



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

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COMMISSIONER OF INSURANCE

Philip G. Haddad, Jr., Petitioner

v.

Division of Insurance, Respondent

Docket No. E2011-08

**Order on Respondent's Motion
For Summary Decision**

Procedural History

On or about July 28, 2011, Philip G. Haddad, Jr. ("Haddad") submitted to the Division of Insurance ("Division") an application for a business entity insurance producer license for the National Memorial Insurance Agency, Inc. ("National Memorial"). By letter dated October 24, 2011, the Division's Director of Producer Licensing ("Director") denied the application because Haddad, the applicant's president, treasurer and secretary, had been shown to have: 1) been "using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere"; and 2) engaged in selling, soliciting and negotiating an insurance product without being licensed as an insurance agent or producer.

The Director's October 24, 2011, letter informed Haddad that he could appeal her decision, and enclosed a form to be filed with the Division's docket clerk. Rather than submit the form, which asks the petitioner to state the grounds for an appeal, Haddad advised the Division that he intended to appeal the Director's decision but, after reviewing the Director's file relating to the denial of National Memorial's application, he believed that not all documents relating to her decision were in the file and therefore could not complete the Division's appeal

form.¹ On November 28, 2011, Haddad reaffirmed his intent to appeal the denial of National Memorial's application, and again asserted that he could not complete the Division's form until resolution of his appeal to the Secretary of the Commonwealth challenging the Division's response to his request for documents relating to the Director's decision on its application.

A notice of procedure was issued on December 2, 2011, ordering the Division to file an answer and setting dates in January 2012 for a prehearing conference and an evidentiary hearing. The Division filed its answer on December 6, 2011, and served copies on Haddad by both certified and first class mail. On December 14, 2011, Haddad, representing himself, requested from Douglas Hale, Esq., counsel for the Division, continuances of the scheduled dates to, respectively, January 24 and February 14, 2012; the Division did not object and Haddad's request was allowed. The Division moved for summary decision on January 12, 2012, asking that the motion be heard on January 24, 2012. Haddad was ordered to file any written response to the motion by January 20, 2012. On January 16, 2012, he again requested continuances from Mr. Hale, asserting that he had not yet been provided with certain documents and records purportedly relied upon by the Director in reaching her October 24, 2011 decision. The Division did not object to Haddad's request to continue the prehearing conference to February 7, 2012, and the evidentiary hearing to February 28, 2012, as long as its motion for summary decision was heard on February 7, 2012.

On January 19, 2012, Haddad's request was allowed with respect to continuing the prehearing conference to February 7, 2012; he was advised that the parties were to make oral argument on the Division's motion at that time, and that he should file any written response by February 3, 2012. On January 31, 2012, Haddad requested an indefinite continuance of this matter, again arguing his belief that documents "supportive" of the Director's decision were missing. His request for a continuance was denied on February 3, 2012, and he was ordered to

¹ Haddad copied me, as Presiding Officer in this matter, on his December 8, 2011 letter to William Galvin, Secretary of the Commonwealth, appealing the Division's response to his request, pursuant to the Public Records Law, M.G.L. c. 66, for documents that he believed were missing from the Director's file on National Memorial's producer license application. In brief, he stated that when he reviewed her file on November 9, 2011, he determined that "many essential pertinent records and documents were missing." The Division informed him that the only documents not in the file were a few items withheld under the attorney-client privilege. On November 17, 2011, Haddad sent the Division a list of documents that he believed would have had to exist in the normal course of making a determination affecting his rights. The Division responded that it had no documents responsive to his request and provided a log of the privileged documents. Haddad's requests for continuances consistently reiterate his belief that the Division has "missing, concealed and secretive" records in its possession that were purportedly "supportive" of the Director's October 24, 2011 decision. As of February 6, his appeal to the Supervisor of Public Records remained open.

appear at the February 7, 2012, prehearing conference. By letter dated February 6, 2012, he stated that he could not prepare an appeal until he had seen certain documents purportedly relied on by the Director to support her decision and would not be present at the conference.

The prehearing conference took place as scheduled on February 7, 2012. Mr. Hale and Mary Lou Moran, Esq. appeared for the Division. Neither Haddad nor any person representing him appeared. Mr. Hale reported that he had received no communication from Haddad more recent than his February 6, 2012 letter, and no communication from any person purporting to represent Haddad.

Arguments on the Division's Motion for Summary Decision

Pursuant to 801 CMR 1.01 (7)(h), a motion for summary decision is appropriate when a party to an adjudicatory proceeding is of the opinion that there is no genuine issue of fact relating to all or part of a claim or defense and he is entitled to prevail as a matter of law. The Division argues that summary decision is appropriate in this proceeding because Haddad failed to allege that the Director did not have a substantial basis for her decision to deny National Memorial's application or that the denial was an abuse of discretion. It argues that there are no genuine issues of fact because, after a full hearing in an adjudicatory proceeding before the Board of Registration of Funeral Directors and Embalmers ("Board of Registration") arising out of Haddad's business as a funeral director, the Board of Registration issued a Final Decision and Order incorporating findings of fact and rulings of law that was affirmed on appeal, first by the Superior Court and subsequently by the Massachusetts Appeals Court in a decision issued pursuant to its Rule 1.28.² The Division argues that the principle of issue preclusion prohibits Haddad from contesting the facts and rulings found in the Board of Registration decision. It contends that those findings of fact and ruling of law are binding on Haddad and fully support the Director's decision.

Haddad filed no written response to the Division's motion for summary decision and elected not to appear at the hearing on that motion. He takes the position that he cannot respond because he has been unable to review all the records and documents that, he alleges, supported the Director's decision. In his January 31, 2012 letter requesting an indefinite continuance of this matter, Haddad asserts that the Director made erroneous statements of fact and that his testimony before the Board of Registration, which was not in the record before her, would

² *Haddad v. Board of Registration of Funeral Directors and Embalmers*, 80 Mass. App. 1104 (2011).

contradict her conclusions. He further asserted that the Board of Registration "intentionally circumnavigated" around the Division.³ His arguments are not persuasive, and I find no reason to delay a decision on the Division's motion.

Analysis and Discussion

Haddad's argument that he is unable to specify the grounds for his appeal or to respond to the Division's motion for summary decision without access to additional purported documents misconstrues the nature of this appeal. Petitioner's burden is to present evidence sufficient to prove that the record before the Director did not support her decision or that she applied a legally incorrect standard. Even assuming, *arguendo*, that she reviewed documents other than those referenced in her decision, the sole issue for consideration on appeal is whether the documents that she did specify as the basis for that decision support her reasons for denying the application.

The Division's answer to Haddad's appeal consists of the following documents: 1) the National Memorial application form, including a reference to the proceeding before the Board of Registration; 2) the October 24, 2011 Letter denying National Memorial's application; 3) the Final Decision and Order of the Board of Registration in the Matter of Phillip [sic] G. Haddad, Jr., Docket Nos. EM-04-124, 126, 184 (March 12, 2007) and 4) the Massachusetts Appeals Court decision affirming the decision of the Board of Registration. The Director's letter specifically states that her decision is based on conduct described in the Board of Registration's findings of fact and on conduct that Haddad disclosed in his testimony before the Board that makes clear that he was engaged in selling, soliciting and negotiating an insurance produce without being licensed to do so.

The Board of Registration's findings amply support the Director's decision to deny National Memorial's producer license application on the grounds that Haddad, while working as a funeral director, engaged in "fraudulent, coercive or dishonest practices" or demonstrated "incompetence, untrustworthiness or financial irresponsibility in the conduct of business." Under G.L. c. 112, §61, the Board of Registration is authorized to discipline a funeral director's license if it determines that the licensee has engaged in conduct which places into question the holder's competence to practice the profession, violated any law, rule or regulation of that Board, or engaged in dishonesty, fraud or deceit which is reasonably related to the practice of the profession. 239 CMR 3.13, the Board of Registration regulations prescribing a code of conduct

³ Haddad offers no explanation for this assertion; the proceeding before the Board of Registration occurred long before Haddad incorporated National Memorial and applied for its business entity insurance license.

and professional ethics for funeral directors, among other things prohibits unfair and deceptive practices and certain business acquisition practices, and requires fairness in dealing with competitors. 239 CMR 4.02 regulates the creation and content of pre-need funeral contracts; 239 CMR 4.12 establishes recordkeeping requirements for funeral directors. The Board of Registration found that Haddad's conduct violated regulations prohibiting unfair and deceptive practices, that he had engaged in prohibited business activities, and failed to comply with mandated business practices. It concluded that his actions constituted deceit, gross misconduct and unprofessional conduct in the practice of funeral directing. The Director correctly concluded that the Board of Registration's decision provided a sound basis for denying National Memorial's application pursuant to c. 175, §162R (a)(8).

The second stated reason for the Director's decision is Haddad's alleged sale, solicitation or negotiation of insurance policies without an appropriate license, in violation of G.L. c. 175, §162I. Haddad's contention that her conclusion is erroneous and that his testimony before the Board of Registration would support reversal of that basis for denying National Memorial's application again misunderstands the nature of this proceeding. Haddad is bound by the Board of Registration's findings of fact relating to his involvement in insurance transactions. He had an opportunity to dispute the accuracy of those findings in the courts; the outcome on appeal was affirmation that the evidence was sufficient to support the Board of Registration's decision.⁴ Even if Haddad had submitted his testimony with the National Memorial application, the Director has no authority to set aside the Board of Registration's findings of fact. Her task is to determine whether those facts support a conclusion that Haddad's conduct violated the insurance statutes.

A review of the Board of Registration's findings amply supports the Director's conclusion. Finding 110 reports Haddad's own testimony that he was transferring funds from bank accounts used to fund pre-need funeral arrangements to insurance policies. Other findings based on documents and testimony from Haddad's colleagues provide more specific information the actions he took in connection with effectuating those transfers. Findings 83 and 104 refer to a document in which Haddad advised a customer that he had decided to transfer her funds to an insurance policy with the Columbian Life Insurance Company ("Columbian"). Findings 86 and 88 refer to Haddad's meetings with a representative of Columbian at which they discussed

⁴ *Haddad v. Board of Registration of Funeral Directors and Embalmers*, supra, fn. 1.

procedures for applying for the Columbian policies. Findings 87 and 89 refer to Haddad's practice of bringing filled out insurance applications to Michael Constantinou, who was at the time a licensed insurance agent and signed the applications in that capacity. Finding 95 states that Haddad also signed assignments of insurance policy proceeds as policy owner and as the funeral establishment to which the proceeds were assigned. Findings 97 and 98 report that Constantinou received commissions from Columbian and paid them over to Haddad. On this record, I find no reason to overturn the Director's conclusion that Haddad's testimony showed that he engaged in the sale, solicitation or negotiation of insurance without a license to do so.

Conclusion

For the above reasons, the Division's Motion for Summary Decision is allowed. The Decision of the Director of Producer Licensing denying the National Memorial Insurance Agency, Inc.'s application for an insurance producer license is hereby affirmed.

DATED: February 9, 2012

Jean F. Farrington
Presiding Officer

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