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DANIEL R. JUDSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Wade M. Callander, Respondent

Docket No. E2015-07

Order on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On October 5, 2015, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Wade M. Callander (“Callander”) who, until December 23, 2014, held a Massachusetts individual insurance producer license.¹ The Division alleged that on two occasions Callander received premium payments from a customer for workers’ compensation insurance but failed to place the coverage. The Division contends that Callander’s failure to transmit premium payments violated G.L. c. §176D and G.L. c. 175, §162R (a)(4) and (a)(8). The Division asked for orders requiring Callander to cease and desist from the conduct alleged in the OTSC, to dispose of any insurance-related interests in Massachusetts, and to return any licenses in his possession to the Division. It also asked that Callander be prohibited from conducting any insurance business in the Commonwealth, that he make restitution to the consumer who paid premiums for coverage that was not received, and that he be fined for the alleged violations.

A Notice of Procedure (“Notice”) was issued on October 5, 2015, advising Callander that the proceeding would be conducted pursuant to G.L. c. 30A and the Standard

¹ The OTSC names Callandar as an individual respondent and “d/b/a Callander Insurance, Inc.” It alleges that Callander was the owner and operator of the incorporated agency, and states that its business entity license expired on September 6, 2014. The statement of facts does not refer to the business entity, no claims are stated and no relief is sought against it. Therefore, pursuant to 801 CMR 1.01 (7) (g)(3), I am dismissing Callander Insurance, Inc. as a respondent.

Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00, *et seq.* The Notice advised Callander to file an answer pursuant to 801 CMR 1.01(6)(d) and that, if he 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. On October 5, 2015, the Division served the Notice and OTSC on Callander by United States mail sent to his mailing, residential and business addresses as shown on the Division's records.² On November 23, 2015, I ordered the parties to appear for a status conference on December 11, 2015. The Division, on December 1, 2015, moved for entry of default and summary decision; on the same date I ordered Callander to file any written response to that motion no later than December 9 and changed the previously scheduled December 11 status conference to a hearing on the Division's motion. At Callander's request, the hearing was subsequently continued to December 18, 2015.

At the hearing, Callander confirmed the information in a December 8, 2015 e-mail he sent to the counsel for the Division, Scott Peary, Esq. In that e-mail, he admitted that he had received premium payments from the customer identified in the OTSC and that he had returned a part of that premium to the customer, and agreed to reimburse the customer for the remaining premium and to pay a \$3,000 fine. Because no material facts were in dispute, and Callander had agreed in writing to make restitution to the customer and to pay a fine, I ordered the parties to submit a consent agreement. On January 1, 2016, Callander declined to execute an agreement prepared by the Division, objecting to provisions for a cease and desist order and seeking to ensure that he would be licensed as a producer.³ On January 11, 2016, the Division again moved for summary decision. I ordered Callander to respond to the motion by February 12, 2016. He did not do so.

This is an adjudicatory proceeding as defined in G.L. c. 30A, §1 and is conducted, as stated in the Notice of Procedure, under the formal Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 *et seq.* Although Callander is no longer licensed as an insurance producer, pursuant to G. L. c. 175, §162R (e) the Commissioner retains authority to enforce the provisions of §162R against him.

² The Post Office returned these mailings, stamped "Return to Sender, Unable to Forward," to the Division. On November 3, 2015 they were sent to Callander by e-mail.

³ At the prehearing conference, Callander stated that he now works as an insurance claim adjuster and expressed concern that a cease and desist order would prevent him from remaining in that position. He misunderstands the nature of such orders. Callander also sought an opinion that he could obtain a producer license in the future. Such an opinion is outside the scope of this matter.

The record that is the basis for this decision consists of the OTSC, exhibits 1 through 5 attached thereto, and two electronic communications from Callander to counsel for the Division dated December 8, 2015 and January 1, 2016. The exhibits consist of: 1) Copy of front and back of a check dated April 8, 2013 to Callander from a customer; 2) Copy of front and back of a check dated October 10, 2013 to Callander from the same customer, with the memo note "workers comp. Ins."; 3) e-mails from the customer to Callander dated January 15 and 17, 2014, requesting reimbursement for the premiums paid for the workers' compensation insurance that was not placed; 4) complaint filed by the customer with the Division's Consumer Service Section ("CSS") on April 25, 2014; 5) Copy of check sent to the customer on January 30, 2014, with the memo note "partial payment, balance due \$765."⁴

Findings of Fact

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

1. The Division first issued Callander a Massachusetts license to sell insurance on or about February 7, 1991.⁵
2. On or about April 8, 2013, Callander received a check for \$303 from a customer as a partial premium payment for a workers' compensation insurance policy for the customer's business.
3. On or about October 10, 2013, Callander received a check for \$1,212 from the customer as an additional premium payment for its workers' compensation insurance.
4. Callander endorsed and deposited the checks, but did not obtain workers' compensation insurance for his customer.
5. In January, 2014 the customer requested repayment from Callander of the entire payment totaling \$1,512.
6. On January 30, 2014, Callander sent the customer a check for \$750 as partial repayment, noting that after that payment the balance due was \$765.

⁴ Exhibits 6 through 9 to the OTSC are copies of communications between Callander and the CSS and of a letter and proposed settlement agreement that a Division attorney sent to Callander on or about October 28, 2014. Paragraphs 17 and 19 through 23 of the OTSC describe those documents and state that Callander did not respond to them. The Division does not, however, assert that his failure to do so is grounds for a claim against him and does not contend that these documents are relevant to any aspect of the OTSC. With respect to Exhibit 9, Article IV, Rule 408, of the *Massachusetts Guide to Evidence*, prohibits the use of settlement offers to prove or disprove the validity of a disputed claim. For those reasons, except for the factual question discussed in Footnote 6, *infra*, I have not considered Exhibits 6 through 9 in connection with this decision.

⁵ The OTSC refers to a producer license. In 1991, a person seeking a license to sell insurance in Massachusetts applied for an agent or a broker license. On January 1, 2003, as a result of passage of St.2002, c. 106, agent and broker licenses were replaced by a single producer license. The Division's failure to chronicle that sequence as part of Callander's licensing history is not material to its claims.

7. Callander's producer license expired on December 23, 2014.⁶

Analysis and Conclusions of Law

801 CMR 1.01 (7) (h) allows a party who 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. Based on the record, I find that the Division is entitled to prevail as a matter of law.

G.L. c. 175, §162R (a) specifies fourteen grounds on which the Commissioner may suspend or revoke a producer's license or impose a fine on the licensee. The Division identifies two subsections of that statute as grounds for disciplining Callander: 1) §162R (a)(4), improperly withholding, misappropriating or converting any monies or properties received in the course of doing business; and 2) §162R (a)(8), using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere.

Callander twice failed to transfer premium payments he received from his customer to a worker's compensation insurer, thus depriving his customer of statutorily mandated coverage. On this record, I conclude that his failure to transmit premium payments supports disciplinary action under G. L. c. 175, §162R (a)(4) for improperly withholding, misappropriating or converting any monies or properties received in the course of doing business. I find as well that Callander's actions constitute dishonest practices and demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth. The record fully supports disciplinary action under G.L. c. 175, §162R (a)(8).

The Division also alleges that Callander violated G.L. c. 176D, but does not specify any particular section of that chapter. Chapter 176, §§6 and 7 authorize the Commissioner to initiate proceedings against licensees who have engaged in unfair or deceptive practices and to issue orders requiring the licensee to cease and desist from such practices.

The OTSC does not ask for revocation of Callander's license, but seeks a cease and desist order, the statutory remedies provided by G.L. c. 175, §§166B and 174B and, pursuant to §162R (a) and G. L. c. 176D, §7, fines of up to \$1,000 per violation. The remedies permitted under both §§166B and 174B are linked, however, to revocation of a license. Because the Division did not request revocation, those claims for relief that, by statute, depend on revocation are denied. In a

⁶ Paragraph 10 in the OTSC asserts that Callander's producer license expired on December 23, 2014. The documents in Exhibit 9 refer to an expiration date of December 24, 2013. The difference is not material to this decision.

disciplinary action alleging violations of c. 175, §162R, civil penalties may be imposed even if no action is taken against the license. Failure to transmit premium payments to insurers is a serious violation that, absent any mitigating factors, supports imposition of the maximum fine. The record indicates, however, that Callander did return nearly half the consumer's premium payments in January 2014, well before the OTSC was filed. For that reason, I will impose a fine of \$800 for each of two violations.⁷ I also order Callander to reimburse his customer the \$765 that Callander admits he owes to that customer.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: that Wade M. Callander shall cease and desist from the conduct that gave rise to this Order to Show Cause; and it is

FURTHER ORDERED: that Wade M. Callander shall pay a fine of One thousand six hundred dollars (\$1,600.00) to the Division within 30 days of the entry of this order; and it is

FURTHER ORDERED: that Wade M. Callander shall pay \$765.00 to South Shore Cabinet, Duxbury, MA within 15 days of the entry of this order as reimbursement for premium payments it received in 2013 from South Shore Cabinet for workers' compensation coverage that was not placed. Callendar shall contemporaneously provide counsel for the Division with evidence that payment has been made.

This decision has been filed this 14th day of April, 2016, in the office of the Commissioner of Insurance. A copy has been sent by first-class mail, postage prepaid, to Wade M. Callander, P. O.. Box 314, Duxbury, MA 02331.

Jean F. Farrington
Presiding Officer

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

⁷ Although Callander's December 8, 2015 e-mail to Division counsel indicated his willingness to pay a \$3,000 fine, on this record I find only two actions that support disciplinary action under c. 175, §162R (a). For that reason, I have imposed a fine that addresses those two violations.