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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Jamaal M. Richard, Respondent
Docket No. E2018-12

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

Introduction and Procedural History

On October 17, 2018, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Jamaal M. Richard (“Richard”) who was a licensed Massachusetts non-resident insurance producer with an active license at the time of filing.¹ The Division seeks orders that Richard violated Massachusetts insurance law, specifically, M.G.L. c.175 §§ 162R (a)(9), a ground upon which the Commissioner may revoke an insurance producer’s license. The Division further alleges Richard 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 Richard’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 October 17, 2018, the Division served the OTSC and a Notice of Action on Richard by the United States Postal Service (“USPS”) certified mail and regular first class mail to his residential/ mailing/ business address on file in the Division’s licensing records. Richard filed no

¹ Richard’s Massachusetts non-resident producer license terminated by operation of law on December 13, 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 Richard.

answer or other response to the OTSC. On December 10, 2018, the Division filed a motion for summary decision in its favor against Richard for failure to answer the OTSC. I issued an order on December 10, 2018 instructing Richard to file any written response to the Division's motion by December 26, 2018 and scheduling a hearing on the motion for December 28, 2018.

Richard 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 December 28, 2018. Robert J. Kelly, Esq. represented the Division at the hearing. At the hearing, Attorney Kelly stated that he had not been contacted about this matter by Richard or by any person purporting to represent him. Attorney Kelly indicated that the OTSC served on Richard by certified mail at his residential/mailling/business address was returned to the Division as unclaimed and that the first class mailing of the OTSC was not returned to the Division by USPS.²

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 Richard'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, Richard 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 four exhibits: A) Notice of Revocation of Producer License from the Louisiana Department of Insurance, dated September 26, 2016; B) Copy of The National Association of Insurance Commissioners ("NAIC") Regulatory Actions database for Richard, effective September 27, 2017; C) Order of Summary Revocation from the State of California Department of Insurance, dated June 14, 2018; D) USPS tracking information for the certified mailing to Richard's residential/mailling/business address.

² Exhibit D.

Findings of Fact

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

1. The Division licensed Richard as a non-resident insurance producer on or about July 13, 2016.
2. On or about September 27, 2017, the Louisiana Department of Insurance revoked Richard's individual insurer producer license.
3. On or about June 14, 2018, the State of California Department of Insurance revoked Richard's nonresident insurance agent's license.
4. Richard did not report the administrative actions against his insurance licenses in Louisiana and California 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. Richard 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 a ground for revocation of Richard's license. The Division also states that Richard 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)(9) supports disciplinary action for "having an insurance producer license, or its equivalent, denied, suspended or revoked" by another jurisdiction. Richard's insurance producer licenses were revoked in Louisiana and California.³ Accordingly, these administrative actions fully support discipline under subsection (a)(9).

I find that the revocation of Richard's insurance producer licenses in two jurisdictions fully warrant the Division's request to revoke his Massachusetts producer license. On this record, I find that, in addition to revocation of his license, Richard 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.

The Division also requests the assessment of a fine in accordance with Chapter 176D, §7 (“Section 7 fines”). The maximum penalty permitted under M.G.L. c. 176D, §7 is \$1,000 per violation. However, I am not persuaded that it is appropriate to impose a Section 7 fine 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 ground on which the Division seeks to discipline Richard, M.G.L. c. 175, §162R (a)(9) is based entirely on administrative actions against his licenses in other jurisdictions, I will not impose a Section 7 fine on him.

In addition to a Section 7 fine, 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. Richard's failure to report two 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 Richard's two 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 Jamaal M. Richard by the Division is hereby revoked; and it is

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

FURTHER ORDERED: that Jamaal M. Richard 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 Jamaal M. Richard 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 Jamaal M. Richard shall pay a fine of One Thousand Dollars (\$1,000) to the Division within 30 days of the date of this decision and order.

³ Exhibits A-C.

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 Jamaal M. Richard 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.