 1999, continued through a successor to the first risk purchasing group to mid-2004, and involved, according to documents from the Division's investigatory file included in Exhibit 5 to its memorandum, 38 or 39 taxi companies, each of which insured multiple vehicles.⁷ Rather than a short-lived event, it may be reasonably viewed as a good sized operation that continued over a five year period.

Lanza's misconduct in connection with the program involved, among other things, collecting premiums from taxi and livery services, failing to purchase appropriate liability coverage for motor vehicles, and issuing false certificates of coverage. Such actions are serious violations of the insurance laws, with the potential for creating multiple difficulties for both putative insureds and for any person involved in an accident with an uninsured vehicle. Such misconduct is also a significant violation of trust that has been found to support disciplinary actions against other licensees, as well as Lanza, and to be an unfair practice in the business of insurance.⁸ In the circumstances of this case, Lanza's argument that the passage of time is sufficient to outweigh the evidence of untrustworthiness demonstrated by his conduct in connection with the Florida Taxi Programs is not persuasive.

Similarly, Lanza's contention that his misconduct with respect to the Florida Taxi Programs is not significant because it is the single lapse in his long career also lacks merit. The scope and length of the Florida Taxi Programs in their various iterations demonstrate that Lanza's misconduct did not involve a one-shot, short-lived program, but one that was in place for five of his fifteen years at Gallagher. It is implausible to attribute improper activities that take place over time to an isolated lapse of judgment. *See Ginsburg v. Division of Insurance*, DOI Docket No. E89-12, at 8 (1990).

⁷ The smallest groups consisted of ten vehicles; the largest of at least 225.

⁸ *See, e.g., Division of Insurance v. Falzone*, DOI Docket No. E2001-08, 9 (2002); *Division of insurance v. Rowan*, DOI Docket No. E2006-02 (2006).

Even though the Division has identified no other complaints about Lanza, past Division decisions have not viewed the dearth of complaints about a producer's conduct as a reliable index of the person's eligibility for a producer license. *See Janeczek v. Division of Insurance*, DOI Docket No. E96-5 (1996.) Because insurance producers are expected to act in a manner that does not generate complaints, meeting that expectation is not a factor that demonstrates an individual's merit or distinguishes him or her from other members of the producer community.⁹

Lanza's argument that his conduct in connection with the Florida Taxi Programs is less significant because it did not occur in Massachusetts and did not affect any Massachusetts insured has no merit. Chapter 175, §162R (a)(8) specifically refers to conduct occurring in the Commonwealth *or elsewhere*, and does not identify the geographical location of the misconduct as a factor to be considered in determining whether it supports disciplinary action. Furthermore, discovery of the scheme in the course of an audit of Gallagher's Massachusetts office indicates that it was operated, in part, in the Commonwealth.¹⁰

As further evidence of his current qualifications for a producer license, Lanza points to his cooperation with the Division's investigation and his compliance with requirements imposed by regulatory authorities, including payment of substantial fines. He contends that cooperation with regulatory authorities in Florida and Massachusetts is further evidence of his rehabilitation. Lanza identifies no support for the contention that compliance with the obligations imposed by the courts or by regulatory agencies is evidence of his trustworthiness or rehabilitation. Although failure to comply with such obligations might well provide an additional reason for denying Lanza's license application, by meeting them he is doing no more than conform his behavior to standards

⁹ In the context of attorney disciplinary actions, the absence of complaints has been found to be a "typical" mitigating factor that does not affect disciplinary decisions. *In the Matter of Michael G. Moore*, 442 Mass. 285, 294 (2004) (rejecting the argument that the absence of complaints against an attorney justified a lesser sanction.)

¹⁰ The Division submitted as exhibits transcripts of depositions taken in connection with civil litigation in Florida related to Lanza's Florida activities, which indicate that the arrangement between Wausau and the Florida Taxi Risk Purchasing Group was written through Wausau's Boston Office, and that premiums were sent from Florida to Lanza in Massachusetts. Even though no Massachusetts insured may have been the target of the scheme, it obviously had an effect on Gallagher, a Massachusetts business and Lanza's employer.

generally applicable to persons in similar situations. It has little or no weight as evidence of Lanza's current suitability for a producer license.

Lanza argues that the Director's conclusion on his trustworthiness is erroneous because it is inconsistent with the Commissioner's decisions authorizing him to work in the industry in an unlicensed capacity. In support of his position, he attached to his memorandum copies of correspondence from the Commissioner dated December 6, 2010 (Exhibit M), June 29, 2011 (Exhibit Q) and December 22, 2011 (Exhibit T) in which the Commissioner allowed Lanza to work in the insurance industry in Massachusetts in an unlicensed capacity. Because the December 22, 2011 letter was issued long after the Director wrote her decision on Lanza's application, it has no evidentiary value in this proceeding. In his December 2010 letter, the Commissioner gave Lanza permission to work in an unlicensed capacity on a probationary basis, to June 30, 2011.

On June 29, 2011, the Commissioner permitted Lanza to continue to work in that capacity for an additional six months, further stating that because of the nature of the facts underlying the revocation of Lanza's insurance license, permission would continue to be granted on a probationary basis. Neither letter addresses the specific question of Lanza's trustworthiness. Both required Lanza, if he wishing to continue to work in an unlicensed capacity after the specified six-month period, to renew his request, and explicitly stated that the Division made no representations on whether such subsequent requests would be approved or denied.

Chapter 175, §166B, places constraints on the ability of a person whose producer license has been revoked to work in the insurance industry, including as an employee of a licensed producer, without the Commissioner's prior approval. A producer who employs an individual who has not obtained that approval risks possible revocation or suspension of his or her license. Section 166B offers no guidance on the approval process and identifies no particular standard that the applicant must satisfy. Permission to work in an unlicensed capacity does not require formal findings on any of the standards, such as trustworthiness, applicable to approval of a producer license application. The decision in *Division of Insurance v. Rowan*, DOI Docket No. E2006-02, at 15, addressed differences between the issues to be considered in a decision to revoke or deny a license and those relating to a decision on a request under §166B, noting that the latter included the nature of the job duties and the employer's oversight of the individual.

Lanza argues that permission to work in an unlicensed capacity in the industry permits an inference that he satisfies the statutory standards, notably trustworthiness, required to hold a producer's license. His position does not reflect the differences between the statutory authority granted to an unlicensed individual and a licensed producer to solicit and negotiate property and casualty insurance. For example, pursuant to Chapter 175, §162I, only a licensed person may "sell, solicit or negotiate" insurance in the commonwealth. However, Chapter 175, §162 provides an exception for employees of an insurance agent, broker or company who may solicit or negotiate insurance so long as they perform these activities on the employer's premises and "under the immediate direction and general supervision of a duly licensed broker or agent." However, only a licensed individual may sign binders of insurance or insurance policies.

In order to work in an unlicensed capacity, Lanza may not solicit or negotiate insurance away from his employer's office and must be under the immediate direction of a licensed producer. As a licensed producer, he would be under no such constraints or supervision. The statutory system effectively allows an individual who is not eligible for a license to work in the industry with supervision, but places no limits on that individual's ability to develop and utilize specialized knowledge relevant to that work. Although the presence of supervision does not absolutely guarantee that an individual will always act in a trustworthy manner, nevertheless the oversight requirement permitted by statute is a reasonable alternative to requiring every person engaged in marketing property and casualty insurance to hold a producer license.

The Commissioner's approval of Lanza's request to work in an unlicensed capacity limited him to working in circumstances where he would be supervised, a constraint that would not continue if his producer license application were to be approved. If licensed as a producer, Lanza would then be free to engage in business for himself and to receive commissions on business that he places.

In his memorandum, Lanza contends as well that the Division's renewal of his producer license in 2005, when the Florida Taxi Programs were under investigation, constitutes evidence that the Division found him trustworthy at that time. Neither party submitted any evidence relating to the circumstances surrounding the renewal of Lanza's

license in 2005 or any other year.¹¹ Because the record contains no basis on which to draw an inference, much less form a conclusion, attributing any significance to the license renewal, Lanza's argument is purely speculative.¹²

Lanza also argues that his fulfillment of educational requirements and enrollment in continuing education classes to obtain insurance designations all support his claim of sufficient evidence of rehabilitation. By letter dated April 6, 2011, Exhibit N to his memorandum, Lanza asked the Commissioner to approve an application for a producer license. On May 13, 2011, the Director notified him, in a letter attached to his memorandum as Exhibit O, that because it was more than a year since he had been licensed, he was required to file a complete application with the Division, including test scores for the applicable insurance examinations. Passage of those examinations is a prerequisite for anyone who applies for a producer license, and has no evidentiary value with respect to determining whether Lanza is trustworthy.

Similarly, Lanza's argument that taking continuing education courses demonstrates rehabilitation is without merit. Chapter 175, §177E, requires all producers to take continuing education courses in order to retain their licenses. That Lanza apparently took them while he was not licensed may support his position that he is dedicated to the insurance industry and very much wants to return to it. It does not, however, alter the conclusion that completion of courses is not so unique or extraordinary that it is evidence of rehabilitation. *See Janeczek v. Division of Insurance*, DOI Docket No. E96, at 5.

Similarly, statements that Lanza has completed courses that will give him particular insurance industry designations, such as that of "Certified Risk Manager," are not evidence of rehabilitation. On documents relating to the Florida Taxi Programs that the Division submitted into evidence, Lanza identifies himself as an "ARM," an acronym for "Associate in Risk Management." Performance appraisals from Gallagher, attached to Lanza's memorandum as Exhibit R, refer to his pursuit of professional designations, and indicate that he was pursuing the "Certified Risk Manager" designation in April 2004. The

¹¹ In the affidavit attached to his memorandum as Exhibit A, Lanza refers to the renewal of his Massachusetts producer license in 2007. The year of the alleged renewal is irrelevant to his argument.

¹² Lanza's memorandum refers to Exhibit P and "licensing documents on file with the Division of Insurance." Exhibit P consists of his 2011 application. Lanza attached copies of no past license applications, and no such documents are in the record.

acquisition of designations is consistent with Lanza's past history, and is therefore not so unique as to constitute evidence of rehabilitation.

Exhibits E through K and M to Lanza's memorandum consist of letters that he offers as evidence of rehabilitation to support his producer license application. The July 29 Letter acknowledges reviewing and considering the content of eight letters that Lanza submitted either with his license application or in connection with his request to work in the insurance industry in an unlicensed capacity.¹³ Lanza argues that the Director failed to give sufficient weight to these documents. Based on my review, I find that the Director correctly concluded that these materials do not provide evidence of rehabilitation sufficient to overcome the evidence supporting denial of Lanza's license application.

For purposes of determining their evidentiary value, the statements that Lanza offers as proof of his rehabilitation constitute hearsay evidence. Chapter 30A, §11 (2) states that agencies conducting adjudicatory proceedings need not observe the rules of evidence observed by courts but further notes that evidence may be admitted and given probative effect "only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs." I have therefore reviewed the documents that Lanza submitted to the Director to determine the extent to which they provide reliable information relevant to issues of rehabilitation.¹⁴

Lanza applied for his producer license in May 2011. Only one of the seven letters attached as exhibits to Lanza's memorandum was written in 2011; that is a letter dated March 25, 2011 to the Commissioner from Roy Solomon, a principal at Amity Insurance Agency where Lanza was employed in a non-licensed capacity, requesting the Commissioner to reinstate Lanza "permanently." The earliest of the other six letters was dated March 29, 2009, the others were written in January and February, 2010. All are addressed "To Whom it May Concern." None of them refers to the licensing process, and Lanza explains neither their context nor the purpose for which they were written. Such non-specific letters have little, if any, evidentiary value.

¹³ Exhibit K, a letter from State Representative Thomas Colter dated February 23, 2010, does not appear on the list of letters the Director considered, and therefore is not relevant to a review of the support for her decision. Lanza's exhibits do not include a letter on the Director's list from Roy Solomon, dated September 3, 2010.

¹⁴ Lanza, at a prehearing conference on December 8, 2011, indicated that he intended to call as witnesses some authors of the letters submitted to the Director. Because he subsequently he elected to waive a hearing, there was no opportunity to cross-examine the authors, explore the bases for their letters of reference, or assess their credibility.

Of the three letter writers who refer to Lanza's problems in Florida, none acknowledges the seriousness of his actions, addresses the circumstances in which it occurred, or the possibility of recurrence. Rather, they characterize his actions as a mistake, a "lapse of judgment" and "uncharacteristic."¹⁵ Because they fail to address issues relevant to assessing rehabilitation, these letters do not support Lanza's positions.

Letters from other correspondents make no reference at all to Lanza's past conduct; two customers in the transportation industry for whom Lanza obtained insurance refer, respectively, to no longer having to bid for insurance and to a switch from a traditional insurance program to an alternative funding approach. Neither writer offers details on the programs involved or provides a chronology of his transactions with Lanza. Lanza's 2011 license application was denied because of misconduct in connection with a fraudulent transportation insurance scheme. The customer statements, rather than support Lanza's claim of rehabilitation, raise questions about his activities related to the development of alternative transportation insurance programs.¹⁶

Lanza also relies on correspondence from his current employer as support for his eligibility for a producer license, as well as a series of evaluations from Gallagher covering the period from 1994 through 2003. None of those evaluations reflect Lanza's involvement with the Florida Taxi Programs, and therefore provide a less than complete picture of his work during that period. That Lanza pursued his improper activities during his tenure at Gallagher demonstrates a capacity to commit serious violations of the insurance laws in the course of his employment without regard to the interests of insureds or his employer. When a 2004 audit uncovered the Florida Taxi Programs, Gallagher promptly terminated Lanza and subsequently initiated civil litigation against him. It is apparent that Gallagher, in considering Lanza's future at that agency, did not view Lanza's successes as a producer as sufficient to outweigh his actions in connection with the Florida Taxi Programs.¹⁷

¹⁵ See, Exhibits F, I, and J attached to Lanza's memorandum.

¹⁶ Lanza, in Paragraph 7 of his affidavit (Exhibit A to this memorandum) states that, after his termination from Gallagher, he joined the Amity Insurance Agency's risk management division.

¹⁷ Exhibit F to Lanza's memorandum is a January 8, 2010, letter from the former president of Gallagher's Massachusetts subsidiary, commenting on Lanza's work at the agency and suggesting that his termination might have been handled differently. The Division submitted as an exhibit (attachment B to its memorandum) the 2007 deposition of Gayton Tis, Gallagher's retired director of internal audit, taken in connection with a Florida proceeding against Lanza. Mr. Tis testified that the writer of Exhibit F was no longer at Gallagher.

As evidence of his rehabilitation, Lanza contends that he has acknowledged and accepted responsibility for any errors he has made. In support of his position, he cites to Exhibits A and L to his memorandum. Exhibit A is Lanza's undated January 2012 affidavit. Exhibit L is the Commissioner's response to Lanza's July 10, 2010 letter requesting permission to work in the insurance industry in an unlicensed capacity. In his affidavit, Lanza asserts that the investigations of the Florida Taxi Programs devastated his family and concedes that he made mistakes. He asserts that he has learned from his mistakes, presents no current risk, and has already been subject to significant penalties. He notes that he has paid "hundreds of dollars" in penalties and attorneys fees, was unable to work in the industry for a period of time, damaged his reputation and created stress and financial hardship for his family. He reiterates his dedication to the industry, and contends that he now has a more profound appreciation of his obligations and responsibilities.

As noted above, Lanza's decision to waive his hearing prevented the Division from cross-examining him on the statements in this affidavit.¹⁸ Even assuming, *arguendo*, the accuracy of his statements, Lanza's affidavit offers limited support for his claim of rehabilitation. He does not, for example, explain his reasons for initially devising the program or show that the impetus or opportunity for engaging in such misconduct no longer exists. Lanza avers that he now "truly understands" the trust that insureds place in their insurance producers. Although he asserts that he now better understands his responsibilities, he contends at the same time that, outside of the Florida Taxi Programs, he otherwise handled all transactions "in the ethical and responsible manner of a trustworthy insurance professional." He does not indicate why or how his understanding of the basic concept of trustworthiness, or how his concept of his responsibilities as a producer has changed.

Lanza has a palpable interest in participating in the insurance industry as a licensed producer, rather than as an employee, and his dedication to increasing his knowledge and acquiring professional designations is acknowledged. Lanza's current employer describes him as a knowledgeable and valued employee who is dedicated to servicing the agency's

¹⁸ Exhibit L simply quotes representations that Lanza made in his request to the Commissioner to work in the industry. It therefore has no evidentiary value as to the accuracy of Lanza's statements.

clients.¹⁹ However, as Lanza's record demonstrates, his past acquisition of knowledge and his status, first as a licensed broker and then as a licensed producer, did not prevent him from committing serious violations of the insurance laws in connection with the Florida Taxi Programs.²⁰ What is at issue is not the degree of his knowledge, but the use to what he put that knowledge in connection with the Florida Taxi Programs.

IV. Conclusion and Order

After careful review of the record in this matter, I find that the Director of Producer Licensing correctly determined that Matthew D. Lanza did not offer sufficient evidence of rehabilitation to outweigh the evidence that supported denial of his 2011 application for a Massachusetts insurance producer license on the grounds that he failed to meet the required standards of trustworthiness and suitability. Her decision is hereby upheld.

DATED: June 29, 2012

Jean F. Farrington
Presiding Officer

This decision may be appealed to the Commissioner of Insurance pursuant to G. L. c. 26, §7.

¹⁹ These characteristics might well support a determination that Lanza satisfies any requirement of competence. The Director, however, did not deny Lanza's application on the ground that he was not competent.

²⁰ Lanza was initially licensed in 1990 as an insurance broker. As a result of passage of Chapter 106 of the Acts and Resolves of 2002, after January 1, 2003 a single producer license replaced separate agent and broker licenses.