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**Division of Insurance, Petitioner**

**v.**

**Joshua A. Vela, Respondent**

**Docket No. E2016-17**

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

*Introduction and Procedural History*

On December 20, 2016, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Joshua A. Vela ("Vela") who is a licensed Massachusetts non-resident insurance producer. The Division alleges that Vela failed to report administrative actions against his insurance producer license by the states of Kansas and Louisiana and the Commonwealth of Virginia. The Division contends that Vela, 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 Vela's Massachusetts producer license pursuant to the provisions of M.G.L. c. 175, §162R (a)(2) and (a)(9). In addition to license revocation, the Division seeks a cease and desist order and orders requiring Vela to dispose of any insurance-related interests in Massachusetts, prohibiting him from conducting any insurance business in Massachusetts, and imposing fines for the alleged violations.

On December 20, 2016, the Division served the OTSC and a Notice of Action on Vela by the United States Postal Service ("USPS") certified mail and regular mail at the residential and mailing address on file in the Division's licensing records. Vela filed no answer or other response to the OTSC. On January 13, 2017, the Division filed a motion for summary decision in its favor against Vela for failure to answer the OTSC. I issued an order on January 26, 2017

instructing Vela to file any written response to the Division's motion by February 22, 2017 and scheduling a hearing on the motion for February 24, 2017.

Vela 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 February 24, 2017. Matthew Burke, Esq. represented the Division at the hearing. He stated that he had not been contacted about this matter by Vela or by any person purporting to represent him. He confirmed that the OTSC and Notice of Action served on Vela by certified mail were delivered on December 27, 2016.

***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 Vela by both first-class mail and certified mail to the residential address on file at the Division. In the Motion for Entry of Default and Summary Decision, Attorney Burke indicated that because Vela was no longer employed at the business address on file in the Division's licensing records, he did not attempt service to this address. 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 conclude that service was sufficient and that Vela'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.

By his default, Vela 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) Final Order of the State of Kansas Commissioner of Insurance, denying Vela's application for a Kansas nonresident insurance agent's license, dated October 12, 2015; B) Notice of Regulatory Action of the Louisiana Department of Insurance, suspending Vela's insurance producer license, dated March 30, 2016; C) Order Revoking License from the Commonwealth of Virginia State Corporation Commission, date stamped June 30, 2016. Attached to the Division's Motion for Summary Decision is A) a USPS Form 3811 Domestic

Return Receipt, indicating proof of delivery to Vela's home and mailing address, and B) a copy of Vela'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 Vela as a non-resident insurance producer on or about August 7, 2015.
2. On October 12, 2015, the State of Kansas Commissioner of Insurance issued a final order denying Vela's application for a Kansas nonresident insurance agent license.
3. On March 30, 2016, the Louisiana Department of Insurance suspended Vela's Louisiana nonresident insurance producer license.
4. On or about June 30, 2016, the Commonwealth of Virginia State Corporation Commission revoked Vela's Virginia insurance agent license.
5. Vela did not report to the Division the Kansas administrative action denying his application for an agent's license, the Louisiana administrative action suspending his producer license, or the Virginia administrative action revoking his insurance producer license.

***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. Vela 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 describe the requirements for obtaining and maintaining a Massachusetts insurance producer license. M.G.L. c. 175, §162R (a) specifies 14 grounds on which the Commissioner may initiate disciplinary action against a licensed producer. The Division identifies subsections §162R (a)(2) and (a)(9) as grounds for revocation of Vela's license.

M.G.L. c. 175, § 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. Here, Vela failed to timely notify the Division of the administrative actions against him in Kansas, Louisiana, or Virginia as he is required to do under M.G.L. c. 175, §162V(a). The record fully supports the Division's claim that Vela violated a Massachusetts insurance law and is therefore subject to discipline under M.G.L. c. 175, § 162R (a)(2).

M.G.L. c. 175, § 162R (a)(9) supports disciplinary action when an insurance producer's license has been "denied, suspended or revoked in any other state, province, district or territory." Here, Vela's insurance producer license was denied by the state of Kansas, suspended by the

state of Louisiana, and revoked by the Commonwealth of Virginia. These administrative actions therefore support revocation of his Massachusetts license under subsection (a)(9).

The number and the seriousness of the grounds the Division cites for taking disciplinary action against Vela fully warrant its request to revoke his Massachusetts producer license. On this record, I find that, in addition to revocation of his license, Vela 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.

M.G.L. c. 175, §162R (a) also permits the Commissioner to levy a civil penalty in accordance with M.G.L. c. 176D, §7 ("Section 7 fines") for the reasons that support disciplinary action against a producer under M.G.L. c. 175, §162R (a). The maximum penalty permitted under M.G.L. c. 176D, §7 is \$1,000 per violation. The Division requests Section 7 fines for the grounds that it relies on to support revocation of Vela's producer license: 1) violations of Massachusetts law; 2) administrative actions against his license in other jurisdictions.

Decisions in administrative proceedings seeking license revocation distinguish grounds for disciplinary action that arise from the respondent's affirmative acts from grounds arising from administrative or judicial actions initiated by third parties to revoke or suspend the respondent's license. Because one of the grounds on which the Division seeks to discipline Vela, M.G.L. c. 175, §162R (a)(9), is based entirely on administrative actions against him by other jurisdictions, I will not impose Section 7 fines on him under that section.

In addition to Section 7 fines under M.G.L. c. 175, §162R (a)(2) for Vela's violations of Massachusetts law, the Division also requests fines for each of his violations of M.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 M.G.L. c. 175, §194. The maximum fine allowed under that section is \$500 per violation. The Division's requests, if allowed, would impose two fines, derived from two statutory sources, on the respondent for his failure to report as required under M.G.L. c. 175, §162V(a). M.G.L. c. 175, §162V prescribes a reporting obligation; failure to comply is not, by itself a basis for disciplinary action, but as a violation of Massachusetts law, supports a request for disciplinary action under M.G.L. c. 175, §162R (a)(2).

I am not persuaded that in these circumstances it is appropriate to impose Section 7 fines on the respondent. The violation of Massachusetts law that the Division relied on to support

license revocation and fines under M.G.L. c. 175, § 162R (a)(2) is based on undisputed facts relating to Vela's failure to report the Kansas, Louisiana, and Virginia administrative actions. The statutory penalty for those underlying violations is limited to a fine of no more than \$500. That a licensee's violation of Massachusetts law also supports disciplinary action under M.G.L. c. 175, §162R (a)(2) intensifies the potential consequences of his actions, but does not alter the underlying events. However, Vela, by failing to report three administrative actions against him, effectively avoided prompt enforcement action in Massachusetts. Therefore, I will impose the maximum \$500 fine for each of Vela's three failures to report an administrative action.

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 Joshua A. Vela by the Division is hereby revoked; and it is

**FURTHER ORDERED:** that Joshua A. Vela shall return to the Division any license in his possession, custody or control; and it is

**FURTHER ORDERED:** that Joshua A. Vela 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 Joshua A. Vela shall comply with the provisions of M.G.L. c. 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 Joshua A. Vela shall pay a fine of One Thousand Five Hundred Dollars (\$1,500) to the Division within 30 days of the date of this decision and order.

This decision has been filed this 6<sup>th</sup> day of December 2017, in the office of the Commissioner of Insurance. A copy shall be sent to Joshua A. Vela by regular first class mail, postage prepaid.

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Kristina A. Gasson  
Presiding Officer

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