

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.
Kimberly Spears, Respondent
Docket No. E2019-09

Order on Petitioner's Motion for Summary Decision

On April 10, 2019, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Kimberly Spears (“Spears”), who was first licensed as a Massachusetts non-resident insurance producer on or about October 4, 2016. The OTSC seeks revocation of Spears’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 Spears failed to report to the Division administrative actions by Louisiana, suspending a producer license issued to her, by Indiana, denying an application for a producer license, and by Oregon, Kentucky and Washington revoking licenses issued to her, as she was obligated to do pursuant to M.G.L. c. 175, §162V (a). In addition to revoking Spears’s license and imposing fines, the Division seeks orders that, among other things, require Spears to dispose of any insurance-related interests in Massachusetts and prohibit her from conducting business in the Commonwealth.

Spears filed no answer or other response to the OTSC. On June 27, 2019, the Division moved for entry of default and summary decision (“the Motion”). An order, entered on June 28, set a date for responding to the Motion and scheduled a hearing on the Motion for July 16, 2019. Matthew Burke, Esq. represented the Division in this matter. Neither Spears nor any person representing her attended the July 16 hearing. Mr. Burke

reported that he had not been contacted by Spears 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 Spears by certified and regular first class United States mail addressed to her at the home address shown on the Division's producer licensing records: 300 Gates Lane, Hanson, KY 42413. The Division attached to the Motion a photocopy of a signed receipt for certified mail indicating that the OTSC was delivered to and accepted by Spears.¹ I conclude that the OTSC was served on Spears by certified United States mail. Further, the Motion noted that the OTSC sent to Spears by regular first class mail was not returned.

The Motion is grounded on Spears's failure to answer the OTSC. I find that Spears's 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, Spears 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: A) the Indiana preliminary administrative order denying Spears's application for a producer license; B) the Oregon order revoking Spears's license; C) the Kentucky order revoking Spears's license; D) the State of Washington order revoking Spears's license; and E) the Louisiana order suspending Spears's license. Attached to the Motion is a copy of Spears's Massachusetts licensing record contained in its Consolidated Licensing and Registration Information System ("CLARIS").

Findings of Fact

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

1. The Division first licensed Spears as a non-resident insurance producer on or about October 4, 2016.
2. According to CLARIS, the application was submitted through the National Insurance Producer Registry ("NIPR") and was referred to the Division's Legal Division to review documents in the NIPR warehouse.

¹ The receipt does not show the date on which it was delivered. The Division states that the receipt was returned to it on June 18, 2019.

3. Spears's application was approved after Division counsel's review.
4. At that time she applied for a Massachusetts nonresident license, Spears was licensed as a resident insurance producer by the Commonwealth of Kentucky.
5. On or about July 21, 2017, the Indiana Commissioner of Insurance denied Spears's application for a non-resident producer license.
6. The stated grounds for that denial were Spears's failure to report her criminal history on the application, the nature of the actions underlying that history, and her failure to report that, on October 21, 2016, Indiana denied a previous producer license application from her.
7. On or about October 18, 2016, Spears submitted an application for an Oregon license that included her criminal history. She did not respond to Oregon's inquiry about that history and, on or about November 18, 2016 Oregon closed the application and refunded her application fee.
8. On or about June 19, 2017, Spears submitted a second application for an Oregon license, on which she failed to disclose her criminal history or to report the Indiana administrative actions. Oregon mistakenly granted Spears a license.
9. On April 16, 2018, the Oregon Division of Financial Regulation revoked Spears's nonresident license on the grounds that the representations in that second application were "incorrect, misleading, incomplete or materially untrue."
10. On or about June 5, 2018, the Kentucky Department of Insurance revoked Spears's insurance license. Among the stated grounds for revocation were Spears's failure to report to it the Oregon revocation and the Indiana denial of two license applications, violations of Kentucky law, engaging in dishonest practices, and the Oregon and Indiana decisions.
11. As of June 5, 2018, Spears was no longer eligible to hold a Massachusetts nonresident producer license.
12. On July 25, 2018, the Insurance Commissioner of the State of Washington revoked Spears's license on the grounds that she failed to respond to an inquiry from the Commissioner about the Oregon license revocation or timely to report the Oregon action to Washington.
13. On July 31, 2018, the Louisiana Department of Insurance suspended Spears's Louisiana license for failure to pay a fine imposed on her on April 2, 2018 because she had not disclosed her criminal history on a producer application dated June 19, 2017, and had not reported the Oregon and Indiana administrative actions.
14. Spears did not timely report the Indiana, Oregon, Kentucky, Washington or Louisiana administrative actions to the Division.

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. Spears 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 Spears's license, the Division relies on §162R (a)(2) and (a)(9). The latter subsection permits disciplinary action if another jurisdiction has revoked or suspended an insurance producer's license or denied an application for a license. The orders attached to the OTSC present a more complex history of Spears's licensing than that asserted in the OTSC. In order to qualify for a Massachusetts nonresident producer license, Spears had to be licensed in her home state, Kentucky. The Kentucky order indicates that Spears disclosed her criminal history on the agent application submitted to it, and on the applications for non-resident licenses submitted to Oregon and Indiana in October, 2016. The Division's CLARIS notes indicate that Spears's online October 2016 application for a Massachusetts license referred to information in the NIPR warehouse, was sent to the Division counsel for review, and was approved. Although CLARIS does not specifically describe the issue that counsel reviewed, in the era of centralized NIPR licensing it is reasonable to conclude that the Kentucky, Indiana, Massachusetts and Oregon decisions were based on a standard application form and uniform information. Kentucky and Massachusetts approved the application; Indiana and Oregon did not.

According to the Indiana and Oregon orders, Spears submitted new applications for nonresident licenses to those jurisdictions in 2017. Neither application disclosed the criminal history that had been reported on the 2016 applications. Indiana ultimately denied the 2017 application, in part based on Spears's criminal history, and in 2018 Oregon revoked the license it mistakenly issued in 2017, a decision that was the basis for the Washington revocation of her license in that state. Kentucky revoked her license, at least in part for providing misleading or incorrect information to a regulator.

Although revocation, suspension or denial of a license in another jurisdiction is a ground for revoking Spears's Massachusetts nonresident license, further analysis is useful in determining whether specific acts underlying another jurisdiction's decision to revoke,

suspend or deny a license are sufficient to support revocation in Massachusetts. In 2016, Massachusetts apparently was aware of Spears's criminal history but did not view it as a bar to licensing her. Were that criminal history a) the sole reason for denying her 2016 license applications, and b) those denials the basis for the OTSC, it would be unreasonable to consider a difference of opinion with other states on the effect of a particular criminal history, without more, as a ground for revocation that would effectively negate the Division's decision. However, the record indicates that the 2017 and 2018 Indiana, Oregon and Kentucky revocations were based on Spears's failure to disclose that history on 2017 license applications, an act that, had it occurred on an application for a Massachusetts license, would support denial of the application. The Washington State decision relied on the Oregon revocation. For that reason, I conclude that the Indiana, Oregon, Kentucky and Washington State decisions revoking Spears's licenses adequately support disciplinary action under §162R (a)(9), in the form of revoking her Massachusetts license.

In contrast, Louisiana fined Spears for failing to report administrative actions in other states and for failure to report her criminal history on a 2017 license application but then, when she did not pay the fine, suspended her license. I am not persuaded that a suspension is a final action that is appropriately relied on as a basis for revoking Spears's Massachusetts nonresident license.

The Division also asserts that Spears violated M.G.L. c. 175, §162V (a) by failing to report the administrative actions taken by Indiana, Oregon, Kentucky, Washington, and Louisiana within 30 days after the final disposition of those matters. The statutory reporting requirement is limited to "final" dispositions; I am not persuaded that a suspension is appropriately characterized as final, absent evidence that the license in question was subsequently revoked. For that reason, I conclude that Spears was not obligated to report the Louisiana suspension. The record supports a conclusion that Spears did not report to the Division the Indiana, Oregon, Kentucky and Washington administrative actions and thereby violated M.G.L. c. 175, §162V (a). The Division requests disciplinary action against Spears pursuant to §162R (a)(2) because failure to comply with §162V (a) is a violation of Massachusetts law.

The Division, in addition to revocation of Spears's license, requests the imposition of civil penalties, permitted under M.G.L. c. 175, §162R (a), 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'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 Spears under §162R (a)(9) because other jurisdictions 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 Spears'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 am not persuaded that, based on the facts presented, a specific violation of a reporting statute should be expanded into a ground for revoking a license and imposing a second fine.

On this record, I conclude that Spears's nonresident Massachusetts producer license should be revoked and that she is subject to fines for failure to report the Indiana, Oregon, Kentucky and Washington administrative actions to the Division. In considering a fine, I note that it appears from the record that, on June 5, 2018, Spears's home state revoked her license; as a result of that action, by operation of law she became ineligible to hold a Massachusetts producer license. In considering the range of fines for violations of §162V (a) a producer's failure timely to report a loss of license in his or her home state may effectively allow the licensee to remain licensed as a nonresident producer for an indefinite time period. Subsequent revocations by other jurisdictions support disciplinary action, but do not automatically and immediately affect a licensee's eligibility to hold a nonresident producer license. I therefore impose a fine of \$500 for Spears's failure to report the Kentucky administrative action and \$200 for each failure to report the actions taken by Indiana, Oregon and Washington.

I also find that, in addition to revocation of her license, Spears 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 Kimberly Spears by the Division are hereby revoked; and it is

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

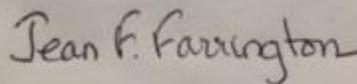
FURTHER ORDERED: that Kimberly Spears shall cease and desist from the conduct that gave rise to this Order to Show Cause; and it is

FURTHER ORDERED: that Kimberly Spears, from the date of this order, is 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 Kimberly Spears 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 Kimberly Spears shall pay a fine of One Thousand One Hundred Dollars (\$1,100) 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 first day of April, 2021. A copy shall be sent to Spears by electronic mail at the email address shown on the Division records: Kimberly.spears.64552@uhc.com.



Jean F. Farrington
Presiding Officer

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

Sent by electronic mail to:

doidocket.mailbox@mass.gov

kimberly.spears.64552@uhc.com

matthew.burke@mass.gov