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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Kotera Heard, Respondent
Docket No. E2018-03

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

Introduction and Procedural History

On February 7, 2018, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Kotera Heard ("Heard") who was a licensed Massachusetts non-resident insurance producer.¹ The Division seeks orders that Heard violated the provisions of the Massachusetts insurance laws, specifically, M.G.L. c.175 §§ 162R (a)(2), (a)(8), and (a)(9), three grounds on which the Commissioner may revoke an insurance producer's license. The Division further alleges Heard 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 Heard'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 businesses in Massachusetts.

On February 7, 2018, the Division served the OTSC and a Notice of Action on Heard by the United States Postal Service ("USPS") certified mail and regular first class mail to the residential/mailing address on file in the Division's licensing records. Heard filed no answer or other response to the OTSC. On May 30, 2018, the Division filed a motion for summary

¹ Heard's Massachusetts non-resident producer license terminated by operation of law on August 27, 2016 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 Heard.

decision in its favor against Heard for failure to answer the OTSC. I issued an order on June 1, 2018 instructing Heard to file a written response to the Division's motion and scheduling a hearing on the motion for June 15, 2018.

Heard did not respond in writing to the Division's motion for summary decision. Neither she nor any person purporting to represent her appeared at the hearing on June 15, 2018. Matthew M. Burke, Esq. represented the Division at the hearing. At the hearing, Attorney Burke stated that he had not been contacted about this matter by Heard or by any person purporting to represent her. Attorney Burke indicated that the OTSC served on Heard by certified mail at her residential/mailing address was unable to be delivered and that the first class mailing of the OTSC was returned to the Division by USPS.

Finding of Default

On the basis of the record before me, I conclude that the Division took appropriate actions to ensure proper service. M.G.L. c. 175, §174A states that notices seeking revocations of producer licenses are deemed sufficient when sent postpaid by registered mail to the last business or residence address of the licensee appearing on the records of the Commissioner. For purposes of giving notice, M.G. L. c. 4, §7, Clause 44 provides that certified mail is equivalent to registered mail. I conclude that service was sufficient and that Heard'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, Heard 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 the following exhibits. Attached to the OTSC: A) Letter to the Division from Aon Retiree Health Exchange, detailing Heard's termination from her position as a licensed insurance agent due to misappropriation of customer data, dated October 1, 2015; B) Notice of Temporary Suspension from the State of Florida Department of Financial Services, suspending Heard's non-resident life, health and variable annuity agent's license, dated January 28, 2016; C) Default Order from the State of Wyoming Department of Insurance revoking Heard's non-resident producer license, dated February 29, 2016; D) License Revocation Notice from the State of Maine Department of Professional and Financial Regulation Bureau of Insurance, dated January 25, 2016, revoking Heard's Maine insurance producer licensed as of February 29, 2016, and E) License Revocation

Order from the Arkansas Insurance Department, dated April 11, 2016. Attached to the Motion for Summary Decision are the following exhibits: A) USPS tracking information for the certified mailing of the OTSC addressed to Heard; B) a copy of the first-class mailing of OTSC addressed to Heard and returned to the Division on March 5, 2018; C) a copy of Heard's licensing record at the Division, and D) a copy of the Certificate of Service for the OTSC.

Findings of Fact

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

1. The Division licensed Heard as a non-resident insurance producer on September 24, 2013. Her license was terminated for failure to renew on August 27, 2016.
2. On September 18, 2015, Heard was terminated for cause from her position as a licensed insurance agent at Aon Hewitt Health Market Insurance Solutions Inc. ("Aon").
3. On October 1, 2015, Aon provided information to the Division's Producer Licensing department notifying the Division that Heard was terminated from Aon for accessing and misappropriating customer information, which included the names, dates of birth, last four digits of Social Security Numbers, and zip codes of five customers. Heard was terminated for providing this customer information to another agent for a purpose outside of the scope of Heard's employment at Aon.
4. On January 25, 2016, the State of Maine Department of Professional and Financial Regulation Bureau of Insurance revoked Heard's Maine insurance producer license, effective as of February 29, 2016.
5. On January 26, 2016, the State of Florida Department of Financial Services suspended Heard's non-resident life, health and variable annuity agent's license.
6. On February 29, 2016, the Wyoming Department of Insurance revoked Heard's non-resident producer license.
7. On April 11, 2016, the Arkansas Insurance Department revoked Heard's non-resident producer license.
8. Heard did not report the administrative actions against her insurance licenses in Maine, Florida, Wyoming, and Arkansas 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. Heard 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)(8), and (a)(9) as grounds for revocation of Heard's license. The Division also states that Heard 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.²

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.” Heard’s conduct is outlined in Exhibit A, the letter to the Division from Aon, detailing how Heard accessed and sent sensitive customer data to others for use outside the scope of her employment as an insurance agent. As a result, Aon notified the customers that their account information was improperly accessed and that personal information was breached and provided the five affected customers with credit monitoring to ensure their data was protected.³ Heard’s actions in this regard demonstrated that she engaged in fraudulent and dishonest practices and that demonstrated untrustworthiness and financial responsibility in the conduct of business and may be disciplined pursuant to 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. Heard’s insurance agent’s license was suspended in Florida and her producer licenses were revoked in Arkansas, Maine, and Wyoming.⁴ Accordingly, these administrative actions fully support 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. Heard failed to report the suspension of her insurance agent’s license in Florida and the revocation of her producer licenses in Arkansas, Maine, and Wyoming within thirty days of the final disposition dates as she is required to do under M.G.L. c.175, §162V (a).⁵

² There is evidence in the record indicating that Heard was charged with five counts of Aggravated Identity Theft and five counts of Computer Fraud in the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois on November 9, 2015 and that Heard was arrested on December 16, 2015. See Exhibit B to OTSC, p. 1, Exhibit D to OTSC, p. 1. However, the Division does not allege in the OTSC that Heard failed to comply with M.G.L. c. 175, §162V (b), a statute requiring a producer to report to the Commissioner any criminal prosecution taken against her in any jurisdiction. Therefore, this Decision and Order does not include an analysis and discussion of M.G.L. c. 175, §162V (b).

³ Exhibit A to OTSC.

⁴ Exhibits B-E to OTSC.

⁵ *Id.*

The record fully supports the Division's claim that Heard has violated Massachusetts insurance law and is therefore subject to discipline under subsection (a)(2).

The number and the seriousness of the grounds the Division cites for taking disciplinary action against Heard fully warrant its request to revoke her Massachusetts producer license. On this record, I find that, in addition to revocation of her license, Heard should be prohibited from transacting any insurance business or acquiring, in any capacity whatsoever in Massachusetts, any insurance 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 for each of the grounds it relies on to support revocation of Heard's license: 1) using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the Commonwealth or elsewhere; 2) the administrative actions against her insurance licenses in Arkansas, Florida, Maine, and Wyoming; 3) and for violations of insurance laws based upon her failure to report the administrative actions to the Division.

However, I am not persuaded that it is appropriate to impose Section 7 fines on the Respondent. 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. Because two of the grounds on which the Division seeks to discipline Heard, M.G.L. c. 175, §162R (a)(2) and (a)(9), are entirely based on administrative actions against her by other jurisdictions, I will not impose Section 7 fines on her under these sections of law. Furthermore, since Heard's alleged fraudulent and dishonest practices during her employment at Aon in Illinois did not affect Massachusetts consumers,⁶ I decline to impose a Section 7 fine upon her based upon her actions supporting license revocation under M.G.L. c. 175, §162R (a)(8).

⁶ Exhibit A to the OTSC, the letter from Aon reporting allegations of insurance fraud, states "certain alleged activities conducted by Ms. Heard affected five Aon Retiree Health Exchange customers, none of whom are residents of Massachusetts."

In addition to Section 7 fines for Heard's violations of Massachusetts law, the Division also requests fines for each of her violations 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. Heard's failure to report four administrative actions to the Division effectively enabled her to avoid prompt enforcement action the Commonwealth. For that reason, I will impose the maximum penalty of \$500 for each of Heard's four failures 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 any insurance producer license issued to Kotera Heard by the Division is hereby revoked; and it is

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

FURTHER ORDERED: that Kotera Heard 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 Kotera Heard shall 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 Kotera Heard shall pay a fine of Two Thousand Dollars (\$2,000) to the Division within 30 days of the date of this decision and order.

This decision has been filed this 29th day of March 2019, in the office of the Commissioner of Insurance. A copy shall be sent to Kotera Heard by regular first class mail, postage prepaid.

Kristina A. Gasson
Presiding Officer

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