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JOSEPH G. MURPHY
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Richard Hayward, Respondent

Docket No. E2014-01

**Decision on Petitioner's Motion
For Summary Decision**

Introduction and Procedural History

On March 4, 2014, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Richard Hayward (“Hayward”) who was, until January 8, 2011, licensed as a non-resident Massachusetts insurance producer. In its OTSC the Division alleges that in 2009, in the Circuit Court in and for Orange County, Florida, Hayward pled *nolo contendere* to criminal charges of obtaining credit cards by fraudulent means (the “Florida Action”). It further alleges that, although Hayward advised the Division that he used the credit cards at issue in the Florida Action for business purposes, the issuing bank’s documentation relating to Hayward’s use of the fraudulently obtained credit cards does not support his position. In 2009, the Kentucky Department of Insurance revoked Hayward’s Kentucky insurance producer license because of his criminal history in Florida; the Division alleges that Hayward failed to report that revocation to the Division.

The Division contends that the circumstances of those prosecutions support revocation of Hayward’s producer license pursuant to the provisions of Massachusetts General Laws Chapter (“Chapter”) 175, §162R (a)(2), (a)(8) and (a)(9). The Division also contends that Hayward

failed to report the Kentucky administrative action to the Division on a timely basis, a violation of Chapter 175, §162V (a) and failed to report the Florida criminal prosecution to the Division on a timely basis, a violation of Chapter 175, §162V (b). It seeks revocation of Hayward's license and orders requiring him to dispose of any insurance-related interests in Massachusetts, prohibiting him from conducting any insurance business in the Commonwealth, and imposing fines for the alleged violations.

The Division served the OTSC on Respondent by first class mail, postage prepaid, addressed to him at his business and mailing address shown on the Division's licensing records. On March 19, 2014 the Division moved to add attachments to the OTSC, stating that the documents in question had previously been sent to the Respondent. The motion was allowed on March 21, 2014. On April 29, 2014 the Division filed a motion for entry of default against Hayward for failure to answer the OTSC and for summary decision in its favor on the allegations and relief requested in the OTSC. An order, issued on April 29, instructed Hayward to file any written response to the Division's motion by May 21, 2014 and scheduled a hearing on the motion for June 3, 2014. That order was sent to Hayward by certified mail to his business and mailing address as shown on the Division's licensing records and to his home address as shown on those records.

Hayward did not respond to the Division's motion for entry of default and summary decision. Neither Hayward nor any person purporting to represent him appeared at the hearing on June 3, 2014. Matthew Burke, Esq. represented the Division at the hearing. He stated that he had not been contacted about this matter by Hayward or by any person purporting to represent him.

Finding of Default

On the basis of the record before me, I conclude that the Division took appropriate actions to ensure proper service. The OTSC was served on Hayward by first-class mail sent to his business address and mailing address, as shown on the Division's records, and was not returned. The order notifying Hayward to respond to the Division's Motion for Summary Decision and to appear for a hearing on June 3, 2014 were sent to his business and mailing address and his home address, all as shown on the Division's licensing records, by certified

mail.¹ I conclude that service was sufficient and that Hayward's failure to answer the OTSC or to respond to the Division's motion, and his failure to appear at the hearing warrant findings that he is in default. By his default, Hayward has waived his 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, the Motion for Summary Decision, and the exhibits attached to them.

Findings of Fact

Based on my review of the record, I make the following findings of fact.

1. The Division first licensed Hayward as an insurance producer on June 6, 2008.
2. Hayward failed to renew his producer license and, for that reason, it terminated by operation of law, effective January 8, 2011.
3. On or about July 1, 2008, the Police Department in Winter Garden, Florida began to investigate a complaint that in 2007 Hayward, using the personal information of a third person, caused a bank to issue credit cards to him and his wife.
4. At the conclusion of its investigation, the Winter Garden Police Department concluded that probable cause existed to charge Hayward with obtaining credit cards through fraudulent means by using the third person's personal identification information without consent, and obtaining a monetary gain over \$5,000.
5. On September 10, 2008, a judge of the Orange County Court signed an arrest warrant for Hayward and set a bond amount of \$15,000.
6. On July 1, 2009, Hayward pleaded *nolo contendere* to the charge of fraud through identity theft and was adjudicated guilty in the Circuit Court for Orange County.
7. According to the Winter Harbor Police Department investigator, the charges on the fraudulently obtained credit cards totaled approximately \$13,000.
8. In a letter to the Division dated July 11, 2009, Hayward stated that the charges on the cards were for business expenses.
9. The account records from the issuing bank demonstrate that the charges on the fraudulently obtained credit cards included a balance transfer of \$4550, cash advances, restaurant and gift shop purchases in Las Vegas, cell phone bills and other miscellaneous expenses.
10. On August 12, 2009, the Kentucky Department of Insurance revoked Hayward's Kentucky insurance license because of his Florida criminal prosecution.

¹ The Division's Motion for Summary Decision and the April 29, 2014 Order were returned to the Division on June 2, with a cover letter from the Liberty Mutual Insurance Company stating that Hayward no longer worked at the Heathrow, Florida office. On June 3, the United States Post Office returned the certified mail sent to Hayward's home address in Oviedo, Florida with the note that it was unclaimed. I note that Chapter 175, §174A provides that hearing notices in matters involving revocation of licenses "shall be deemed sufficient when sent postpaid by registered mail to the last business or residence address of the licensee appearing on the records of the commissioner. . . ." Pursuant to Chapter 4, §7, ¶ 44, registered mail, when used with reference to the sending of notice, includes certified mail. An insurance producer, pursuant to Chapter 175, §162M, must inform the Commissioner of a change of address within 30 days of the change. Division records do not show any change of address for Hayward.

Analysis and Conclusions of Law

801 CMR 1.01(7)(h) permits a party to move for summary decision 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. Hayward has not contested the factual allegations in the OTSC or offered any defense to the Division's claims for relief. Although Hayward'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 him the provisions of Chapter 175, §§162H through 162X and Chapter 176D.

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)(8) and (a)(9) as grounds for revocation of Hayward's license, as well a failure to comply with Chapter 175 §162V(b), 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. Although Hayward sent a letter to the Division in July 2009 following the conclusion of the Florida Action, he failed to comply with his statutory obligation to notify the Division of the criminal prosecution before it was concluded. He further failed to notify the Division of the Kentucky administrative action. The record fully supports the Division's claim that Hayward violated Massachusetts insurance law.

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. I find that the records of the investigation underlying Hayward's prosecution in the Florida Action fully support the Division's claims that Hayward's actions permit disciplinary action under Chapter 175, §162R (a)(8.) The unauthorized use of a third party's personal information to obtain credit cards from a bank constitutes fraud and demonstrates untrustworthiness and financial irresponsibility. The records from the bank issuing those credit cards do not support Hayward's effort to characterize the charges as business

expenses. Misrepresentation of the nature of those expenses is dishonest and supports a conclusion that Hayward has shown untrustworthiness in the conduct of business.

Subsection 162R (a)(9) supports disciplinary action when an insurance producer's license has been revoked in another jurisdiction. The record of the Kentucky administrative action that resulted in revocation of Hayward's insurance producer license in that state therefore supports revocation of his Massachusetts license.

The number and nature of the grounds for disciplinary action fully warrant revocation of Hayward's license. On this record, I find that, in addition to revocation of his license, Hayward should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and should be required to dispose of any interest he may have in any insurance business in Massachusetts.

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 Hayward, by failing to report his criminal prosecution and Kentucky license revocation, committed two statutory violations. The investigation that led to Hayward's prosecution began approximately a month after he obtained his Massachusetts insurance producer license, and the Kentucky license revocation 14 months after he was licensed in Massachusetts. Hayward's failure to report these events allowed him to remain fully qualified to sell insurance in Massachusetts for the term of his license and deprived the Division of an opportunity promptly to reassess his qualifications for licensure. I am persuaded that failure to comply with the reporting requirements in Chapter 175, §162V on a timely basis is a serious violation of the insurance laws and therefore 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 Richard Hayward by the Division are hereby revoked; and it is

FURTHER ORDERED: that Richard Hayward shall return to the Division any licenses in his possession, custody or control; and it is

FURTHER ORDERED: that Richard Hayward 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 Richard Hayward 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 Richard Hayward 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 4th day of June 2014, in the office of the Commissioner of Insurance. A copy shall be sent to Hayward 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.