



COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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MAURA T. HEALEY
GOVERNOR

KIM DRISCOLL
LIEUTENANT GOVERNOR

KEVIN P. BEAGAN
ACTING COMMISSIONER OF INSURANCE

Division of Insurance v. David Pietro

Docket No. E2022-04

DECISION AND ORDER

On December 16, 2022, the Division of Insurance (“DOI”) filed an Order to Show Cause (“OTSC”) in the above captioned matter. On January 6, 2023, Respondent David Pietro (“Pietro” or “Respondent”) filed an Answer. A Hearing was held in this matter on April 3, 2024. At the Hearing, Respondent was heard on his own behalf. Additionally, the parties were given the opportunity to brief issues of law in the matter. Both parties submitted briefs on or before the deadline of May 1, 2024. We now proceed to a final decision and order in this matter.

The OTSC alleges that the Respondent committed acts supporting disciplinary action under clauses two, four, six, and eight of MASS. GEN. LAWS c.175, §162R, and supports its allegation with documents from a superior court case wherein the Respondent was the Defendant.¹ Those documents show that on or about May 15, 2019, the Massachusetts Attorney General’s Office filed in Bristol County Superior Court, docket number 1973CR00114, alleging that Respondent, as president and CEO of DGP Miles Insurance Agency, Inc., collected

¹Those documents are the Statement of the Case submitted to the Bristol County Superior Court on May 15, 2019, and the public Docket Report dated July 13, 2022, and attached to the OTSC as Exhibits A and B.

insurance premium from six customers, failed to remit the premium to their insurance carriers, and subsequently made false statements to customers regarding the resulting policy cancellations. The Docket record shows that a prehearing conference in the proceeding occurred on February 24, 2020, and that Respondent pled guilty on or about July 13, 2022, to five felony charges arising from his failure to remit premiums. The Division alleged as well that Respondent did not report the charges to the Division within 30 days of the prehearing conference as required under M.G.L. c. 175, §162V(b). The Respondent does not deny the factual allegations of the OTSC or contest the accuracy of the Divisions' exhibits.

The record in this proceeding consists of the OTSC, the Answer, the Division's Brief, the Respondent's Brief, and the exhibits attached to them. The exhibits to the OTSC consist of A) the Massachusetts Attorney General's "Commonwealth's Statement of Case", and B) the Bristol County public docket report.

Findings of Fact

- 1) Respondent was first licensed by the Division as a resident insurance agent on or about November 8, 1995.
- 2) Respondent's resident agent license was converted to a resident individual insurance producer license on or about June 17, 2002.
- 3) Respondent's current resident insurance producer license is active through May 31, 2025.
- 4) On or about May 15, 2019, the Massachusetts Attorney General's Office filed the "Commonwealth's Statement of Case" in Bristol County Superior Court, docket number 1973CR00114, alleging that Pietro failed to remit his customers' insurance premium payments to their insurers and made false or misleading statements to consumers about his actions.

- 5) On or about February 24, 2020, a pre-trial hearing was held in the Superior Court matter.
- 6) Respondent did not report the Superior Court proceeding to the Division within 30 days of the prehearing conference.
- 7) On or about July 13, 2022, Respondent pled guilty to five felony counts of Larceny Over Two Hundred and Fifty Dollars as described in the Commonwealth's Statement of the Case.

Discussion and Analysis

Although Respondent did not contest the facts, as alleged in the OTSC, Respondent opposed revocation of his producer license, requesting leniency based on the circumstances surrounding the facts from which this matter arises and the low likelihood of repeat offenses. A review of Section 162R, however, shows only a list of prohibited conduct.² The prescribed penalties for the prohibited conduct are probation, suspension, revocation, or refusal to renew a license. M.G.L. c.175 §162R(a). Because there is no dispute as to the facts that show conduct that supports discipline under M.G.L. c.175 §162R(a)(2, 4, 6, and 8), and given the seriousness of that conduct, the theft of premiums, the underlying five felony convictions, misrepresentations to consumers, and failure to report the charges to the Division, I find that revocation is appropriate.

As well as license revocation, the Division requests that the maximum fine be assessed for each violation of the four sections above. OTSC, Relief ¶¶ 11-14. Section 162R(a) allows for civil penalties in accordance with M.G.L. c. 176D §7 or any other applicable section. M.G.L. c.175 §162R(a). Chapter 176D §7 allows for the assessment of fines, restitution, and punitive damages. M.G.L. c.176D §7. The maximum allowable fine under that section is one thousand

² There is no scienter requirement, so no examination of the Respondent's state of mind is necessary.

dollars (\$1000.00) per act or practice. Id. There is a single instance of conduct supporting discipline under Section (a)(2), namely the failure to report the felony charges in accordance with M.G.L. c. 175, §162V(b). See OTSC at ¶¶ 12-19. There are five instances of conduct supporting discipline under both Sections (a)(4) and (a)(8) for misappropriating premiums and making misrepresentations to consumers. Assessing fines under multiple sections would be duplicative. For that reason, I conclude that a fine of six thousand dollars (\$6000.00) is appropriate.

Finally, I note that this forum is not the proper venue for any determination regarding *future* license applications by the Respondent. We also note that this decision cannot be the specific determination required by 18 U.S. Code §1033(e)(2).³ Such a determination requires a proceeding convened specifically to make that evaluation.

Per the discussion above, I conclude that Respondent's conduct is consistent with M.G.L. c.175 §162R(a)(2, 4, 6, and 8) and supports revocation and penalty. We order the relief requested in paragraphs 6 through 10, inclusive, of the Relief section of the OTSC. Additionally, we order the respondent to pay a civil penalty of six thousand dollars (\$6000.00) within 30 days of the date of this order.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Respondent by the Division are hereby revoked; and it is

³ Section 1033 applies to “[a]ny individual who has been convicted of any criminal felony involving dishonesty or a breach of trust...” 18 U.S.C. §1033(e)(1)(A). While the Division does not enforce federal statutes, Section 1033 prohibits participation in the “insurance business,” which includes “...all acts necessary or incidental to such writing or reinsuring and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons...” 18 U.S.C. §1033(f)(1). Both parties have acknowledged that the Respondent has received no such determination.

FURTHER ORDERED: that Respondent shall return to the Division any licenses in his possession, custody or control; and it is

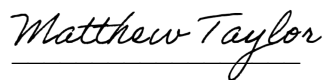
FURTHER ORDERED: that Respondent shall cease and desist from the conduct that gave rise to this Order to Show Cause; and it is

FURTHER ORDERED: that Respondent, from the date of this order, is 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 Respondent shall comply with the provisions of M.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 Respondent shall pay a fine of Six Thousand Dollars (\$6,000.00) 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 Wednesday, August 7, 2024. A copy shall be sent to Respondent by electronic mail at the address provided by his counsel: lpovich@andersonkreiger.com



Matthew A. Taylor, Esq.

Presiding Officer

August 7, 2024