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**Jay Seitz, Petitioner**  
**v.**  
**Division of Insurance, Respondent**  
**Docket No. E2021-01**

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On March 15, 2021, Jay Seitz (“Seitz”), by filing a Notice of Claim for an Adjudicatory Proceeding (“NCAP”), appealed a decision by the Director of Producer Licensing (“Director”) at the Division of Insurance (“Division”) that denied his application to renew his Massachusetts insurance producer license. The Director notified Seitz of that denial by letter dated March 10, 2021 (the “Denial Letter”). In response to the NCAP his appeal was docketed and, on April 1, 2021, a notice of procedure was issued instructing the Division to file an answer. It submitted its answer on April 6, 2021. On May 19, 2022 the Division, based on the documents submitted by the two parties, filed a motion for summary decision. Seitz was ordered to file any response to the Division’s motion by May 27, 2022. He did not do so.

**Summary of the Record**

Seitz was first licensed as a Massachusetts resident insurance producer on November 6, 2018; on January 3, 2021, he applied to renew that license. His NCAP sought two specific outcomes: 1) renewal of his license and 2) a waiver from the

Commissioner of Insurance (“Commissioner”) that under federal law would permit him to engage in the business of insurance in Massachusetts.<sup>1</sup> Seitz attached three documents to his NCAP: 1) a letter dated February 19, 2020 that he sent to the Commissioner in response to an enforcement action filed against him by the Division on February 6, 2020;<sup>2</sup> 2) a letter dated April 1, 2020 that he sent to William P. Barr, former Attorney General of the United States, about his 2014 convictions; and 3) the Denial Letter advising him of the reasons for denying his 2021 renewal application.

On March 26, 2021 Seitz submitted to the Division a letter and eight exhibits that he described as a response to a motion for summary decision filed by the Division in the 2020 action. It was apparent, upon reading these documents that Seitz was also responding to this appeal of the denial of his license renewal. Of the eight exhibits attached to the March 26, 2021 letter, one was a copy of the May 15 NCAP and three duplicated the documents submitted with it. Of the remaining four, one related to the waiver that Seitz is seeking in this proceeding and another is a statement from Seitz that he had filed certain documents with the National Insurance Producer Registry (“NIPR”). These six documents are relevant to Seitz’s appeal of the denial of his license renewal application and are included in the documentary record that is the basis for this decision.<sup>3</sup>

On April 6, 2021, the Division filed an answer to the NCAP that consisted of the following six documents: A) Seitz’s application to renew his resident producer license, dated January 3, 2021; B) Seitz’s initial application for an individual producer license dated November 6, 2018; C) the docket in United States v. Jay Seitz, case number 1:12-cr-00921-2, United States District Court, Southern District of New York, filed Aug. 12, 2014; D) Denials by Indiana and South Dakota, respectively dated Dec. 20, 2019 and June 10, 2020, of producer license applications from Seitz; and E) Denials of producer license applications from Seitz issued by North Dakota and North Carolina in 2019.<sup>4</sup>

#### Analysis and Discussion

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<sup>1</sup> 18 U.S.C. §1033 (a)(1) and (2) (“§1033”).

<sup>2</sup> *Division of Insurance v. Seitz*, DOI Docket E2020-01 (the “2020 Action”).

<sup>3</sup> The remaining two exhibits attached to Seitz’s March 26 correspondence are copies of the Division’s motion for summary decision filed in the 2020 Action and Seitz’s insurance producer license issued in 2018. Neither relates to an issue in this proceeding.

<sup>4</sup> Those two denials were previously submitted as exhibits in the 2020 Action.

An appeal from the denial of a producer license is an administrative proceeding conducted according to the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01. The Division argues in its motion for summary decision that 801 C.M.R. 1.01(7)(h) permits such a motion to be granted when the moving party “is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense” and that [the party] “is entitled to prevail as a matter of law.” It contends that in this matter there are no disputed issues to be determined in a hearing. It further notes that the Commissioner is authorized to regulate insurance licensing issues pursuant to M.G.L. c.175, §162R, a statute that clearly states the grounds for refusing to issue an insurance producer’s license. In addition, when an application for an insurance license is denied, the applicant bears the burden of demonstrating that he meets the statutory standards. The documents that Seitz submitted do not raise any genuine issues of fact with respect to this matter; he did not respond to the motion for summary decision.

As a preliminary matter, Seitz’s NCAP requested two forms of relief, renewal of his producer license and a waiver of the federal law prohibiting a person who has been convicted of any criminal felony involving dishonesty or breach of trust from engaging or participating in the business of insurance without the written consent of an insurance regulatory official authorized to regulate the insurer. In Massachusetts, the Commissioner is the regulatory official authorized to grant a waiver; consent must be specifically granted pursuant to that statutory authority.<sup>5</sup> Seitz attached to his March 26, 2021 submission a copy of the application for a §1033 waiver that he submitted to the Commissioner in November 2019. Because the authority delegated to me does not extend to the allowance or denial of §1033 applications, to the extent that Seitz seeks relief in this proceeding in the form of a waiver, it is denied.

This decision, therefore, addresses the renewal of Seitz’s insurance producer license and the eight reasons for denying Seitz’s 2021 renewal application set out in the Denial Letter. They are: 1) Seitz’s criminal record of felony convictions; 2) Seitz’s failure to disclose that criminal history on his 2018 application for a producer license; 3)

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<sup>5</sup> The Division’s website advises those seeking waivers about the of the process for applying for a waiver, including the required documents and the interviews. The grant of a waiver does not authorize applicants to engage in any insurance business activities that require a license; they must then obtain a producer license.

that Seitz obtained his 2018 producer license through misrepresentation or fraud by "providing incorrect, misleading, incomplete or materially untrue information" on his 2018 license application; 4) that Seitz's 2014 convictions for fraud showed that he had committed an "insurance unfair trade practice or fraud" and had been "using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere"; 5) that four other states have denied Seitz's applications for an insurance producer license; 6) that Seitz failed to report those denials to the Division as required by M.G.L. c. 175, § 162V (a); 7) that Seitz failed to disclose those other state license denials on his renewal application; and 8) that Seitz, by virtue of these stated reasons, had been found to violate the insurance laws of the Commonwealth.

M.G.L. c. 175, §162R (a) specifies fourteen grounds on which the Commissioner may deny an initial or renewal application for an insurance producer license. Section 162R (a)(6) specifies that a license may be denied if the applicant has been convicted of a felony. The Denial Letter identified §162R (a)(6) as the first ground for denying Seitz's renewal application. Question 26, 1 b. on Seitz's 2021 renewal application asked if he had been convicted of a felony; he answered yes to that question.<sup>6</sup> The record demonstrates that there is no genuine issue of fact as to the validity of the license denial under §162R (a)(6). I find that on this record his 2021 renewal was correctly denied for that reason.

The Denial Letter also denied the 2021 application on the grounds of §162R (a)(7), having admitted or been found to have committed any insurance unfair trade practice or fraud, and §162R (a) (8), using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere. Exhibit C to the Division's answer to Seitz's appeal, a document from the Federal District Court stated that Seitz was found guilty and convicted on three grounds, Mail Fraud, Health Care Fraud and Conspiracy to commit Health Care Fraud supports denial on those two grounds. In addition, Question 26, 1 c on the renewal application asked Seitz whether, if the felony

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<sup>6</sup> He also answered yes to Question 26, 1a that asked about misdemeanors; in the March 10 letter the Director did not address that as a reason to deny Seitz's application.

involved dishonesty or breach of trust, he had applied for a waiver under 18 U.S.C. §1033. His affirmative response to that question effectively conceded that the felonies fell within those categories and supports the denial of his application on those two grounds. On this record, I conclude that the documents attached to the Division's answer and Seitz's answers to questions on the renewal application fully support denial of his 2021 producer license renewal application for the third and fourth reasons articulated in the Denial Letter, §162R (a)(7) and (a)(8).

Section 162R (a)(9) specifies that a license may be denied if the applicant has had an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory. The Denial Letter states that the fifth ground for denying Seitz's renewal application is decisions from four other states denying his applications for an insurance producer license. The Division's answer to Seitz's NCAP includes copies of denial letters from North Dakota, North Carolina, Indiana and South Dakota. Seitz does not contest those actions. I find that those documents fully support denial of Seitz's renewal application for the reason set out in 162R (a)(9).

The Denial Letter also denied Seitz's renewal application on four additional grounds. Upon review of the record, for the following reasons, I conclude that the record does not support denial on those four grounds. Licensees who seek to renew their Massachusetts licenses must report on their applications administrative actions issued in other jurisdictions that deny applications for insurance producer licenses or impose discipline affecting those licensees. Seitz's 2021 renewal application, submitted with the Division's answer, shows that he answered "no" to Background Question 2 that asks whether the applicant has been involved in administrative proceedings involving professional or occupational licenses. Section 162R (a)(1) permits denial of a license application if an applicant provides incorrect, misleading, incomplete or materially untrue information on that application. Similarly, §162R (a)(3) supports such action if the applicant or licensee has obtained or attempted to obtain a license through misrepresentation or fraud.

The Denial Letter states that Seitz's 2021 renewal application was denied under M.G.L. 175, §§ 162R (a) (1) and (a)(3) for "obtaining a license through misrepresentation or fraud" by "providing incorrect, misleading, incomplete or materially untrue

information" in your initial 2018 license application (emphasis supplied).<sup>7</sup> It neither explains why the Director viewed Seitz's omissions from his 2018 application for an insurance license as relevant to a decision on his 2021 renewal application nor identifies a statutory provision that would permit denial of a 2021 renewal application because of issues related to Seitz's 2018 producer license application.<sup>8</sup> For that reason, I find that the record does not support denial of Seitz's renewal application for the second reason set out in the Denial Letter.

As the sixth ground for denying Seitz's renewal application, the Denial Letter denies the renewal application on the ground that Seitz failed to report the four state administrative actions denying him a producer license within 30 days, as required by M.G.L. 175, §162V (a) ("§162V(a)"). Failure to comply with reporting under §162V (a) is among the claims that the Division may raise through an enforcement action; the action requires a statement of the evidentiary basis for the claim, notice to the licensee of the action and an opportunity to rebut the claim through a written response and at an evidentiary hearing. Section 162V (a) does not state that failure to comply is a basis for denying or revoking a license; the license application does not require the applicant to certify compliance with that section. Allegations by Producer Licensing that an applicant has not complied with §162V (a) are not a basis for denying a license application.<sup>9</sup> For that reason, I find that the record does not support denial of Seitz's application for the sixth reason set out in the denial letter.

The seventh ground for denying Seitz's application relates to a different obligation to report license denials by other states on a license application. Background Question 2 on his 2021 renewal application required Seitz to report his involvement in any administrative proceedings involving professional or occupational licenses; he

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<sup>7</sup>The copy of Seitz's 2018 producer license application attached to the Division's answer shows that he answered no to questions on that application about his criminal history and administrative actions relating to professional or occupational licenses. His failure to do so was one basis for the 2020 action to revoke the license that was issued to him in 2018.

<sup>8</sup> Those issues were the basis for the 2020 Action.

<sup>9</sup> The 2020 action included two claims alleging that Seitz failed to report under §162V (a) denials of license applications by North Dakota and North Carolina. Some three months after the Denial Letter was issued, on June 21, 2021, a decision in that action found that he had not complied with the statute, ruled in favor of the Division on those claims and imposed fines for noncompliance. The two additional administrative denials that support license denial pursuant to 162R (a)(9) were not litigated to determine whether they were reported as required by §162V (a).

answered no to that question. That answer provides undisputed evidence that Seitz failed to acknowledge on the application the license denials that are grounds for denying his license pursuant to §162R (a)(9). That uncontested fact, however, is not itself sufficient to support denial of the application; to serve as a basis for license denial an incorrect answer to a question must be linked to a statutory ground for nonrenewal codified in §162R (a). The Denial Letter did not link Seitz's failure to correctly answer a question on his 2021 application to the grounds set out in §§162R (a) (1) and (a)(3).

The regulatory standards for notifying a person of an adverse action, such as a license denial, are set out in the Standard Adjudicatory Rules of Administrative Procedure, 801 CMR 1.01 (6)(a). Notices must identify both the specific facts relied upon as the basis for the agency's action and the statutory or regulatory authority for the action taken by the agency. The Denial Letter identified the fact that Seitz incorrectly answered a question on the 2021 application but did not inform him of the statutes that permit denial of a license for failing to answer a question correctly.<sup>10</sup> For that reason, I find that the Denial Letter did not support the seventh reason for denying the 2021 application.<sup>11</sup>

The eighth reason in the Denial Letter denies the application "pursuant to all the above and by authority of §162R (a) (2) because you have been found to have "violat[ed] [the] insurance laws" of the Commonwealth" [sic]. A denial pursuant to §162R (a) (2) requires a finding that the applicant has violated particular insurance laws. The Denial Letter, although it includes the phrase "pursuant to all the above," specifically alleges that Seitz violated only one Massachusetts insurance statute, §162V (a). Neither the Denial Letter nor any other documentary record in this proceeding references a decision addressing Seitz's compliance with §162V (a). For the reasons discussed above in the discussion of the sixth reason in the denial letter, the record in this proceeding is

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<sup>10</sup> The Denial Letter did not advise Seitz that it considered his failure to disclose other state license denials on the 2021 application a basis for denying the renewal application for reasons set out in §162R (a)(1) and (a)(3).

<sup>11</sup> Denials under either §§162R (a) (1) and (a)(3) are independent from denial on the basis of §162R (a)(9) and require different evidentiary support. A denial under §162R (a)(9) may be supported by documentation as evidence that those denials occurred.

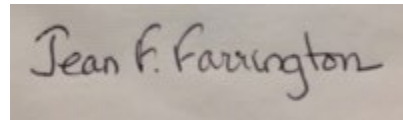
insufficient to support a finding that the 2021 renewal should have been denied pursuant to §162R (a) (2).

Conclusion

The final paragraph of the Denial Letter notes that while Seitz's renewal application was denied for more than one reason, it would have been independently denied for each listed reason. On this record, I find that undisputed facts and the statute setting out the grounds for denying an insurance producer license fully support the denial of the renewal application dated January 3, 2021 that Jay Seitz submitted to the Division of Insurance.

The Division's motion for summary decision is hereby allowed.

Dated: June 9, 2022



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Jean F. Farrington  
Presiding Officer

Sent by electronic mail this 9<sup>th</sup>  
day of June 2022 to:  
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