



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

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COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Kiana C. Mims, Respondent
Docket No. E2008-10

Order on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On May 15, 2008, the Massachusetts Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Kiana C. Mims ("Mims"), who is licensed as a non-resident insurance producer. The Division alleges that Mims failed to notify the Division of an administrative action in Wisconsin within 30 days of the final disposition of that proceeding, and that her failure to do so violated G.L. c. 175, §162V(a) ("§162V(a)"). It asserts as well that her action constitutes a violation of G.L. c. 175, §162R(a)(2) ("§162R(a)(2)"), which permits actions against a licensee for violating any insurance law, or violating any regulation, subpoena or order of the commissioner. The Division asks for revocation of all licenses issued to Mims and orders requiring her to cease and desist from the conduct alleged in the OTSC, to dispose of any interest she may have in any insurance-related business, and to submit any and all Massachusetts insurance licenses in her possession to the Division. The Division also seeks orders prohibiting Mims from the direct or indirect transaction of insurance business or the acquisition of any insurance business in Massachusetts, and imposing of fines for the alleged violations.

A Notice of Procedure ("Notice") was issued on June 16, 2008, advising Mims that a hearing on the OTSC would be held on July 31, 2008, at the offices of the Division, and

a pre-hearing conference would take place on July 17, 2008. The hearing would be conducted pursuant to M.G.L c. 30A and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00, *et. seq.* The Notice advised Mims to file an answer pursuant to 801 CMR 1.01(6)(d) within 21 days of receiving the Notice and that, if she failed to file an answer, the Division may move for an order of default, summary decision, or decision on the pleadings granting it the relief requested in the OTSC. It also notified Mims that, if she failed to appear at the pre-hearing conference or hearing, an order of default, summary decision, or decision on the pleadings could be entered against her. The Commissioner designated me as the presiding officer for this proceeding.

On June 23, the Notice and OTSC were sent by certified mail to Mims's business and mailing address, as shown on the Division's records: 3600 E. Commerce Place, Orlando, Florida 32808. Copies were also sent to Mims's residential address, shown on the Division's records as 1861 White Heron Bay Circle, Orlando, Florida 32824, by first-class mail, postage prepaid. The business signed for the certified mailing on June 26, but returned it to the Division because Mims no longer worked there. The documents mailed to her residential address were not returned. Mims filed no answer or other responsive pleading to the OTSC.

On July 17, 2008, a pre-hearing conference took place pursuant to 801 CMR 1.01(10)(a). Robert J. Kelly, Esq. appeared for the Division. Neither Mims nor any person representing her appeared. Mr. Kelly reported that he had received no communication from Mims or any person purporting to represent her. On the same day, the Division filed a Motion for Summary Decision. I issued an order advising Mims to file any response to the motion by July 28, 2008, and setting July 31, 2008, as the date for argument on the motion. Mims filed no response to the Division's motion and did not appear at the July 31 hearing. Mr. Kelly reported that he received no communication from Mims or from any person representing her in this matter.

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 OTSC and

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

Notice were sent to Mims at the business and mailing address and the residential address shown on the Division's licensing records. The first-class mail was not returned to the Division. I conclude that Mims's failure to answer the OTSC or to respond to the Division's motion, and her failure to appear at the prehearing conference or at the hearing warrant findings that she is in default. By her default, Mims 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 solely upon the OTSC and the exhibit attached thereto.

Findings of Fact

On the basis of the record before me, consisting of the OTSC and the exhibit attached to it, I find the following facts:

1. Respondent Mims was first licensed by the Division as a non-resident insurance producer on or about November 23, 2005.
2. On November 4, 2005, Mims applied to the Office of the Commissioner of Insurance ("OCI") in the state of Wisconsin for a non-resident insurance intermediary license.
3. On February 6, 2006, the OCI denied Mims's application based on her failure to respond to requests for information relating to her disclosure of a bankruptcy proceeding on her application.
4. Mims requested a hearing regarding the denial of her application.
5. At an initial prehearing conference in the Wisconsin proceeding, Mims agreed to provide specified information on the bankruptcy by April 11, 2006 and to participate in a second prehearing conference on April 25, 2006. The administrative law judge issued an order to Mims reflecting that agreement.
6. Mims did not provide the information by April 11, 2006 and did not appear for the second pre-hearing conference on April 25, 2006.
7. A Final Decision and Order was issued in the Wisconsin proceeding on June 21, 2006. The Decision upheld the OCI's denial of Mims's application for a nonresident insurance intermediary license.
8. Mims failed to notify the Division of the Wisconsin administrative action.

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

Analysis and Conclusions 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 find that respondent's failure to comply with the directives in the Notice warrant a finding that she is in default. No genuine issue of fact has been raised in connection with the Division's claims. I find that it is entitled to prevail as a matter of law.

I find that Mims failed to notify the Division of the Wisconsin administrative action and that she therefore violated §162V(a), which mandates that a producer notify the Division of an administrative action in another jurisdiction within 30 days of the final disposition of the matter. Pursuant to §162R(a)(2), a producer is subject to disciplinary action for violating any Massachusetts insurance laws or any regulation, subpoena or order of the commissioner or of another state's insurance commissioner. In addition to violating §162V(a), Mims failed to comply with orders issued in the Wisconsin administrative proceeding requiring her to provide certain documents by a specified date and to appear for a second prehearing conference in the proceeding. I find that Mims's violation of §162V (a) and of the orders of the Wisconsin Commissioner of Insurance support revocation of her license pursuant to §162R (a)(2).

Pursuant to G.L. c. 175, §162R(a), the Commissioner may, in addition to revoking a producer license, levy civil penalties in accordance with c. 176D, §7. The maximum fine under that statute is One Thousand Dollars (\$1,000) per violation. I find that Mims's failure to report the Wisconsin administrative action is a serious violation of Massachusetts insurance law and therefore impose the maximum fine for a single violation.

ORDERS

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

ORDERED: That any and all licenses issued to Kiana C. Mims by the Massachusetts Division of Insurance are hereby revoked; and it is

FURTHER ORDERED: that Kiana C. Mims shall return to the Division any licenses in her possession, custody, or control; and it is

of service, which may be found to be sufficient.

FURTHER ORDERED: that Kiana C. Mims shall comply with the provision of M.G.L. c. 175, §166B, and dispose of any and all interests as proprietor, stockholder, officer or employee of any licensed producer in Massachusetts; and it is

FURTHER ORDERED: that Kiana C. Mims is, from the date of this order, prohibited from directly or indirectly transacting any insurance business or acquiring any insurance business in the Commonwealth of Massachusetts in any capacity, and it is

FURTHER ORDERED: that Kiana C. Mims shall cease and desist from the conduct that gave rise to the Order to Show Cause, and it is

FURTHER ORDERED: that Kiana C. Mims shall pay a fine of One Thousand Dollars (\$1,000) to the Division of Insurance within 30 days of the issuance of this order.

This decision has been filed this 5th day of August 2008 in the office of the Commissioner of Insurance. A copy shall be sent to Mims 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.