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DANIEL R. JUDSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Jeanette Louise Mix, Respondent
Docket No. E2016-07

Order on Petitioner's Motion for Summary Decision

On April 28, 2016, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Jeanette Louise Mix ("Mix"), who was licensed in 2012 as a Massachusetts non-resident insurance producer. The Division alleges that Mix, on her 2012 application for a Massachusetts non-resident producer license, answered no to a question about her criminal history. It further alleges that the states of Washington, North Dakota and Delaware, and the Commonwealth of Virginia revoked her insurance producer licenses, and that Mix failed timely to report those revocations to the Division within the time period prescribed by G.L. c. 175, §162V(a).

The Division contends that the allegations in the OTSC support revocation of Mix's non-resident Massachusetts producer license pursuant to the provisions of G.L. c.175, §162R (a)(1), (a)(2) and (a)(9). The Division also contends that Mix should be fined for failing to report the administrative actions to the Division on a timely basis as she is obligated to do so. In addition to revocation of Mix's license, the Division seeks orders that, among other things, require her to dispose of any insurance-related interests in Massachusetts, prohibit her from conducting any insurance business in the Commonwealth, and impose fines for the alleged violations.

Mix filed no answer or other response to the OTSC. On May 26, 2016, the Division filed a motion for entry of default and summary decision; subsequently, on September 22, 2016 it filed an amended motion for default and summary decision. An order entered on October 4, 2016 setting a date for responding to the Division's motion and scheduling a hearing on the motion for October 25, 2016. Neither Mix nor any person representing her attended the hearing.

Finding of Default

According to the certificate of service submitted with the OTSC, the Division served it on Mix by regular United States mail sent to her mailing, business and residential address shown on the Division's producer licensing records, 6513 Cherrycrest Lane, Charlotte, NC 28217. On May 26, the Division filed a Motion for Entry of Default and Summary Decision, on the grounds that Mix had failed to answer the OTSC. In that motion, the Division reported that the documents sent to Mix had been returned with the notation "Attempted, Not Known, Return to Sender, Unable to Forward." On September 22, 2016, the Division submitted an amended Motion for Entry of Default and Summary Decision, again on the grounds that Mix had failed to answer the OTSC. In that motion, the Division reported that on August 26, 2016, it served the OTSC on Mix by certified United States mail, at her address in Charlotte, NC. The United States Postal Service returned those documents to the Division on September 15, 2016, marked "Return to Sender, Unable to Forward." On the basis of the postal records, I conclude that the OTSC was served on Mix by certified mail and that, pursuant to G.L. c. 175, §174A, service was sufficient.¹

I find that Mix's failure to answer the OTSC or to respond to the Motion, and her failure to appear at the hearing warrant findings that she is in default. By her default, Mix has waived her 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.

¹ M.G.L. c. 175, §174A, establishes a statutory process that determines when notice of a proposed revocation or suspension of a license is by law deemed sufficient. Service is to be made postpaid "by registered mail to the last business or residence of the licensee appearing on the records of the commissioner." For purposes of that statute, registered mail includes certified mail. M.G.L. c. 175, §162M (f) requires licensees to inform the commissioner of a change of address within 30 days of the change. The licensee bears the burden of ensuring that his or her address on the Division's records is correct. The statement in the Division's motion that it had served the OTSC on Mix by both certified and regular United States mail is inconsistent with the certificate of service filed with the OTSC.

The record in this proceeding consists of the OTSC, the Initial and Amended Motions for Summary Decision, and the exhibits attached to them. The exhibits attached to the OTSC consist of Mix's application for an insurance producer license dated July 19, 2012, a summary of a criminal proceeding against Mix in the General Sessions Court of South Carolina in 1998, and decisions in administrative actions initiated against Mix by the states of Delaware, North Dakota and Washington, and the Commonwealth of Virginia.

Findings of Fact

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

1. The Division first licensed Mix as a non-resident insurance producer on or about September, 2012.
2. On her license application, Mix answered "No" to background question 1 which asks if she has ever been convicted of a crime. Convicted, as defined for purposes of responding to that question, includes entering a plea of guilty.
3. On or about February 9, 1999, in the General Sessions Court of South Carolina, Mix pleaded guilty to a charge of passing fraudulent checks.
4. By order dated April 9, 2014, the State of Washington revoked Mix's insurance producer license, effective April 23, 2014.
5. On or about November 7, 2014, the Commonwealth of Virginia State Corporation Commission revoked Mix's insurance producer license.
6. On or about November 21, 2014, the North Dakota Insurance Commissioner revoked Mix's insurance producer license.
7. On or about August 25, 2015, the Delaware Insurance Commissioner revoked Mix's insurance producer license.
8. Mix failed to report the Washington, Virginia, North Dakota and Delaware administrative actions to the Division with the statutory time frames.

Analysis and Discussion

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. Mix has not contested the factual allegations in the OTSC or offered any defense to the Division's claims for relief. G. L. c. 175, §§162G through 162X set out, among other things, the requirements for obtaining and maintaining a Massachusetts insurance producer license. Section 162R (a) specifies fourteen grounds on which the Commissioner may suspend or revoke a producer's license. The Division identifies §162R (a)(1), (a)(2) and (a)(9) as grounds for revocation of Mix's license, as well a

failure to comply with G.L. c. 175, §162V(a), the statute requiring her to report to the Commissioner any administrative action taken against her by another jurisdiction.

Subsection 162R (a)(1) permits disciplinary action if a licensee has provided incorrect, misleading, incomplete or materially untrue information on the license application. By failing to report her South Carolina conviction on her Massachusetts license application, Mix provided incorrect and materially untrue information to the Division. The record fully supports disciplinary action pursuant to subsection 162R (a)(1). Subsection 162R (a)(2) permits disciplinary action if the licensee has violated any insurance law. The record fully supports a conclusion that Mix did not report to the Division any administrative actions initiated in other jurisdictions and thereby violated G.L. c. 175, §162V (a). Those multiple violations support disciplinary action pursuant to subsection 162R (a)(2).

Subsection 162R (a)(9) permits disciplinary action when an insurance producer's license has been revoked in another jurisdiction. The orders in the Washington, Virginia, North Dakota and Delaware administrative actions revoked Mix's insurance producer license in each state and fully support disciplinary action under that section.

The number and nature of the grounds that the Division cites for taking disciplinary action against Mix fully warrant revocation of her Massachusetts insurance producer license. On this record, I find that, in addition to revocation of her license, Mix should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and should be required to dispose of any interests she may have in any insurance business in Massachusetts.

Section 162R (a) also permits the Commissioner to levy a civil penalty in accordance with G.L. c.176D, §7 for the reasons that permit disciplinary action under §162R (a). The maximum penalty permitted under G.L. c.176D, §7 is \$1,000 per violation. Failure to provide complete and accurate answers to questions on the producer license application forms is a serious violation of the applicant's obligation, set out in the Certification and Attestation section of that application, to certify that the application is "true and complete." Such actions also deprive the Division of an opportunity to determine the applicant's qualifications for license. For that reason, for Mix's failure to provide accurate information on her license application, I impose a fine of \$1,000.

The Division also requests fines for each of Mix's specific violations of G.L. c. 175, §162V (a). Because that section does not include a specific penalty for non-compliance, violators are subject to fines imposed in accordance with G. L. c. 175, §194. The maximum fine allowed under that section is \$500 per violation.² The Division's requests, if allowed, would impose two fines, derived from two statutory sources, on the respondent for her actions.

Chapter 175, §162V prescribes a reporting obligation; failure to comply is not, itself, a basis for disciplinary action but, as a violation of Massachusetts law, supports a request for disciplinary action under c. 175, §162R (a)(2). I am not persuaded, however, that in these circumstances it is appropriate to impose a fine as permitted under G.L. c.176D, §7. The OTSC is based, in part, on undisputed facts relating to Mix's failure to notify the Division of administrative actions against her insurance producer license in four other jurisdictions. The statutory penalty for those underlying violations is limited to a fine of no more than \$500. That the violations also support disciplinary action under c. 175, §162R (a)(2) intensifies the potential consequences of her actions, but does not alter the underlying events. However, Mix's failure to report those four administrative actions effectively enabled her to avoid any enforcement action in the Commonwealth for over two years. For that reason, I will impose the maximum \$500 fine for each of Mix's four failures to report an administrative action.³

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Jeannette Louise Mix by the Division are hereby revoked; and it is

FURTHER ORDERED: that Jeannette Louise Mix shall return to the Division any licenses in her possession, custody or control; and it is

FURTHER ORDERED: that Jeannette Louise Mix is, from the date of this order, prohibited from directly or indirectly transacting any insurance business or

² That section states that "[w]hoever violates any provision of this chapter, the penalty whereof is not specifically provided herein, shall be punished by a fine of not more than five hundred dollars."

³ The record does not indicate that Mix violated any other Massachusetts insurance law or regulation that supports discipline under §162R (a)(2) and is not subject to the limitations of G. L. c. 175, §194.

acquiring, in any capacity whatsoever, any insurance business in the Commonwealth of Massachusetts; and it is

FURTHER ORDERED: that Jeannette Louise Mix shall comply with the provisions of G.L. c. 175, §166B and dispose of any and all interests in Massachusetts as a proprietor, partner, stockholder, officer or employee of any licensed insurance producer; and it is

FURTHER ORDERED: that Jeannette Louise Mix shall pay a penalty of Three Thousand Dollars (\$3,000) to the Division within 30 days of the entry of this order.

This decision has been filed this 1st day of February 2017, in the office of the Commissioner of Insurance. A copy shall be sent to Mix 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.