
Division of Insurance, Petitioner
v.
David Bruce Kuhnke, Respondent

Docket No. E2005-18

Order on Petitioner's Motion for Decision on the Pleadings

Introduction and Procedural History

On October 6, 2005 the Massachusetts Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against David Bruce Kuhnke (“Kuhnke”), who is currently licensed as a non-resident Massachusetts insurance producer. The Division seeks orders that Kuhnke has violated M. G.L. c. 175, §§162R (a) (2), (4), (5), (7), (8) and (9); M.G.L. c. 175, §162V(a); and M.G.L. c. 176D, §§2 and 3. It asks for revocation of his license, an order requiring him to dispose of any insurance-related interests in Massachusetts and to surrender any licenses in his possession to the Division, and imposition of fines for the alleged violations.

The Division states in the OTSC that Massachusetts first licensed Kuhnke as an insurance producer on or about July 22, 2003, and states that he currently holds no active appointments to represent insurance companies. The Division alleges that Kuhnke owns¹ Helix, Inc. (“Helix”), a company based in Connecticut that is not licensed to conduct business in Massachusetts, which placed health care medical waste liability insurance

¹ In a copy of the complaint against Kuhnke, Insurance Commissioner Susan F. Cogswell of the Connecticut Insurance Department indicates in Count I paragraph 1 that Kuhnke is a licensed producer and that Kuhnke is the license applicant for Helix, which is also a licensed producer. Count II of the order clarifies that on October 1, 2003 and December 2, 2003 Kuhnke through Helix issued policies to Brockton Hospital and Dr. Gurka, respectively.

policies. Although neither Kuhnke nor Helix was authorized by USF Insurance Company ("USF") to write any insurance policies on its behalf, Kuhnke negotiated three USF medical waste liability insurance policies in Massachusetts through Helix.² For all three policies Kuhnke issued an invoice, was paid a net premium through Helix, and did not obtain any coverage for the business client, but he kept the premium paid to Helix. In January 2004, Kuhnke attempted to negotiate with USF Insurance Company to write healthcare environmental liability policies on its behalf and was not granted any authorization to do so.

On or about January 27, 2005 all licenses issued to Kuhnke and Helix in the state of Connecticut were revoked by the Connecticut Insurance Department based on deceptive advertising, failure to respond to information requests, and the false policies that Kuhnke issued in Massachusetts to Brockton Hospital and Dr. Gary Gurka.³ The Connecticut revocation was also premised upon Kuhnke's issuance of a false policy of coverage to a Connecticut company, for which he received a premium, obtained no coverage, but kept the net premium paid through Helix.⁴

The Division alleges that Kuhnke did not report this administrative action to the Division within 30 days.

A Notice of Procedure ("Notice"), issued on October 12, advising Kuhnke that a prehearing conference would take place on November 21 at the offices of the Division, a hearing on the OTSC would be held on December 6, 2005, also at the Division, and that

² Through Helix, Kuhnke negotiated a USF medical waste liability policy with Physicians Insurance Agency of Massachusetts ("PIAM) sometime in late 2003 for Dr. Gary Gurka of Arlington, MA. In reliance on a quote from Kuhnke, Dr. Gurka gave to PIAM a gross premium/surplus lines tax of \$2,080 on or about December 22, 2003. PIAM conveyed \$1,800 to Helix as a net premium based on Kuhnke's invoice. Kuhnke did not obtain coverage for Dr. Gurka, nor did he return the premium. In 2003 Kuhnke issued a USF medical waste liability policy to Roger Keith & Sons Insurance Agency ("Keith") of Brockton, MA on behalf of their client Brockton Hospital with an effective date of October 1, 2003 to October 1, 2004. On or about December 2003, Keith paid a net premium invoice of \$16,332 that it had received from Kuhnke. There was no coverage obtained for Keith and Kuhnke kept the premium. Through B.R. Alexander & Co. of Boston ("Alexander"), Kuhnke issued a medical waste liability policy to Hallmark Health Systems, Inc. ("Hallmark"), with an effective date from October 1, 2003 to October 1, 2004. Alexander conveyed to Helix \$20,028.13 based on an invoice that Kuhnke sent. Kuhnke did not obtain any coverage for Alexander, but he kept the premium paid to Helix.

³ The Connecticut revocation was also premised upon Kuhnke's issuance of a false policy of coverage to ProHealth Physicians, Inc. and ProHealth Physicians, P.C. for a premium payment of \$43,532.70, which Kuhnke kept.

⁴ He negotiated a medical waste liability policy for ProHealth Physicians, Inc. and ProHealth Physicians, P.C. for a premium payment of \$43,532.70, which he kept.

the proceeding 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 Kuhnke 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 Kuhnke 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 October 12, the Division sent the Notice and OTSC by certified and first class mail to respondent at his home and business addresses as they appear on the Division's records: 54 North Farms Road, Avon, CT 06001 and P.O. Box 1621, Avon, CT 06001. All of the mail was returned because his post office box was closed and the time for forwarding his mail had expired. Kuhnke filed no answer or other responsive pleading.

On November 21, a prehearing conference was held, pursuant to 801 CMR 1.01(10)(a). Douglas Perry, Esq. appeared for the Division. Neither Kuhnke nor any person representing him appeared. Mr. Perry reported that he had not heard from Kuhnke or any person representing him.

The Division filed a motion for a decision on the pleadings on November 21, which it served on respondent by first class mail. An order issued on November 23 advising Kuhnke to file any response to the motion by November 30, stated that any argument on the motion would be heard on December 6, at the time initially set for an evidentiary hearing. Kuhnke filed no response to the Division's motion. At the hearing on December 6, Mr. Perry stated that he had received no communications from the respondent or any person representing him. Neither Kuhnke nor any representative of his appeared at the December 6 hearing.

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 the mailing and business addresses shown on the Division's licensing records. I conclude that Kuhnke'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 findings that he is in default. By his default, Kuhnke has waived his right to proceed further with an evidentiary hearing in this case and I may consider the Division's motion for a decision on the pleadings based solely upon the OTSC.

Findings of Fact and Conclusions of Law

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

1. Respondent Kuhnke was first licensed in Massachusetts as a producer on July 22, 2003.

2. a) Kuhnke owned Helix, Inc. ("Helix"), a company based in Connecticut and not licensed to conduct business in Massachusetts, which placed health care medical waste liability insurance policies.

b) Even though USF did not agree to engage Kuhnke or Helix to write any insurance policies on its behalf, he wrote three USF medical waste liability policies through Helix, to three Massachusetts businesses in late 2003: to Dr. Gary Gurka of Arlington, MA through his agent Physicians Insurance Agency of Massachusetts ("PIAM"); to Brockton Hospital through its agent Roger Keith & Sons Insurance Agency; and to Hallmark Health Systems, Inc. through its agent B.R. Alexander & Co. of Boston.

c) For all three policies Kuhnke issued an invoice, was paid a net premium through Helix, and failed to obtain any coverage for the business client, and yet he kept the premium paid to Helix.

d) On or about January 27, 2005 Connecticut revoked all licenses issued to Kuhnke and Helix based on deceptive advertising, failure to respond to information requests, and the three false policies that Kuhnke issued in Massachusetts. The Connecticut revocation was also premised upon Kuhnke's issuance of a false policy of coverage for which he received a premium, obtained no coverage, but kept the net premium paid through Helix.

e) Kuhnke failed to report the revocation of his Connecticut producer license to the Division within 30 days.

The grounds for the Division's motion 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 Kuhnke failed to respond to the OTSC or to the Division's motion, and that he did not appear in this proceeding.

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 violating any insurance laws, and revocation of a producer's license by any other state. G.L. c. 175, §162V(a) requires a producer to report to the Division any disciplinary action taken by another state.

On the basis of this finding, I conclude that the facts alleged in the OTSC are sufficient to support revocation of Kuhnke's Massachusetts producer license pursuant to §§162R (a) (2), (4), (5), (7), (8) and (9); and M.G.L. c. 176D, §§2 and 3. By failing to report his license revocation to the Division, Kuhnke also violated G.L. c. 175, §162V(a).

I find, on this record consisting of the OTSC and the findings of fact, that the Massachusetts producer license issued to David Bruce Kuhnke should be revoked for four violations of §176D, §2 and 3, and §162R(a)(2), (4), (5), (7), (8), and (9), and that he should be fined \$4,000 for failure to comply with G.L. c. 175, §162V(a).

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to David Bruce Kuhnke by the Massachusetts Division of Insurance are hereby revoked; and it is

FURTHER ORDERED: That David Bruce Kuhnke shall return to the Massachusetts Division of Insurance any licenses in his possession, custody or control; and it is

FURTHER ORDERED: That David Bruce Kuhnke 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 David Bruce Kuhnke 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 David Bruce Kuhnke shall pay a fine of Four Thousand Dollars (\$4,000) to the Massachusetts Division of Insurance within 30 days.

This decision has been filed this 3rd day of January 2005, in the office of the Commissioner of Insurance. A copy shall be sent to Kuhnke by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

Amma A. Kokro, Esq.
Presiding Officer

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