



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.
Andrew Layne Weeks, Respondent
Docket No. E2008-01

Order on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On January 2, 2008, the Massachusetts Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Andrew Layne Weeks ("Weeks"), who is currently licensed as a non-resident insurance producer. The Division seeks orders that Weeks has violated the provisions of the Massachusetts insurance laws, specifically M.G.L. c. 175, §162V(a), failing to notify the Division of administrative actions in another jurisdiction or by another governmental agency in the commonwealth within 30 days of the final disposition of the matter; M.G.L. c. 175, §162R(a)(1), providing incorrect, misleading, incomplete or materially untrue information in his application; M.G.L. c. 175, §162R(a)(3), obtaining a license through misrepresentation or fraud; M.G.L. c. 176D, §2, committing an unfair or deceptive act or practice in the business of insurance in Massachusetts; and M.G.L. c. 175, §162R(a)(2), violating any insurance laws, or violating any regulation, subpoena or order of the commissioner or of another state's insurance commissioner. It asks for revocation of all licenses granted to him by the

Division, an order requiring him to dispose of any interest he may have in any insurance-related business, an order to submit any and all Massachusetts insurance licenses in his possession to the Division, an order prohibiting the direct or indirect transaction of insurance business or the acquisition of any insurance business in Massachusetts, and imposition of fines for the alleged violations.

The Division alleges that Weeks was first licensed as a non-resident producer on or about July 20, 2005. This license is active. It asserts that Weeks submitted an application to the Division which was signed by him on June 25, 2005, and failed to disclose a pending criminal action. The Division, further alleges, that Weeks failed to report an administrative action to the Division. Weeks also did not respond to the Division's inquiry about the administrative action.

A Notice of Procedure ("Notice") was issued on January 18, 2008, advising Weeks that a hearing on the OTSC would be held on March 13, 2008, at the offices of the Division, a pre-hearing conference would take place on February 20, 2008, and 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 Weeks to file an answer pursuant to 801 CMR 1.01(6)(d) within 21 days of his receipt of the Notice and that, if he failed to file an answer, the Division might move for an order of default, summary decision, or decision on the pleadings granting it relief requested in the OTSC. It also notified Weeks that, if he failed to appear at the pre-hearing conference or hearing, an order of default, summary decision, or decision on the pleadings might be entered against him. The Commissioner designated me as the presiding officer for this proceeding.

On January 18, 2008, the Notice and OTSC were sent by certified mail to Weeks's business address, which Division's records list as 1541 S. Waukegan Road, Waukegan, IL 60085. The Notice and OTSC were returned by the post office on February 1, 2008.¹ A copy also was sent to this address, by first-class mail, postage prepaid, and returned on February 1, 2008.² On January 18, 2008, a copy was sent, by first-class mail, postage prepaid, to Weeks's residential address, which Division's

¹ A yellow sticker was affixed to the envelope with the following notations: return to sender; not deliverable as addressed; unable to forward; return to sender.

² A yellow sticker with identical language also was affixed to this envelope.

records list as 120 Homestead Street, Lake Bluff, IL 60044. It was returned on February 15, 2008.³ A copy was sent, by first-class mail, postage prepaid, on January 18, 2008, to 901 North Pollard Street, Apartment 2304, Arlington, VA 22203, the address provided to Mr. Hale by Weeks during a conversation prior to the filing of the OTSC. It was returned on January 28, 2008.⁴ The Division did not receive an answer or other responsive pleadings to the OTSC from Weeks or any person representing him.

On February 20, 2008, a pre-hearing conference took place, pursuant to 801 CMR 1.01 (10)(a). Douglas Hale, Esq. appeared for the Division. Neither Weeks nor any person representing him appeared. Mr. Hale reported that he had received no communication from Weeks or any person purporting to represent him, and stated that he would file a Motion for Summary Decision. Later that day, the Division filed a Motion for Summary Decision. An Order was issued on March 6, 2008, advising Weeks to file a response to the motion by March 12, 2008, and setting March 13, 2008, as a date for any argument on the motion.⁵ The order was returned to the Division.⁶ A hearing was held on March 13, 2008. Weeks neither filed a response to the motion nor appeared at the hearing. Mr. Hale reported that he received no communication from Weeks or from any person representing him in this matter.

Finding of Default

On the basis of the record before me, I conclude the Division took appropriate actions to ensure proper service, and that sufficient service was made. The OTSC and Notice were sent to Weeks at the addresses shown on the Division's licensing records. The Domestic Return Receipt was not signed and the OTSC and Notice were returned by the United States Post Office. The first class mailings were also returned. Weeks has an obligation, pursuant to M.G.L. c. 175, §162M(8)(f), to report any change of

³ A yellow sticker was affixed to the envelope with the following notations: Weeks, Andrew; moved left no address; unable to forward; return to sender.

⁴ A yellow sticker was affixed to the envelope with the following notations: forward time expired; return to sender; Weeks, Andrew 901 North Pollard Street, Apartment 2304, Arlington, VA 22203-5800; return to sender.

⁵ The order informed Weeks that he was allowed to file his answer by facsimile due to time constraints.

⁶ The order sent to 120 Homestead Street, Lake Bluff, IL was returned on March 14, 2008. A yellow sticker was affixed to the envelope with the following notations: Weeks, Andrew; moved left no address; unable to forward; return to sender. The order sent to 1541 S. Waukegan Road, Waukegan, IL was returned on March 18, 2008. The envelope had a black ink stamp with the notation not deliverable as addressed, unable to forward, return to sender. The order sent to the 901 North Pollard Street, Arlington, VA address was returned. A yellow sticker was affixed to the envelope with the notation Weeks, Andrew; moved left no address; unable to forward; return to sender.

address to the commissioner within 30 days. I conclude that Weeks failure to answer the OTSC or to respond to the Division's motion, and his failure to appear at the scheduled pre-hearing conference or at the hearing, either *pro se* or through counsel or other personal representative, warrant findings that he is in default. By his default, Weeks 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 solely upon the OTSC and the documents attached to it.

Findings of Fact

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

1. Respondent Weeks was first licensed by the Division on or about July 20, 2005. His non-resident Producer License remains active; he does not hold any agent appointments at this time.
2. On June 7, 2005, Weeks was arrested for driving on a revoked license, a misdemeanor, in Illinois.
3. Weeks submitted a Uniform Application for Individual Insurance Producer License ("Application") to the Division on or about June 25, 2005.
4. Weeks answered "no" to Application Question 1: "Have you ever been convicted of, or are currently charged with, committing a crime?" The term "crime" included misdemeanor; the term "convicted," in part, included having been given probation, a suspended sentence or a fine.
5. Weeks submitted a Florida insurance application in August 2005 and failed to disclose his June 2005 arrest.
6. On January 17, 2006, the State of Florida, Department of Financial Service, entered into a Settlement Stipulation for Consent Order with Weeks.
7. On February 8, 2006, a Consent Order was issued pursuant to the Settlement Stipulation.
8. Weeks failed to notify the Division of the Florida Department of Financial Services' administrative action within 30 days of final disposition.
9. A request for information, dated March 1, 2006, was sent to Weeks by Division Special Investigator Loney F. Bond ("Investigator Bond").

10. Weeks failed to respond to the March 1, 2006, request for information.
11. On February 15, 2007, Investigator Bond sent a second request for information to Weeks by certified mail.
12. A signed Domestic Return Receipt was received by Investigator Bond on February 27, 2007.
13. Weeks failed to respond to the February 15, 2007, request for information

Analysis and Conclusions of Law

801 CMR 1.01(7)(h) authorizes a party to file a Motion for Summary Decision, with or without supporting affidavits, when the party 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. The Division's Motion for Summary Decision notes that the Respondent failed to file an answer to the OTSC and failed to appear at the scheduled pre-hearing conference. The Respondent did not file a response to the Division's Motion for Summary Decision. No genuine issue of fact has been raised in connection with the Division's claims. I find that the Division is entitled to prevail as a matter of law.

M.G.L. c. 175, §162R(a) identifies grounds on which the Commissioner may, among other things, revoke a producer's license and levy civil penalties in accordance with M.G.L. c. 176D, §7. The Division relies on M.G.L. c. 175, §162R(a)(1), providing incorrect, misleading, incomplete or materially untrue information in the license application, and M.G.L. c. 175, §162R(a)(3), obtaining or attempting to obtain a license through misrepresentation or fraud, to support the relief it seeks. Weeks provided incorrect and untrue information by failing to disclose his pending criminal action in Illinois, and obtained his license through his misrepresentation to the Division. Truthfulness on an application is imperative for the purpose of determining eligibility for licensure. I conclude that the findings of fact support a determination that Weeks violated M.G.L. c. 175, §162R(a)(1) and M.G.L. c. 175, §162R(a)(3).

The Division cites to M.G.L. c. 176D, §2, no person shall engage in this commonwealth in any trade practice which is an unfair method of competition or an unfair or deceptive act or trade practice, seeking relief in this matter. I find Weeks's failure to provide correct information on his license application and his failure to respond

to Investigator Bond's two requests for information, made pursuant to M.G.L. c. 176D, §5, is an unfair and deceptive practice in the business of insurance.

The Division seeks relief under M.G.L. c. 175, §162V(a) which mandates that a producer notify the Division of administrative actions in another jurisdiction or by another governmental agency in the commonwealth within 30 days of the final disposition of the matter. I find that Weeks did not notify the Division of his administrative action in Florida within 30 days of final disposition of such action.⁷

I find that these violations support revocation of Weeks' license. Pursuant to M.G.L. c. 175, §162R(a), the Commissioner may levy civil penalties in accordance with c. 176D, §7. I find that the maximum fine should be imposed on Weeks for each violation of the statute, resulting in a fine of Three Thousand Dollars (\$3,000).

ORDERS

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

ORDERED: That any and all licenses issued to Andrew Layne Weeks by the Massachusetts Division of Insurance are hereby revoked; and it is

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

FURTHER ORDERED: that Andrew Layne Weeks 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 Andrew Layne Weeks 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 Andrew Layne Weeks shall cease and desist from the conduct that gave rise to the Order to Show Cause, and it is

⁷ The Division asserts that violations of M.G.L. c. 176D, §2, M.G.L. c. 175, §§162R(a)(1) and (3) and M.G.L. c. 175, §162V(a) constitutes a violation of M.G.L. c. 175, §162R(a)(2). Pursuant to M.G.L. c. 175, §162R(a)(2), a producer is subject disciplinary action for violating any insurance laws, or violating any regulation, subpoena or order of the commissioner or of another state's insurance commissioner. I conclude that Weeks's actions violate the statute.

FURTHER ORDERED: that Andrew Layne Weeks shall pay a fine of Three Thousand Dollars (\$3,000) to the Division of Insurance within 30 days of issuance of this order.

This decision has been filed this ____ day of March 2008 in the office of the Commissioner of Insurance. A copy shall be sent to Weeks by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

Tesha M. Scolaro
Presiding Officer

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