



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

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AND BUSINESS REGULATION

JOSEPH G. MURPHY
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Jeffrey Douglas Penta, Respondent
Docket No. E2013-05

Order and Decision on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On March 18, 2013, Petitioner, the Division of Insurance (“the Division”), filed an Order to Show Cause (“OTSC”) against Jeffrey Douglas Penta (“Penta”), a licensed Massachusetts individual insurance producer. The Division asserted three claims against Penta under Massachusetts General Laws Chapter 175 (“Chapter 175”). The Division claims that Penta converted a client’s money order to his personal use, a cause for discipline pursuant to §162R(a)(4) of Chapter 175 (“§162R(a)(4)”). In addition, it claims that Penta engaged in fraudulent or dishonest practices, and demonstrated untrustworthiness and financial irresponsibility in the conduct of business, a cause for discipline pursuant to §162R(a)(8) of Chapter 175 (“§162R(a)(8)”). It further claims that he forged another’s name to a document related to an insurance transaction, a cause for discipline pursuant to §162R(a)(10) of Chapter 175 (“§162R(a)(10)”). The Commissioner of Insurance (“Commissioner”) designated me Presiding Officer for this proceeding.

On March 18, 2013, Michael D. Powers, counsel for the Division, mailed the OTSC, together with a Notice of Action from the Hearings and Appeals Docket Clerk (“Docket Clerk”),

to Penta at his current address appearing on the records of the Commissioner. Penta did not file an Answer to the OTSC.

The Division on April 29, 2013, filed Petitioner's Motion for Entry of Default and Summary Decision in this matter ("Motion"). On that same day I issued an Order and Notice of Hearing ("Order"), which the Docket Clerk sent postpaid by certified mail to Penta at his current address appearing on the records of the Commissioner. Penta was ordered to file any written response to the Motion no later than May 20, 2013. The Order notified Penta that the Motion would come on for hearing on May 23, 2013, and that failure to respond to the Motion or to appear at the hearing could result in the entry of an order of default against him and the entry of a summary decision or decision on the pleadings granting the relief requested in the OTSC.

The certified mail return receipt card ("green card") assigned to the Order was received by the Docket Clerk on May 17, 2013. The green card documented receipt of the Order by J. Penta on May 6, 2013. Despite receipt of the Order, Penta did not file a response to the Motion and did not attend the hearing that was held on May 23, 2013.

Finding of Default

The Division took appropriate actions to ensure proper service, and sufficient service was made. Section 162M(f) of Chapter 175 requires Massachusetts insurance producers to inform the Commissioner of a change of address within 30 days of the change. The OTSC and Notice of Action were sent by mail to Penta at his current address then-appearing on the records of the Commissioner. *See* 801 CMR 1.01(4)(c) ("Notice of actions and other communications from the adjudicating Agency, or its designee, shall be presumed to be received upon the day of hand-delivery or, if mailed, three days after deposit in the U.S. mail.").

The Order and Notice of Hearing were sent postpaid by certified mail to Penta at his current address then-appearing on the records of the Commissioner. This was sufficient notice of the hearing on the Motion. *See* Chapter 175, §174A; Massachusetts General Laws Chapter 4, §7.

Penta's failure to answer the OTSC or to respond to the Division's Motion, and his failure to appear at the hearing on the Motion, warrant finding that he is in default. By his default, Penta 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. *See Division of Insurance v. John Clark Daly*, DOI Docket No. E93-2 (The Presiding Officer may accept the allegations contained in the Order to Show Cause as true if there is no Answer to the Order to Show Cause.). 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. Penta first was licensed by the Division as an insurance producer under Chapter 175, §162H, *et seq.*, on July 7, 2006.
2. At all times pertinent to this proceeding the following address has appeared on the records of the Commissioner as Penta's current address: 44 Judith Lane, Apartment Number 4, Waltham, Massachusetts 02452-7243.
3. In 2012 Penta was employed as an insurance producer by the NRT Insurance Agency Inc. ("NRT"), located at 52 Second Avenue in Waltham, Massachusetts.
4. On or about June 13, 2012, Penta met with Kenneth Gibbons ("Gibbons"), a client of NRT, who was seeking automobile insurance coverage from Arbella Mutual Insurance Company ("Arbella").
5. Gibbons provided Penta with a Postal Money Order ("Money Order") in the amount of \$638.25 to be used to pay premium due Arbella for automobile insurance coverage.
6. The payee section of the Money Order was blank and Penta told Gibbons that Penta would fill out the Money Order in Arbella's name and send it to Arbella.
7. Penta provided Gibbons with a Customer's Receipt for the Money Order, initialed by Penta, which indicated that the Money Order was payable to "Arbella Insurance."
8. Despite his representations to Gibbons, Penta made the Money Order payable to himself, cashed the Money Order, and converted the \$638.25 to his personal use.
9. Penta inserted the name of a female, "Mary English," as the payer on the Money Order, rather than the name of the actual payer, Gibbons.
10. Subsequently, Gibbons became aware that Arbella intended to cancel his insurance coverage for nonpayment of the \$638.25 premium due Arbella.

Analysis and Conclusions of Law

Penta converted a client's money order to his personal use, an action that subjects him to discipline pursuant to §162R(a)(4).

Penta misrepresented to Gibbons that Penta would fill out the Money Order in Arbella's name and send it to Arbella to pay the premium due on the Gibbons automobile insurance policy. Penta also provided Gibbons with a Customer's Receipt for the Money Order, initialed by Penta, which indicated that the Money Order was payable to Arbella. Penta thereby engaged in fraudulent and dishonest practices, and demonstrated untrustworthiness and financial irresponsibility in the conduct of business, actions that subject him to discipline pursuant to §162R(a)(8).

Penta inserted the name "Mary English" as the payer on the Money Order, rather than the name of Gibbons, the actual purchaser of the Money Order. He inserted his own name as payee on the Money Order, although Penta had assured Gibbons that he would insert "Arbella Insurance" as payee. Penta's intention clearly was to conceal the connection between the Money Order and the Gibbons/Arbella insurance transaction. Section 162R(a)(10) in part states as a cause for discipline "forging another's name to ... any document related to an insurance transaction." Because the statute proscribes forging another's "name," rather than another's "signature," it is of no moment that the name "Mary English" was printed by Penta, rather than being rendered as a cursive signature. BLACK'S LAW DICTIONARY (6th ed. 1991) defines "forge" in part as "to fraudulently alter a genuine instrument to another's prejudice." Gibbons was prejudiced by Penta's action of disguising the true payer, an action by which Penta sought to conceal the connection of the Money Order to the purchase by Gibbons of automobile insurance from Arbella and convert the money to his own use. The Money Order was a document related to the Gibbons/Arbella automobile insurance transaction, and by forging the name "Mary English" as payer on the money order given him by Gibbons, Penta thereby engaged in an action that subjects him to discipline pursuant to Chapter 175, §162R(a)(10).

Discipline

Chapter 175, §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 Massachusetts General Laws Chapter 176D, §7 ("§7"), or to take any

combination of these actions, for 14 enumerated causes. These causes include three that apply to Penta: §162R(a)(4) (misappropriating or converting any monies or properties received in the course of doing insurance business); §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 §162R(a)(10) (forging another's name to an application for insurance or to any document related to an insurance transaction).

Each of the above three causes represents a serious divergence from the behavior justifiably expected of a Massachusetts insurance licensee. Each cause addresses, furthermore, a different one of three distinct kinds of improper acts engaged in by Penta. He converted money received from a client, a basis for discipline under §162R(a)(4). He made fraudulent misrepresentations to a client, a basis for discipline under §162R(a)(8). He forged another's name on a document related to an insurance transaction, a basis for discipline under §162R(a)(10). There are, accordingly, three independent causes for discipline of Penta.

Pursuant to §162R(a)(4), I assess the maximum civil penalty under §7 of \$1,000.00, and revoke all Penta's Massachusetts insurance licenses.

Pursuant to §162R(a)(8), I assess the maximum civil penalty under §7 of \$1,000.00, and revoke all Penta's Massachusetts insurance licenses.

Pursuant to §162R(a)(10), I assess the maximum civil penalty under §7 of \$1,000.00, and revoke all Penta's Massachusetts insurance licenses.

ORDERS

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

1. That Jeffrey Douglas Penta shall cease and desist from the conduct complained of in the Order to Show Cause filed on March 18, 2013;
2. That any and all insurance producer licenses issued to Jeffrey Douglas Penta by the Massachusetts Division of Insurance are hereby revoked;
3. That Jeffrey Douglas Penta shall return to the Massachusetts Division of Insurance any licenses in his possession, custody or control;

4. That Jeffrey Douglas Penta 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 Jeffrey Douglas Penta 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 Jeffrey Douglas Penta shall pay to the Massachusetts Division of Insurance **within 30 days of the entry of this Order and Decision on Petitioner's Motion for Summary Decision** a civil penalty of **Three Thousand Dollars (\$3,000.00)** pursuant to Massachusetts General Laws Chapter 175, §§ 162R(a)(4), 162R(a)(8), 162R(a)(10), and Massachusetts General Laws Chapter 176D, §7.

A copy of this Order and Decision on Petitioner's Motion for Summary Decision shall be sent by the Docket Clerk to Jeffrey Douglas Penta at 44 Judith Lane, Apartment Number 4, Waltham, Massachusetts 02452-7243, by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

Filed: December 24, 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.

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Jeffrey Douglas Penta
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