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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Crystal L. Booker, Respondent
Docket No. E2018-07

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

Introduction and Procedural History

On February 22, 2018, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Crystal L. Booker (“Booker”) who is a licensed Massachusetts non-resident insurance producer.¹ The Division seeks orders that Booker violated the provisions of the Massachusetts insurance laws, specifically, M.G.L. c.175 §§ 162R (a)(2) and (a)(9), two grounds on which the Commissioner may revoke an insurance producer’s license. The Division further alleges Booker 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 her license in other jurisdictions. It requests the revocation of Booker’s license, imposition of fines, and orders prohibiting her from engaging in the insurance business in Massachusetts and directing her to dispose of any interest she may have in any insurance businesses in Massachusetts.

On February 22, 2018, the Division served the OTSC and a Notice of Action on Booker by the United States Postal Service (“USPS”) certified mail and regular first class mail to the residential/ mailing address on file in the Division’s licensing records.² Booker filed no answer

¹ Booker’s Massachusetts non-resident producer license terminated by operation of law on March 30, 2019 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 Booker.

² The Division indicated in the OTSC that Booker was no longer employed at her business address. As a result, the Division did not send correspondence to that address listed in the Division’s licensing records.

or other response to the OTSC. On May 30, 2018, the Division filed a motion for summary decision in its favor against Booker for failure to answer the OTSC. I issued an order on June 1, 2018 instructing Booker to file a written response to the Division's motion and scheduling a hearing on the motion for June 15, 2018.

Booker did not respond in writing to the Division's motion for summary decision. Neither she nor any person purporting to represent her appeared at the hearing on June 15, 2018. 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 Booker or by any person purporting to represent her. Attorney Burke indicated that the OTSC served on Booker by certified mail at her residential/ mailing address was unable to be delivered and that the first class mailing of the OTSC 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. 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 Booker'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, Booker 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) Findings of Fact, Conclusions of Law and Order from the State of Arizona Department of Insurance, dated March 20, 2017; B) Summary Order Revoking Idaho Nonresident Insurance Producer License from the State of Idaho Department of Insurance, dated March 28, 2017, and C) Affidavit of Default and Default Order Revoking All Licensing Privileges from the State of South Carolina Department of Insurance. Attached to the Motion for Summary Decision are the following exhibits: A) a copy of the certified mailing of OTSC addressed to Booker and returned to the Division on March 9, 2018; B) a copy of Booker's licensing record at the Division, and 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 Booker as a non-resident insurance producer on September 11, 2016.
2. On March 20, 2017, the Arizona Department of Insurance revoked Booker's resident accident/health insurance producer license for providing incomplete information in the license application, after she failed to respond to requests for replacement fingerprint forms from the Arizona Department of Insurance.
3. On March 28, 2017, the Idaho Department of Insurance revoked Booker's Idaho nonresident insurance producer license.
4. On June 5, 2017, the State of South Carolina Department revoked Booker's South Carolina nonresident insurance producer license.
5. Booker did not report the administrative actions against her insurance license in Arizona, Idaho, and South Carolina 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. Booker 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)(2) and (a)(9) as grounds for revocation of Booker's license. The Division also states that Booker 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 her by another jurisdiction within thirty days of the final disposition of the matter.

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. Booker's insurance producer licenses were revoked in Arizona, Idaho, and South Carolina.³ Accordingly, 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. Booker failed to report the revocation of her producer licenses in

³ Exhibits A-C to OTSC.

Arizona, Idaho, and South Carolina within thirty days of the final disposition dates as she is required to do under M.G.L. c.175, §162V (a).⁴ The record fully supports the Division's claim that Booker 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 Booker fully warrant its request to revoke her Massachusetts producer license. On this record, I find that, in addition to revocation of her license, Booker 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 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 for the administrative actions against her insurance producer licenses in Arizona, Idaho, and South Carolina and for violations of insurance laws based upon her failure to report the administrative actions to the Division.

However, I am not persuaded that it is appropriate to impose Section 7 fines on the Respondent. 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 grounds on which the Division seeks to discipline Booker, M.G.L. c. 175, §162R (a)(2) and (a)(9), are entirely based on administrative actions against her by other jurisdictions, I will not impose Section 7 fines on her under these sections of law.

In addition to Section 7 fines for Booker'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. Booker's failure to report four administrative actions to the Division effectively enabled her to avoid prompt enforcement action the Commonwealth. For that reason, I will

⁴ *Id.*

impose the maximum penalty of \$500 for each of Booker's three 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 Crystal L. Booker by the Division is hereby revoked; and it is

FURTHER ORDERED: that, within ten (10) days of this decision, Crystal L. Booker shall return to the Division any license in her possession, custody or control; and it is

FURTHER ORDERED: that Crystal L. Booker 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 Crystal L. Booker 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 Crystal L. Booker 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 12th day of April 2019, in the office of the Commissioner of Insurance. A copy shall be sent to Crystal L. Booker 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.