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Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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DANIEL R. JUDSON
COMMISSIONER OF INSURANCE

Michael Tarantino, Petitioner
v.
Division of Insurance, Respondent
Docket No. E2015-10

Order on Respondent's Motion for Summary Decision

Introduction and Procedural History

On September 15, 2015, the Director of Producer Licensing ("Director") at the Division of Insurance ("Division") issued a decision denying an application from the Tarantino Insurance Agency, LLC ("Tarantino Agency") for a business entity insurance producer license (the "Denial Letter.") On October 13, 2015, Michael Tarantino ("Tarantino"), manager of the Tarantino Agency, filed a Notice of Claim for an Adjudicatory Proceeding ("Notice of Claim") appealing the Director's decision. A Notice of Procedure instructing the Division to file an answer and scheduling a prehearing conference and a hearing was issued on October 14, 2015.

On November 10, 2015, the Division moved to enlarge the time to file its answer to November 12, on the ground that it mistakenly believed that the answer was due on the date of the prehearing conference. That motion was allowed. The Division's answer consisted of copies of the Denial Letter, the Tarantino Agency's application form and supplementary information on past administrative actions, dated August 21, 2015, court records relating to civil litigation brought by the Magna Finance Company, Inc. ("Magna Finance") and by the Cambridge Trust Company against Tarantino and the Tarantino Agency and by the Capitol One Bank (USA) and Thomas Schaejbe against Tarantino, and records relating to tax issues between Tarantino and the Town of Arlington, the Commonwealth of Massachusetts, and the United States Internal

Revenue Service. The Division identified these documents as exhibits that it would introduce at any hearing.

The prehearing conference took place on November 17, 2015. Scott Peary, Esq. represented the Division; Tarantino appeared *pro se*. Tarantino asserted that he completed the Tarantino Agency's application after asking Division staff what he needed to submit with the form and thought he had answered the questions accurately. Tarantino agreed, however, that he failed to report civil litigation brought by Magna Finance against Tarantino and the Tarantino Agency, the fact underlying the Director's denial of the Tarantino Agency's application for providing "incorrect, misleading, incomplete or materially untrue information in the license application." Because support for denial on that ground was undisputed, the parties agreed that no evidentiary hearing was required and that the matter could be resolved on summary decision. On December 1, 2015, they submitted memoranda stating their respective positions.

The Parties' Arguments

The Division asserts that the Tarantino Agency's admitted failure to make a required disclosure on its business entity license application form is a sufficient basis for the denial of that application. Specifically, the Tarantino Agency answered "no" to Background Question 5 ("Question 5") on the application that, in relevant part, asks if the business entity or any owner of that entity or the member or manager of a Limited Liability Company (LLC "is a party to or ever been found liable in any lawsuit involving allegations of fraud, misappropriation or conversion of funds or misrepresentations." Records obtained by the Division relating to an action initiated by Magna Finance against the Tarantino Agency in December 2013 in the Waltham Division of the District Court Department of the Massachusetts Trial Court, however, demonstrate that Tarantino and the Tarantino Agency were parties to a suit that, among other things, alleged conversion of funds. The Division points out that Tarantino admits that he failed to disclose that litigation on the Tarantino Agency application. It argues that the record fully supports the Director's stated basis for denying the Tarantino Agency's application.

Tarantino, at the prehearing conference and in his written submission, agrees that he made a mistake on the Tarantino Agency's application but contends that he made that error based on information provided by the Division. He states that at the start of the license "renewal" process he spoke with staff in the Division's Special Investigation Unit about an

action that the Tarantino Agency had settled with the Division in 2004 and asked what needed to be included on his application. He asserts that one person told him that he needed to respond to the issue with Magna Finance and another stated that the only issue was the 2004 action. In a subsequent communication with the Division, he was informed that the Tarantino Agency, LLC had been dissolved. After reinstating the LLC, Tarantino states was told by Producer Licensing staff to submit a paper application.

Tarantino argues that he made his mistake in answering Question 5 on the application based on the information he received from the Division, contending that he was led to believe that the only issue was the dissolution of the LLC. He argues that he heard nothing more about Magna Finance until he received the Denial Letter. Tarantino asserts that he will “pay them under protest if I must to get my license reinstated.” He comments, as well, that the Division was given an opportunity to file its answer late and feels that he should be given the same opportunity.

Discussion

Pursuant to 801 CMR 1.01 (7)(h), summary decision is appropriate when a party to an adjudicatory proceeding is of the opinion that there is no genuine issue of fact relating to all or part of a claim or defense and he is entitled to prevail as a matter of law. Tarantino did not dispute his failure to report the Magna Finance litigation on the Tarantino Agency application or the Director's reliance on documentation related to that litigation as evidentiary support for her decision. I find that there is no genuine issue of material fact that precludes summary decision in this matter.

The grounds for refusing to issue or to renew an insurance producer license are set out in M.G.L. c. 175, §162R (a) (“§162R (a)”). The Denial Letter refers to three subsections of §162R (a) as grounds for the Director's decision to deny the Tarantino Agency's application. Subsection (a)(1) permits denial if the applicant has provided incorrect, misleading incomplete or materially untrue information on the application. The Denial Letter states as well that the decision was based on §162R(a)(7) and §162R(a)(8), subsections that, respectively, support denial if the applicant has been “found to have committed any insurance unfair trade practice or fraud” and “found to be using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the

commonwealth...” The Director asserted that her conclusions were based on a review of the Tarantino Agency's application and its licensing record.¹

The documents that the Division relies on to decide on a license application must provide reliable and substantial evidentiary support for each reason that is identified as a ground for denying an application. I find that the record in this case fully supports denial based on §162R(a) (1). Tarantino agrees that he incorrectly answered Question 5 and thus provided incorrect, misleading, incomplete or materially untrue information on the license application.

The Denial Letter does not specify the facts that the Director relied on as support for her denial of the application for the reasons set out in §162R(a)(7) and §162R(a)(8), but refers only to a “review of [the Tarantino Agency's] application and its licensing record.” Such vague references do not rise to the level of substantial evidence to support a conclusion. The Division submitted, in its answer, copies of documents that, it stated, it would introduce into evidence at any hearing in this matter. Assuming, *arguendo*, that the Director viewed those documents as grounds for denial of the Tarantino Agency's application pursuant to §162R(a)(7) and §162R(a)(8), her reliance was misplaced.

The litigation records relating to Magna Finance do not support a conclusion that the court found that the Tarantino Agency had committed an unfair insurance trade practice or fraud. The Magna Finance complaint included, in addition to counts for breach of contract and conversion of funds, a count for violations of M.G.L. c. 93A. It sought a decision from the Court that the Tarantino Agency had engaged in unfair or deceptive acts or practices in the conduct of trade or commerce. These claims, however, were never litigated; no answer was filed to the complaint and Tarantino and the Tarantino Agency were ultimately defaulted and found liable to Magna Finance for its actual alleged financial damages. Tarantino's failure to answer correctly a question on the license application that specifically asks if he and the Tarantino Agency were parties to litigation alleging the conversion of funds unquestionably supports a decision denying the license on the grounds that he provided incorrect or materially untrue information on that application. Because the Magna Finance complaint was never heard, the Court had no opportunity to make findings that might, in appropriate circumstances, constitute evidence that

¹ The Denial Letter refers to the Magna Finance documents as materials that were not part of the Tarantino Agency's licensing application.

Tarantino and the Tarantino Agency had engaged in practices that would support denial of the business entity license application under §162R(a)(7) or §162R(a)(8).

Documents referring to litigation between Tarantino and/or the Tarantino Agency and the Capitol One Bank USA, the Cambridge Trust Company and Thomas Schaejbe provide no information on the grounds for those suits or the outcome of the proceedings, and provide no evidentiary support for denial of the Tarantino Agency's application for the reasons set out in §162R(a)(7) and §162R(a)(8). The relevance of the tax records submitted as part of the Division's answer is unclear; while failure to pay state income tax may be grounds, under §162R(a) (14) to deny a license, none of the records submitted refer to state taxes. Although the Denial Letter refers to a review of the Tarantino Agency's licensing record, it identifies no specific aspect of that licensing record as a basis for the denial of its application. On this record, therefore, I find insufficient evidence to support denial of the Tarantino Agency's license application for the reasons set out in §162R(a)(7) or §162R(a)(8).

Tarantino's argument that his incorrect answer to Question 5 resulted from conversations with Division staff that led him to believe that he did not need to report the Magna Finance litigation is without merit. Tarantino, as the LLC manager, has sole responsibility for the content of the Tarantino Agency's business entity application. As part of that application, he certified that he understood and complied with the insurance laws and regulation of the Commonwealth, and that he is responsible for the Tarantino Agency's compliance with those laws, rules and regulations. In answering Background Question 2 on the application, Tarantino understood his obligation to acknowledge and explain a prior Division action relating to his business that was resolved without a hearing in 2004, and a subsequent 2009 action by the Florida Department of Insurance that apparently was also resolved without loss of his license in that state.

Further, Tarantino's chronology of his contacts with Division staff about the Tarantino Agency's application does not support his contention that his answer to Question 5 was based on advice from the Division. He reports that he was told, at the beginning of the renewal process, that he needed to respond to the issue with Magna Finance; he nevertheless elected to omit it from the application. That choice fully supports denial of the application. Tarantino's theory that the allowance on appeal of one party's procedural motion to extend time is a reason to set aside the substantive grounds of the appeal is without merit. Also, his suggestion that payment of

the damages awarded to Magna Finance would allow his license to be reinstated demonstrates a profound misunderstanding of the reason for denial of the Tarantino Agency application.

Conclusion and Order

The Denial Letter cited three statutory reasons for denying the Tarantino Agency's application. Any one of those reasons, if supported by substantial evidence, is a sufficient basis for upholding the Director's decision. After careful review of the record in this matter, I find that it fully supports the Director's determination that the omission from the Tarantino Agency's application for a business entity producer license of information on a civil action by Magna Finance against the Tarantino Agency and Michael Tarantino is grounds for denying that application. The Division's Motion for Summary Decision affirming the Director's decision is hereby allowed.

DATED: December 15, 2015

Jean F. Farrington
Presiding Officer

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