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EDWARD A. PALLESCHI
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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Jessica Elaine Edney, Respondent
Docket No. E2019-15

Order on Petitioner's Motion for Summary Decision

On June 5, 2019, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Jessica Elaine Edney ("Edney"), who was first licensed as a Massachusetts non-resident insurance producer on or about August 23, 2016. Because she did not renew that license, the Division terminated it on October 17, 2018. The OTSC seeks revocation of Edney'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 Edney failed to report to the Division an administrative action against her by North Dakota, orders from Idaho and the Commonwealth of Virginia revoking her producer licenses, and an order from Arkansas suspending her producer license in that state, as she was obligated to do pursuant to M.G.L. c. 175, §162V (a). In addition to revocation of Edney's license and the imposition of fines, the Division seeks orders that, among other things, require Edney to dispose of any insurance-related interests in Massachusetts and prohibit her from conducting business in the Commonwealth.

Edney filed no answer or other response to the OTSC. On July 19, 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 Edney nor any person representing her attended the August 20 hearing. Mr. Burke

reported that he had not been contacted by Edney 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 Edney by certified and regular first class United States mail addressed to her at the home address shown on the Division’s producer licensing records: 6218 Forest Grove Drive, Fredericksburg, VA 22407. The Division attached to the Motion a photocopy of the certified mail envelope that the United States Post Office returned to the Division on July 11, 2019, with the notation that it could not be forwarded. The copy of the OTSC sent to that address by regular first class mail was not returned to the Division. Pursuant to M.G.L. c. 175, §174A, notice of a hearing required under §162R is deemed sufficient if sent postpaid by registered mail to the last business or residence address appearing on the records of the Commissioner.¹ On this record, I conclude that service of the OTSC on Edney was sufficient under §174A.

The Motion is grounded on Edney’s failure to answer the OTSC. I find that Edney’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, Edney 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 North Dakota Commissioner of Insurance imposing a fine on Edney, orders from Georgia Commissioner of Insurance suspending Johnson’s license, orders from the Virginia State Corporation Commission and the Idaho Department of Insurance revoking Edney’s license, and an order from the Arkansas Insurance Department suspending Edney’s license. Attached to the Motion is a copy of Edney’s Massachusetts licensing record contained in the Division’s Consolidated Licensing and Registration Information System (“CLARIS”) and copies of documents relating to service of the OTSC.

Findings of Fact

¹ For purposes of this section, certified mail includes registered mail.

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

1. The Division first licensed Edney as a non-resident insurance producer on or about August 23, 2016.
2. At that time, Edney was licensed as a resident insurance producer by the Commonwealth of Virginia.
3. Edney failed to renew her Massachusetts nonresident producer license and it was terminated on October 17, 2018.
4. On October 13, 2017, the Virginia State Corporation Commission revoked Edney's producer license.
5. As of October 17, 2017, because Edney was no longer licensed in her home state, she was no longer eligible to hold a Massachusetts nonresident producer license.²
6. On March 9, 2017, the North Dakota Commissioner of Insurance fined Edney \$200 for incorrectly answering a background question on her August 19, 2016 application for a nonresident insurance producer license in that state.
7. Virginia revoked Edney's resident producer license on October 13, 2017, for failure to report the North Dakota action to it within thirty days.
8. Arkansas suspended Edney's nonresident license on November 17, 2017 because she was no longer licensed and in good standing in her home state, Virginia.
9. On July 9, 2018, the Idaho Department of Insurance revoked Edney's license on the ground that she was no longer licensed in her home state.
10. Edney failed to report the North Dakota, Virginia, Arkansas or Idaho administrative actions to the Division within thirty days after the date of each state's respective order.

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. Edney 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 Edney's license, the Division relies on §162R (a)(2) and (a)(9). It requests disciplinary action pursuant to §162R (a)(2) because failure to

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.

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 four other United States jurisdictions, supports disciplinary action under the latter section.

The Division asserts that Edney violated M.G.L. c. 175, §162V (a) by failing to report the administrative actions taken by North Dakota, Virginia, Arkansas and Idaho within 30 days after the final dispositions 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 Edney was not obligated to report the Arkansas suspension. The record supports a conclusion that Edney did not report to the Division the North Dakota, Virginia or Idaho administrative actions and thereby violated M.G.L. c. 175, §162V (a).

The Division, in addition to revocation of Edney'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 Edney 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 Edney'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. Based on the facts presented, 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 Edney's nonresident Massachusetts producer license should be revoked and that she is subject to fines for failure to report the North Dakota, Virginia and Idaho revocations to the Division. In considering a fine, I note that the record demonstrates that, on October 13, 2017, Edney's home state revoked her producer 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), Edney's failure timely to report the loss of her license in her home state allowed her to remain licensed as a nonresident Massachusetts producer for approximately a year after she became ineligible for that license; I therefore impose the maximum fine, \$500, for that violation. Revocations by other jurisdictions may support disciplinary action, but do not automatically and immediately affect a licensee's eligibility to hold a nonresident producer license. The North Dakota action, however, was based on Edney's failure to correctly answer a background question on her nonresident license application that was submitted contemporaneously with her Massachusetts application. Had that action been reported, Massachusetts might have revisited its decision to approve her application. Similarly, a report of the Idaho action might have resulted in a more immediate response to Edney's ineligibility for a Massachusetts license. I therefore impose a fine of \$200 each for Edney's failure to report the administrative actions taken by North Dakota and Idaho.

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

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

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

FURTHER ORDERED: that Jessica Elaine Edney, from the date of this order, prohibited from directly or indirectly transacting any insurance business or acquiring, in

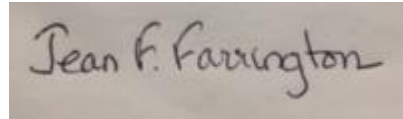
any capacity whatsoever, any insurance business in the Commonwealth of Massachusetts; and it is

FURTHER ORDERED: that Jessica Elaine Edney 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 Jessica Elaine Edney shall pay a fine of Nine Hundred Dollars (\$900) 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 15th day of July 2020.

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

A rectangular box containing a handwritten signature in dark 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.