



CHARLES D.
BAKER JAY ASH
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

1000 Washington Street • Suite 810 • Boston, MA 02118-6200
(617) 521-7794 • FAX (617) 521-7475
<http://www.mass.gov/doi>

SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

JOHN C. CHAPMAN
UNDERSECRETARY

DANIEL R. JUDSON
COMMISSIONER

Division of Insurance, Petitioner

v.

Robert G. Draper, Respondent

Docket No. E2016-04

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

Introduction and Procedural History

On April 7, 2016, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Robert G. Draper (“Draper”), a licensed Massachusetts non-resident insurance producer. The Division alleges that on or about September 25, 2013, Draper surrendered his North Carolina insurance producer license to that state and, on July 17, 2014, surrendered his Ohio insurance producer license to that state. Further, the Division alleges, the State of Delaware and the Commonwealth of Virginia revoked Draper’s producer licenses on, respectively, June 9 and October 8, 2014. Finally, it asserts, on January 12, 2016, the West Virginia Commissioner of Insurance revoked Draper’s producer license in that state. The Division alleges that Draper did not report any of these administrative actions to it and that his failure to do so violates M.G.L. c. 175, §162V(a). It also asserts that Draper committed unfair or deceptive acts in the business of insurance and thereby violated M.G.L. c. 176D, §2.

The Division contends that these allegations support revocation of Draper’s Massachusetts producer license pursuant to the provisions of M.G.L. c. 175, §162R (a)(2), (a)(5), (a)(8) and (a)(9), as well as M.G.L. c. 175, §162V (a) . It points out, in addition, that upon revocation of Draper’s producer license in his home state, Virginia, he became ineligible for a Massachusetts non-resident producer license. In addition to license revocation, the Division seeks orders requiring Draper to cease and desist from the alleged misconduct and 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.

On April 7, 2016, the Division served the OTSC and a Notice of Action on Draper by certified and by first class mail, postage prepaid, addressed to him at the residential, business and mailing address on file in the Division's licensing records. The documents sent by certified mail were returned to the Division on April 28, 2016; the documents sent by first class mail were returned on May 9, 2016. Draper filed no answer to the OTSC. On May 3, 2016, the Division filed a motion for summary decision in its favor granting the relief requested in the OTSC. An order, issued on May 4, instructed Draper to file any written response to the Division's motion by May 31, 2016, and scheduled a hearing on the motion for June 3, 2016. Draper did not respond to the Division's motion for summary decision. Neither he nor any person purporting to represent him appeared at the hearing on June 3, 2016. Robert Kelly, Esq. represented the Division at the hearing. He stated that he had not been contacted about this matter by Draper or by any person purporting to represent him.

Sufficiency of Service

M.G.L. c. 175, §174A states that notices of hearings seeking revocations of producer licenses are 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. For purposes of giving notice, M. G. L. c. 4, §7, Clause 44 provides that certified mail is equivalent to registered mail. I find that the Division has complied with the statutory requirements and that service is therefore deemed sufficient.

Finding of Default

The Division's motion for summary decision is based on Draper's failure to answer the OTSC or to communicate with counsel for the Division. At the June 3, 2016 hearing on that motion, the Division moved orally for entry of default against Draper. Default is appropriate when the respondent to an OTSC fails to file an answer or to respond to other orders issued by the Commissioner or his designee. Draper filed no answer to the OTSC nor did he contact Division counsel. The record before me fully supports finding Draper in default. By his

default, Draper 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 an addendum to it, and the following exhibits attached to the OTSC: A) Voluntary surrender of North Carolina producer license executed by Draper on September 25, 2013; B) Decision, dated June 9, 2014, from the State of Delaware Insurance Department revoking Draper's Delaware producer license; C) Executed Request to Surrender for Cause, dated July 17, 2014, submitted by Draper to the Ohio Department of Insurance; D) Order, dated October 8, 2014, from the State Corporation Commission of the Commonwealth of Virginia revoking Draper's Virginia producer license; and E) Order, dated January 12, 2016, from the West Virginia Insurance Commissioner revoking Draper's West Virginia producer license.

Findings of Fact

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

1. The Division first licensed Draper as a non-resident insurance producer on or about May 3, 2013.
2. On September 25, 2013, Draper voluntarily surrendered his North Carolina producer license to the North Carolina Department of Insurance for a period of ten years.
3. On June 9, 2014, the Insurance Department of the State of Delaware issued a final order revoking Draper's Delaware producer license.
4. On June 10, 2014, Draper submitted a "Request to Surrender for Cause to the Ohio Department of Insurance.
5. On July 17, 2014, the Ohio Superintendent of Insurance executed Draper's "Request to Surrender."
6. As of July 17, 2014, Draper was no longer authorized to act as an insurance producer in Ohio.
7. On October 8, 2014, the State Corporation Commission of the Commonwealth of Virginia issued an order revoking Draper's Virginia insurance license.
8. On January 12, 2016, the Insurance Commissioner of West Virginia revoked Draper's West Virginia insurance producer license.¹
9. Draper did not report any of these administrative proceedings to the Division.

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.

¹ The West Virginia action is against "Robert Draper II." However, the order includes identifying information, such as an address and a history of license revocations in Delaware, North Carolina and Ohio and the deactivation of his producer license in his home state, Virginia, to persuade me that the respondent in West Virginia is the same person who is the respondent in this action.

Draper has not contested the factual allegations in the OTSC or offered any defense to the Division's claims for relief.

M.G.L. c. 175, §§162G through 162X set out, among other things, the requirements for obtaining and maintaining a Massachusetts insurance producer license. Chapter 175, §162N establishes the requirements for holding a Massachusetts non-resident producer license. Chapter 175, §162R (a) specifies fourteen grounds on which the Commissioner may initiate disciplinary action against a licensed producer. The Division identifies subsections §162R (a)(2), (a)(5), (a)(8) and (a)(9) as grounds for revocation of Draper's license, as well a failure to comply with c.175 §162V(a), a statute requiring a producer to report to the Commissioner any administrative proceeding relating to a license in any jurisdiction within 30 days of the final disposition. It also alleges violation of c. 176D, §2.

Section 162N (a)(1) establishes that to be eligible for licensure as a non-resident producer an applicant must be currently licensed as a resident producer and in good standing in his home state. "Home state" is defined in §162H as "any state or territory of the United States in which an insurance producer maintains his principal place of residence or principal place of business and is licensed to act as an insurance producer." The Division's allegation that Draper was not eligible for a Massachusetts producer license appears to be based on his Virginia mailing and business address in the Division's records and the revocation of his Virginia license. Draper has not contested that allegation.

The exhibits, however, considered as a whole, offer evidence that Draper was no longer eligible for a Massachusetts license as of October 8, 2014, but also raise a question about the reliability of that documentation to support a final conclusion on the matter. The 2016 West Virginia revocation order refers to Draper as having held resident producer licenses both in Pennsylvania and Virginia. The order provides no specific information on the relevant time periods, but raises a question about Draper's "home state" for purposes of determining the jurisdiction in which he held a resident license.² In any event, resolution of that issue does not alter this decision because §162N does not provide for automatic revocation or suspension of a license by operation of law when the licensee is no longer eligible for appointment as a

² The Virginia revocation order does not identify Draper as a resident or non-resident licensee.

nonresident producer, nor does it require the licensee to report that he is no longer eligible. There is no basis for a claim that Draper violated §162N.³

Subsection 162R (a)(2), in pertinent part, permits disciplinary action for violating any insurance laws or regulation, subpoena or order of the Commissioner or of another state's insurance commissioner. The Division claims that the orders from Delaware, Virginia and West Virginia indicate that Draper violated the insurance laws of those states and is therefore subject to discipline pursuant to 162R (a)(2). It does not allege that Draper's failure to comply with any Massachusetts laws subjects him to discipline under that section. The decisions from Delaware, Virginia and West Virginia implicitly support a conclusion that Draper violated the insurance laws of those states, but such decisions may provide limited information on the nature of those violations. As a basis for determining what disciplinary action is appropriate in this proceeding, the ultimate decision to revoke Draper's license is of greater significance.

Subsection 162R (a)(5) permits disciplinary action if a producer has intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance. As support for its claim that Draper is subject to disciplinary action under this section, the Division relies on a statement in the Virginia revocation order that Draper provided untrue information in his license application filed with the Commission. Section (a)(5) refers to misrepresentation of the terms of an insurance contract or on an application for insurance. The document on which the Division relies is an application for an insurance license and does not support action under (a)(5).

Subsection 162R (a)(8) permits disciplinary action if an producer has used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business. The Division does not specify aspects of Draper's conduct that form a basis for disciplinary action under this section, but refers generally to the allegations in the OTSC. None of the revocation orders attached as exhibits to the OTSC refers to fraudulent, coercive or dishonest practices or demonstrated incompetence, untrustworthiness

³ Even if Draper's Massachusetts license had expired by operation of law, the Commissioner, pursuant to c. 175, §162R (e) retains the authority to enforce against a licensee the provisions of c. 175, §§162H through 162X and Chapter 176D.

or financial irresponsibility in the conduct of business in any of the issuing jurisdictions.⁴ I find that the evidence does not support the claim that Draper should be disciplined under (a)(8).

Subsection 162R (a)(9) supports disciplinary action when an insurance producer's license has been revoked in another jurisdiction. The Division claims that the revocation of Draper's producer licenses in Delaware, Virginia and West Virginia support disciplinary action against him. The orders from those jurisdictions fully support those claims.

The Division alleges that Draper, by failing to report administrative actions by the states of North Carolina, Delaware, Ohio, Virginia and West Virginia, violated c. 175, §162V(a) five times. The statute requires a producer to report to the Division "taken against the producer in another jurisdiction." Of the five exhibits offered to support the Division's claims, the Delaware, Virginia and West Virginia decisions result from formal administrative action initiated by the states. Language on the North Carolina voluntary surrender form specifies that voluntary surrender is equivalent to a regulatory action taken by the Department. The Ohio form, however, does not so characterize a Request to Surrender," commenting only that it will be entered in the Journal of the Ohio Department of Insurance. For that reason, I find that the evidence supports four claims of failure to report an administrative action.

On this record, I find that the evidence supports some, but not all, of the Division's claims against Draper, and that the number and seriousness of the grounds that are fully supported by the evidence warrant revocation of Draper's license. Failure to report administrative actions by other jurisdictions limits the Division's capacity effectively to protect Massachusetts consumers through oversight of its licensees. Approximately five months after obtaining a Massachusetts producer license in May 2013, Draper surrendered his license in North Carolina. In June and July 2014, he became disqualified in two other jurisdictions. Draper's failure to report these, and later, events to the Division on a timely basis allowed him to remain fully qualified for many months to sell insurance in Massachusetts and deprived the Division of an opportunity promptly to reassess his qualifications for licensure. On this record, I find that, in addition to revocation of his license, Draper should be prohibited from transacting any insurance

⁴ The North Carolina decision does not identify the reasons underlying Draper's voluntary surrender of his license. The Delaware, Ohio and West Virginia decisions are based on failure to report actions in other states. Virginia refers to untrue information on a license application.

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 causes that support to disciplinary action against a producer under §162R as well as to levy penalties under any other applicable sections of the general laws. For violations of law that are not listed as grounds for disciplinary action under §162R (a), G. L. c. 175, §194 permits a fine of not more than \$500. Draper, by failing to report four administrative actions against him committed four violations of Chapter 175, §162V(a). Because these actions constitute serious violations of the insurance laws, I impose the maximum fine for each of them.

For the reasons above, the Division's Motion for Summary Decision is hereby allowed.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Robert G. Draper by the Division are hereby revoked; and it is

FURTHER ORDERED: that Robert G. Draper shall return to the Division any licenses in his possession, custody or control; and it is

FURTHER ORDERED: that Robert G. Draper 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 Robert G. Draper 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 Robert G. Draper 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 in the office of the Commissioner of Insurance this 22nd day of August, 2016. A copy shall be sent to Robert G. Draper 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.