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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Nakima K. Johnson, Respondent
Docket No. E2019-11

Order on Petitioner's Motion for Summary Decision

On March 28, 2019, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Nakima K. Johnson ("Johnson"), who was first licensed as a Massachusetts non-resident insurance producer on or about October 26, 2011. The OTSC seeks revocation of Johnson'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 Johnson failed to report to the Division administrative actions suspending a producer license issued to her by Georgia and revoking licenses issued by South Dakota and Mississippi, as M.G.L. c. 175, §162V (a) obligates her to do. In addition to revocation of Johnson's license and the imposition of fines, the Division seeks orders that, among other things, require Johnson to dispose of any insurance-related interests in Massachusetts and prohibit her from conducting business in the Commonwealth.

Johnson filed no answer or other response to the OTSC. On May 29, 2019, the Division moved for entry of default and summary decision ("the Motion"). An order, entered on June 20, set a date for responding to the Motion and scheduled a hearing on the Motion for July 12, 2019. Matthew Burke, Esq. represented the Division in this matter. Neither Johnson nor any person representing her attended the July 12 hearing. Mr. Burke reported that he had not been contacted by Johnson 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 Johnson by certified and regular first class United States mail addressed to her at the home address shown on the Division’s producer licensing records: 1209 N. 50th Street, Philadelphia, PA 19131. The Division attached to the Motion a photocopy of a signed receipt for certified mail indicating that the OTSC was delivered to and accepted at Johnson’s address.¹ I conclude that the OTSC was served on Johnson by certified United States mail.

The Motion is grounded on Johnson’s failure to answer the OTSC. I find that Johnson’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, Johnson 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 an order from the Georgia Commissioner of Insurance suspending Johnson’s license, and orders from the South Dakota Division of Insurance and Mississippi Insurance Department revoking Johnson’s license. Attached to the Motion is a copy of Johnson’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 Johnson as a non-resident insurance producer on or about October 26, 2011.
2. At that time, Johnson was licensed as a resident insurance producer by the Commonwealth of Pennsylvania.
3. Johnson’s Massachusetts nonresident producer license was renewed on January 20, 2017, through the National Insurance Producer Registry (“NIPR”).
4. In connection with that renewal, counsel for the Division, after reviewing documents relevant to her application contained in the document warehouse maintained by NIPR, approved the renewal.
5. On June 28, 2017, the Georgia Commissioner of Insurance suspended Johnson’s nonresident producer license.

¹ The receipt does not show the date on which it was delivered. The Division states that the receipt was returned to it on April 9, 2019.

6. The stated reason for the suspension was failure to respond to a request for information about a misdemeanor reported in connection with Johnson's January 13, 2017 application to renew her Georgia nonresident license.
7. On November 1, 2018, the South Dakota Division of Insurance revoked Johnson's nonresident producer license.
8. Johnson failed to report to the Division, within 30 days after November 1, 2018, the South Dakota administrative action.
9. On January 8, 2019, the Mississippi Insurance Department revoked Johnson's nonresident producer license on the ground that her home state, Pennsylvania, had revoked or nonrenewed her producer license.
10. As of the date that Pennsylvania revoked or did not renew her resident producer license, Johnson was no longer eligible to hold a Massachusetts nonresident producer.²

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. Johnson 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 Johnson'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. The evidence submitted by the Division in part supports disciplinary action under that section. The 2017 Georgia suspension order arose from Johnson's alleged failure to provide additional information to that state about a criminal matter reported on a license renewal application which, according to Division records, is contemporaneous with her Massachusetts renewal application. Although the CLARIS record does not specify the reason for referring Johnson's application to counsel, in the current world of centralized NIPR licensing it is reasonable to conclude that uniform information is distributed with renewal applications.

² 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. The Mississippi order revoking Johnson's nonresident license did not include the date of the Pennsylvania action.

Massachusetts appears to have reviewed that information and determined that it did not prevent renewal of Johnson's license, while Georgia took a different approach, suspending Johnson's license until she provided particular records. In these circumstances, I find that the Georgia suspension is not a basis for revoking Johnson's Massachusetts nonresident license. In contrast, the orders from South Dakota and Mississippi revoking Johnson's insurance producer license in those jurisdictions, support disciplinary action under §162R (a)(9).

The Division also asserts that Johnson violated M.G.L. c. 175, §162V (a) by failing to report the administrative actions taken by Georgia, South Dakota and Mississippi 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 Johnson was not obligated to report the Georgia suspension. The record supports a conclusion that Johnson did not report to the Division the South Dakota or Mississippi administrative actions and thereby violated M.G.L. c. 175, §162V (a). The Division requests disciplinary action against Johnson 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 Johnson'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'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 Johnson 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 Johnson'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 Johnson's nonresident Massachusetts producer license should be revoked and that she is subject to fines for failure to report the South Dakota and Mississippi revocations to the Division. In considering a fine, I note that it appears from the record that, on an unspecified date prior to January 31, 2019, Johnson's producer license was either revoked or nonrenewed in her home state; as a result of that action, by operation of law she became ineligible to hold a Massachusetts producer license. Although Johnson was not charged with failure to report the Pennsylvania revocation, 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 \$250 each for Johnson's failure to report the administrative actions taken by South Dakota and Mississippi.

I also find that, in addition to revocation of her license, Johnson 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 Nakima K. Johnson by the Division are hereby revoked; and it is

FURTHER ORDERED: that Nakima K. Johnson shall return to the Division any licenses in her possession, custody or control; and it is

FURTHER ORDERED: that Nakima K. Johnson shall cease and desist from the conduct that gave rise to this Order to Show Cause; and it is

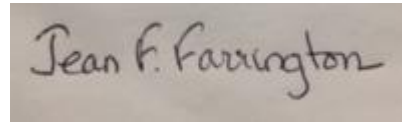
FURTHER ORDERED: that Nakima K. Johnson, from the date of this order, prohibited from directly or indirectly transacting any insurance business or acquiring, in any capacity whatsoever, any insurance business in the Commonwealth of Massachusetts; and it is

FURTHER ORDERED: that Nakima K. Johnson 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 Nakima K. Johnson shall pay a fine of Five Hundred Dollars (\$500) 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 17th day of June 2020.

A copy shall be sent to Johnson by electronic mail at the address appearing on the records of the Division.

A rectangular box containing a handwritten signature in black ink that reads "Jean F. Farrington".

Jean F. Farrington
Presiding Officer

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