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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.

Adolphus Nolan, Jr., Respondent

Docket No. E2013-08

**Order and Decision on Division of Insurance's Motion
for Entry of Default and Summary Decision**

Introduction and Procedural History

On April 5, 2013, Petitioner, the Division of Insurance (“the Division”), filed an Order to Show Cause (“OTSC”) against Adolphus Nolan, Jr. (“Nolan”), a licensed Massachusetts non-resident individual insurance producer. The Division asserted five causes for discipline against Nolan under Massachusetts General Laws Chapter 175 (“Chapter 175”). It claims that Nolan failed to report to the Division a 2012 Utah administrative action and a 2011 Virginia administrative action, two violations of the reporting requirement in § 162V(a) of Chapter 175 (“§ 162V(a)"). The Division also alleges that Nolan did not disclose the Virginia administrative action on his 2011 Massachusetts license application, thereby “violating” § 162R(a)(1) of Chapter 175 (“§ 162R(a)(1)").¹ It further charges that Nolan obtained a Massachusetts insurance

¹The substance of the Division's claim is that this action by Nolan constitutes a cause for disciplining him pursuant to § 162R(a)(1). See generally *Division of Insurance v. Lester Williams*, Docket No. E2012-10 (The Presiding Officer observed that it was imprecise for the Order to Show Cause to allege that Williams “violated” § 162R(a)(2) because this provision is the second of 14 “causes” that are listed in Chapter 175, § 162R(a), as possible grounds for disciplining licensees.).

license through misrepresentation or fraud when he did not disclose the Virginia administrative action on his 2011 Massachusetts license application, thereby “violating” § 162R(a)(3) of Chapter 175 (“§ 162R(a)(3)”)² Finally, the Division asserts that Nolan’s violation of § 162V(a), his “violations” of §§ 162R(a)(1) and 162R(a)(3), his violations of Code of Virginia § 38.2-1826 A and Subsection 1 of 38.2 -1831, and his violation of Utah Code Annotated Subsection 31A-2-202(4) constitute “violations” by him of § 162R(a)(2) of Chapter 175 (“§ 162R(a)(2)”)³ The Commissioner of Insurance (“Commissioner”) designated me Presiding Officer for the proceeding on the OTSC.

On April 5, 2013, Mary Lou Moran, counsel for the Division, mailed the OTSC, with a Notice of Action from the Hearings and Appeals Docket Clerk (“Docket Clerk”), to Nolan at his current addresses appearing on the records of the Commissioner. Nolan did not file an Answer to the OTSC.

On May 17, 2013, counsel for the Division filed Division of Insurance’s Motion for Entry of Default and Summary Decision in this matter (“Motion”) and mailed the Motion to Nolan at his current addresses appearing on the records of the Commissioner. On that same day I issued an Order and Notice of Hearing (“Order”), which the Docket Clerk sent postpaid by certified mail, return receipt requested, to Nolan at his current addresses appearing on the records of the Commissioner. Nolan was ordered to file any written response to the Motion no later than June 21, 2013. The Order notified Nolan that the Motion would come on for hearing on June 26, 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 28, 2013. The green card documented Nolan’s receipt of the Order on May 22, 2013. Despite receipt of the Order, Nolan did not file a response to the Motion and did not attend the hearing that was held on June 26, 2013.

²The substance of the Division’s claim is that this action by Nolan constitutes a cause for disciplining him pursuant to § 162R(a)(3). See *Division of Insurance v. Lester Williams*, at note 1.

³The substance of the Division’s claim is that these actions by Nolan constitute a cause for disciplining him pursuant to § 162R(a)(2). See *Division of Insurance v. Lester Williams*, at note 1.

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 Nolan at his current addresses 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 was sent postpaid by certified mail to Nolan at his current addresses 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.

Nolan’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, Nolan 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*, 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. Nolan first was licensed by the Division as a Massachusetts non-resident insurance producer pursuant to Chapter 175, § 162G, *et seq.*, on September 20, 2011.
2. At all times pertinent to this proceeding the following addresses have appeared on the records of the Commissioner as Nolan’s current addresses: 2700 W. Plano Parkway, Plano, Texas 75075 (business address) and 320 E. Wintergreen Road, Apt. 18-H, Desoto, Texas 75115 (residential and mailing address).

3. By certified letter dated June 27, 2011, the State Corporation Commission of the Commonwealth of Virginia ("Virginia Commission") notified "Adolphus Nolan" of his right to a hearing about his alleged violations of Virginia Code § 38.2-1826 A and Subsection 1 of § 38.2-1831.

4. The Virginia Commission identified the named insurance producer as "Adolphus Nolan," but the 320 East Wintergreen Road, Apt. 18H, Desoto, Texas 75115 address used by the Virginia Commission is the same address that is on the records of the Commissioner as Nolan's residential and mailing address.⁴

5. The "Adolphus Nolan" named as a party to the administrative proceeding before the Virginia Commission is the same person as Adolphus Nolan, Jr., the Respondent in this matter.

6. On August 11, 2011, the Virginia Commission revoked Nolan's Virginia insurance license ("Virginia Administrative Action").

7. Nolan did not notify the Division of the Virginia Administrative Action within 30 days of the final disposition of the matter.

8. Nolan thereafter submitted to the Division a Uniform Application for Individual Producer License/Renewal/Continuation dated August 24, 2011 ("2011 Massachusetts Application").

9. Question 2 of Section 37 in the Background Information section of the 2011 Massachusetts Application ("Question 2") asked Nolan "Have you ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration?"

10. Question 2 provided a definition of the word "involved" that included "having a license ... revoked" and "being named as a party to an administrative action ... which is related to a professional or occupational license."

11. Nolan answered "No" to Question 2.

12. On June 27, 2012, the Utah Insurance Department filed a Notice of Informal Adjudicative Proceeding and Order, which ordered an administrative forfeiture of \$500.00

⁴ The 320 East Wintergreen Road, Apt. 18H, Desoto, Texas 75115 address also is the address used by the Utah Insurance Department for "Adolphus Nolan, Jr."

against Nolan, and, effective August 27, 2012, Nolan surrendered his Utah insurance license in lieu of administrative action (collectively, "Utah Administrative Action").

13. Nolan did not notify the Division of the Utah Administrative Action within 30 days of the final disposition of the matter.

Analysis and Conclusions of Law

Nolan did not truthfully answer Question 2 on his 2011 Massachusetts Application because he denied being named as a party to an administrative action related to his Virginia insurance license.⁵ Nolan thereby subjected himself to discipline pursuant to both § 162R(a)(1) ("providing incorrect, misleading, incomplete or materially untrue information in the license application") and § 162R(a)(3) ("obtaining or attempting to obtain a license through misrepresentation or fraud").

Nolan violated § 162V(a) on two occasions. He violated the statute when he did not notify the Division of the Virginia Administrative Action that revoked his Virginia insurance license. He violated the statute a second time when he did not notify the Division that he had surrendered his Utah insurance license in lieu of further administrative action by the Utah Insurance Department, a "consent to order" that he should have reported to the Division.⁶ By his two violations of § 162V(a), Nolan subjected himself to discipline pursuant to § 162R(a)(2) ("violating any insurance laws, or violating any regulation ... of the commissioner").

By violating Massachusetts insurance law and insurance laws of Virginia and Utah, Nolan subjected himself to discipline pursuant to § 162R(a)(2).

⁵ I do not base my adjudication on a failure by Nolan to report having his Virginia insurance license revoked on August 11, 2011, although license revocation is one basis for finding that he answered Question 2 untruthfully. The date of revocation is less than two weeks prior to the date Nolan put on his 2011 Massachusetts Application. The date upon which Nolan *filed* the 2011 Application with the Division is not apparent from the record of this proceeding. More than a month earlier, by certified mail dated June 27, 2011, Nolan was notified that he was the subject of a Virginia administrative proceeding, a sufficient basis for finding that he answered Question 2 untruthfully. See ¶ 10 of the *Findings of Fact*.

⁶ Section 162V(a) provides in part (emphasis added) that "[a] producer shall report to the commissioner any administrative action taken against the producer in another jurisdiction ... within 30 days of the final disposition of the matter. This report shall include a copy of the order, *consent to order* or other relevant legal documents."

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 Nolan: § 162R(a)(1), § 162R(a)(2), and § 162R(a)(3). Each of these three causes represents a serious divergence from the behavior justifiably expected of a Massachusetts insurance licensee.

Nolan's untruthful answer to Question 2 supports discipline under two subsections of Chapter 175, § 162R(a): § 162R(a)(1) and § 162R(a)(3). A single act by Nolan, however, justifies discipline pursuant to these two subsections. Pursuant to §§ 162R(a)(1) and -(3), I assess a civil penalty under § 7 of \$1,000.00 for Nolan's untruthfulness on his Massachusetts license application, and revoke all Nolan's Massachusetts insurance licenses.

For each of Nolan's two violations of § 162V(a) I assess a civil penalty under § 7 of \$1,000.00 and revoke all Nolan's Massachusetts insurance licenses pursuant to § 162R(a)(2).

I decline to order discipline of Nolan pursuant to § 162R(a)(2) for violating Massachusetts, Virginia, and Utah insurance laws. The Virginia Commission and Utah Insurance Department already have imposed discipline for his actions in those jurisdictions, and discipline for Nolan's Massachusetts actions has been levied otherwise herein based on his specific violations of Massachusetts insurance law.

ORDERS

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

1. That Adolphus Nolan, Jr., shall cease and desist from the conduct complained of in the Order to Show Cause filed on April 5, 2013;
2. That any and all insurance producer licenses issued to Adolphus Nolan, Jr., by the Massachusetts Division of Insurance are hereby revoked;
3. That Adolphus Nolan, Jr., shall return to the Massachusetts Division of Insurance any licenses in his possession, custody or control;
4. That Adolphus Nolan, Jr., 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 Adolphus Nolan, Jr., 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 Adolphus Nolan, Jr., shall pay to the Massachusetts Division of Insurance **within 30 days of the entry of this Order and Decision on Division of Insurance's Motion for Entry of Default and Summary Decision** a civil penalty of **Three Thousand Dollars (\$3,000.00)** pursuant to Massachusetts General Laws Chapter 175, §§ 162R(a)(1), 162R(a)(2), 162R(a)(3), and Massachusetts General Laws Chapter 176D, § 7.

A copy of this Order and Decision on Division of Insurance's Motion for Entry of Default and Summary Decision shall be sent by the Docket Clerk to Adolphus Nolan, Jr., at 2700 W. Plano Parkway, Plano, Texas 75075 (business address) and 320 E. Wintergreen Road, Apt. 18-H, Desoto, Texas 75115 (residential and mailing address), 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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