



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.

Nancy A. Hutchinson, Respondent

Docket No. E2013-11

Decision on Petitioner's Motion
For Summary Decision

Procedural History

On August 6, 2013, the Division of Insurance (“Division”) filed an order to show cause (“OTSC”) against Nancy A. Hutchinson (“Hutchinson”), who was, until March 24, 2011, licensed as a Massachusetts insurance producer. The Division alleges that Hutchinson was prosecuted in 2011 in the South Boston District Court on charges of embezzlement or fraudulent conversion of funds, presenting a false motor vehicle application or claim, and forging a document with intent to defraud. In 2012, in the Brighton District Court, Hutchinson was charged with larceny and uttering a false order for money.

The Division contends that the circumstances of those prosecutions support revocation of her producer license pursuant to the provisions of Massachusetts General Laws Chapter (“Chapter”) 175, §162R, (a)(2), (a)(4), (a)(7) and (a)(8). The Division also alleges that Hutchinson failed to notify the Division of these prosecutions on a timely basis, a violation of Chapter 175, §162V (b). It seeks revocation of Hutchinson’s 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 August 6, 2013, advised Hutchinson to file an answer to the OTSC within 21 days of the date it was served on her. The Notice further advised her that she was entitled to a hearing and that the proceedings would be conducted pursuant to Chapter 30A and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00, *et seq.* The Notice informed Hutchinson that, if she failed to file an answer, 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.

On August 6, 2013, the Division sent the Notice and OTSC by first-class mail and by certified mail to Hutchinson at her home and mailing address of 33 G Street, South Boston, MA 02127 and her business address of 497 E. Broadway, South Boston, MA 02127. The Post Office returned the green card receipt for the certified mail sent to Hutchinson's home and mailing address to the Division on August 29, 2013, with the notation that the mail was unclaimed. The Post Office did not return the first class mail containing the OTSC and Notice that was sent to that address.

On September 4, 2013, the Division filed a motion for summary decision, on the ground that Hutchinson had neither filed an answer to the OTSC nor contacted the Division about this matter.¹ An order issued on September 5, 2013, advising Hutchinson to file any written response to the Division's motion by September 16, 2013. No response was received.

801 CMR 1.01(7)(h) permits a party to move for summary judgment when, in its opinion, there is no genuine issue of fact relating to a claim and it is entitled to prevail as a matter of law. Hutchinson has not contested the factual allegations in the OTSC or offered any defense to the Division's claims for relief. Although Hutchinson's Massachusetts insurance producer license lapsed by operation of law in 2011, the Commissioner, pursuant to Chapter 175, §162R (e) retains the authority to enforce against her the provisions of Chapter 175, §§162H through 162X and Chapter 176D.

Findings of Fact

Based on my review of the record, consisting of the OTSC, the motion for summary decision and the exhibits attached to them, I make the following findings of fact.

1. The Division first licensed Hutchinson as an insurance agent on August 12, 2002.
2. Her license was converted to an insurance producer license as of May 16, 2003.

¹ The Division reported, in its motion, that the documents sent to Hutchinson at her business address were not returned.

3. Hutchinson failed to renew her insurance producer license and it terminated for that reason, by operation of law, effective March 24, 2011.
4. Hutchinson was employed by the Thomas Black Insurance Agency ("Thomas Black") from October 1, 1997 through March 30, 2011.
5. On April 21, 2011, Thomas Black visited the Boston Police Department to report that Hutchinson had stolen client funds from the agency over an approximate one year period and had forged and falsely notarized an official insurance affidavit.
6. A report from the Boston Police Department investigator, states that he interviewed Hutchinson on April 27, 2011 and that she admitted to stealing money.
7. A criminal complaint issued on April 29, 2011 from the South Boston District court charging Hutchinson on three counts of violating Massachusetts law: embezzlement or conversion of funds by a broker; making a fraudulent application for motor vehicle insurance on behalf of a Thomas Black client; and forgery of a document (a notary certification) with intent to defraud.
8. Hutchinson was arraigned on those charges on May 23, 2011 in South Boston District Court.
9. Hutchinson, on June 20, 2011, admitted to sufficient facts with respect to each count, and was sentenced to supervised probation and ordered to make restitution to Thomas Black.
10. As of August 6, 2013, Hutchinson had not made full restitution under the court order.
11. Hutchinson was employed by the Kokoras Insurance Agency in Brighton, Massachusetts from about August 1 through October 12, 2011.
12. On or about January 20, 2012, the manager of the Kokoras Agency reported to police that Hutchinson had stolen client funds in the form of money orders given to her by customers to purchase insurance.
13. On February 15, 2012, a complaint was filed against Hutchinson in the Brighton Division of the Boston Municipal Court alleging three counts of criminal violations of Massachusetts law: larceny over \$250; larceny over \$250 by a single scheme, and uttering a false order for money.
14. Hutchinson was arraigned on those three counts in the Brighton Division on March 13, 2012.
15. A series of pretrial hearings took place in this matter.
16. On August 17, 2012, the Commonwealth filed an accord and satisfaction on all counts and the complaint was dismissed.

Analysis and Conclusions of Law

Chapter 175, §§162G through 162X sets out, among other things, the requirements for obtaining and maintaining a Massachusetts insurance producer license. Chapter 175, §162R (a) specifies fourteen grounds on which the Commissioner may suspend or revoke a producer's license. The Division identifies subsections §162R (a)(2), (a)(4), (a)(7) and (a)(8) as grounds for revocation of Hutchinson's license, as well a failure to comply with Chapter 175 §162V(b)(1), a statute requiring a producer to report to the Commissioner any criminal prosecution in any jurisdiction within 30 days of the initial pretrial hearing date.

Subsection 162R (a)(2), in pertinent part, permits revocation for violating any insurance laws or regulation, subpoena or order of the Commissioner or of another state's insurance commissioner. Hutchinson's failure to respond to the Notice constitutes a violation of orders issued in this proceeding. Subsection 162R (a)(4) permits revocation if a person withheld, misappropriated, or converted any monies or properties received in the course of doing insurance business. Hutchinson admitted to an investigator for the Boston Police Department that she has stolen money from Thomas Black and admitted to sufficient facts with respect to the count charging her with larceny in the 2011 prosecution in the South Boston District Court.

Subsection 162R (a)(7) permits revocation if an insurance producer has admitted or been found to have committed any insurance unfair trade practice or fraud. Hutchinson admitted to sufficient facts with respect to the count in the 2011 prosecution charging her with preparing a fraudulent application for motor vehicle insurance. Subsection 162R(a)(8) permits revocation if a producer has used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business. Hutchinson's actions while employed at Thomas Black constitute fraudulent and dishonest practices. Further, her failure to complete repayment under a court restitution order is evidence of financial irresponsibility.

I find that the records of the prosecution in the South Boston District Court fully support the Division's claims that Hutchinson violated Chapter 175, §162R (a)(2), (a)(4), (a)(7) and (a)(8).² The theft of client funds and the forgery of insurance documents are serious violations that warrant revocation of Hutchinson's license. On this record, I find that, in addition to revocation of her license, Hutchinson should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and should be required to dispose of any interest she may have in any insurance business in Massachusetts.

Chapter 175, §162V (b) requires a Massachusetts licensed producer to report to the Commissioner any criminal prosecution in any jurisdiction within 30 days of the initial pretrial hearing date. Hutchinson's insurance producer license expired on March 24, 2011. The first criminal prosecution of Hutchinson was initiated in May 2011, after her license had expired and she was therefore no longer obligated to comply with that statute. For that reason, the Division's claim that Hutchinson violated Chapter 175, §162V (b) is denied.

² Unlike the records from the South Boston District Court, the records from the Brighton District Court relating to Hutchinson's prosecution in 2012 provide no conclusive evidence that she violated the insurance laws. No documents record Hutchinson's responses to the complaint or the terms of the accord and satisfaction filed by the Commonwealth.

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. I find that the evidence supports a finding that Hutchinson stole client funds from Thomas Black on at least one occasion and falsified at least one insurance document. I will therefore impose a fine for two statutory violations.³ Because Hutchinson's acts were serious violations of the laws relating to the transaction of insurance business, I impose the maximum fine for each of those violations.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Nancy Hutchinson by the Division are hereby revoked; and it is

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

FURTHER ORDERED: that Nancy Hutchinson 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 Nancy Hutchinson shall comply with the provisions of 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 Nancy Hutchinson shall cease and desist from the conduct alleged in the Order To Show Cause; and it is

FURTHER ORDERED: that Nancy Hutchinson shall pay a fine of Two Thousand (\$2,000) to the Division within 30 days of the entry of this order.

This decision has been filed this 6th day of May 2014, in the office of the Commissioner of Insurance. A copy shall be sent to Hutchinson by regular first class mail, postage prepaid.

Jean F. Farrington
Presiding Officer

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

³ The documents from the South Boston District Court indicate that Hutchinson, over time, stole approximately \$4,000 from Thomas Black. However, no further documentation was provided that would support a finding of the number of thefts. Similarly, no documentation permits a conclusion that she falsified documents on more than one occasion.