



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

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JULIANNE M. BOWLER
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.
Martin O'Malley, Respondent

Docket No. E2005-26

Order on Petitioner's Motion for Decision on the Pleadings

Introduction and Procedural History

On December 6, 2005 the Massachusetts Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Martin O'Malley ("O'Malley"), who is currently not licensed in Massachusetts. O'Malley received a broker license on or about August 9, 2001. It was converted to a producer license on or about May 16, 2003 and canceled for non-renewal on or about August 9, 2004. The Division alleges that on June 18, 2001, O'Malley answered "no" in response to question 19 on his Massachusetts Individual Broker License application, which inquires about prior criminal convictions. It alleges that he failed to report a prior criminal conviction that occurred on or about April 3, 2000 when he was convicted of assault with a deadly weapon in a San Diego, California superior court.

The Division further alleges that in violation of G.L. c. 175, §162R(a)(1), O'Malley provided incorrect and misleading information in a license application; obtained a license

through misrepresentation or fraud in violation of G.L. c. 175, §162R(a)(3); and engaged in unfair and deceptive trade practices in violation of G.L. c. 176D, §2. It seeks the following relief: findings on the allegations set forth in the OTSC; findings that O'Malley has violated G.L. c. 175, §162R(a)(1) and (a)(3) and c. 176D, §2; an order prohibiting him from transacting or acquiring any insurance-related business in Massachusetts; and the imposition of fines for the alleged violations.

A Notice of Procedure (“Notice”), was issued on December 19, advising O’Malley that a prehearing conference would take place on January 5 at the offices of the Division, a hearing on the OTSC would be held on January 26, also at the Division, and that 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 O’Malley to file an answer by January 24 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 O’Malley 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 December 23, the Division sent the Notice and OTSC by certified and first class mail to respondent at his residential mailing address as it appears on the Division’s records: 8 Gerard Dr., Fitchburg, MA 01420. The post office returned the certified mail, noting that it had attempted delivery but that it had been unclaimed. The first class mail was also returned, with the notation that the forwarding order had expired. O’Malley filed no answer or other responsive pleading.

On January 5, a prehearing conference was held, pursuant to 801 CMR 1.01(10)(a). Douglas Perry, Esq. appeared for the Division. Neither O'Malley nor any person representing him appeared. Mr. Perry reported that he had received no communication from the respondent or from any person purporting to represent him. On January 5, the Division filed a motion for a decision on the pleadings, based on O'Malley's failure to file a timely answer as required under 211 CMR 1.01(6)(e), and served him by first class mail. An order was issued on January 17 advising O'Malley to file any response to the motion by January 24, and stating that any argument on the motion would be heard on January 26. The order was sent by first class mail on January 17, but returned by the postal service. O'Malley filed no response to the Division's motion. At the hearing on January 26, neither O'Malley nor any representative of his appeared.

Finding of Default

On the basis of the record before me, I conclude that the Division took appropriate actions to ensure that proper and sufficient service was made on the Respondent. The OTSC and Notice were sent to respondent at the only address shown on the Division's licensing records. G.L. c. 175, §162M(f) requires O'Malley to inform the Division of any address changes within 30 days of any such change. I conclude that O'Malley'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, O'Malley 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, I find the following facts:

1. O'Malley received a broker's license on August 9, 2001.
2. It was converted into a producer license on May 16, 2003 and canceled on August 30, 2004 for non-renewal.
3. On April 3, 2000 O'Malley was convicted of assault with a deadly weapon in San Diego, California.
4. On June 18, 2001 O'Malley answered "no" to a question about prior criminal arrests, prosecutions and convictions on his Massachusetts Application for Individual Broker License, notwithstanding his April 3, 2000 conviction.

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 O'Malley 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. I find that O'Malley, by failing to disclose his criminal history on a license application, has provided incorrect and misleading information under G.L. c. 175, §162R(a)(1); in attempting to obtain a license while denying his criminal history he has committed fraud or misrepresentation under c. 175, §162(a)(3); and engaged in unfair and deceptive practices pursuant to G.L. c. 176D, §2 and should be fined.

I find further, that he should be fined \$1,000 for his violation of G.L. c. 176D, §2.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That Martin O'Malley 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 Martin O'Malley shall pay a fine of One Thousand Dollars (\$1,000) to the Massachusetts Division of Insurance within 30 days.

This decision has been filed this 16th day of March 2006, in the office of the Commissioner of Insurance. A copy shall be sent to O'Malley 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.