

COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Nikia Jones, Respondent

Docket No. E2019-07

Order on Petitioner's Motion for Summary Decision

On May 22, 2019, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Nikia Jones (“Jones”), who was first licensed as a Massachusetts non-resident insurance producer on or about June 30, 2015. The OTSC seeks revocation of Jones’s Massachusetts producer license on the grounds that she is subject to discipline pursuant to the provisions of M.G.L. c.175, §162R (a)(2) and (a)(9). It also alleges that Jones failed to report to the Division administrative actions suspending her nonresident producer licenses in Illinois and Arkansas, and an order from the State of Washington revoking her producer licenses, as she was obligated to do pursuant to M.G.L. c. 175, §162V (a). In addition to revocation of Jones’s license and the imposition of fines, the Division seeks orders that, among other things, require Jones to dispose of any insurance-related interests in Massachusetts and prohibit her from conducting business in the Commonwealth.

Jones filed no answer or other response to the OTSC. On July 23, 2019, the Division moved for entry of default and summary decision (“the Motion”). An order, entered on July 25, set a date for responding to the Motion and scheduled a hearing on the Motion for August 20, 2019. Matthew Burke, Esq. represented the Division in this matter. Neither Jones nor any person representing her attended the August 20 hearing. Mr. Burke reported that he had not been contacted by Jones or any person purporting to represent her.

Finding of Default

According to the certificate of service submitted with the OTSC, the Division served the OTSC and Notice of Action on Jones by certified and regular first class United States mail addressed to her at the home and mailing address shown on the Division's producer licensing records: 821 N. Karlov Avenue, Chicago, Illinois 60651. The Division attached to the Motion the certified mail receipt (Green Card) bearing Jones's signature that the United States Post Office returned to the Division on July 22, 2019. The date of delivery was not specified on that receipt. The copy of the OTSC sent to Jones by regular first class mail was not returned to the Division. On this record, I conclude that the OTSC was served on Jones.

The Motion is grounded on Jones's failure to answer the OTSC. I find that her failure to answer the OTSC or to respond to the Motion, and her failure to appear at the hearing warrant a finding that she is in default. By her default, Jones has waived her right to proceed further with an evidentiary hearing in this case and I may consider the Motion based on the record.

The record in this proceeding consists of the OTSC, the Motion, and the exhibits attached to them. The exhibits to the OTSC consist of orders from the Illinois and Arkansas insurance departments suspending Jones's producer licenses in those jurisdictions and an order from the Washington Insurance Commissioner revoking her license in that state. Attached to the Motion is a copy of Jones's Massachusetts licensing record contained in its Consolidated Licensing and Registration Information System ("CLARIS") and copies of documents relating to service of the OTSC.

Findings of Fact

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

1. The Division first licensed Jones as a non-resident insurance producer on or about June 30, 2015.
2. At that time, Jones was licensed as a resident insurance producer by the State of Illinois.
3. Although Jones's Massachusetts nonresident producer license was terminated on October 22, 2017 for failure to renew, a reinstatement application was approved on January 12, 2018.
4. On August 14, 2018, the Illinois Department of Insurance issued an order, effective 30 days from mailing, suspending Jones's resident producer license

- for failure to pay state income tax for tax years 2014 and 2015 and to file tax returns for five years between 2005 and 2013.
5. On or about September 17, 2018, because Jones was no longer in good standing in her home state, she became ineligible to hold a Massachusetts nonresident producer license.¹
 6. On November 28, 2018, the Arkansas Insurance Department suspended Jones's license because of the Illinois suspension.
 7. On December 18, 2018, the Washington Insurance Commissioner issued an order, effective January 2, 2019, revoking Jones's license for failure to report the Illinois action to it within thirty days.
 8. Jones failed to report the Illinois, Arkansas or Washington administrative actions to the Division within thirty days after the date of the orders.

Analysis and Discussion

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. Jones has not contested the factual allegations in the OTSC or offered any defense to the Division's claims for relief. M.G. L. c. 175, §§162G through 162X set out, among other things, the requirements for obtaining and maintaining a Massachusetts insurance producer license. Section 162R (a) specifies fourteen grounds on which the Commissioner may suspend or revoke a producer's license.

As grounds for revocation of Jones's license, the Division relies on §162R (a)(2) and (a)(9). It requests disciplinary action pursuant to §162R (a)(2) because failure to comply with §162V (a) is a violation of Massachusetts law. Subsection (a)(9) permits disciplinary action if another jurisdiction has revoked or suspended an insurance producer's license. The evidence submitted by the Division, orders in administrative actions by three other United States jurisdictions, permits disciplinary action under the latter section. Pursuant to §162R (a), the Commissioner may place an insurance licensee on probation or suspend, revoke or refuse to issue or renew a license. Two of the three administrative actions underlying the Division's request for revocation of Jones's license suspend, rather than revoke her license. Her home state, Illinois, elected to suspend, rather than revoke, Jones's license for non-payment of taxes home; both it and Arkansas noted

¹ M.G.L. c. 175, §162N provides that a producer is not eligible for a non-resident license in Massachusetts unless he or she is licensed as a resident in a home state and is in good standing in that state.

that she would be reinstated if the taxes were paid. I am not persuaded that revocation is appropriate in these circumstances. Washington revoked Jones's license for failure to report the earlier administrative actions; I find that its action is sufficient to support the Division's request for revocation of Jones's Massachusetts license.

The Division asserts that Jones violated M.G.L. c. 175, §162V (a) by failing to report the administrative actions taken by Illinois, Arkansas and Washington within 30 days. The statutory reporting requirement is limited to "final" dispositions; I am not persuaded that suspensions are appropriately characterized as final, absent evidence that the license in question was subsequently revoked. The suspensions in this matter were conditional upon payment of state taxes; the record provides no information on the resolution of either suspension. For that reason, I conclude that Jones was not obligated to report the Illinois or Arkansas suspension. The record supports a conclusion that Jones did not report to the Division the Washington administrative action and thereby violated M.G.L. c. 175, §162V (a).

The Division, in addition to revocation of Jones's license, requests the imposition of civil penalties, as permitted under M.G.L. c. 175, §162R (a), and in accord with the fines permitted under M.G.L. c. 176D, §7 ("Section 7 fines") for her alleged violations of §162R (a)(2) and (a)(9). The maximum Section 7 fine is \$1,000 per violation. For the reasons stated below, the Division's request for Section 7 fines is denied. Decisions in administrative proceedings seeking license revocation distinguish grounds for disciplinary action that arise from the respondent licensee's affirmative acts from grounds arising from administrative or judicial actions initiated by third parties to revoke or suspend the respondent's license. The OTSC seeks to discipline Jones under §162R (a)(9) because other jurisdictions suspended or revoked her nonresident licenses, a ground that is entirely based on administrative actions initiated by third parties. The Division also requests fines pursuant to §162R (a)(2) because of Jones's violations of §162V (a). Because that reporting statute imposes no 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. I find no reason to expand a specific violation of a reporting statute into a ground for revoking a license and imposing a second fine.

On this record, I conclude that Jones's nonresident Massachusetts producer license should be revoked and that she is subject to a fine for failure to report the Washington revocation to the Division. That revocation refers to the home state suspension of Jones's license and, if reported, might have produced a more immediate response to Jones's ineligibility for a Massachusetts license. I therefore impose a fine of \$250 for Jones's failure to report the Washington administrative action.

I also find that, in addition to revocation of her license, Jones should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and be required to dispose of any interests she may have in any insurance business in Massachusetts.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Nikia Jones by the Division are hereby revoked; and it is

FURTHER ORDERED: that Nikia Jones shall return to the Division any licenses in her possession, custody or control; and it is

FURTHER ORDERED: that Nikia Jones shall cease and desist from the conduct that gave rise to this Order to Show Cause; and it is

FURTHER ORDERED: that Nikia Jones, 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 the Commonwealth of Massachusetts; and it is

FURTHER ORDERED: that Nikia Jones shall comply with the provisions of G. L. c. 175, §166B and dispose of any and all interests in Massachusetts as a proprietor, partner, stockholder, officer or employee of any licensed insurance producer; and it is

FURTHER ORDERED: that Nikia Jones shall pay a fine of Two Hundred Fifty Dollars (\$250) to the Division within 30 days of the entry of this order.

This decision has been filed in the office of the Commissioner of Insurance this 4th day of December 2019. A copy shall be sent to Jones by regular first class mail, postage prepaid.

Jean F. Farrington
Presiding Officer

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