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**Division of Insurance, Petitioner**

**v.**

**Jordan McKittrick, Respondent**

**Docket No. E2018-01**

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

***Introduction and Procedural History***

On January 19, 2018, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Jordan McKittrick ("McKittrick") who at the time of filing was a licensed Massachusetts non-resident insurance producer.<sup>1</sup> The Division seeks orders that McKittrick failed to report administrative actions against him by the states of Minnesota, Idaho, North Dakota, Oregon, Nevada, and Mississippi that resulted in revocation of his insurance producer licenses in those jurisdictions. The Division contends that McKittrick, by failing to timely report these actions to the Commissioner, violated M.G.L. c. 175, §162V (a). The Division further alleges these administrative actions support revocation of McKittrick's Massachusetts producer license pursuant to M.G.L. c.175, § 162R (a)(9). In addition to license revocation, the Division requests the 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 January 19, 2018, the Division served the OTSC and a Notice of Action on McKittrick by the United States Postal Service ("USPS") certified mail and regular first class

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<sup>1</sup> McKittrick's Massachusetts non-resident producer license terminated by operation of law on March 29, 2018 for failure to renew. Pursuant to M.G.L. c. 175 § 162R (e), the Commissioner retains the authority to enforced the producer licensing statute against McKittrick.

mail to his residential address and business address on file in the Division's licensing records. McKittrick filed no answer or other response to the OTSC. On March 21, 2018, the Division filed a motion for summary decision in its favor against McKittrick for failure to answer the OTSC. I issued an order on March 22, 2018 instructing McKittrick to file any written response to the Division's motion by April 6, 2018 and scheduling a hearing on the motion for April 10, 2018.

McKittrick 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 April 10, 2018. Robert J. Kelly, Esq. represented the Division at the hearing. He stated that he had not been contacted about this matter by McKittrick or by any person purporting to represent him. Attorney Kelly confirmed that the OTSC served on McKittrick by certified mail at his home/ mailing address was signed for and delivered. The first class mailings to both the business and home addresses were returned to 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 McKittrick by both first-class mail and certified mail to the residential and business addresses on file at the Division and McKittrick signed the certified mail receipt confirming delivery to his residential address.

By his default, McKittrick 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 six exhibits. The following exhibits are attached to the OTSC: A) a Consent Order from the State of Minnesota Commissioner of Commerce revoking McKittrick's resident insurance producer license, dated January 11, 2016; B) Summary Order Revoking Idaho Nonresident Insurance Producer License from the Department of Insurance, State of Idaho, filed on January 28, 2016 (Docket No. 18-3137-16); C) Order Revoking License from the State of North Dakota Insurance Commissioner, dated March 4, 2016 (Case Number AG-16-613); D) Final Order to Cease and Desist and Final Order Revoking License, from the State of Oregon Department of Consumer and Business Services Division of Financial Regulation, dated August 20, 2016 (Case No. INS-

16-0300); E) a Revocation of Nevada Non-Resident Producer License from the State of Nevada Division of Insurance, dated December 1, 2016 (Case No. 16.0382); F) Revocation of Mississippi Non-Resident Insurance Producer License from the Mississippi Insurance Department, dated February 3, 2017. Attached to the motion for summary decision is Exhibit G) a USPS Certified Mail Receipt confirming delivery of the OTSC to McKittrick's home address.

### ***Findings of Fact***

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

1. The Division first licensed McKittrick as a non-resident insurance producer on October 24, 2015.
2. On January 11, 2016, the State of Minnesota Commissioner of Commerce issued a Consent Order revoking McKittrick's insurance producer license and ordering him to pay the costs of the regulator's investigation. In order to settle allegations that McKittrick submitted 36 automobile insurance applications with false prior carrier declarations in order to qualify his customers for a lower premium in violation of Minnesota insurance law, McKittrick agreed to waive his rights to a hearing and the revocation of his resident insurance producer license.
3. McKittrick did not report the revocation of his Minnesota insurance producer license to the Division.
4. On January 28, 2016, the State of Idaho Department of Insurance issued a summary order revoking McKittrick's insurance producer license due to the revocation of his Minnesota resident insurance producer license.
5. McKittrick failed to report the revocation of his Idaho insurance producer license to the Division.
6. On March 4, 2016, the State of North Dakota Insurance Commissioner issued an order revoking McKittrick's insurance producer license due to the revocation of his resident insurance producer license in Minnesota.
7. McKittrick failed to report the revocation of his North Dakota insurance producer license to the Division.
8. On August 20, 2016, the State of Oregon Department of Consumer and Business Services issued an order revoking McKittrick's nonresident insurance producer license for his failure to report the revocation of his resident insurance producer's license in Minnesota, as well as nonresident licenses in three other jurisdictions.
9. McKittrick did not report the revocation of his Oregon insurance producer license to the Division.
10. On December 1, 2016, the Nevada Division of Insurance issued an order revoking McKittrick's insurance producer license due to McKittrick's lack of a home state license in good standing.
11. McKittrick did not report the revocation of his Nevada license to the Division.
12. On February 3, 2017, the Mississippi Insurance Department issued an order revoking McKittrick's insurance producer license due to the revocation of his home state license.
13. McKittrick failed to report the revocation of his Mississippi license to the Division.

***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. McKittrick 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)(9) as the ground for revocation of McKittrick's license due to the revocation of his insurance producer licenses in six jurisdictions.

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. McKittrick's insurance producer's licenses were revoked in Minnesota, Idaho, North Dakota, Oregon, Nevada, and Mississippi.<sup>2</sup> These administrative actions fully support discipline under subsection (a)(9) and warrant the Division's request to revoke McKittrick's Massachusetts nonresident producer license. On this record, I find that, in addition to revocation of his license, McKittrick should be prohibited from transacting 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 the ground upon which it relies on to support the revocation of McKittrick's license, the revocations of his insurance license in other jurisdictions.

I am not persuaded that it is appropriate to impose Section 7 fines on the Respondent on the ground upon which McKittrick's license is revoked: namely, M.G.L. c.175, §162R (a)(9). Decisions in administrative proceedings seeking license revocation distinguish grounds for

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<sup>2</sup> Exhibits A-F.

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 upon which the Division seeks to discipline McKittrick, M.G.L. c. 175, §162R (a)(9), is entirely based on administrative actions against him by other jurisdictions, I will not impose Section 7 fines on him under this section of law.

In addition to section 7 fines under M.G.L. c. 175, §162R (a)(9) for McKittrick's violations of Massachusetts law, the Division also requests fines for each of his failures to report administrative actions against him, in violation 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 OTSC is based on undisputed facts relating to McKittrick's failure to notify the Division of administrative actions against his licenses in six other jurisdictions. His failure to report these 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 McKittrick's six 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 Jordan McKittrick by the Division is hereby revoked; and it is

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

**FURTHER ORDERED:** that Jordan McKittrick 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 Jordan McKittrick 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 McKittrick shall pay a fine of Three Thousand Dollars (\$3,000) to the Division within 30 days of the date of this decision and order.

This decision has been filed this 27<sup>th</sup> day of December, in the office of the Commissioner of Insurance. A copy shall be sent to Jordan McKittrick by regular first class mail, postage prepaid.

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Kristina A. Gasson  
Presiding Officer

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