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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Wafeek A. Shalabi, Respondent

Docket No. E2017-01

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

Introduction and Procedural History

On February 1, 2017, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Wafeek A. Shalabi ("Shalabi") who at the time of filing was a licensed Massachusetts non-resident individual insurance producer.¹ The Division seeks orders that Shalabi violated the provisions of the Massachusetts insurance laws, specifically, M.G.L. c. 175 §§ 162R (a)(2), (a)(8), and (a)(9), three grounds on which the Commissioner may revoke an insurance producer's license. The Division further alleges Shalabi failed to comply with M.G.L. c. 175 §162V (a), a statute requiring a producer to report to the Commissioner any administrative actions taken against his license in other jurisdictions. It requests the revocation of Shalabi's license, imposition of fines, and an order prohibiting him from engaging in the insurance business in Massachusetts and directing him to dispose of any interest he may have in any insurance businesses in Massachusetts.

On February 1, 2017, the Division served the OTSC and a Notice of Action on Shalabi by the United States Postal Service ("USPS") certified mail and regular first class mail to his business and residential addresses on file in the Division's licensing records. On February 7,

¹ Shalabi's Massachusetts non-resident producer license terminated by operation of law on May 15, 2018 for failure to renew. Pursuant to M.G.L. c. 175, §162R (e), the Commissioner retains the authority to enforce the producer licensing statute against Shalabi.

2017, the OTSC was delivered by certified mail at Shalabi's business address and on February 11, 2017, the OTSC was delivered by certified mail at Shalabi's residential address. He filed no answer or other response to the OTSC. According to the Division's counsel, Matthew M. Burke, Esq., the Respondent left one voicemail for him but the Petitioner's subsequent attempts to reestablish contact by telephone were unsuccessful. On January 10, 2018, the Division filed a motion for summary decision in its favor against Shalabi for failure to answer the OTSC. I issued an order on January 11, 2018 instructing Shalabi to file any written response by January 24, 2018 and scheduling a hearing on the motion for January 26, 2018.

Shalabi 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 January 24, 2018. At the hearing, Attorney Burke stated that he had not been contacted about this matter by Shalabi or by any person purporting to represent him since Shalabi's initial telephone call to the Division in early 2017. Attorney Burke also confirmed that the OTSCs served on Shalabi by certified mail at his business and residential addresses were signed for and delivered on February 7, 2017 and February 11, 2017, respectively, and that the two first-class mailings sent to these addresses were not returned to the Division by USPS.

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 Shalabi by both first-class mail and certified mail to the business and residential addresses on file at the Division and Shalabi signed the certified mail receipts. It is evident from the record that the Respondent was fully aware of the allegations filed against him as he knew how to contact Attorney Burke to inquire about this matter. Additionally, the Petitioner gave the Shalabi ample time to respond and waited until January 2018 to move for an entry of default.

By his default, Shalabi 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 exhibits attached to the OTSC and the Motion for Summary Decision. The exhibits attached to the OTSC are as follows: A) Findings of Fact, Conclusions of Law and Recommendation of the Hearing

Officer from the State of Illinois Department of Insurance (Hearing No. 14-HR-0920), dated August 25, 2016 and B) an Order issued In the Matter of Revocation of Licensing Authority of Wafeek A. Shalabi and Midwest Insurance Group of Illinois, Inc. from the Acting Director of the State of Illinois' Department of Insurance (Hearing No. 14-HR-0920), dated September 7, 2016. Attached to the Motion for Summary Decision are the following exhibits: A) USPS Certified Mail Receipt confirming delivery of the OTSC to Shalabi's business address on February 7, 2017; B) USPS Certified Mail Receipt confirming delivery of the OTSC to Shalabi's residential address on February 11, 2017; C) a Consolidated Licensing and Regulation Information System report, showing Shalabi's licensing record at the Division as of January 10, 2018, and D) a copy of the Certificate of Service of the OTSC, dated February 1, 2017.

Findings of Fact

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

1. The Division first licensed Wafeek A. Shalabi as a non-resident insurance producer on December 29, 2009.
2. Shalabi was the President and owner of Midwest Insurance Group of Illinois, Inc. ("Midwest Insurance"), an Illinois business entity licensed as a Business Entity Insurance Producer.
3. On April 21, 2011, Shalabi's contract to solicit American Equity Investment Life Insurance Company's ("American") products terminated for cause after an investigation and audit. As a result, all of Shalabi's downline agents also had their Agent's Appointment Agreements terminated by American.
4. On August 25, 2016, a Hearing Officer for the State of Illinois' Department of Insurance issued a "Findings of Fact, Conclusions of Law and recommendation of the Hearing Officer," recommending that Shalabi's insurance producer license be revoked. Following a hearing, the Hearing Officer determined that Shalabi and Midwest Insurance violated Illinois insurance law by committing the following acts demonstrating incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in the state of Illinois:
 - i. Shalabi and Midwest Insurance's producers solicited and submitted American annuities that did not bear the name and signature of the insurance producer who solicited and wrote the application.
 - ii. A producer employed by Shalabi and Midwest Insurance's producers failed to present an applicant and the replacing insurer with a "Notice Regarding Replacement of Insurance of Annuity" as required by Illinois insurance law. The agent incorrectly marked annuity applications as not replacing any existing insurance or annuities, and as "unqualified" when, in fact, they were "qualified." These misrepresentations of the annuities that were replaced and the failure to liquidate the existing products caused considerable financial harm to consumers.

- iii. On at least six occasions, Shalabi's insurance producers wrote American Equity annuities without a valid contract to represent the insurer. Shalabi and other Midwest Insurance producers then signed and submitted these applications.
 - iv. At the time of the Hearing Officer's recommendation, Shalabi and Midwest Insurance owed an outstanding balance of \$31,304.89 to American Equity as a result of cancelled annuities for which commissions had been paid.
 - v. As the designated licensed producer for Midwest Insurance, it was Shalabi's duty to ensure his agents were licensed. Shalabi accepted annuity applications from an individual who had her insurance producer's license revoked in Illinois and failed to inquire into the licensing status of the agents working with Midwest Insurance.
5. Shalabi failed to communicate and cooperate with the Illinois Department of Insurance during the investigation.
 6. On September 7, 2016, the Acting Director of the State of Illinois' Department of Insurance revoked Shalabi's Illinois insurance producer license and Midwest Insurance's business entity license and assessed Shalabi a civil penalty of \$5,000.
 7. Shalabi failed to report the revocation of his Illinois resident insurance producer license to the Division within 30 days.

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. Shalabi has not contested the factual allegations in the OTSC nor 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 M.G.L. c. 175, §162 R (a)(2), (a)(8), and (a)(9) as grounds for revocation of Shalabi's license.

M.G.L. c. 175, §162R (a)(8) supports disciplinary action for "using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere." Shalabi's fraudulent conduct is outlined in Exhibit A to the OTSC, the findings of the Illinois Department of Insurance, following a hearing at which Shalabi appeared.² There, the state of Illinois outlines a pattern of fraudulent, coercive, and dishonest and financially irresponsible actions that occurred during Shalabi's ownership of Midwest Insurance. The record demonstrates that

² The findings of the Hearing Officer were eventually adopted by the Acting Director of the Illinois Department of Insurance in her decision to revoke Shalabi's producer license. See Exhibits A-B.

Shalabi fraudulently solicited annuities, failed to liquidate existing insurance products that were replaced by annuities, skirted its contractual obligations by failing to repay a \$31,304.89 balance to American Equity for canceled annuities, and submitted annuity applications for without the name and signature of the insurance producer who solicited and wrote the applications, amongst other violations of Illinois insurance law.³ The record supports the Division's claim Shalabi used fraudulent, coercive or dishonest practices and untrustworthiness in the conduct of business. He is therefore subject to discipline under subsection (a)(8).

M.G.L. c. 175, §162R (a)(9) supports disciplinary action for "having an insurance producer license, or its equivalent, denied, suspended or revoked" by another jurisdiction. Shalabi's insurance producer's license was revoked in Illinois.⁴ This administrative action fully supports discipline under subsection (a)(9).

Finally, M.G.L. c. 175, §162R (a)(2) supports disciplinary action for violating any insurance laws or regulation, subpoena or order of the Commissioner or of another state's insurance commissioner. Shalabi failed to report the revocation of his Illinois insurance producer's license within thirty days of the final disposition date as he is required to do under M.G.L. c. 175, §162V(a).⁵ The record fully supports the Division's claim that Shalabi has violated Massachusetts insurance law and is therefore subject to discipline under subsection (a)(2).

The grounds that the Division cites as basis for disciplinary action against Shalabi are extremely serious and fully warrant its request to revoke his Massachusetts producer license. On this record, I find that, in addition to revocation of his license, Shalabi should be prohibited from transacting 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 Chapter 176D, §7 ("Section 7 fines") for unfair and deceptive acts and practices in the business of insurance. The maximum penalty permitted under M.G.L. c. 176D, §7 is \$1,000 per violation. The Division requests Section 7 fines on the grounds that it relies on to

³ Exhibit A to the OTSC.

⁴ Exhibit B to the OTSC.

⁵ *Id.*

support the revocation of Shalabi's producer license: 1) using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business; 2) the revocation of his insurance produce license in another jurisdiction; and 3) for violations of insurance law based upon his failure to report the revocation of his insurance producer's license in another jurisdiction.

The facts are undisputed that Shalabi engaged in a pattern of fraudulent and financially irresponsible conduct in the business of insurance. Given the extremely serious nature of the Respondent's infractions, it is entirely appropriate to impose a Section 7 fine on the Respondent. For that reason, I will impose the maximum penalty of \$1,000 for the first ground upon which Shalabi's license is revoked, M.G.L. 175, §162R (a)(8).

However, I am not persuaded that it is appropriate to impose Section 7 fines on the Respondent on the other two grounds upon which Shalabi's license is revoked; namely, M.G.L. c.175, §162R (a)(2) and (a)(9). Decisions in administrative proceedings seeking license revocation distinguish grounds for disciplinary action that arise from the respondent's affirmative acts—such as the Respondent's signing of applications for insurance he did not solicit and using agents that were not properly licensed—from grounds arising from administrative or judicial actions initiated by third parties to revoke or suspend the Respondent's license. Because two of the grounds on which the Division seeks to discipline Shalabi, M.G.L. c. 175, §162R (a)(2) and (a)(9), are entirely based on administrative actions by other jurisdictions, I will not impose Section 7 fines under these sections of law.

The Division also requests a fine for Shalabi's violation 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. Shalabi's failure to report his Illinois license revocation to the Division effectively enabled him to avoid prompt enforcement action in the Commonwealth. For that reason, I will impose the maximum penalty of \$500 for Shalabi's failure 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 the insurance producer license issued to Wafeek A. Shalabi by the Division is hereby revoked; and it is

FURTHER ORDERED: that, within ten (10) days of this decision, Wafeek A. Shalabi shall return to the Division any license in his possession, custody or control; and it is

FURTHER ORDERED: that Wafeek A. Shalabi 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 Wafeek A. Shalabi shall promptly 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 Wafeek A. Shalabi 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 27th day of December, in the office of the Commissioner of Insurance. A copy shall be sent to Wafeek A. Shalabi by regular first class mail, postage prepaid.

Kristina A. Gasson
Presiding Officer

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