
Division of Insurance, Petitioner
v.
Eric James Brown, Respondent

Docket No. E2006-13

Order on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On October 4, 2006 the Massachusetts Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Eric James Brown (“Brown”), who is currently licensed as a Massachusetts insurance producer. The Division seeks orders that Brown has violated G.L. c. 175, §§162R (a)(9), and 162V(a).¹ It asks for revocation of his license, an order requiring him to dispose of any insurance-related interests in Massachusetts, and imposition of fines for the alleged violations.

The Division states in the OTSC that Massachusetts first licensed Brown as an insurance agent in October 1992 and that his agent appointments were cancelled in September 2001. Brown was licensed as a non-resident insurance producer as of January 1, 2004, and holds one active appointment as an agent. The Division alleges that, on or about January 16, 2006 Brown signed a settlement stipulation for a consent order with the Florida Department of Financial Services and that, pursuant to the consent order which was issued thereafter, Brown surrendered his Florida insurance license with the same force and effect as a revocation. On February 2, 2006, Florida issued a consent order that incorporated the settlement stipulation. The Division asserts that Brown did not report that

¹ G.L. c. 175, §162R (a)(9) establishes that revocation, suspension or denial of an insurance producer license in another jurisdiction is grounds for revoking, suspending or denying a license in Massachusetts. G.L. c. 175, §162V (a) requires a Massachusetts licensee to report to the Commissioner an action by another jurisdiction against his license within 30 days of the action.

administrative action to the Division within 30 days of the final disposition of the matter, as he is required to do pursuant to G.L. c. 175, §162V(a).

A Notice of Procedure ("Notice"), issued on October 4, advised Brown that a hearing on the OTSC would be held on November 29, 2006, at the offices of the Division, that a prehearing conference would take place on November 8, also at the Division, and 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 Brown 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 Brown 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 designated me as presiding officer for this proceeding.

On May 25, the Division sent the Notice and OTSC by certified mail to respondent at the address in Highland Beach, Florida that appears in the documents from the Florida Department of Financial Services. Copies were also sent to Brown by first class mail at the mailing and business addresses in the Division's records which he provided on his 2004 application for a producer's license. The post office returned to the Division a green receipt for certified mail, signed by Jill Brown, showing a delivery date of October 11, 2006. Brown filed no answer or other responsive pleading.

On November 8, a prehearing conference was held, pursuant to 801 CMR 1.01(10)(a). Douglas Hale, Esq. appeared for the Division. Neither Brown nor any person representing him appeared. Mr. Hale reported that he had received no communication from the respondent or from any person purporting to represent him. The Division filed a motion for summary decision, which it served on respondent by first class mail. An order issued on November 9, advising Brown to file any response to the motion by November 24, and stating that any argument on the motion would be heard on November 29, at the time set for an evidentiary hearing in the October 4 Notice. Brown filed no response to the Division's motion, and did not appear at the November 29 hearing. At that hearing, Mr. Hale stated that he had received no communication from the respondent or any person representing him.

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. The OTSC and Notice were sent to respondent at an address recently utilized by the Florida Department of

Financial Services, and were signed for by a person at that address. Copies were also sent to the address shown on the Division's licensing records. I conclude that Brown's failure to answer the OTSC or to respond to the Division's motion, and his failure to appear at the scheduled prehearing conference and at the hearing warrant a finding that he is in default. By his default, Brown 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 solely upon the OTSC and the documents attached to it.

Findings of Fact and Conclusions of Law

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

1. Brown was first licensed in Massachusetts as an individual insurance agent on or about October 27, 1992. He was licensed as a non-resident Massachusetts producer license on January 1, 2004.
2. On or about January 16, 2006, Brown signed a Settlement Stipulation for Consent Order with the State of Florida Department of Financial Services.
3. On February 2, 2006, the Florida Department of Financial Services issued a Consent Order, pursuant to which Brown surrendered his Florida insurance with the same force and effect as a license revocation.
4. Brown failed to report the license revocation to the Commissioner within 30 days of the final disposition of the Florida administrative action.

Discussion and Analysis

The stated grounds for the Division's motion for summary decision are respondent's failure to file an answer to the OTSC within the time prescribed by the Standard Adjudicatory Rules of Practice and Procedure and his failure to appear at the scheduled prehearing conference. It is undisputed that Brown neither filed a response to the Division's submissions nor appeared in this matter.

G.L. c. 175, §162R (a), in pertinent part, permits the Commissioner to suspend or revoke an insurance producer's license and to levy civil penalties in accordance with G.L. c. 176D, §7 for reasons that include revocation of a producer's license by any other state. G.L. c. 175, §162V requires a producer to report to the Commissioner any disciplinary taken by another state.

On the basis of these findings of fact, I conclude that in January 2006 the state of Florida revoked Brown's license to act as an insurance agent in that state. By failing to report the Florida action to the Commissioner, Brown also violated G.L. c. 175, §162V.

I find, on this record, that the Massachusetts producer license issued to Eric James Brown should be revoked and that, as permitted under G.L. c. 162R, he should be fined for failure to comply with G.L. c. 175, §162V.²

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Eric James Brown by the Massachusetts Division of Insurance are hereby revoked; and it is

FURTHER ORDERED: that Eric James Brown shall return to the Massachusetts Division of Insurance any licenses in his possession, custody or control; and it is

FURTHER ORDERED: that Eric James Brown 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 Eric James Brown 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 Eric James. Brown shall pay a fine of One Thousand Dollars (\$1,000) to the Massachusetts Division of Insurance.

This decision has been filed this 20th day of December 2006, in the office of the Commissioner of Insurance. A copy shall be sent to Brown by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

Jean F. Farrington
Presiding Officer

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

² In determining a fine, I note that no allegation is made that any conduct that resulted in revocation of Brown's Florida insurance license involved violations of Massachusetts law or affected Massachusetts residents.