



CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

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

1000 Washington Street • Suite 810 • Boston, MA 02118-6200
(617) 521-7794 • FAX (617) 521-7475
<http://www.mass.gov/doi>

JAY ASH
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

JOHN C. CHAPMAN
UNDERSECRETARY

GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Rafael Sarabia, Respondent

Docket No. E2017-15

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

Introduction and Procedural History

On May 31, 2017, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Rafael Sarabia ("Sarabia") who was a licensed Massachusetts non-resident insurance producer.¹ The Division seeks orders that Sarabia has violated the provisions of the Massachusetts insurance laws, specifically M.G.L. c. 175, §§162R (a)(2) and (a)(9). The Division further alleges that Sarabia 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 his license, imposition of fines, and orders prohibiting him from engaging in the insurance business in Massachusetts and directing him to dispose of any interest he may have in any insurance business in Massachusetts.

On May 31, 2017, the Division served the OTSC and a Notice of Action on Sarabia by the United States Postal Service ("USPS") certified mail and regular first-class mail to him at the residential, business, and mailing address on file in the Division's licensing records. Sarabia filed no answer or other response to the OTSC. On June 22, 2017, the Division filed a motion for summary decision in its favor against Sarabia for failure to answer the OTSC. I issued an

¹ According to Division licensing records, Sarabia's non-resident producer license was terminated for non-renewal on April 13, 2017.

order on June 27, 2017 instructing Sarabia to file any written response to the Division's motion by July 7, 2017 and scheduling a hearing on the motion for July 11, 2017.

Sarabia 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 July 11, 2017. Matthew M. Burke, Esq. represented the Division at the hearing. He stated that he had not been contacted about this matter by the respondent or by any person purporting to represent him. Attorney Burke confirmed that the OTSC served on Sarabia by first-class mail was returned undelivered on June 12, 2017 and that the OTSC served by certified mail was returned undelivered on June 15, 2017.

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 Sarabia did not renew his non-resident producer license in 2017, he 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 Sarabia by both first-class mail and certified mail to the residential, mailing, and business address 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 mail² to the last business or residence address of the licensee appearing on the records of the Commissioner. I conclude that service was sufficient and that Sarabia'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, Sarabia 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) Notice of Denial from the Florida Department of Financial Services, dated September 10, 2014; B) Order Revoking License from the Commonwealth of

² For purposes of giving notice, M. G. L. c. 4, §7, Clause 44 provides that certified mail is equivalent to registered mail.

Virginia State Corporation Commission, dated January 29, 2016; C) Notice of Order of License Suspension from the State of Georgia Office of Commissioner of Insurance, dated February 18, 2016 and Order of License Suspension from the State of Georgia Office of Commissioner of Insurance, dated March 9, 2016; D) Default Decision and Order of Revocation from the State of California Department of Insurance, dated November 3, 2016. Attached to the Division's Motion for Summary Decision are copies of envelopes confirming the USPS return of the OTSC as undelivered and Sarabia'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 Sarabia as a non-resident insurance producer on or about July 16, 2014. Sarabia's license was terminated for nonrenewal on April 13, 2017.
2. On September 10, 2014, the Florida Department of Financial Services issued a Notice of Denial indicating its intent to deny Sarabia's application for licensure as a nonresident insurance agent due to his felony conviction for Failure to Stop and Render Aid-Moving in the 187th District Court, Bexar County, Texas. The Notice of Denial was effective October 1, 2014.
3. On January 29, 2016, the Commonwealth of Virginia State Corporation Commission revoked Sarabia's Virginia insurance agent's license.
4. On February 18, 2016, the State of Georgia Office of the Commissioner of Insurance issued an order notifying Sarabia that his Georgia insurance agent's license was suspended effective March 9, 2016.
5. On August 18, 2016, the State of California Department of Insurance revoked Sarabia's insurance agent's license.
6. Sarabia did not report to the Division the administrative action by Florida denying his application for licensure as a nonresident insurance agent.
7. Sarabia did not report to the Division the administrative actions revoking his insurance licenses in Virginia and California.
8. Sarabia did not report to the Division the administrative action suspending his insurance license in Georgia.

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. Sarabia 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)(2) and (a)(9) as grounds for revocation of Sarabia's license due to his 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.³

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, Sarabia failed to notify the Division of the administrative actions against him in Florida, Virginia, California, and Georgia as he is required to do under M.G.L. c. 175, §162V (a). The record fully supports the Division's claim that Sarabia violated 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 denied, suspended, or revoked by another jurisdiction. The administrative actions 1) denying Sarabia's insurance license application in Florida; 2) suspending Sarabia's insurance license in Georgia; and 3) revoking Sarabia's insurance licenses in California and Virginia therefore fully support discipline under subsection (a)(9).

The number and the seriousness of the grounds the Division cites for taking disciplinary action against Sarabia fully warrant its request to revoke his Massachusetts producer license. On this record, I find that, in addition to revocation of his license, Sarabia 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 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

³ The Division may also initiate disciplinary action for providing incorrect, misleading, incomplete or materially untrue information a license application under M.G.L. c. 175, §162R (a)(1), obtaining a license through misrepresentation or fraud under M.G.L. c. 175, §162R (a)(3), or having been convicted of a felony under M.G.L. c. 175, §162R (a)(6). Despite ample documentation in the record demonstrating that Sarabia was convicted of a felony for Failure to Stop and Render Aid-Moving in the 187th District Court, Bexar County, Texas on October 26, 2009, the Division does not allege that Sarabia failed to disclose this information or misrepresented himself to the Division on his producer license application prior to his original license approval date of July 16, 2014. Nor does the Division allege the Respondent should be disciplined due to his 2009 felony conviction. Therefore, this decision will only address the specifically identified violations of Massachusetts law in the OTSC.

\$1,000 per violation. The Division requests Section 7 fines for each of the two grounds it relies on to support revocation of Sarabia's license: 1) violations of Massachusetts law; and 2) denial, suspension, and revocation of his insurance 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 deny, revoke, or suspend the respondent's license. Because one of the grounds on which the Division seeks to discipline Sarabia, 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 Sarabia'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 imposed 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. 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 OTSC is based, in part, on undisputed facts relating to Sarabia's failure to notify the Division of administrative actions against his licenses in four other jurisdictions. That a licensee's violations of Massachusetts also support disciplinary action under M.G.L. c. 175, §162R (a)(2) intensifies the potential consequences of Sarabia's actions, but does not alter the underlying events. However, Sarabia's failure to report those four administrative actions effectively enabled him to avoid prompt enforcement action in the Commonwealth. For that reason, I will impose the maximum penalty of \$500 for each of Sarabia's four 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 Rafael Sarabia by the Division is hereby revoked; and it is

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

FURTHER ORDERED: that Rafael Sarabia 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 Rafael Sarabia 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 Rafael Sarabia shall pay a fine of Two Thousand Dollars (\$2,000) to the Division within 30 days of the date of this decision and order.

This decision has been filed this 21st day of December 2018, in the office of the Commissioner of Insurance. A copy shall be sent to Rafael Sarabia 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.