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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Michael S. Laisney, Respondent

Docket No. E2017-03

**Decision on Petitioner's Motion
for Summary Decision**

Introduction and Procedural History

On February 3, 2017, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Michael S. Laisney (“Laisney”), who was first licensed as a Massachusetts non-resident insurance producer on or about February 19, 2013.¹ The Division alleges that on or about August 4, 2014, Florida revoked Laisney’s resident insurance agent license. Subsequently, the states of Washington, Vermont, Wyoming, West Virginia and Delaware each revoked his non-resident producer license. The Division alleges that Laisney did not report these administrative actions to Massachusetts within the time period prescribed in M. G. L. c. 175, §162V (a) (“§162V (a)”).

The Division contends that the allegations in the OTSC support revocation of Laisney’s Massachusetts producer license pursuant to the provisions of M.G.L. c. 175, §162R (a)(2) and (a)(9). The Division also contends that Laisney should be fined for failing to report the administrative actions to the Division on a timely basis as he is obligated to do so. In addition to revocation of Laisney’s license, the Division seeks orders that, among other things, require him

¹The initial licensing date cited in the OTSC, February 3, 2013, conflicts with the date shown on the Division’s official licensing record that is attached to the motion for summary decision as Exhibit B. I find that the date on the official licensing record, February 19, 2013, is more likely correct.

to dispose of any insurance-related interests in Massachusetts, prohibit him from conducting any insurance business in the Commonwealth, and impose fines for the alleged violations.

Laisney filed no answer or other response to the OTSC. On March 15, 2017, the Division filed a motion for entry of default and summary decision, on the grounds that he failed to answer the OTSC. An order entered on March 16, 2017 setting a date for responding to the Division's motion and scheduling a hearing on the motion for April 11, 2017. Laisney did not file a response to the Division's motion. Neither Laisney nor any person representing him attended the hearing.

Finding of Default

According to the certificate of service submitted with the OTSC, the Division served it on Laisney by certified and regular United States mail sent to his residential address shown on the Division's producer licensing records, 131 13th Avenue N, Jacksonville Beach, FL 32250. At the April hearing on the Division's motion, Matthew Burke, Esq., counsel for the Division, confirmed that the Post Office had advised the Division that the certified mail sent to Laisney was unclaimed, but that the documents sent by regular mail to Laisney's residential address had not been returned. On that basis, I conclude that the OTSC was served on Laisney. I find that Laisney's failure to answer the OTSC or to respond to the Motion, and his failure to appear at the hearing warrant findings that he is in default. By his default, Laisney 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.

The record in this proceeding consists of the OTSC and the motion for Summary Decision, and the attached exhibits. The exhibits attached to the OTSC consist of the administrative actions taken against Laisney by the states of Florida, Washington, Vermont, Wyoming, West Virginia and Delaware.

The Division's OTSC also notes that Laisney's Massachusetts nonresident producer license terminated by operation of law on January 31, 2016, for failure to renew. Pursuant to M.G.L. c. 175, §162R (e), the Commissioner retains the authority to enforce the licensing statutes against Laisney.

Findings of Fact

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

1. The Division first licensed Laisney as a non-resident insurance producer on or about February 19, 2013.
2. On or about June 30, 2014, the Florida Department of Financial Services revoked Laisney's resident insurance agent license.²
3. On or about September 11, 2014, the Insurance Commissioner of the State of Washington issued an order revoking Laisney's non-resident producer license effective September 26, 2014.
4. On or about November 6, 2014, the Vermont Department of Financial Regulation revoked Laisney's non-resident producer license.
5. On or about April 2, 2015, the Wyoming Insurance Department revoked Laisney's non-resident producer license.
6. On or about June 4, 2015, the West Virginia Insurance Commissioner revoked Laisney's non-resident producer license.
7. By order executed on or about August 25, 2015, the Delaware Insurance Commissioner revoked Laisney's non-resident insurance producer license, effective September 25, 2015.
8. Laisney failed to report the administrative actions in Florida, Washington, Vermont, Wyoming, West Virginia and Delaware to the Division.

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. Laisney 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)(2) and (a)(9) as grounds for revocation of Laisney's license; the act underlying discipline under §162R (a)(2), is Laisney's failure to comply with G.L. c. 175, §162V(a), the statute requiring him to report to the Commissioner any administrative action taken against him by another jurisdiction.

Subsection 162R (a)(2) permits disciplinary action if the licensee has violated any insurance law. The record fully supports a conclusion that Laisney 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 of Massachusetts insurance law support disciplinary action pursuant to subsection 162R (a)(2).

²The OTSC alleges that the Florida order was issued on or about August 4, 2014. The Final Order is dated June 30, 2014.

Subsection 162R (a)(9) permits disciplinary action when an insurance producer's license or its equivalent has been revoked in another jurisdiction. The orders issued in the Florida, Washington, Vermont, West Virginia, Wyoming and Delaware administrative actions revoked Laisney's insurance agent or 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 Laisney fully warrant its request to revoke his Massachusetts producer license. On this record, I find that, in addition to revocation of his license, Laisney should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and should be required to dispose of any interests he 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 ("Section 7 fines") 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. The Division requests Section 7 fines for each of the two grounds it relies on to support revocation of Laisney's license: 1) violations of Massachusetts law; and 2) revocation of his producer 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 Laisney, §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 §162R (a)(2) for Laisney's violations of Massachusetts law, the Division also requests fines for each of his 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. 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 by G.L. c. 175, §162V(a). Chapter 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 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 OTSC is based, in part, on undisputed facts relating to Laisney's failure to notify the Division of administrative actions against his insurance agent or producer licenses in six other jurisdictions. The statutory penalty for those underlying violations is limited to a fine of no more than \$500. That a licensee's violations of Massachusetts also support disciplinary action under c. 175, §162R (a)(2) intensifies the potential consequences of Laisney's actions, but does not alter the underlying events. However, Laisney's failure to report those six administrative actions effectively enabled him to avoid any enforcement action in the Commonwealth for over two years. For that reason, I will impose the maximum penalty of \$500 for each of Laisney's six failures to report an administrative action.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Michael S. Laisney by the Division are hereby revoked; and it is

FURTHER ORDERED: that Michael S. Laisney shall return to the Division any licenses in his possession, custody or control; and it is

FURTHER ORDERED: that Michael S. Laisney 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 the Commonwealth of Massachusetts; and it is

FURTHER ORDERED: that Michael S. Laisney 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 Michael S. Laisney shall pay a fine of Three Thousand Dollars (\$3,000) to the Division within 30 days of the entry of this order.

This decision has been filed in the office of the Commissioner of Insurance this 24th day of November 2017. A copy shall be sent to Laisney 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.