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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Deise E. Brito, Respondent

Docket No. E2017-12

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

Introduction and Procedural History

On April 10, 2017, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Deise E. Brito (“Brito”) who was a licensed Massachusetts non-resident insurance producer.¹ The Division alleges that Brito failed to report administrative actions against her by the states of South Dakota and Nevada that resulted in revocation of her insurance producer licenses in those jurisdictions. The Division also alleges that Brito entered into an agreement with the state of New York to surrender her insurance agent’s license and failed to report this settlement to the Division. The Division contends that Brito, by failing timely to report these administrative actions, violated M.G.L. c. 175, §162V (a), which supports revocation of Brito’s Massachusetts producer license pursuant to the provisions of M.G.L. c. 175, §162R (a)(9).

In addition to license revocation, the Division seeks a cease and desist order and orders requiring Brito to dispose of any insurance-related interests in Massachusetts, prohibiting her from conducting any insurance business in Massachusetts, and imposing fines for the alleged violations.

¹ According to Division licensing records, Brito’s non-resident producer license was terminated for non-renewal on December 12, 2016.

On April 10, 2017, the Division served the OTSC and a Notice of Action on Brito by the United States Postal Service ("USPS") certified mail and regular first-class mail to her at the residential and business addresses on file in the Division's licensing records. Brito filed no answer or other response to the OTSC. On May 16, 2017, the Division filed a motion for summary decision in its favor against Brito for failure to answer the OTSC. I issued an order on May 18, 2017 instructing Brito to file any written response to the Division's motion by May 31, 2017 and scheduling a hearing on the motion for June 2, 2017.

Brito did not respond to the Division's motion for summary decision. Neither she nor any person purporting to represent her appeared at the hearing on June 2, 2017. Robert J. Kelly, Esq. represented the Division at the hearing. He stated that he had not been contacted about this matter by Brito or by any person purporting to represent her. Attorney Kelly stated that the OTSC served on Brito at her business address, listed as Amica Mutual Insurance Company ("Amica"), was not returned as undeliverable to the Division and he confirmed on a telephone call to Amica that the OTSC was received. The OTSC served on Brito to her residential address by both certified and first class mail was returned to the Division as undeliverable by USPS.

Pursuant to M.G.L. c. 175, §162R (e) the Commissioner of Insurance retains the authority to enforce the provisions of and impose penalties or remedies against a person charged with violations of M.G.L. c. 175, §§162H through 162X even if the person's license has lapsed by operation of law. Therefore, although Brito did not renew her non-resident producer license in 2016, she is still subject to disciplinary action by the Division.

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 Brito by both first-class mail and certified mail to the residential and business addresses on file at the Division. 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 Brito's failure to answer the OTSC, to respond to the Division's motion, or to appear at the hearing warrant a finding that she is in default.

By her default, Brito has waived her 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 Decision from the South Dakota Department of Labor and Regulation Division of Insurance, dated April 14, 2016; B) Stipulation Surrendering Licenses from the New York State Department of Financial Services, dated October 5, 2016; C) Letter from the Nevada Department of Business and Industry Division of Insurance revoking Brito's insurance producer license, dated January 3, 2017. After the hearing, Attorney Kelly submitted Exhibit D), Copies of envelopes confirming service of the OTSC and Motion for Summary Decision to Brito's residential address and their eventual return as undelivered to the Division.

Findings of Fact

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

1. The Division first licensed Brito as a non-resident insurance producer on or about May 14, 2014. Brito's license was terminated for nonrenewal on December 12, 2016.
2. On April 14, 2016, the South Dakota Division of Insurance revoked Brito's South Dakota insurance producer license.
3. On October 5, 2016, the New York State Department of Financial Services ("DFS") settled an administrative proceeding against Brito which resulted in the surrender of her New York insurance agent license. The DFS stipulation provides that the surrender of the license has the same force and effect as if the license was revoked or denied after a hearing.
4. On January 3, 2017, the Nevada Division of Insurance revoked Brito's Nevada insurance producer license.
5. Brito did not report to the Division the administrative actions by South Dakota and Nevada that resulted in the revocation of her producer licenses in those jurisdictions.
6. Brito did not report to the Division the administrative action by New York that resulted in the surrender of her New York insurance agent 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. Brito 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 M.G.L. c. 175, §162R (a)(9) as a ground for

revocation of Brito's license due to the administrative actions taken against her in South Dakota, Nevada, and New York and due to her 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 her by another jurisdiction within 30 days of the final disposition of the matter.

M.G.L. c. 175, §162R (a)(9) supports disciplinary action when an insurance producer's license has been denied or revoked by another jurisdiction. Brito's license was revoked in South Dakota and Nevada.² Furthermore, the New York DFS stipulation wherein Brito agreed to surrender her agent's license provides that agreements to surrender licenses have "the same force and effect as if said licenses had been revoked or denied after a hearing."³ The administrative actions in South Dakota, New York, and Nevada therefore fully support revocation of her Massachusetts license under subsection (a)(9). On this record, I find that, in addition to revocation of her license, Brito should be prohibited from transacting or acquiring, in any capacity whatsoever, any insurance business in Massachusetts and shall dispose of any interests she 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 ground that it relies on to support the revocation of Brito's producer license, the revocation or denial of her producer licenses 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 the ground on which the Division seeks to discipline Brito, M.G.L. c. 175, §162R (a)(9), is based entirely on administrative actions against her by other jurisdictions, I will not impose Section 7 fines on her.

The Division also requests a fine for Brito's violation of M.G.L. c. 175, §162V (a), which prescribes a reporting obligation on licensed producers in the Commonwealth of Massachusetts. For violations of law not listed as grounds for disciplinary action under §162R (a), M.G.L. c.

² Exhibits A and C to OTSC.

³ Exhibit B to OTSC.

175, §194 permits a fine of not more than \$500 for each violation.⁴ The OTSC includes undisputed facts relating to Brito's failure to report the South Dakota, New York, and Nevada administrative actions against her insurance producer licenses in those jurisdictions. Therefore, I will impose the maximum \$500 fine in accordance with M.G.L. c. 175, §194 for each of Brito's three failures to report an administrative action in violation of M.G.L. c. 175, §162V (a).

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 Deise E. Brito by the Division is hereby revoked; and it is

FURTHER ORDERED: that Deise E. Brito shall return to the Division any license in her possession, custody or control; and it is

FURTHER ORDERED: that Deise E. Brito 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 Deise E. Brito 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 Deise E. Brito shall pay a fine of Fifteen Hundred Dollars (\$1,500) to the Division within 30 days of the date of this decision and order.

This decision has been filed this 26th day of December 2018, in the office of the Commissioner of Insurance. A copy shall be sent to Deise E. Brito 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.

⁴ That section specifically states that "[w]hoever violates any provision of this chapter, the penalty whereof is not specifically provided herein, shall be punished by a fine of not more than five hundred dollars."