



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

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NONNIE S. BURNES
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Fred A. Drewery, Jr., Respondent
Docket No. E2009-06

Order On Petitioner's Motion for Summary Decision

Introduction and Procedural History

On March 13, 2009, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Fred A. Drewery, Jr. ("Drewery") who, until September 23, 2007, held a Massachusetts non-resident individual insurance producer license. The Division alleges that Drewery failed to notify the Division of administrative actions against him by insurance regulators in the states of Delaware and South Dakota and the Commonwealth of Virginia. It asserts that his actions violate Massachusetts law and support revocation of his Massachusetts producer license pursuant to the provisions of G.L. c. 175, §162R (a)(2) and (a)(9), and §162V (a). It asks for revocation of Drewery's license and seeks orders requiring him to dispose of any insurance-related interests in Massachusetts, prohibiting him from conducting any insurance business in the Commonwealth, and imposing fines for the alleged violations.

A Notice of Procedure ("Notice") was issued on March 16, 2009, advising Drewery that a prehearing conference would take place on April 17, 2009 and that a hearing on the OTSC would be held on May 1, 2009, both at the offices of the Division. It further advised him that the hearing would be conducted pursuant to G.L. c. 30A and the Standard

Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00, *et seq.* The Notice advised Drewery to file an answer pursuant to 801 CMR 1.01(6)(d) and that, if he failed to do so, the Division might move for an order of default, summary decision or decision on the pleadings granting it the relief requested in the OTSC. It also notified Drewery that, if he failed to appear at the prehearing conference or hearing, an order of default, summary decision or decision on the pleadings might be entered against him. The Commissioner of Insurance ("Commissioner") designated me as presiding officer for this proceeding.

On March 20, the Division sent copies of the Notice and OTSC by certified mail to respondent at his business and mailing address appearing on the Division's records: 1501 Casho Mill Road, Suite 13, Newark, Delaware 19711. A copy of each document was also sent by first-class mail, postage prepaid, to Drewery at both the business and mailing address and at his home address, 344 Heron Court, Newark, Delaware 19702. The post office returned the certified and first-class mail sent to Drewery at the business and mailing address shown on the Division's records. The documents sent to Drewery's home address were not returned.

Drewery failed to file an answer or other response to the OTSC. On April 17, a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Robert Kelly, Esq. appeared for the Division. Neither Drewery nor any person representing him appeared. Mr. Kelly reported that he had received no communication from the respondent or from any person purporting to represent him. On April 17, the Division filed its motion for summary decision. On that same date, I issued an order advising Drewery to file any response to the motion by April 29, and stating that any argument on the motion would be heard on May 1 at 10:00 a.m., the time initially set for the evidentiary hearing. Drewery filed no response to the Division's motion and did not appear at the May 1 hearing. Mr. Kelly confirmed at that hearing that neither the respondent nor any person representing him had communicated with the Division.

Finding of Default

On the basis of the record before me, I conclude that the Division took appropriate actions to ensure proper service, and that sufficient service was made.¹ The first-class

¹ I note that G.L. c. 175, §174A provides that hearing notices in matters involving revocation of licenses "shall be deemed sufficient when sent postpaid by registered mail to the last business or residence address of

mail sent to Drewery's home address, as shown on the Division's records, was not returned. I conclude that Drewery's failure to answer the OTSC or to respond to the Division's motion, and his failure to appear at the prehearing conference or at the hearing warrant findings that he is in default. By his default, Drewery has waived his 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 and copies of the following documents attached to it as exhibits: A) Stipulation and consent order executed by Drewery and the Insurance Commissioner of the State of Delaware, dated June 27, 2006; B) Order issued by the State Corporation Commission of the Commonwealth of Virginia revoking Drewery's license to transact the business of insurance; and C) Order issued by the Division of Insurance of the South Dakota Department of Revenue and Regulation revoking Drewery's South Dakota insurance producer license.

Findings of Fact

On the basis of the record, consisting of the OTSC, I find the following facts:

1. Respondent Fred A. Drewery, Jr. was first licensed in Massachusetts as a non-resident individual insurance producer on July 12, 2005.
2. On June 27, 2006, Drewery entered into a consent order with the Insurance Commissioner of the State of Delaware in which he admitted to violations of the Delaware statutes relating to the business of insurance, and agreed to cease and desist from further violations, to suspension of his license, unless he paid a fine, and to placing his license on probation for a one-year period.
3. Drewery did not report the Delaware administrative action to the Division.
4. On October 31, 2006, the State Corporation Commission of the Commonwealth of Virginia, on the recommendation of the Bureau of Insurance, revoked Drewery's Virginia insurance license for failure to report to it in timely fashion the administrative action taken by Delaware.
5. Drewery did not report the Virginia administrative action to the Division.

the licensee appearing on the records of the commissioner. . . ." This section, however, does not require that notices of hearing must be sent by registered mail; nor does it provide that registered mail is the only method of service, which may be found to be sufficient.

6. On March 26, 2007 the Division of Insurance of the South Dakota Department of Revenue and Regulation revoked Drewery's South Dakota insurance producer license.

7. Drewery did not report the South Dakota administrative action to the Division.

8. Drewery's Massachusetts producer license was terminated, effective September 23, 2007, for failure to renew.

Analysis and Conclusions of Law

Pursuant to G.L. c. 175, §162R (e) the Commissioner retains the authority to enforce the provisions of and to impose any remedies authorized by the Massachusetts Insurance Producer Licensing Statute, G.L. c. 175, §§162H through 162X, and the provisions of G.L. c. 176D against any person charged with a violation of those statutes even though the person's license has lapsed by operation of law. 801 CMR 1.01 (7) (h) allows a party, when he or she is of the opinion that there is no genuine issue of fact relating to a claim, and that he or she is entitled to prevail as a matter of law, to file a motion for summary decision, with or without supporting affidavits. The Division bases its motion for summary decision on respondent's failure to file an answer to the OTSC and failure to appear at the scheduled prehearing conference. I have found that respondent's failure to comply with the directives in the Notice warrant a finding that he is in default. No genuine issue of fact has been raised in connection with the Division's claims, and I find that it is entitled to prevail as a matter of law.

G.L. c. 175, §§162G through 162X set out, among other things, the requirements for obtaining and maintaining a Massachusetts insurance producer license. G.L. c. 175, §162R (a) specifies fourteen grounds on which the Commissioner may suspend or revoke a producer's license. The Division identifies subsections §162R (a)(2) and (a)(9) as grounds for revocation of Drewery's license. G. L. c. 175. §162V(a)(1) requires a producer to report to the Commissioner any administrative action taken against him or her in another jurisdiction within 30 days of the final disposition of the matter.

Subsection 162R (a)(2), in pertinent part, permits revocation for violating any insurance laws or regulation, subpoena or order of the Commissioner or of another state's insurance commissioner. Drewery's failure to respond to the Notice constitutes a violation of orders issued in this proceeding. Subsection 162R (a)(9) permits revocation if an insurance producer has had a license denied, suspended or revoked in any other state. Actions against Drewery's insurance license in Delaware, South Dakota and Virginia therefore permit the Commissioner to revoke his Massachusetts license under §162R (a)(9).

G.L. c. 175, §162V (a) requires a Massachusetts licensed producer to report to the Commissioner any disciplinary action taken by another state within 30 days of its final disposition. Drewery was the respondent in three administrative actions initiated by the states of Delaware and South Dakota and by the Commonwealth of Virginia. He reported none of those actions to the Commissioner within 30 days of its disposition. Drewery's violations of §162V (a) are an additional basis for revocation of his license pursuant to G.L. c. 175, §162R (a)(2).

On this record, I find that Drewery's license should be revoked, that he should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and that he should be required to dispose of any interest he may have in any insurance business in Massachusetts. G. L. c175, §162R (a) also permits the Commissioner to levy a civil penalty in accordance with G. L. c. 176D, §7 for violations of the insurance laws and regulations. The maximum penalty permitted under G. L. c. 176D, §7 is \$1,000 per violation. I find that Drewery, by failing to report administrative actions by the states of Delaware and South Dakota and Commonwealth of Virginia, committed three statutory violations. Because he failed to comply with his affirmative obligations under the licensing statutes, I impose the maximum fine for each of those violations.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Fred A. Drewery, Jr. by the Division are hereby revoked; and it is

FURTHER ORDERED: that Fred A. Drewery, Jr. shall return to the Division any licenses in her possession, custody or control; and it is

FURTHER ORDERED: that Fred A. Drewery, Jr. 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 the Commonwealth of Massachusetts; and it is

FURTHER ORDERED: that Fred A. Drewery, Jr. shall comply with the provisions of 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 Fred A. Drewery, Jr. shall pay a fine of Three Thousand Dollars (\$3,000) to the Division within 30 days of the entry of this order.

This decision has been filed this 6th day of May 2009, in the office of the Commissioner of Insurance. A copy shall be sent to Drewery by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

Jean F. Farrington
Presiding Officer

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