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DANIEL R. JUDSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Sean Green, Respondent

Docket No. E2016-06

**Decision and Order on Petitioner's Motion
for Entry of Default and Summary Decision**

Introduction and Procedural History

On April 22, 2016, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Sean Green ("Green") who was, until November 19, 2015, a licensed Massachusetts non-resident insurance producer. The Division alleges that Green failed to disclose his criminal history on the producer license application he submitted to the Division on or about August 28, 2013 and, subsequently, failed to report administrative actions against him by the Commonwealth of Virginia and the states of California, Washington and Ohio that resulted in revocation of his insurance producer licenses in those jurisdictions. The Division contends that Green, by failing timely to report those actions, violated M.G.L. c. 175, §162V (a).

The Division further contends that these allegations support revocation of Green's Massachusetts producer license pursuant to the provisions of M.G.L. c. 175, §162R (a)(1), (a)(2) and (a)(9). In addition to license revocation, the Division seeks a cease and desist order and orders requiring Green 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 22, 2016, the Division served the OTSC and a Notice of Action on Green by first-class mail addressed to him at the business and the residential/ mailing addresses on file in the Division's licensing records. Green filed no answer or other response to the OTSC. On May 16, the Division filed a motion for summary decision in its favor against Green for failure to answer the OTSC. An order, issued on May 31, instructed Green to file any written response to the Division's motion by June 15 and scheduled a hearing on the motion for July 8, 2016.

Green 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 July 8, 2016. Matthew Burke, Esq. represented the Division at the hearing. He stated that he had not been contacted about this matter by Green or by any person purporting to represent him. He confirmed that the OTSC and the motion for summary decision that were served on Green by first-class mail at the business address shown on the Division's records had not been returned by the United States Postal Service.

Pursuant to M.G.L. c. 175, §162R (e) the Commissioner of Insurance retains the authority to enforce the provisions of and impose penalties or remedies against a person charged with violations of M.G.L. c. 175, §§162H through 162X even if the person's license has lapsed by operation of law. Therefore, although Green did not renew his non-resident producer license in 2015, he is still subject to disciplinary action by the Division.

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 Green by first-class mail sent to his residential/ mailing and business addresses, as shown on the Division's records.¹ The United States Postal Service returned mail sent to the residential/ mailing address, but not to the business address. Therefore, pursuant to 801 CMR 1.01 (4)(c), the OTSC and Notice of Action are presumed to have been received three days after deposit in the United States mail.² I conclude that service was sufficient and that Green's failure to answer the OTSC, to respond to the Division's motion, or to appear at the hearing warrant a finding that he is in default.

¹ The Division's motion for summary decision states that Green was served both by registered and standard United States mail; Division counsel confirmed that service was made only by standard first-class mail.

² Even if the three-day presumption may not reflect current standards for postal delivery, it is reasonable to conclude that Green has had at least two months to respond to the OTSC.

By his default, Green 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 following exhibits attached to the OTSC: A) Green's 2013 application for Massachusetts non-resident producer license; B) Records from the Flagstaff, Arizona, Municipal Court, indicating that on May 3, 2004, Green pleaded guilty/no contest to charges of shoplifting; C) Records from the Glendale, Arizona City Court showing Green's April 6, 2005 conviction for domestic violence; D) Records from the Scottsdale, Arizona City Court indicating that, on October 5, 2009, Green pleaded guilty to violating Section 19.19 of the Scottsdale Municipal Code; E) Order from the Commonwealth of Virginia State Corporation Commission dated March 11, 2014 revoking Green's Virginia producer license; F) Order from the California Department of Insurance dated July 30, 2014, revoking Green's California producer license; G) Order from the Insurance Commissioner of the State of Washington, dated October 30, 2014, revoking Green's Washington insurance producer license effective November 14, 2014; and H) Order from the Ohio Department of Insurance dated May 18, 2015, revoking Green's Ohio producer license as of that date. Attached to the Division's Motion for Summary Decision is a copy of Green's licensing record at the Division.

Findings of Fact

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

1. The Division first licensed Green as a non-resident insurance producer on or about August 28, 2013.
2. According to the Division's licensing records, Green's license terminated automatically for non-renewal on November 11, 2015.
3. On May 3, 2004, Green pleaded guilty in the Flagstaff, Arizona Municipal Court to charges of shoplifting.
4. On April 6, 2005, Green was convicted of domestic violence in the Glendale, Arizona City Court.
5. On October 5, 2009, Green pleaded guilty in the Scottsdale, Arizona City Court to violating Section 19.19 of the Scottsdale Municipal Code.
6. Green did not report any of these criminal offenses on the application for a Massachusetts non-resident producer license that he submitted to the Division on or about August 28, 2013.
7. On March 11, 2014, the Commonwealth of Virginia Corporation Commission revoked Green's Virginia insurance producer license.
8. On July 30, 2014, the California Department of Insurance revoked Green's California insurance producer license.

9. On October 30, 2014, the Insurance Commissioner of the State of Washington revoked Green's Washington insurance producer license, effective November 14, 2014.
10. On May 18, 2015, the Ohio Department of Insurance revoked Green's Ohio insurance producer license.
11. Green did not report to the Division the administrative actions by Virginia, California, Washington and Ohio that resulted in the revocation of his producer licenses in those states.

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. Green 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, §162R (a) specifies fourteen grounds on which the Commissioner may initiate disciplinary action against a licensed producer. The Division identifies subsections §162R (a)(1), (a)(2) and (a)(9) as grounds for revocation of Green's license, as well a failure to comply with Chapter 175, §162V(a), a statute requiring a producer to report to the Commissioner within a specified time frame any administrative action taken against him or her in any jurisdiction.

Subsection 162R (a)(1) supports disciplinary action if a licensee provided incorrect, misleading, incomplete or materially untrue information on the application for a producer license. Background Question 38, part 1.a on Green's application asks if the applicant has ever been convicted of a misdemeanor. Green answered "No" to that question. His failure to disclose the three actions in Arizona fully supports the Division's claim that he is subject to disciplinary action under subsection (a)(1).

Subsection 162R (a)(2), in pertinent part, supports disciplinary action for violating any insurance laws or regulation, subpoena or order of the Commissioner or of another state's insurance commissioner. Green failed to notify the Division of the administrative actions against him in Virginia, California, Washington and Ohio, as he is required to do under G.L. c. 175, §162V(a). The record fully supports the Division's claim that Green violated a Massachusetts insurance law and is subject to discipline under subsection (a)(2).

Subsection 162R (a)(9) supports disciplinary action when an insurance producer's license has been revoked by another jurisdiction. The administrative actions that resulted in revocation of Green's insurance producer licenses in Virginia, California, Washington and Ohio therefore support revocation of his Massachusetts license under subsection (a)(9).

The number and the seriousness of the grounds relied on by the Division to support its disciplinary action fully warrant revocation of Green's Massachusetts producer license. On this record, I find that, in addition to revocation of his license, Green should be prohibited from transacting any insurance business or acquiring, in any capacity whatsoever in Massachusetts, any insurance business in Massachusetts and shall dispose of any interests 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 G.L. c. 176D, §7 for violations of the insurance laws and regulations. The maximum penalty permitted under c.176D, §7 is \$1,000 per violation. Green, by failing to disclose his criminal record on his license application effectively circumvented a complete review of his eligibility to hold a Massachusetts producer license. By failing to report to the Division administrative actions revoking his producer license in four other jurisdictions, Green committed four violations of c. 175, §162V(a) that are also four grounds for discipline under §162R (a)(2). His failure to report permitted him to remain licensed in Massachusetts long after the events occurred that support revocation. Because these actions constitute serious violations of the insurance laws, in addition to license revocation for the reasons set out in c. 175, §162R (a)(1), (a)(2) and (a)(9) I will impose the maximum fine for each of them.

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

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any insurance producer license issued to Sean Green by the Division is hereby revoked; and it is

FURTHER ORDERED: that Sean Green shall return to the Division any license in his possession, custody or control; and it is

FURTHER ORDERED: that Sean Green 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 Massachusetts; and it is

FURTHER ORDERED: that Sean Green 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 Sean Green shall pay a fine of Five Thousand (\$5,000) to the Division within 30 days of the date of this decision and order.

This decision has been filed this 15th day of July 2016, in the office of the Commissioner of Insurance. A copy shall be sent to Sean Green by regular first class mail, postage prepaid.

Jean F. Farrington
Presiding Officer

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