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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Rodolfo Jimenez, Respondent

Docket No. E2016-18

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

Introduction and Procedural History

On December 30, 2016, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Rodolfo Jimenez (“Jimenez”) who is a licensed Massachusetts non-resident insurance producer. The Division alleges that Jimenez failed to report administrative actions against him by the states of North Dakota, South Dakota, and Nebraska and the commonwealths of Kentucky and Virginia that resulted in revocation of his insurance producer licenses in those jurisdictions. The Division further alleges that Jimenez failed to report a voluntary surrender agreement, in which Jimenez agreed to surrender his insurance producer license in lieu of any further administrative action by the state of Utah. The Division contends that Jimenez, 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 Jimenez’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 Jimenez 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 30, 2016, the Division served the OTSC and a Notice of Action on Jimenez by the United States Postal Service ("USPS") certified mail and regular first-class mail to him at the residential address on file in the Division's licensing records. Jimenez filed no answer or other response to the OTSC. On February 1, 2017, the Division filed a motion for summary decision in its favor against Jimenez for failure to answer the OTSC. I issued an order on February 3, 2016 instructing Jimenez to file any written response to the Division's motion by March 1, 2017 and scheduling a hearing on the motion for March 3, 2017.

Jimenez 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 March 3, 2017. Matthew M. Burke, Esq. represented the Division at the hearing. He stated that he had not been contacted about this matter by Jimenez or by any person purporting to represent him. He confirmed that the OTSC served on Jimenez by certified mail and first-class mail was returned to the Division on January 21, 2017.

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 Jimenez by both first-class mail and certified mail to the residential address on file at the Division. In the OTSC, Attorney Burke indicated that because Jimenez 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 residential 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 Jimenez'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, Jimenez 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) Order of Revocation from the Commonwealth of Kentucky Department of Insurance, dated May 12, 2014; B) Default Order of the State of North Dakota Insurance Commissioner revoking Jimenez's insurance producer license, dated June 19, 2014; C)

Order Revoking License of the Commonwealth of Virginia State Corporation Commission, time stamped July 10, 2014; D) Voluntary Dismissal of Formal Proceeding and Order of the Insurance Commissioner of Utah, dated July 24, 2014 and agreement for license surrender signed by Jimenez on July 16, 2014; E) Final Decision of the South Dakota Department of Labor and Regulation revoking Jimenez's insurance producer license, dated November 7, 2014; F) Order of the State of Nebraska Department of Insurance revoking Jimenez's insurance producer license, dated December 21, 2015. Attached to the Division's Motion for Summary Decision is A) a USPS Certified Mail Receipt and tracking information and B) a copy of Jimenez'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 Jimenez as a non-resident insurance producer on or about December 31, 2013.
2. On May 12, 2014, the Commonwealth of Kentucky revoked Jimenez's Kentucky insurance agent license.
3. On June 19, 2014, the State of North Dakota Insurance Commissioner revoked Jimenez's North Dakota insurance producer license.
4. On or about July 10, 2014, the Commonwealth of Virginia State Corporation Commission revoked Jimenez's Virginia insurance agent license.
5. On July 25, 2014, the State of Utah Insurance Commissioner settled an administrative proceeding against Jimenez which resulted in the surrender of his Utah insurance producer license.
6. On November 7, 2014, the South Dakota Division of Insurance revoked Jimenez's South Dakota insurance producer license.
7. On December 21, 2015, the State of Nebraska Department of Insurance revoked Jimenez's Nebraska insurance producer license.
8. Jimenez did not report to the Division the administrative actions by Kentucky, North Dakota, Virginia, South Dakota, and Nebraska that resulted in the revocation of his producer licenses in those jurisdictions.
9. Jimenez did not report to the Division the administrative action by Utah that resulted in the surrender of his Utah 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. Jimenez 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 Jimenez's license. It also seeks fines for a failure to comply with M.G.L. c. 175, §162V(a), a statute requiring a producer to report to the Commissioner any administrative action taken against him by another jurisdiction within 30 days of the final disposition of the matter.

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, Jimenez failed to notify the Division of the administrative actions against him in Kentucky, North Dakota, Virginia, South Dakota, Utah, and Nebraska as he is required to do under M.G.L. c. 175, §162V(a). The record fully supports the Division's claim that Jimenez violated a Massachusetts insurance law and is therefore subject to discipline under subsection (a)(2).

M.G.L. c. 175, §162R (a)(9) supports disciplinary action when an insurance producer's license has been revoked by another jurisdiction. The administrative actions revoking Jimenez's insurance producer licenses in Kentucky, North Dakota, Virginia, South Dakota, and Nebraska 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 Jimenez fully warrant its request to revoke his Massachusetts producer license. On this record, I find that, in addition to revocation of his license, Jimenez 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 Jimenez'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 Jimenez, 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 Jimenez'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 posed 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 relies on to support license revocation and find under M.G.L. c. 175, §162R (a)(2) is based on undisputed facts relating to Jimenez's failure to report the Kentucky, North Dakota, Virginia, South Dakota, Utah, and Nebraska administrative actions. 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, Jimenez, by failing to report six administrative actions against him, effectively avoided prompt enforcement action in Massachusetts. Therefore, I will impose the maximum \$500 fine in accordance with M.G.L. c. 175, §194 for each of Jimenez's six 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 Rodolfo Jimenez by the Division is hereby revoked; and it is

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

FURTHER ORDERED: that Rodolfo Jimenez 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 Rodolfo Jimenez 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 Rodolfo Jimenez shall pay a fine of Three Thousand Dollars (\$3,000) to the Division within 30 days of the date of this decision and order.

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

Kristina A. Gasson
Presiding Officer

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