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DIVISION OF INSURANCE

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JOSEPH G. MURPHY
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Karina Carr-Epstein, Respondent

Docket No. E2012-05

Order On Petitioner's Motion for Summary Decision

On August 2, 2012, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Karina Carr-Epstein ("Carr-Epstein"), a licensed Massachusetts non-resident individual insurance producer. The Division alleges that Carr-Epstein failed: 1) to maintain an insurance producer license in her home state of Maryland, thus rendering her ineligible, pursuant to Massachusetts General Laws Chapter ("Chapter") 175, §162N (a), to hold a non-resident producer license in Massachusetts; and 2) to notify the Division of an administrative order issued by the State of Arkansas suspending her producer license in that state, a violation of Chapter 175, §162V (a).

The Division further alleges that Carr-Epstein's violations of Chapter 175, §§162N(a) and 162V(a), as well as of the Arkansas insurance laws, support revocation of her Massachusetts license pursuant to Chapter 175, §162R (a)(2), which authorizes disciplinary action against a licensed producer if the licensee has violated any insurance law. The Division seeks revocation of Carr-Epstein's license and orders requiring her to dispose of any insurance-related interests in Massachusetts, prohibiting her from conducting any insurance business in the Commonwealth, and imposing fines for the alleged violations.

A Notice of Procedure ("Notice") was issued on September 4, 2012, advising Carr-Epstein that a prehearing conference would take place on October 5, 2012 and that a hearing on the OTSC would be held on October 19, 2012, both at the offices of the Division. It further advised her that the hearing would be conducted pursuant to Chapter 30A and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00, *et seq.* The Notice advised Carr-Epstein to file an answer pursuant to 801 CMR 1.01(6)(d) and that, if she 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 Carr-Epstein that, if she failed to appear at the prehearing conference or hearing, an order of default, summary decision or decision on the pleadings might be entered against her. The Commissioner of Insurance ("Commissioner") designated me as presiding officer for this proceeding.

The Division sent copies of the Notice and OTSC by certified mail to respondent at the three addresses shown in the Division's licensing records: 1) 206 River Way Court, Apartment 103, Owings Mills, MD 21117 (Residence); 2) 1203A West Loop 281, Longview, TX 75604 (Business); and 3) P. O. Box 6377, Longview, TX 75608 (Mailing.) A copy of each document was also sent by first-class mail, postage prepaid, to Carr-Epstein at each of these three addresses. The certified mail sent to Carr-Epstein at the residence and business addresses was returned to the Division with notations that she no longer resided or worked at those locations. The first class mail sent to the residence address was also returned to the Division with the note that the Post Office had no forwarding address on file. However, the first class mail sent to the business and mailing addresses was not returned to the Division.

Carr-Epstein failed to file an answer or other response to the OTSC. On October 5, 2012, a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Mary Lou Moran, Esq. appeared for the Division. Neither Carr-Epstein nor any person representing her appeared. Ms. Moran reported that she had received no communication from the respondent or from any person purporting to represent her. Following the prehearing conference, the Division filed its motion for summary decision. On the same date, I issued an order advising Carr-Epstein to file any response to the motion by October 17, 2012, and stating that any argument on the motion would be heard on October 19, 2012, at 10:00 a.m., the time initially set for the evidentiary hearing. Carr-Epstein filed no response to the

Division's motion and did not appear at the October 19, 2012 hearing. At that hearing, Ms. Moran stated that neither the respondent nor any person representing her 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 Carr-Epstein's business and mailing addresses, all as shown on the Division's records, was not returned. I conclude that her failure to respond to the OTSC and to appear at the prehearing conference or at the hearing all support a finding that she is in default. By her default, Carr-Epstein has waived her 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, the documents attached to it as Exhibit A (licensing information from Maryland) and B, (Suspension Order from the Arkansas Insurance Department dated January 19, 2012 and licensing record from the National Association of Insurance Commissioners ("NAIC")) and a copy of Carr-Epstein's application for a Massachusetts Non-Resident Insurance Producer License, filed at the October 19, 2012 hearing.

Findings of Fact

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

1. Carr-Epstein was first licensed as a Massachusetts non-resident insurance producer on or about March 11, 2010.
2. On her application for a Massachusetts non-resident producer license Carr-Epstein identified her home state as Maryland and listed a residential address in Owings Mills, Maryland.
3. Carr-Epstein's Maryland producer license was issued on December 6, 2009 and expired on December 6, 2011.

¹ Chapter 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. . .". G.L. c. 4, §7, ¶44, provides that "Registered mail", when used with reference to the sending of notice or of any article having no intrinsic value shall include certified mail."

4. On January 19, 2012, the Arkansas Insurance Department issued an order summarily suspending Carr-Epstein's Arkansas non-resident insurance producer's license.
5. The Arkansas order advised Carr-Epstein that the suspension would be lifted if she presented evidence that her home state license was active and in good standing, and that she could request an administrative hearing within 30 days of the date of the suspension order.
6. Records from the NAIC Regulatory Information Reporting System, dated May 22, 2012, indicate that the suspension order was not lifted.
7. Carr-Epstein failed to notify the Division of the Arkansas Insurance Department administrative action within 30 days after it became final.

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, and on the uncontested facts in the OTSC. I find that respondent's failure to comply with the directives in the Notice warrant a finding that she is in default. Because 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.

Chapter 175, §162R (a)(2) allows the Commissioner to revoke an insurance producer's license and to level civil penalties for, among other things, violations of any insurance laws. The Division seeks revocation of Carr-Epstein's license for violations of two sections of Chapter 175: §162N (failure to maintain a producer's license in her home state), and §162V(a) (failure to report a disciplinary action taken by another state within 30 days of the final disposition.)

I conclude that the above findings of fact fully support the Division's claims and its request for relief. On this record, I find that Carr-Epstein's Massachusetts producer license should be revoked, that she should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and that she should be required to dispose of any interests she may have in any insurance business in Massachusetts. As noted above,

Chapter 175, §162R (a) permits the Commissioner to levy a civil penalty in a disciplinary action. The maximum amount of the penalty, \$1,000 per violation, is that set out in Chapter 176D, §7.

I find that Carr-Epstein, by failing to maintain her Maryland producer license and failing to report the Arkansas administrative action, violated two Massachusetts insurance statutes. Her failure to comply with her statutory obligations is a serious offense that directly affects her eligibility and 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 Karina Carr-Epstein by the Division are hereby revoked; and it is

FURTHER ORDERED that Karina Carr-Epstein shall return to the Division any licenses in her possession, custody or control; and it is

FURTHER ORDERED that Karina Carr-Epstein 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 Karina Carr-Epstein 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 Karina Carr-Epstein 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 13th day of March 2013, in the office of the Commissioner of Insurance. A copy shall be sent to Carr-Epstein by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

Jean F. Farrington
Presiding Officer

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