



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.

Hope Allen, Respondent

Docket No. E2013-06

Decision and Order

On March 19, 2013, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Hope Allen (“Allen”), a licensed Massachusetts resident insurance producer. Allen was first licensed as a Massachusetts insurance broker effective January 6, 2003; her license was converted to a producer license on or about May 16, 2003, pursuant to Massachusetts General Laws Chapter (“Chapter”) 175, §162H, *et seq.* The Division alleges that in May, 2012 the Bankers Life and Casualty Company (“Bankers Life”) notified the Commissioner of Insurance (“Commissioner”) that it had terminated its agent contract with Allen for cause.

The Division alleges that Bankers Life terminated Allen’s contract because she misappropriated for her own use and benefit funds received from a customer to purchase insurance, and that her conduct violated Chapter 175, §162R (a)(4) and (a)(8). Those statutes permit the Commissioner to take disciplinary action if a licensee has misappropriated or converted money received in the course of doing insurance business or has used dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the Commonwealth or elsewhere. The Division alleges as well that Allen’s conduct constituted an unfair or deceptive trade practice prohibited by Chapter 176D. It seeks revocation of Allen’s producer 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 Action (“Notice”), issued on March 19, 2013, advised Allen 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.* It advised her 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. The Commissioner designated me as presiding officer for this proceeding.

The Division served Allen by mailing copies of the Notice and OTSC to her at 7 Cove Road, Forestdale, MA, her mailing, business and residence address on file in the Division’s licensing records. Allen failed to file an answer or other response to the OTSC and, on April 30, 2013, the Division moved for entry of default and summary decision against her. On that same date, I ordered Allen to file any written response to the Division’s motions by May 17, 2013 and notified her that the motions would be heard on May 21, 2013. The order and notice was sent to Allen by certified mail. On May 13, 2013, an order issued rescheduling the hearing for May 24, 2013.

The hearing took place at the scheduled location and time. Michael D. Powers, Esq. appeared for the Division. Neither Allen nor any person representing her appeared. Mr. Powers affirmed the statements in the Division’s motion for default that he had received no communication from the Respondent or from any person purporting to represent her. Allen filed no response to the Division’s motions.

The Division’s Motion for Default

On the basis of the record before me, I conclude that the Division made sufficient service on the Respondent. The documents sent by first class mail on March 19, 2013 were not returned to the Division. Pursuant to 801 CMR 1.01(4)(c) a notice of action from an adjudicating agency shall be presumed to be received three days after deposit in the United States Mail. The Postal Service returned the certified mail containing the notice of hearing to the Division; comments on the envelope stated that it had notified the addressee twice and that the document was unclaimed.¹ The order changing the date of the hearing on the Division’s motions, sent by first-

¹ The Division received the returned mail on May 24, 2013. According to the notations on the envelope, the Post Office left notices on May 2 and May 7, 2013.

class mail, was not returned. I conclude that Allen's failure to answer the OTSC or the Division's motions and to appear at the hearing support a finding that she is in default. The Division's motion for entry of default is therefore allowed.

The Division's Motion for Summary Decision

By her default, Allen 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 and the following documents attached to it as Exhibits A through C: A) letter from Banker's Life to the Commissioner notifying him that it had terminated its contract with Hope Allen; B) copy of front and back of check from consumer to Allen; and C) documents from the Orleans District Court relating to the prosecution of Allen in 2012 for larceny by check. An additional document, Allen's licensing history as shown in the Division's records, was attached to the Division's motion for summary decision as Exhibit A.

1. Findings of Fact

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

1. Allen was first licensed as a Massachusetts resident individual broker for life and health insurance on or about January 6, 2003. She subsequently passed examinations that qualified her to sell property and casualty insurance.
2. Allen's license was converted to a producer license on or about May 16, 2003.
3. Allen most recently renewed her individual producer license on August 10, 2011.
4. Between November 2006 and June 2011 Allen was appointed an agent for at least twelve life and health insurance companies.
5. On May 2, 2012, Banker's Life informed the Commissioner that it had terminated its contract with Allen for cause because of a violation of her agent contract.
6. Allen violated her contract by obtaining a personal check for \$1,520.06, naming her as payee, from a client for the purpose of paying an insurance premium.
7. Allen failed to transfer the client's funds to the insurance company but instead cashed the check and misappropriated the funds for her own use.
8. On August 24, 2012, a complaint issued against Allen from the Orleans District Court alleging larceny by check over \$250.
9. On or about October 12, 2012, Allen admitted to sufficient facts, the case was continued without a finding and Allen was placed on probation until January 7, 2014.

2. Discussion and Analysis

801 CMR 1.01 (7)(h) allows a party to an adjudicatory hearing, 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. I find that no genuine issue of fact has been raised in connection with the Division's claims, and that it is entitled to prevail as a matter of law.

Chapter 175, §162R (a) specifies fourteen grounds on which the Commissioner may suspend or revoke a producer's license. The Division identifies two subsections of §162R (a) as grounds for revocation of Allen's license: 1) (a)(4), improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business; and 2) (a)(8), using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in Massachusetts or elsewhere. I find that the record fully supports disciplinary action against Allen on each of those grounds.

The misappropriation of client funds is a serious matter that fully supports revocation of Allen's producer license. Chapter 175, §162R (a) also permits the Commissioner to levy a civil penalty in accordance with Chapter 176D, §7 for violations of the insurance laws and regulations. The maximum penalty permitted under Chapter 176D, §7 is \$1,000 per violation. The seriousness of Allen's action supports imposition of the maximum fine for her violation.

I find, therefore, that Allen'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. I also impose a fine of \$1,000 for her action.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED That any and all insurance producer licenses issued to Hope Allen by the Division are hereby revoked; and it is

FURTHER ORDERED that Hope Allen shall return to the Division any licenses in her possession, custody or control; and it is

FURTHER ORDERED that Hope Allen 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 Hope Allen shall comply with the provisions of G.L. 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 it is

FURTHER ORDERED that Hope Allen shall pay a fine of One Thousand Dollars (\$1,000) to the Division within 30 days of the entry of this order.

This decision has been filed this 10th day of June 2013, in the office of the Commissioner of Insurance. A copy shall be sent to Allen by first class mail, postage prepaid.

Jean F. Farrington
Presiding Officer

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