



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

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GARY D. ANDERSON
ACTING COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Daniel Marechal, Respondent

Docket No. E2013-09

Order and Decision

on Petitioner's Motion for Entry of Default and Summary Decision

Introduction and Procedural History

On May 2, 2013, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Daniel Marechal ("Marechal"). The OTSC asserts that Marechal has not completed the number of continuing education ("CE") credits that are required by § 177E(H) of Massachusetts General Laws Chapter 175 ("Chapter 175") and 211 CMR 50.00 *et seq.* The Commissioner of Insurance ("Commissioner") designated me to preside over the proceeding.

Marechal did not file an Answer to the OTSC. The Division filed Petitioner's Motion for Entry of Default and Summary Decision ("Default Motion") on February 12, 2014. I issued an order that scheduled a March 2014 Hearing on the Default Motion. On March 10, 2014, however, the Division filed Petitioner's Motion for Continuance ("Continuance Motion"), which requested that the March 2014 Hearing on the Default Motion be continued because the parties had agreed that by October 2014 Marechal would satisfy his CE requirement under Chapter 175, § 177E(H) ("§ 177E(H)"). I granted the Continuance Motion and continued the Hearing on the Default Motion.

October and November 2014 passed without notification that Marechal had, indeed, completed his CE requirement pursuant to § 177E(H). I therefore scheduled a Hearing on the pending Default Motion; for January 7, 2015. *Order and Notice: Hearing on January 7, 2015,*

on Petitioner's Motion for Entry of Default and Summary Decision; mailed December 16, 2014 ("Hearing notice").

During the pendency of this proceeding two different residential, business, and mailing addresses for Marechal have appeared on the records of the Commissioner. A copy of the Hearing notice was sent to Marechal at both these addresses by both certified mail and by regular U.S. first class mail, postage prepaid.

In December 2014 Marechal's residential, business, and mailing address on the records of the Commissioner was 33 Maple Street, Malden, Massachusetts 02148. The certified mail copy of the Hearing notice sent to this address was returned to the Docket Clerk with the notation: "MOVED LEFT NO ADDRESS / UNABLE TO FORWARD / RETURN TO SENDER." The regular U.S. first class mail copy of the Hearing notice sent to this address was returned to the Docket Clerk with the notation: "RETURN TO SENDER / INSUFFICIENT ADDRESS / UNABLE TO FORWARD."¹

The certified mail copy of the Hearing notice sent to Marechal at 220 Montvale Avenue, Woburn, Massachusetts 08101, was received by him, as evidenced by his signature on the Domestic Return Receipt (green card) for this mailing. The copy of the Hearing notice sent to this address by regular U.S. first class mail, furthermore, has not been returned to the Docket Clerk.

The Default Motion came on for Hearing on January 7, 2015. Marechal did not appear at the Hearing. The Division asked for an entry of default against Marechal.

Finding of Default

Although Marechal did not file an answer to the OTSC, Marechal plainly had notice of the OTSC and of the Default Motion. Indeed, prior to the March 2014 Hearing on the Default Motion, Marechal negotiated a grace period with counsel for the Division, within which period Marechal agreed to satisfy his CE requirement.

Marechal's signature on the Domestic Return Receipt (green card) for the certified mail copy of the Hearing notice that was sent to him at 220 Montvale Avenue establishes that

¹ Chapter 175, § 162M(f) requires Massachusetts insurance producers to inform the Commissioner of a change of address within 30 days of the change.

Marechal received notice of the January 2015 Hearing on the Default Motion. His failure to appear at the January 2015 Hearing on the Default Motion warrants finding that he is in default. By his default, Marechal has waived the right to proceed further with an evidentiary Hearing and I may consider the Default 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 and Conclusions of Law

On the basis of the record, consisting of the OTSC and the exhibits attached to it, I find the following facts and make the following conclusions of law:

1. Marechal first was licensed by the Division as an insurance agent under Chapter 175, § 163, on or about February 4, 1987.
2. Marechal's insurance agent license was converted to an insurance producer license pursuant to Chapter 175, § 162H *et seq.*, on or about June 19, 2003.
3. Marechal renewed his insurance producer license on March 26, 2012, and his insurance producer license remains active.
4. As a licensed insurance producer, Marechal is required to comply with all of the insurance laws of the Commonwealth of Massachusetts, including § 177E(H), which pertains to the CE requirement for insurance producers.
5. On or about April 18, 2012, an investigator from the Division's Special Investigations Unit sent a letter to Marechal about his failure to complete the proper number of CE credits required by §177E(H) and 211 CMR 50.00 *et seq.*
6. By letter dated October 22, 2012, Marechal again was notified that he was noncompliant with his CE requirement and notified that if he did not come into compliance within 60 days of the receipt of the letter the Division would file an Order to Show Cause against him.

7. Marechal in 2014 entered into an agreement with counsel for the Division under which Marechal agreed that by October 2014 Marechal would satisfy his CE requirement under § 177E(H).

8. Marechal has not satisfied his CE requirement under § 177E(H).

9. The purpose of the CE requirement is to assure the professional competence of licensed insurance producers by requiring satisfactory completion of approved CE courses. 211 CMR 50.03.

10. Marechal is not in compliance with the CE requirement set out in § 177E(H) and 211 CMR 50.00 *et seq.*, and, therefore, is not qualified to be a licensed insurance producer in the Commonwealth of Massachusetts.

ORDERS

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

1. That Daniel Marechal shall cease and desist from the conduct complained of in the Order to Show Cause filed on May 2, 2013.

2. That any and all insurance licenses issued to Daniel Marechal by the Massachusetts Division of Insurance **are hereby suspended**, along with the registration underlying the licenses and the right to renew such licenses, as is provided under Chapter 175, §§ 162R and 177E(H), until such time as Marechal shall have demonstrated to the satisfaction of the Commissioner that he has complied with all of the requirements of § 177E(H) and 211 CMR 50.00, as well as all other laws and regulations applicable to such licensing.

3. That Daniel Marechal 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 until such time as he has demonstrated to the satisfaction of the Commissioner that he has complied with all of the requirements of § 177E (H) and 211 CMR 50.00 *et seq.*

By regular U.S. first class mail, postage prepaid, the Docket Clerk shall send a copy of this *Order and Decision on Petitioner's Motion for Entry of Default and Summary Decision* to

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Marechal at 220 Montvale Avenue, Woburn, Massachusetts 01801; and to Marechal at his address on record with the Division: 33 Maple Street, Malden, Massachusetts 02148.

Filed: January 8, 2015

Stephen M. Sumner
Presiding Officer

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

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