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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Mark Bresard-Howard, Respondent
Docket No. E2018-04

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

Introduction and Procedural History

On February 7, 2018, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Mark Bresard-Howard (“Bresard-Howard”) who was a licensed Massachusetts non-resident insurance producer at the time of filing.¹ The Division seeks orders that Bresard-Howard 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 Bresard-Howard 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 Bresard-Howard’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 February 7, 2018, the Division served the OTSC and a Notice of Action on Bresard-Howard by the United States Postal Service (“USPS”) certified mail and regular first class mail to his home address on file in the Division’s licensing records. Bresard-Howard filed no answer or other response to the OTSC. On March 7, 2018, the Division filed a motion for summary

¹ Bresard-Howard’s Massachusetts non-resident producer license terminated by operation of law on August 1, 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 Bresard-Howard.

decision in its favor against Bresard-Howard for failure to answer the OTSC. I issued an order on March 14, 2018 instructing Bresard-Howard to file any written response to the Division's motion by March 23, 2018 and scheduling a hearing on the motion for March 27, 2018.

Bresard-Howard 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 March 27, 2018. Matthew M. Burke, Esq. represented the Division at the hearing. He stated that he had not been contacted about this matter by Bresard-Howard or by any person purporting to represent him. Attorney Burke confirmed that the OTSC served on Bresard-Howard by certified mail at his residential/ mailing address was signed for and delivered on February 10, 2018 and that the first class mail sent to this address was not returned to the Division by USPS.

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 Bresard-Howard by both first-class mail and certified mail to the residential/ mailing address on file at the Division and Bresard-Howard signed the certified mail receipt.

By his default, Bresard-Howard 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 8 exhibits. The following exhibits are attached to the OTSC: A) License Reinstatement Consent Order from the State of Georgia Office of Commissioner of Insurance (Case Number 11005636), executed on March 25, 2011; B) Respondent's Uniform Application for Individual Producer License, dated February 3, 2016; C) a letter from the North Dakota Insurance Department denying Respondent's application for a non-resident license, dated June 22, 2016; D) Order of Termination from the State of Maine Bureau of Insurance, dated September 6, 2016; E) Preliminary Administrative Order and Notice of License Denial from the Indiana Department of Insurance, dated October 12, 2016; F) Order Revoking License from the Commonwealth of Virginia State Corporation Commission, timestamped November 10, 2016; G) Notice of Regulatory Action from the Louisiana Department of Insurance dated November 17, 2016; H) Default Decision and Order of Revocation from the State of California Department of Insurance, (File No. PLBS 10568-A (AR)), undated and unsigned. Attached to the motion for summary decision are the following exhibits: A) USPS Certified Mail Receipt and tracking confirming

delivery of the OTSC to Bresard-Howard's residential address on February 10, 2018; B) Consolidating Licensing and Regulation Information System report, dated March 7, 2018; C) 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 Bresard-Howard as a non-resident insurance producer on February 5, 2016.
2. On March 25, 2011, Bresard-Howard signed a License Reinstatement Consent Order and agreed to pay a \$150 fine to the State of Georgia Office of the Commissioner of Insurance. The fine was imposed due to Bresard-Howard's failure to renew his Georgia resident insurance agent's license prior to a December 31, 2010 deadline. Bresard-Howard's Georgia license was reinstated for 2011 on or about this date.
3. On February 3, 2016, Bresard-Howard submitted the Uniform Application for Individual Producer License to the Division and to other state insurance regulators. Background Question 2 on the Uniform Application asked whether the applicant had ever been named or involved as a party in an administrative proceeding. Bresard-Howard answered "no."
4. On June 22, 2016, the North Dakota Insurance Department denied Bresard-Howard's April 28, 2016 application for a non-resident individual insurance producer license due to his failure to disclose the March 25, 2011 Georgia administrative action. Bresard-Howard failed to respond to offers from the North Dakota Insurance Department to settle the matter.
5. Bresard-Howard failed to report the denial of his North Dakota license application to the Division within thirty days.
6. On September 6, 2016, the State of Maine Bureau of Insurance issued an Order of Termination revoking Bresard-Howard's nonresident insurance producer license effective October 6, 2016 for failure to report administrative action against him in another jurisdiction and for failure to respond to a Bureau of Insurance inquiry in a timely manner.
7. Bresard-Howard failed to report the revocation of his Maine license to the Division within thirty days.
8. On October 12, 2016, the Indiana Commissioner of Insurance denied Bresard-Howard's application for a nonresident insurance producer license due to Bresard-Howard's failure to disclose prior administrative actions on his application.
9. Bresard-Howard failed to report to the Division within thirty days the denial of his Indiana insurance producer license application.
10. The Commonwealth of Virginia issued an Order Revoking License to Bresard-Howard, time-stamped November 10, 2016. The revocation of Bresard-Howard's insurance agent license was based upon his failure to report the North Dakota administrative action within thirty days.
11. Bresard-Howard did not report the Virginia revocation of his license to the Division within thirty days.

12. On November 17, 2016, the Louisiana Department of Insurance issued a Notice of Regulatory Action revoking Bresard-Howard's insurance producer license due to his failure to disclose the North Dakota administrative action.
13. Bresard-Howard failed to report the revocation of his Louisiana license to the Division within thirty days.
14. On November 18, 2016, the State of California Department of Insurance revoked Bresard-Howard's nonresident insurance agent license.
15. Bresard-Howard did not report the revocation of his California insurance agent license to the Division within thirty 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. Bresard-Howard 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 Bresard-Howard's license. The Division also states that Bresard-Howard 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 2 of the Uniform Application for Individual License asked if the applicant had ever been named or involved as a party in an administrative proceeding.² Bresard-Howard answered "no" to this question. However, in March 2011, Bresard-Howard signed a License Reinstatement Consent Order in which he agreed to pay an "administrative fine" for failing to file for a continuation of his insurance agent license in Georgia.³ As such, the record fully supports the Division's claim that Bresard-Howard provided incorrect and materially untrue information on his February 3, 2016 license application. He is therefore subject to discipline under subsection (a)(1).

² Exhibit B to the OTSC.

³ Exhibit A to the OTSC.

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. Bresard-Howard’s insurance producer’s or agent’s licenses were revoked in Maine, Virginia, Louisiana, and California, and his applications for non-resident licenses were denied in Indiana and North Dakota.⁴ These administrative actions fully support 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. Bresard-Howard failed to report the revocations and denials of his insurance producer’s or agent’s licenses in six jurisdictions within thirty days of the final disposition date as he is required to do under M.G.L. c.175, §162V(a).⁵ The record fully supports the Division’s claim that Bresard-Howard 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 Bresard-Howard fully warrant its request to revoke his Massachusetts producer license. On this record, I find that, in addition to revocation of his license, Bresard-Howard 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 Bresard-Howard’s license: 1) providing incorrect, misleading, incomplete, or materially untrue information on his application for an insurance license; 2) the revocations and denials of his insurance license in other jurisdictions; 3) and for violations of insurance laws based upon his failure to report the revocations and denials of his insurance producer’s or agent’s licenses in other jurisdictions.

The facts are undisputed that Bresard-Howard provided incorrect and materially untrue information on his Uniform Application for an Insurance License in February 2016. As a result

⁴ Exhibit A to the OTSC, Exhibits C-H.

⁵ *Id.*

of the Respondent's action, the Division was not provided the necessary information to inquire about the nature of the administrative action against his Georgia insurance agent's license in 2011. 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 penalty of \$1,000 for the first ground upon which Bresard-Howard's license is revoked, M.G.L. c.175, §162V (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 Bresard-Howard'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 Bresard-Howard, 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 under M.G.L. c. 175, §162R (a)(2) for Bresard-Howard'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. Bresard-Howard's failure to report six administrative actions 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 each of Bresard-Howard'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 Mark Bresard-Howard by the Division is hereby revoked; and it is

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

FURTHER ORDERED: that Mark Bresard-Howard 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 Mark Bresard-Howard 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 Mark Bresard-Howard shall pay a fine of Four Thousand Dollars (\$4,000) to the Division within 30 days of the date of this decision and order.

This decision has been filed this 27th day of February 2019, in the office of the Commissioner of Insurance. A copy shall be sent to Mark Bresard-Howard 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.