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DANIEL R. JUDSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

De'Borah S. Dunbar, Respondent

Docket No. E2015-13

Decision and Order

Procedural History

The Petitioner, the Division of Insurance (“Division”), on October 22, 2015, filed an Order to Show Cause (“OTSC”) concerning the Respondent, De’Borah S. Dunbar (“Ms. Dunbar”). Matthew M. Burke, Esq., counsel for the Division, mailed the OTSC, with a Notice of Action from the Hearings and Appeals Docket Clerk (“Docket Clerk”), to Ms. Dunbar at her current home/ mailing address listed on the licensing records of the Division and also to an address listed for her on the records of the National Association of Insurance Commissioners, the Commonwealth of Virginia, and the states of South Dakota, North Dakota, Kansas, and Wisconsin (“the additional record address”). The Commissioner of Insurance (“Commissioner”) designated me to be Presiding Officer for the proceeding on the OTSC.

The OTSC asserts 25 claims against Ms. Dunbar under Massachusetts General Laws Chapter (“Chapter”) 175. The claims fall into three categories. The OTSC claims that Ms. Dunbar is subject to discipline pursuant to Chapter 175, § 162R(a)(2) (“§ 162R(a)(2)”) because she violated an insurance law -- Chapter 175, § 162V(a) (“§ 162V(a)”) -- when she failed to report administrative actions in South Dakota (Third and Fourth Claims), New York (Sixth and Seventh Claims), Minnesota (Ninth and Tenth Claims), Maine (Twelfth and Thirteenth Claims), Virginia (Fifteenth and Sixteenth Claims), North Dakota (Eighteenth and Nineteenth Claims),

Kansas (Twenty First and Twenty Second Claims), and Wisconsin (Twenty Fourth and Twenty Fifth Claims). The OTSC further charges that Ms. Dunbar “violated” § 162R(a)(9) of Chapter 175 (“§ 162R(a)(9)”) when her nonresident producer licenses issued by South Dakota (Second Claim), New York (Fifth Claim), Minnesota (Eighth Claim), Maine (Eleventh Claim), Virginia (Fourteenth Claim), North Dakota (Seventeenth Claim), Kansas (Twentieth Claim), and Wisconsin (Twenty Third Claim) were revoked.¹ Finally, the OTSC alleges that Ms. Dunbar “violated” § 162R(a)(8) OF Chapter 175 (“§ 162R(a)(8)”) because she used fraudulent, coercive or dishonest practices and demonstrated untrustworthiness in the conduct of business (First Claim).²

Ms. Dunbar did not file an Answer to the OTSC. The Division on November 20, 2015, filed Petitioner’s Motion for Entry of Default and Summary Decision (“Motion”).

On December 1, 2015, I issued an Order and Notice of Hearing (“Order”), which the Docket Clerk sent, postage paid, by certified mail, return receipt requested, and by regular U. S. mail to Ms. Dunbar to her home/ mailing and business addresses as listed on the licensing records of the Division and also to the additional record address. The Order stated that the Motion would come on for hearing on December 22, 2015, and that failure to respond to the Motion or to appear at the hearing could result in the entry of an order of default against her and the entry of a summary decision or decision on the pleadings granting the relief requested in the OTSC that was filed by the Division on October 22, 2015.

Ms. Dunbar did not appear at the Hearing on December 22, 2015. The Division asked for an entry of default against Ms. Dunbar.

Finding of Default

The Division took appropriate actions to ensure proper service, and sufficient service was made when Attorney Burke mailed the OTSC and the Notice of Action to Ms. Dunbar at her current home/ mailing address listed on the licensing records of the Division. Section 162M(f) of

¹ The substance of these claims is that actions by Ms. Dunbar constitute causes for disciplining her pursuant to § 162R(a)(9). See *Division of Insurance v. Williams*, Docket No. E2012-10 (The Presiding Officer observed that it was imprecise for the OTSC to allege that Williams “violated” § 162R(a)(2) because this provision is the second of 14 “causes” that are listed in Chapter 175, § 162R(a), as possible grounds for disciplining licensees.).

² The substance of this claim is that actions by Ms. Dunbar constitute a cause for disciplining her pursuant to § 162R(a)(8). See note 1, *supra*.

Chapter 175 requires Massachusetts insurance producers and agencies to inform the Commissioner of a change of address within 30 days of the change. *See also* 801 CMR 1.01(4)(c) (“Notice of actions and other communications from the adjudicating Agency, or its designee, shall be presumed to be received upon the day of hand-delivery or, if mailed, three days after deposit in the U.S. mail.”).

The Order scheduling the December hearing was sent to Ms. Dunbar at her current home/ mailing and business addresses listed on the licensing records of the Division and also to the additional record address. This was sufficient notice of the hearing on the Motion. *See* Chapter 175, § 174A; Chapter 4, § 7.³

The failure of Ms. Dunbar to answer the OTSC, to respond to the Motion, and to appear at the hearing on the Motion, warrant finding that Ms. Dunbar is in default. By this default, Ms. Dunbar has waived the right to proceed further with an evidentiary hearing and I may consider the Motion and the merits of the matter based solely upon the OTSC and the exhibits attached to it. *See Division of Insurance v. Daly*, Docket No. E93-2 (The Presiding Officer may accept the allegations contained in an OTSC as true if there is no Answer to the OTSC.).

Findings of Fact

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

1. Ms. Dunbar was licensed by the Division as a non-resident individual insurance producer on October 15, 2012.
2. Ms. Dunbar’s Massachusetts insurance license was terminated for non-renewal on September 17, 2015.
3. At all times pertinent to this proceeding the following addresses have been listed on the licensing records of the Division as Ms. Dunbar’s current addresses: 1800 N. Green Valley

³ The four envelopes containing copies of the Order that were sent by regular U. S. mail and by certified U. S. mail to Ms. Dunbar’s home/ mailing address listed on the licensing records of the Division and to the additional record address have been returned to the Docket Clerk. Each of the four envelopes has the following label pasted on it: “RETURN TO SENDER – NOT DELIVERABLE AS ADDRESSED -- UNABLE TO FORWARD.” The envelopes containing copies of the Order that were mailed by regular U. S. mail and by certified U. S. mail to Ms. Dunbar’s business address listed on the licensing records of the Division have not been returned to the Docket Clerk.

Parkway #812, Henderson, Nevada 89074 (home/ mailing) and c/o Amica Mutual Insurance Company, 2475 Village View Drive, Suite 200, Henderson, Nevada 89074 (business).

4. The records of the National Association of Insurance Commissioners, the Commonwealth of Virginia, and the states of South Dakota, North Dakota, Kansas, and Wisconsin list a mailing address for Ms. Dunbar of 1800 N Green Valley Parkway, Apt. 921, Henderson, Nevada 89074.

5. On April 9, 2014, the South Dakota Department of Labor and Regulation revoked Ms. Dunbar's nonresident insurance producer license ("South Dakota administrative action").

6. Ms. Dunbar did not report the South Dakota administrative action to the Division.

7. On April 17, 2014, the New York State Department of Financial Services revoked Ms. Dunbar's nonresident insurance producer license ("New York administrative action").

8. Ms. Dunbar did not report the New York administrative action to the Division.

9. On May 29, 2014, the State of Minnesota Department of Commerce revoked Ms. Dunbar's nonresident insurance producer license ("Minnesota administrative action").

10. Ms. Dunbar did not report the Minnesota administrative action to the Division.

11. On June 12, 2014, the Bureau of Insurance of the State of Maine Department of Professional and Financial Regulation revoked Ms. Dunbar's nonresident insurance producer license ("Maine administrative action").

12. Ms. Dunbar did not report the Maine administrative action to the Division.

13. In October 2014 Ms. Dunbar's nonresident insurance license was revoked by the Office of the Commissioner of Insurance of the State of Wisconsin ("Wisconsin administrative action").

14. Ms. Dunbar did not report the Wisconsin administrative action to the Division.

15. On November 7, 2014, the Commonwealth of Virginia State Corporation Commission revoked Ms. Dunbar's nonresident insurance producer license ("Virginia administrative action").

16. Ms. Dunbar did not report the Virginia administrative action to the Division.

17. Effective January 12, 2015, the Commissioner of Insurance of the State of Kansas revoked Ms. Dunbar's nonresident insurance agent license ("Kansas administrative action").

18. Ms. Dunbar did not report the Kansas administrative action to the Division.

19. On March 25, 2015, the State of North Dakota Insurance Commissioner revoked Ms. Dunbar's nonresident insurance producer license ("North Dakota administrative action").

20. Ms. Dunbar did not report the North Dakota administrative action to the Division.

Analysis and Conclusions of Law

Chapter 175, § 162R(e), authorizes the Commissioner to enforce the provisions of the licensing statutes, and to impose remedies or penalties pursuant to those statutes and to Chapter 176D, even if a respondent's license has lapsed by operation of law. Although Ms. Dunbar's Massachusetts insurance license was terminated for non-renewal on September 17, 2015, the Commissioner nevertheless can impose discipline for actions taken, or not taken, when she was a licensed Massachusetts insurance producer.

1. Claims based on non-reporting of administrative actions; § 162V(a) & § 162R(a)(2)

Section 162V(a) requires an insurance producer to report to the Division an administrative action taken against the producer in another jurisdiction within 30 days of the final disposition of the matter. Failure to comply with the reporting requirement of § 162V(a) constitutes a violation of an insurance law. Violation of an insurance law subjects an insurance producer to discipline pursuant to § 162R(a)(2). Ms. Dunbar is subject to discipline pursuant to § 162R(a)(2), violation of an insurance law, because she failed to comply with § 162V(a) on eight occasions; when she failed to report to the Division administrative actions taken by South Dakota (Third and Fourth Claims), New York (Sixth and Seventh Claims), Minnesota (Ninth and Tenth Claims), Maine (Twelfth and Thirteenth Claims), Virginia (Fifteenth and Sixteenth Claims), North Dakota (Eighteenth and Nineteenth Claims), Kansas (Twenty First and Twenty Second Claims), and Wisconsin (Twenty Fourth and Twenty Fifth Claims).

2. Claims based on revocations of insurance licenses; § 162R(a)(9)

The revocations of Ms. Dunbar's nonresident producer licenses issued by South Dakota (Second Claim), New York (Fifth Claim), Minnesota (Eighth Claim), Maine (Eleventh Claim), Virginia (Fourteenth Claim), North Dakota (Seventeenth Claim), Kansas (Twentieth Claim), and Wisconsin (Twenty Third Claim) constitute eight causes that subject Ms. Dunbar to discipline pursuant to § 162R(a)(9).

3. Claim based on § 162R(a)(8)

The OTSC provides insufficient basis for me to conclude that Ms. Dunbar in the conduct of business has used fraudulent, coercive, or dishonest practices, or has demonstrated incompetence, untrustworthiness, or financial irresponsibility.

Discipline

1. Discipline for non-reporting of administrative actions; § 162V(a) & § 162R(a)(2)

Each one of Ms. Dunbar's violations of § 162V was a particularly serious offense because it involved insurance license revocation. Her non-reporting, therefore, unlike the reporting of less significant matters, drastically affects her eligibility and qualifications for a Massachusetts producer license. Revocation of her Massachusetts nonresident insurance producer licenses and the maximum civil penalty of \$1,000 pursuant to § 162R(a)(2) and Chapter 176D, § 7, is appropriate for each one of her eight violations of § 162V(a).

2. Discipline for revocations of insurance license; § 162R(a)(9)

The revocations of Ms. Dunbar's nonresident producer licenses issued by South Dakota, New York, Minnesota, Maine, Virginia, North Dakota, Kansas, and Wisconsin constitute eight causes, each of which is a sufficient reason to revoke her Massachusetts insurance licenses pursuant to § 162R(a)(9). No civil penalties are levied for these causes. *See generally Division of Insurance v. Russell*, Docket No. E2015-09.⁴

⁴ In her *Decision on Petitioner's Motion For Summary Decision in Division of Insurance v. Russell*, the Presiding Officer *inter alia* reached the following conclusions:

Section 162R (a) also permits the Commissioner to levy a civil penalty in accordance with Chapter 176D, §7 for the reasons that permit disciplinary action under §162R (a). Of the 14 statutory reasons for disciplining a licensee, 12 are based on actions that a licensee or applicant has affirmatively taken; the other two reasons permit disciplinary action based on actions taken against the license, either conviction of a felony (a)(6) or revocation, suspension or denial of a license by another jurisdiction (a)(9). It is reasonable to consider imposing a fine when the disciplinary action arises from the respondent's personal actions. I am not, however, persuaded that a fine is reasonable if the disciplinary action is based on an action taken elsewhere against the respondent. For that reason, I conclude that while the record fully supports revocation of Russell's license under (a)(6) and (a)(9), no fine should be imposed.

ORDERS

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

1. That De'Borah S. Dunbar shall cease and desist from the conduct complained of in the Order to Show Cause;
2. That any and all insurance producer licenses issued to De'Borah S. Dunbar by the Massachusetts Division of Insurance are hereby revoked;
3. That De'Borah S. Dunbar shall return to the Massachusetts Division of Insurance any licenses in her possession, custody or control;
4. That De'Borah S. Dunbar is, from the date of this *Decision and Order*, prohibited from directly or indirectly transacting any insurance business or acquiring, in any capacity whatsoever, any insurance business in the Commonwealth of Massachusetts;
5. That De'Borah S. Dunbar 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
6. That De'Borah S. Dunbar shall pay to the Massachusetts Division of Insurance **within 30 days of the entry of this *Decision and Order*** a civil penalty of **Eight Thousand Dollars (\$8,000.00)** pursuant to Chapter 175, §§ 162V(a) and 162R(a)(2); and Chapter 176D, § 7.

A copy of this *Decision and Order* shall be sent by the Docket Clerk by regular first class mail, postage paid, to De'Borah S. Dunbar at the addresses listed on the records of the Division as her current home and mailing/business addresses: 1800 N. Green Valley Parkway #812, Henderson, Nevada 89074, and c/o Amica Mutual Insurance Company, 2475 Village View Drive, Suite 200, Henderson, Nevada 89074; and also to 1800 N Green Valley Parkway, Apt. 921, Henderson, Nevada 89074.

Filed: April 27, 2016

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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Division of Insurance v. De'Borah S. Dunbar
Docket No. E2015-13

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