



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.
Lester Williams, Respondent

Docket No. E2012-10

Order and Decision on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On November 9, 2012, the Division of Insurance (“the Division”) filed an Order to Show Cause (“OTSC”) against Lester Williams (“Williams”), a licensed Massachusetts non-resident individual insurance producer. The Division asserts four claims against Williams under Massachusetts General Laws Chapter 175 (“Chapter 175”). The Division claims that he “violated” Chapter 175, § 162R(a)(9) (“§ 162R(a)(9)”) because North Carolina suspended his resident North Carolina insurance license. It claims that he “violated” Chapter 175, § 162N(a) (“§ 162N(a)”) because he failed to maintain an insurance license in good standing in North Carolina, his state of residence. It claims that he failed to report a North Carolina insurance license administrative action in violation of Chapter 175, § 162V(a) (“§ 162V(a)”). It claims that Williams “violated” Chapter 175, § 162R(a)(2) (“§ 162R(a)(2)”) because he violated both Massachusetts and North Carolina insurance laws. The Division seeks the revocation of all Williams’ Massachusetts insurance licenses and maximum civil penalties pursuant to Chapter 175, § 194 (“§ 194”) and Massachusetts General Laws Chapter 176D, § 7 (“§ 7”).

A Notice of Procedure (“Notice”), issued on November 9, 2012, informed Williams that a prehearing conference would take place on December 14, 2012, and a hearing on the OTSC would be held on January 15, 2013. It also notified Williams that the hearing would be

conducted pursuant to Massachusetts General Laws Chapter 30A and the Formal Rules of the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01, *et seq.* The Notice advised Williams to file an answer to the OTSC within 21 days of its receipt 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 further notified Williams that failure to appear at the prehearing conference or hearing could mean that an order of default, summary decision or decision on the pleadings might be entered against him.

The Division sent the Notice and OTSC to Williams by certified mail and first-class mail to the two addresses that were on record in the Division's licensing records. His business and mailing address was on record as Connexions, 4601 Corporate Drive NW #115, Concord, North Carolina 28027; his residential address was on record as 9726 Ashburton Drive, Charlestown, North Carolina 28216. The first-class mail to the two addresses was not returned to the Division. The certified mail to Williams' business and mailing address was accepted, and a return receipt card was received by the Division. The certified mail to Williams' residential address was returned to sender as unclaimed, unable to be forwarded.

A prehearing conference was held pursuant to 801 CMR 1.01(10)(a) on December 14, 2012. Robert J. Kelly, Esq., appeared for the Division. Williams did not attend the prehearing conference, nor did any person representing him. Attorney Kelly reported that the Division had received no communication from Williams or from any person purporting to represent him with respect to the matter.

Following the prehearing conference, the Division, pursuant to 801 CMR 1.01(7)(h), filed a written motion for summary decision ("Motion"). The Division sent the Motion to Williams by first-class mail to Williams' record business and mailing address and his record residential address. The first-class mail to Williams' residential address was not returned to the Division. The first-class mail to Williams' business and mailing address was returned to the Division as unclaimed, no forwarding address.

I issued an order ("Order") on December 14, 2012, that advised Williams to file any response to the Motion by January 8, 2013, and informed him that argument on the Motion would be heard on January 15, 2013, the time initially set for an evidentiary hearing on the OTSC. The first-class mail of the Order to Williams' record residential address was not returned

to the Docket Clerk; however, the first-class mail of the Order to Williams' record business and mailing address was returned as not deliverable as addressed, unable to forward.

Attorney Mary Lou Moran, Esq., appeared for the Division at the hearing on the Motion that was held on January 15, 2013. Williams did not appear at the January 15 hearing, nor did he file a response to the Division's Motion. Attorney Moran stated at the hearing that neither Williams nor any person purporting to represent him had communicated with the Division with respect to the matter.

Finding of Default

The Division took appropriate actions to ensure proper service, and sufficient service was made. Massachusetts insurance producers are required by Chapter 175, § 162M(f), to inform the Commissioner of Insurance of a change of address within 30 days of the change. The Division sent the Notice and OTSC to Williams by certified mail and first-class mail to the two addresses on record in the Division's licensing records.

Williams' 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 on the Motion, warrant finding that he is in default. By his default, Williams has waived his right to proceed further with an evidentiary hearing and I may consider the Motion on the merits of the matter based solely upon the OTSC and the exhibits attached to it. No genuine issue of fact has been raised in connection with the Division's claims, and I find that it is entitled to prevail as a matter of law.

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. Williams was licensed as a resident insurance producer in North Carolina.
2. Williams first was licensed as a Massachusetts non-resident individual insurance producer pursuant to Chapter 175, § 162G *et seq.*, effective November 1, 2010.
3. The North Carolina Department of Insurance suspended Williams' North Carolina resident insurance license on or about July 28, 2011 ("North Carolina Administrative Action").
4. Williams' North Carolina insurance license remained suspended through October 31, 2012, the last day of his current North Carolina continuing education compliance period.
5. Williams never notified the Division of the North Carolina Administrative Action.

Analysis and Conclusions of Law

6. Williams violated the mandate of § 162V(a) by failing to report to the Division the North Carolina Administrative Action within 30 days of final disposition.

7. Williams' failure to report to the Division the North Carolina Administrative Action, in violation of § 162V(a), constitutes a violation of a Massachusetts insurance law. His failure therefore is a basis under § 162R(a)(2) for disciplinary action against him. It is imprecise to speak of a "violation" of § 162R(a)(2); that provision is the second of 14 "causes" that are listed in § 162R(a) as possible grounds for discipline.

8. Having his North Carolina insurance license suspended by the North Carolina Department of Insurance constitutes grounds under § 162R(a)(9) for disciplinary action against Williams by Massachusetts. The suspension of Williams' North Carolina insurance license is the result of the application of the insurance licensing law or regulations of North Carolina. It is imprecise to speak of Williams' suspension by North Carolina as constituting a "violation" of § 162R(a)(9).

9. Williams is ineligible, under § 162N(a), for a Massachusetts non-resident insurance license because North Carolina, the state of his residence, suspended his North Carolina resident insurance license.¹ The ineligibility of Williams for a Massachusetts non-resident insurance producer license is a consequence of having his resident insurance license suspended by North Carolina. It is imprecise to speak of his ineligibility as constituting a "violation" of § 162N(a).

Discipline

Section 162R(a) authorizes the Commissioner to place an insurance producer on probation, to suspend or revoke a producer's license, or to levy on him or her a civil penalty in accordance with § 7, or to take any combination of these actions, for 14 enumerated reasons, including violating an insurance law, § 162R(a)(2), and having an insurance license suspended in another state, § 162R(a)(9).

Williams violated the Massachusetts insurance law reporting requirements in § 162V(a), and his action renders him liable under § 162R(a)(2) to license revocation and levy of a civil

¹ After October 31, 2012, furthermore, Williams no longer possessed a North Carolina insurance license. To have a North Carolina insurance license re-issued to Williams after October 31, 2012, the end of his current North Carolina continuing education compliance period, Williams would need, *inter alia*, to complete the appropriate North Carolina pre-licensing course and pass a North Carolina insurance examination.

penalty pursuant to § 7. Williams' violation of § 162V(a) is a serious offense that directly affects his eligibility and qualifications for a Massachusetts producer license. I find that Williams' violation of § 162V(a) constitutes grounds for revoking his Massachusetts insurance licenses pursuant to § 162R(a)(2). For Williams' reporting failure, I assess the maximum civil penalty under § 7 of \$1,000. I assess no additional civil penalties under § 194 for Williams' violation of § 162V(a).

I find that the suspension of Williams' North Carolina insurance license constitutes an independent reason to revoke his Massachusetts insurance licenses pursuant to § 162R(a)(9). I assess no civil penalties for the suspension of Williams' North Carolina insurance license.

ORDERS

After due notice, hearing and consideration, it is hereby ORDERED:

1. That Lester Williams shall cease and desist from the conduct complained of in the Order to Show Cause;
2. That any and all insurance producer licenses issued to Lester Williams by the Massachusetts Division of Insurance are hereby revoked;
3. That Lester Williams shall return to the Massachusetts Division of Insurance any licenses in his possession, custody or control;
4. That Lester Williams is, from the date of this order and decision, prohibited from directly or indirectly transacting any insurance business or acquiring, in any capacity whatsoever, any insurance business in the Commonwealth of Massachusetts;
5. That Lester Williams shall comply with the provisions of Massachusetts General Laws Chapter 175, §166B, and dispose of any and all interests in Massachusetts as proprietor, partner, stockholder, officer or employee of any licensed insurance producer; and
6. That Lester Williams shall pay to the Massachusetts Division of Insurance **within 30 days of the entry of this order and decision** a civil penalty for violation of Massachusetts General Laws Chapter 175, § 162V(a), of **One Thousand Dollars (\$1,000)** pursuant to Massachusetts General Laws Chapter 175, § 162R(a)(2), and Massachusetts General Laws Chapter 176D, § 7.

A copy of this order and decision shall be sent to Lester Williams at 9726 Ashburton Drive, Charlestown, North Carolina 28216, and at Connexions, 4601 Corporate Drive NW

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#115, Concord, North Carolina 28027, by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

Filed: March 13, 2013

Stephen M. Sumner, Esq.
Presiding Officer

This decision may be appealed to the Commissioner of Insurance pursuant to Massachusetts General Laws Chapter 26, § 7.