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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Alex Drawve, Respondent

Docket No. E2017-19

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

Introduction and Procedural History

On September 20, 2017, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Alex Drawve (“Drawve”) who was a licensed Massachusetts non-resident insurance producer at the time of filing.¹ The Division seeks orders that Drawve violated the provisions of the Massachusetts insurance laws, specifically, M.G.L. c.175 §§ 162R (a)(1), (a)(2), and (a)(9), three grounds on which the Commissioner may revoke an insurance producer’s license. The Division further alleges Drawve 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 Drawve’s 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 businesses in Massachusetts.

On September 20, 2017, the Division served the OTSC and a Notice of Action on Drawve by the United States Postal Service (“USPS”) certified mail and regular first class mail to his residential/ mailing address on file in the Division’s licensing records. Drawve filed no

¹ Drawve’s Massachusetts non-resident producer license terminated by operation of law on March 18, 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 Drawve.

answer or other response to the OTSC. On November 9, 2017, the Division filed a motion for summary decision in its favor against Drawve for failure to answer the OTSC. I issued an order on November 13, 2017 instructing Drawve to file any written response to the Division's motion by November 29, 2017 and scheduling a hearing on the motion for December 1, 2017.

Drawve did not respond in writing to the Division's motion for summary decision. Neither he nor any person purporting to represent him appeared at the hearing on December 1, 2017. Matthew M. Burke, Esq. represented the Division at the hearing. At the hearing, Attorney Burke stated that he had not been contacted about this matter by Drawve or by any person purporting to represent him. Attorney Burke indicated that the OTSC served on Drawve by certified mail at his residential/ mailing address was forwarded to another mailing address and was out for delivery² and that the first class mailing of the OTSC was returned to the Division by USPS.³ On December 4, 2017, I received a voicemail message from a person purporting to be Drawve, stating that he received a copy of the Order and Notice of Hearing and was unsure how to proceed.⁴

Finding of Default

On the basis of the record before me, I conclude that the Division took appropriate actions to ensure proper service. M.G.L. c. 175, §174A states that notices seeking revocations of producer licenses are deemed sufficient when sent postpaid by registered mail to the last business or residence 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 Drawve'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. Furthermore, it is clear that Drawve knew that a proceeding had been initiated

² As of the date of the hearing, the USPS tracking indicated that the OTSC is "out for delivery." Attorney Burke indicated that a USPS certified mail receipt confirming delivery was not returned to the Division. See Exhibit B to Motion for Summary Decision.

³ Exhibit A to Motion for Summary Decision.

⁴ The voicemail indicated that it was from November 21, 2017; however, I was only notified of its delivery on December 4, 2017, three days after the date of the hearing. I contacted Drawve by telephone and left a voicemail message indicating that he should call the Docket Clerk for more information about this matter and to contact the Division's Producer Licensing department to update the Division's records with his new mailing, residential, and work addresses. Additionally, I forwarded the voicemail to Attorney Burke, who attempted to contact Drawve at the telephone number left on the voicemail message, the same telephone number listed in the Division's licensing records, on two occasions. Neither Attorney Burke nor I were successful in our attempts to communicate with Drawve after the hearing. As of the date of this decision, the Division's licensing records reflect Drawve's residential and mailing address as the address to which the OTSC was mailed.

against him. He indicated in a voicemail that he received the Order and Notice of Hearing with instructions about the date of the hearing and how to contact the Division, contacted the Division to inquire about this matter, and failed to respond to subsequent voicemails from the Division.

By his default, Drawve 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 eight exhibits. The exhibits attached to the OTSC are: A) McLean County Circuit Court, Illinois Disposition Information for Case Number 2013CF001693, Alex B. Drawve; B) Uniform Application for Individual Producer License, dated June 17, 2015; C) Financial Industry Regulatory Authority Letter of Acceptance, Waiver and Consent, dated July 18, 2016; D) Order of Summary Revocation from the California Department of Insurance, dated March 10, 2017. Attached to the Motion for Summary Decision are the following exhibits: A) a copy of the first-class mailing of OTSC addressed to Drawve and returned to the Division on October 10, 2017; B) USPS tracking for the certified mailing of the OTSC addressed to Drawve; C) a copy of Drawve's licensing record at the Division, and D) a copy of the Certificate of Service for the OTSC.

Findings of Fact

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

1. The Division licensed Drawve as a non-resident insurance producer on June 17, 2015.
2. On March 31, 2014, Drawve pleaded guilty to a felony charge of Manufacture/Delivery of Cannabis, 10-30 Grams in McLean County Circuit Court in Illinois. He was sentenced to one day in jail, 24 months of probation, and 30 hours of community service.
3. On or about June 17, 2015, Drawve submitted the Uniform Application for Individual Producer License ("Uniform Application") to the Division and to other state insurance regulators.
4. Background Question 1b on the Uniform Application asked whether the applicant had ever been convicted of a felony, had a judgment withheld or deferred, or was currently charged with committing a felony. Drawve answered "no."
5. Background Question 2 on the Uniform Application asked whether the applicant had ever been named or involved as a party in an administrative proceeding. Drawve answered "no."
6. On July 18, 2016, Drawve signed a Letter of Acceptance, Waiver and Consent with the Financial Industry Regulatory Authority ("FINRA"), stating that he "willfully failed to timely disclose that he was charged with and convicted of a non-investment-related felony" when he submitted his application to enter the securities industry. Drawve agreed to a six-month suspension and the imposition of a \$5,000 fine. The settlement agreement was accepted and executed by FINRA on July 27, 2016.

7. On March 10, 2017, California Department of Insurance issued an order revoking Drawve's California insurance agent license within 30 days of the date of that order.
8. Drawve did not report the revocation of his California insurance agent 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. Drawve 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, §162R (a)(1), (a)(2), and (a)(9) as grounds for revocation of Drawve's license. The Division also states that Drawve has 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 him by another jurisdiction within thirty days of the final disposition of the matter.

M.G.L. c. 175, §162R (a)(1) supports disciplinary action for "providing incorrect, misleading, incomplete or materially untrue information in the license application." Here, Background Question 1b on the Uniform Application asked if the applicant has ever been convicted of a felony, had a judgment withheld or deferred, or was currently charged with committing a felony.⁵ Drawve answered "no" to this question on his June 17, 2015 license application. However, the record clearly shows that Drawve was convicted of felony Manufacture/Delivery of Cannabis, in McLean County Circuit Court in Illinois, on March 31, 2014.⁶ As such, the record fully supports the Division's claim the Drawve provided incorrect and materially untrue information on his application for an insurance producer license. He is therefore subject to discipline under subsection (a)(1).

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.

⁵ Exhibit B to OTSC, p. 2.

⁶ Exhibit A to OTSC.

Drawve's insurance agent's license was revoked in California.⁷ Accordingly, 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. Drawve failed to report the revocation of his insurance agent's license in California within thirty days of the final disposition dates as he is required to do under M.G.L. c.175, §162V(a).⁸ The record fully supports the Division's claim that Drawve has violated Massachusetts insurance law and is therefore subject to discipline under subsection (a)(2).

The number and the seriousness of the grounds the Division cites for taking disciplinary action against Drawve fully warrant its request to revoke his Massachusetts producer license. On this record, I find that, in addition to revocation of his license, Drawve 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 \$1,000 per violation. The Division requests Section 7 fines for each of the grounds it relies on to support revocation of Drawve's license: 1) providing incorrect, misleading, incomplete, or materially untrue information on his application for an insurance license; 2) the revocation of his insurance agent's license in California; 3) and for violation of the insurance law based upon his failure to report his California license revocation.

The facts are undisputed that Drawve provided incorrect and materially untrue information on the Uniform Application in June 2015. As a result of the Respondent's action, the Division was not provided the necessary information about his felony conviction in order to assess his eligibility for a non-resident producer license. Given the serious nature of the Respondent's infraction, it is entirely appropriate to impose a Section 7 fine on the Respondent for this unfair and deceptive business practice. For that reason, I will impose the maximum

⁷ Exhibit D to OTSC.

⁸ Exhibits C-D to OTSC.

penalty of \$1,000 for the first ground upon which Drawve's license is revoked, M.G.L. c.175, §162R (a)(1).

However, I am not persuaded that it is appropriate to impose Section 7 fines on the Respondent on the other two grounds upon which Drawve'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 furnishing incorrect and materially untrue information on his application for licensure—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 Drawve, M.G.L. c. 175, §162R (a)(2) and (a)(9), are entirely based on administrative actions against him by other jurisdictions, I will not impose Section 7 fines on him under these sections of law.

In addition to Section 7 fines for Drawve'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. Drawve's failure to report an administrative action to the Division effectively enabled him to avoid prompt enforcement action the Commonwealth. For that reason, I will impose the maximum penalty of \$500 for Drawve's failure to report the California 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 Alex Drawve by the Division is hereby revoked; and it is

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

FURTHER ORDERED: that Alex Drawve 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 Alex Drawve 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 Alex Drawve 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 23rd day of April 2019, in the office of the Commissioner of Insurance. A copy shall be sent to Alex Drawve 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.