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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Kathleen Bruno, Respondent

Docket No. E2018-08

**Decision and Order on Petitioner's Motion
for Entry of Default and Summary Decision**

Introduction and Procedural History

On March 15, 2018, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Kathleen Bruno ("Bruno") who, was first licensed as a non-resident individual insurance producer on June 13, 2012.¹ The Division seeks orders that Bruno violated provisions of the Massachusetts insurance laws, specifically, M.G.L. c. 175 §§ 162R (a)(2), (a)(4), (a)(8), and (a)(9), four grounds on which the Commissioner may revoke an insurance producer's license. The Division further alleges Bruno failed to comply with M.G.L. c.175 § 162V (a), a statute requiring a producer to report to the Commissioner any administrative actions taken against her license in other jurisdictions. It requests the revocation of Bruno's license, imposition of fines, and orders prohibiting her from engaging in the insurance business in Massachusetts and directing her to dispose of any interest she may have in any insurance business in Massachusetts.

On March 15, 2018, the Division served the OTSC and a Notice of Action on Bruno by the United States Postal Service ("USPS") certified mail and by first class mail postage prepaid to her home/mailing and business addresses. The certified mailings were returned to the

¹ Bruno's Massachusetts non-resident producer license terminated by operation of law on October 3, 2017 for failure to renew. Pursuant to M.G.L. c. 175, §162R (e), the Commissioner retains the authority to enforce the producer licensing statute against Bruno.

Division, marked "return to sender." The first class mailing to Bruno's home/ mailing address was not returned to the Division. Bruno filed no answer or other response to the OTSC. On May 15, 2018, the Division filed a motion for summary decision in its favor against Bruno for failure to answer the OTSC. I issued an order on May 18, 2018 instructing Bruno to file any written response to the Division's motion by June 1, 2018 and scheduling a hearing on the motion for June 5, 2018.

Bruno did not respond the Division's motion for summary decision. Neither she, nor any person purporting to represent her appeared at the hearing on June 5, 2018. At the hearing, Robert J. Kelly, Esq. represented the Division. He stated that he had not been contacted about the matter by Bruno or any person purporting to represent her. Attorney Kelly confirmed that the OTSC certified mailings were returned to sender, but the first class mailing was not returned.

Finding of Default

On the basis of the record before me, I conclude that the Division took appropriate actions to ensure proper service. The OTSC was served on Bruno by certified mail to the residential and business addresses on file at the Division and by first class mail to her last known mailing address. M.G.L. c. 175, §174A states that notices of hearings seeking revocations of producer licenses are deemed sufficient when sent postpaid by registered mail² to the last business or residence address of the licensee appearing on the records of the Commissioner. I conclude that service was sufficient and that Bruno's failure to answer the OTSC, to respond to the Division's motion, or to appear at the hearing warrant a finding that she is in default.

By her default, Bruno has waived her right to proceed further with an evidentiary hearing in this case and I may consider the Division's motion for summary decision based on the record. That record consists of the OTSC, the Motion for Summary Decision, and two exhibits. The Decision issued by the State of Rhode Island and Providence Plantations Department of Business Regulation revoking Bruno's producer license is attached to the OTSC is marked Exhibit A. Attached to the motion for summary decision is Exhibit B, copies of the business and home address certified mailings of the OTSC, marked "return to sender."

Findings of Fact

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

² For purposes of giving notice, M. G. L. c. 4, §7, Clause 44 provides that certified mail is equivalent to registered mail.

1. The Division first licensed Bruno as a non-resident insurance producer on June 13, 2012. Bruno's non-resident insurance producer license terminated for failure to renew on October 3, 2017.
2. In 2016, the Rhode Island and Providence Plantations Department of Business Regulation ("DBR") investigated a consumer complaint alleging that Bruno failed to remit premium to the insurer after a consumer purchased a surplus line policy in March 2016 and paid the premium for the full year in advance. The consumer received a notice of cancellation for nonpayment of premium before the policy took effect.
3. When confronted by the consumer with the cancellation notice, Bruno submitted falsified notices to the consumer and to DBR misrepresenting that the surplus lines cancellation notice was rescinded and that the policy was in full effect.
4. During this time, Bruno misrepresented that the consumer was covered by the surplus lines policy. Bruno later admitted to a surplus line broker that she submitted a fake rescission notice and cancellation endorsement to DBR.
5. On or about July 1, 2016, the consumer attempted to cancel the surplus lines policy. Although Bruno forwarded a partial refund to the consumer, the full amount of premium paid for a policy that was never effective was withheld. Bruno improperly withheld \$1,097.20 from the consumer.
6. On July 31, 2017, the DBR issued a decision finding that Bruno improperly withheld, misappropriated, and converted moneys received in the course of doing business, misrepresented the terms of an insurance contract or application, and committed unfair, fraudulent, and dishonest practices in the business of insurance. The Decision revoked Bruno's insurance producer license and imposed a \$5,000 fine upon her.
7. As of the date of the DBR decision, Bruno had not refunded the consumer.
8. Bruno did not report the revocation of her Rhode Island producer license to the Division.

Analysis and Conclusions of Law

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. Bruno has not contested the factual allegations in the OTSC nor offered any defense to the Division's claims for relief. M.G.L. c. 175, §§ 162G through 162X describe the requirements for obtaining and maintaining a Massachusetts insurance producer license. M.G.L. c. 175, §162R (a) specifies 14 grounds on which the Commissioner may initiate disciplinary action against a licensed producer. The Division identifies M.G.L. c. 175, §162R (a)(2), (a)(4), (a)(8), and (a)(9) as grounds for revocation of Bruno's license. The Division also states that Bruno has failed to comply with M.G.L. c.175, §162V (a), a statute requiring a producer to report to the Commissioner any administrative actions taken against her by another jurisdiction within thirty days of the final disposition of the matter.

M.G.L. c. 175, §162R (a)(4) supports disciplinary action for "improperly withholding,

misappropriating or converting any monies or properties received in the course of doing insurance business.” Bruno improperly withheld and misappropriated premium received from a consumer while acting as an insurance producer, a pattern of misconduct which is outlined in Exhibit A, the Decision issued by the State of Rhode Island Department of Business Regulation. In the decision, the Hearing Officer described in detail how Bruno accepted a customer's payment for full year of premium on a surplus lines policy and failed to remit the premium to the insurer.³ Furthermore, upon the customer's cancellation of the surplus lines policy, Bruno failed to fully refund the customer.⁴ The record demonstrates that Bruno improperly withheld and misappropriated monies received during the course of her insurance business. She is therefore subject to discipline under subsection (a)(4).

M.G.L. c. 175, §162R (a)(8) supports disciplinary action for “using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere.” The full extent of Bruno's fraudulent and dishonest conduct is also outlined in Exhibit A and the facts above. It is clear from the record that Bruno engaged in fraudulent, coercive, and dishonest and financially irresponsible actions in her business as an insurance producer, which included failure to remit premium payments to the insurer and submitting fake notices to the DBR and to the customer regarding the surplus lines policy's status.⁵ As a result, Bruno is therefore subject to discipline under subsection (a)(8).

M.G.L. c. 175, §162R (a)(9) supports disciplinary action for “having an insurance producer license, or its equivalent, denied, suspended or revoked” by another jurisdiction. Bruno's insurance producer's license was revoked in Rhode Island.⁶ This administrative action fully supports discipline under subsection (a)(9).

Finally, M.G.L. c. 175, §162R (a)(2) supports disciplinary action for violating any insurance laws or regulation, subpoena or order of the Commissioner or of another state's insurance commissioner. Bruno failed to report the revocation of her Rhode Island insurance producer's license within thirty days of the final disposition date as she is required to do under

³ Exhibit A, p. 2-3.

⁴ *Id.* at 3.

⁵ *Id.* at 2-3.

⁶ *Id.* at 6-7.

M.G.L. c. 175, §162V(a). The record fully supports the Division's claim that Bruno has violated Massachusetts insurance law and is therefore subject to discipline under subsection (a)(2).

The grounds the Division cites as basis for disciplinary action against Bruno are extremely serious and fully warrant its request to revoke her Massachusetts producer license. On this record, I find that, in addition to revocation of her license, Bruno should be prohibited from transacting business in Massachusetts and shall dispose of any interests she may have in any insurance business in Massachusetts.

M.G.L. c. 175, §162R (a) also permits the Commissioner to levy a civil penalty in accordance with Chapter 176D, §7 ("Section 7 fines") for unfair and deceptive acts and practices in the business of insurance. The maximum penalty permitted under M.G.L. c. 176D, §7 is \$1,000 per violation. The Division requests Section 7 fines on the four grounds that it relies on to support the revocation of Bruno's producer license: 1) improperly withholding, misappropriating or converting monies received in the course of doing insurance business; 2) using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business; 3) the revocation of her insurance producer's license in another jurisdiction; and 4) for a violation of insurance law based upon her failure to report the revocation of her insurance producer's license to the Division.

The facts are undisputed that Bruno improperly withheld, misappropriated, or converted monies received in the course of doing insurance business and engaged in fraudulent and financially irresponsible conduct in the business of insurance. Not only did Bruno fail to remit paid premium to the insurer—which caused a consumer's insurance policy to be canceled—but when Bruno was confronted with the policy cancellation notice, she decided to forge cancellation rescission notices to misrepresent that the consumer had annual coverage when he did not. Given the extremely serious nature of the Respondent's infractions, it is entirely appropriate to impose Section 7 fines upon the Respondent. For that reason, I will impose the maximum penalty of \$1,000 for two of Bruno's unfair and deceptive insurance practices under subsections (a)(4) and (a)(8): 1) withholding paid premium from the insurer and the consumer, and 2) submitting false cancellation rescission notices to the consumer and to the Rhode Island insurance regulators.

However, I am not persuaded that it is appropriate to impose Section 7 fines on the Respondent based upon the other two grounds upon which Bruno's license is revoked; namely, M.G.L. c.175, §162R (a)(2) and (a)(9). Decisions in administrative proceedings seeking license revocation distinguish grounds for disciplinary action that arise from the respondent's affirmative acts—such as the Respondent's acceptance of payment while failing to purchase insurance—from grounds arising from administrative or judicial actions initiated by third parties to revoke or suspend the Respondent's license. Because two of the grounds on which the Division seeks to discipline Bruno, M.G.L. c. 175, §162R (a)(2) and (a)(9), are entirely based on administrative actions by other jurisdictions, I will not impose Section 7 fines under these sections of law.

The Division also requests a fine for Bruno's violation of M.G.L. c. 175, §162V (a). Because that section does not include a specific 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. Bruno's failure to report her Rhode Island license revocation to the Division effectively enabled her to avoid prompt enforcement action in the Commonwealth. For that reason, I will impose the maximum penalty of \$500 for Bruno's failure to report an administrative action.

For the reasons set forth above, the Division's Motion for Summary Decision is hereby allowed.

ORDERS

Accordingly, after due notice, hearing, and consideration it is

ORDERED: That the insurance producer license issued to Kathleen Bruno by the Division is hereby revoked; and it is

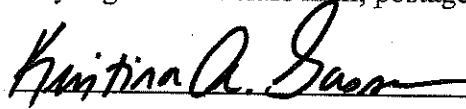
FURTHER ORDERED: that, within ten (10) days of this decision, Kathleen Bruno shall return to the Division any license in her possession, custody or control; and it is

FURTHER ORDERED: that Kathleen Bruno is, 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 Massachusetts; and it is

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

FURTHER ORDERED: that Kathleen Bruno shall pay a fine of Two Thousand Five Hundred Dollars, (\$2,500) to the Division within 30 days of the date of this decision and order.

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

A handwritten signature in black ink, appearing to read "Kristina A. Gasson", written over a horizontal line.

Kristina A. Gasson
Presiding Officer

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