

COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Lester G. Sherman, Jr., Respondent
Docket No. E2017-11

Order on Petitioner's Motion for Summary Decision

On April 4, 2017, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Lester G. Sherman, Jr. ("Sherman"), who was licensed in 2016 as a Massachusetts non-resident insurance producer. Pursuant to the provisions of G.L. c.175, §162R (a)(9), the Division seeks revocation of Sherman's Massachusetts producer license on the grounds that two other jurisdictions, the states of Michigan and Idaho, have previously revoked his insurance producer licenses.

The Division alleges that Sherman failed timely to report to the Division the administrative actions revoking his licenses in Michigan and Idaho, as he is obligated to do so pursuant to G.L. c. 175, §162V (a). It asks that he be fined for that failure. In addition to revocation of Sherman's license and the imposition of fines, the Division seeks orders that, among other things, require Sherman to dispose of any insurance-related interests in Massachusetts and prohibit him from conducting business in the Commonwealth.

Sherman filed no answer or other response to the OTSC. On May 8, 2017, the Division filed a motion for entry of default and summary decision. An order, entered on May 9, 2017, set a date for responding to the Division's motion and scheduled a hearing on the motion for June 2, 2017. Robert Kelly, Esq. represented the Division in this matter. Neither Sherman nor any person representing him attended the hearing. Mr. Kelly

reported that he had not been contacted by Sherman or any person purporting to represent him.

Finding of Default

According to the certificate of service submitted with the OTSC, the Division served the documents on Sherman by certified and regular United States mail addressed to him at his home and mailing address as shown on the Division's producer licensing records, 595 Fox Hills Dr. N., Bloomfield Hills, MI 48304 and at his business address, 13700 Oakland Street, Highland park, MI 48203. On May 8, 2017, the Division moved for an entry of default and summary decision (the "Motion") on the grounds that Sherman had failed to answer the OTSC. The Division attached to the Motion a photocopy of the receipt for certified mail sent to Sherman at his home and mailing address and signed by him. The United States Post Office tracking information stated that it had been delivered to Sherman on April 7, 2017. The Division also attached a photocopy of a receipt for certified mail sent to Sherman at his business address that was signed by another individual. On the basis of the postal records, I conclude that the OTSC was served on Sherman personally by certified mail.

I find that Sherman's failure to answer the OTSC or to respond to the Motion, and his failure to appear at the hearing warrant a finding that he is in default. By his default, Sherman has waived his right to proceed further with an evidentiary hearing in this case and I may consider the Division's Motion based on the record.

The record in this proceeding consists of the OTSC, the Motion, and the exhibits attached to them. The exhibits to the OTSC consist of orders in administrative actions revoking Sherman's insurance producer licenses that were issued by his home state, Michigan, and the state of Idaho.

Findings of Fact

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

1. The Division first licensed Sherman as a non-resident insurance producer on or about April 26, 2016.
2. By order dated November 21, 2016, the Michigan Department of Insurance and Financial Services revoked Sherman's resident insurance producer license.
3. On or about December 5, 2016, the state of Idaho revoked Sherman's non-resident insurance producer license.

4. Sherman failed to report to the Division the Michigan and Idaho administrative actions revoking his licenses.

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. Sherman 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) identifies fourteen specific grounds on which the Commissioner may suspend or revoke a producer's license. The Division identifies §162R (a)(9) as grounds for revocation of Sherman's license. That subsection supports disciplinary action when another jurisdiction has revoked an insurance producer's license. The evidence submitted by the Division, copies of orders issued by Michigan and Idaho revoking Sherman's insurance producer license in each of those jurisdictions fully supports disciplinary action under that section.

The Division also seeks civil penalties in accordance with G.L. c. 176D, §7 ("Section 7 fines"), as permitted under §162R (a) for Sherman's alleged violations of Massachusetts law. 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 the ground on which the Division seeks to discipline Sherman under §162R (a) is based entirely on administrative actions against him by other jurisdictions, I find no basis for imposing Section 7 fines on him.

G.L. c. 175, §162V (a), requires a Massachusetts licensee to report to the Commissioner any administrative action taken against him or her by another jurisdiction. The record fully supports a conclusion that Sherman did not report to the Division the administrative actions initiated in two other jurisdictions, Michigan and Idaho, and thereby violated G.L. c. 175, §162V (a). Section 162V (a) does not specify a penalty for failure to comply with that statute. Violations of the section are therefore subject to fines authorized under G. L. c. 175, §194. The maximum fine allowed under that section is \$500 per

violation. I find that Sherman committed two violations of G. L. c. 175, §162V (a) and impose the maximum fine for each.

The ground that the Division cites as a basis for disciplinary action against Sherman, prior revocation of producer licenses in two other jurisdictions, fully warrants revocation of his Massachusetts license. I find that, in addition to revocation of his license, Sherman should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and be required to dispose of any interests he may have in any insurance business in Massachusetts.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Lester G. Sherman, Jr. by the Division are hereby revoked; and it is

FURTHER ORDERED: that Lester G. Sherman, Jr. shall return to the Division any licenses in his possession, custody or control; and it is

FURTHER ORDERED: that Lester G. Sherman, Jr. shall cease and desist from the conduct that gave rise to this Order to Show Cause; and it is

FURTHER ORDERED: that Lester G. Sherman, Jr. 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 Lester G. Sherman, Jr. 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 Lester G. Sherman, Jr. shall pay a fine of One Thousand Dollars (\$1,000) 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 Sherman by regular first class mail, postage prepaid.

Jean F. Farrington
Presiding Officer

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