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DANIEL R. JUDSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Steve Stokeling, Respondent

Docket No. E2016-08

**Decision on Petitioner's Motion
For Summary Decision**

Introduction and Procedural History

On April 29, 2016, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Steve Stokeling ("Stokeling"), who was first licensed as a Massachusetts non-resident insurance producer on or about August 20, 2012. The Division alleges that, in 2013, two insurance companies filed a civil complaint against Stokeling in the United States District Court for the Northern District of Florida alleging that he had sold forged surety bonds bearing the names of those companies. It further alleges that Stokeling, on or about February 6, 2014, entered into a consent agreement with the state of Georgia and voluntarily surrendered his Georgia producer license. In addition, the Division alleges that in 2014 five other jurisdictions, Kentucky, Idaho, Colorado, Vermont, and Wyoming, revoked Stokeling's insurance producer licenses, and that in 2015 he agreed to surrender his Mississippi producer license. The Division alleges that Stokeling did not report these administrative actions within the time period prescribed in M. G. L. c. 175, §162V (a) ("§162V (a)").

The Division contends that the allegations in the OTSC support revocation of Stokeling's Massachusetts producer license pursuant to the provisions of M.G.L. c. 175, §162R (a)(2), (a)(8) and (a)(9). The Division also contends that Stokeling should be fined for failing to report the administrative actions to the Division on a timely basis as he is obligated to do so. In addition to revocation of Stokeling's license, the Division seeks orders that, among other things, require him

to dispose of any insurance-related interests in Massachusetts, prohibit him from conducting any insurance business in the Commonwealth, and impose fines for the alleged violations.

Stokeling filed no answer or other response to the OTSC. On May 26, 2016, the Division filed a motion for entry of default and summary decision; subsequently, on September 22, 2016 it filed an amended motion for default and summary decision. An order entered on October 4, 2016 setting a date for responding to the Division's motion and scheduling a hearing on the motion for October 25, 2016. Neither Stokeling nor any person representing him attended the hearing.

Finding of Default

According to the certificate of service submitted with the OTSC, the Division served it on Stokeling by regular United States mail sent to his mailing, business and residential address shown on the Division's producer licensing records, 416 Childers Drive, Warner Robins, GA 31088. It also sent a copy to by regular mail to him at 1401 Peachtree Street, N.E., Suite 500 in Atlanta, GA, an address on file in the Vermont and Colorado insurance licensing records. On May 26, the Division filed a Motion for Entry of Default and Summary Decision, on the grounds that Stokeling had failed to answer the OTSC. In that motion, the Division reported that the documents sent to Stokeling at the Warner Robins address had been returned with the notation "Return to Sender, Unable to Forward." On September 22, 2016, the Division submitted an amended Motion for Entry of Default and Summary Decision, again on the grounds that Stokeling had failed to answer the OTSC. In that motion, the Division reported that on August 26, 2016, it served the OTSC on Stokeling by certified United States mail, at his address in Atlanta, GA, and that the documents had been returned to the Division on September 16. As with the earlier service, the certified mailing was marked Return to Sender, Unable to Forward."

On the basis of the postal records, I conclude that the OTSC was served on Stokeling by certified mail and that, pursuant to G.L. c. 175, §174A, service was sufficient.¹ I find that

¹ M.G.L. c. 175, §174A, establishes a statutory process that determines when notice of a proposed revocation or suspension of a license is by law deemed sufficient. Service is to be made postpaid "by registered mail to the last business or residence of the licensee appearing on the records of the commissioner." For purposes of that statute, registered mail includes certified mail. M.G.L. c. 175, §162M (f) requires licensees to inform the commissioner of a change of address within 30 days of the change. The licensee bears the burden of ensuring that his or her address on the Division's records is correct. Although the Division did not serve Stokeling by certified mail at the Warner Robins address on the Division's records, it did do so at the Atlanta address that appeared on the records of two other jurisdictions that had initiated administrative actions against Stokeling. Because mail sent to the Warner

Stokeling's failure to answer the OTSC or to respond to the Motion, and his failure to appear at the hearing warrant findings that he is in default. By his default, Stokeling 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 on the record.

The record in this proceeding consists of the OTSC, the Initial and Amended Motions for Summary Decision, and the exhibits attached to them. The exhibits attached to the OTSC consist of the civil litigation naming Stokeling as a defendant filed in the United States District Court for the Northern District of Florida, records documenting the judgment in that proceeding, and decisions or consent orders in administrative actions initiated against Stokeling by the states of Georgia, Kentucky, Colorado, Idaho, Vermont, Wyoming and Mississippi.

Findings of Fact

Based on my review of the record, I make the following findings of fact.

1. The Division first licensed Stokeling as a non-resident insurance producer on or about August 20, 2012.
2. On or about July 30, 2013, the Federal Insurance Company and the Pacific Indemnity Company filed a civil complaint against Stokeling and others in the United States District Court for the Northern District of Florida alleging that defendants had sold forged surety bonds purporting to be issued by the plaintiff companies.
3. On or about May 14, 2014, a default judgment and permanent injunction were entered against Stokeling.
4. On or about February 6, 2014, Stokeling surrendered his Georgia producer license and executed a consent order with the Georgia Insurance Commissioner.
5. On or about April 18, 2014, the Kentucky Department of Insurance revoked Stokeling's non-resident producer license.
6. On or about July 1, 2014, the Idaho Department of Insurance revoked Stokeling's non-resident producer license.
7. On or about October 20, 2014, the Colorado Division of Insurance revoked Stokeling's non-resident insurance producer license.
8. On or about December 23, 2014, the Vermont Department of Financial Regulation revoked Stokeling's non-resident producer license.
9. On or about April 2, 2015, the Wyoming Department of Insurance revoked Stokeling's non-resident producer license.
10. On or about May 8, 2015 Stokeling voluntarily surrendered his Mississippi non-resident producer license to the Mississippi Insurance Department.
11. Stokeling failed to report the administrative actions in Georgia, Kentucky, Idaho, Colorado, Vermont, Wyoming and Mississippi to the Division.

Robins address had been returned to the Division in May, 2016, I conclude that it was reasonable to serve Stokeling by certified mail at the Atlanta address.

Analysis and Discussion

801 CMR 1.01(7)(h) permits a party to move for summary decision when, in its opinion, there is no genuine issue of fact relating to a claim and it is entitled to prevail as a matter of law. Stokeling has not contested the factual allegations in the OTSC or offered any defense to the Division's claims for relief. G. L. c. 175, §§162G through 162X set out, among other things, the requirements for obtaining and maintaining a Massachusetts insurance producer license. Section §162R (a) specifies fourteen grounds on which the Commissioner may suspend or revoke a producer's license. The Division identifies §162R (a)(2), (a)(8) and (a)(9) as grounds for revocation of Stokeling's license, as well a failure to comply with G.L. c. 175, §162V(a), the statute requiring him to report to the Commissioner any administrative action taken against him by another jurisdiction.

Subsection 162R (a)(2) permits disciplinary action if the licensee has violated any insurance law. The record fully supports a conclusion that Stokeling did not report to the Division any administrative actions initiated in other jurisdictions and thereby violated G.L. c. 175, §162V (a). Those multiple violations of Massachusetts insurance law support disciplinary action pursuant to subsection 162R (a)(2).

Subsection 162R (a)(8) permits disciplinary action against a licensee for "using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere." The Division does not allege that Stokeling engaged in activities in Massachusetts that would support discipline under subsection (a)(8); as support for its position that he is subject to discipline under that section it apparently relies on the claims made in the civil litigation in the Federal District Court for the Northern District of Florida and in the Colorado administrative action as grounds for revoking Stokeling's license in that jurisdiction. Those claims arise from the issuance of forged surety bonds to guarantee performance on publicly funded construction projects. I find that the actions described in the civil complaint and the Colorado administrative action fully support the Division's position that they are a basis for t disciplinary action under §162R (a)(8).²

² The civil complaint listed projects in the states of Florida, Georgia, Nevada, Maryland, Texas, Colorado, California, Washington, Tennessee and Kentucky, as well as American Samoa. The documents in the record relating to the Kentucky action do not specifically reference bonds issued for projects in that state.

Subsection 162R (a)(9) permits disciplinary action when an insurance producer's license has been revoked in another jurisdiction. The orders issued in the Kentucky, Colorado, Idaho, Vermont and Wyoming administrative actions revoked Stokeling's insurance producer license in each state and fully support disciplinary action under that section.³

The number and nature of the grounds that the Division cites for taking disciplinary action against Stokeling fully warrant its request to revoke his Massachusetts producer license. On this record, I find that, in addition to revocation of his license, Stokeling should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and should be required to dispose of any interests he may have in any insurance business in Massachusetts.⁴

Section 162R (a) also permits the Commissioner to levy a civil penalty in accordance with G.L. c.176D, §7 ("Section 7 fines") for the reasons that permit disciplinary action under §162R (a). The maximum penalty permitted under G.L. c.176D, §7 is \$1,000 per violation. The Division requests Section 7 fines for each of Stokeling's alleged violations of Massachusetts law. It also requests fines for each of Stokeling's specific violations of G.L. c. 175, §162V (a). Because that section does not include a specific penalty for non-compliance, violators are subject to fines imposed in accordance with G.L. c. 175, §194. The maximum fine allowed under that section is \$500 per violation. The Division's requests, if allowed, would impose two fines, derived from two statutory sources, on the respondent for his failure to report as required by G.L. c. 175, §162V(a).

Chapter 175, §162V prescribes a reporting obligation; failure to comply is not, itself, a basis for disciplinary action but, as a violation of Massachusetts law, supports a request for disciplinary action under c. 175, §162R (a)(2). I am not persuaded, however, that in these circumstances it is appropriate to impose a fine as permitted under G.L. c.176D, §7. The OTSC is based, in part, on undisputed facts relating to Stokeling's failure to notify the Division of administrative actions against his insurance producer license in seven other jurisdictions. The statutory penalty for those underlying violations is limited to a fine of no more than \$500. That

³ Georgia and Mississippi accepted Stokeling's voluntary surrender of his license and he agreed not to engage in the business of insurance in those states. Absent evidence that those states equate voluntary surrender with revocation, I decline to find that either state revoked Stokeling's producer license.

⁴The second claim in the OTSC asserts that, by not being licensed in his state of residence, Georgia, Stokeling violated G.L. c. 175, §162R (a)(9). The basis for the claim is incompletely stated. In any event, even though, pursuant to c. 175, §162N, a non-resident insurance producer must, as a condition for that license, be licensed in his or her home state, the statute identifies no legal basis for finding a violation of that statute.

the violations also support disciplinary action under c. 175, §162R (a)(2) intensifies the potential consequences of his actions, but does not alter the underlying events. However, Stokeling's failure to report those seven administrative actions effectively enabled him to avoid any enforcement action in the Commonwealth for over two years. For that reason, I will impose the maximum penalty of \$500 for each of Stokeling's seven failures to report an administrative action.⁵ Because there is no evidence that the fraudulent activities that support disciplinary action against Stokeling pursuant to §162R (a)(8) affected Massachusetts residents, I will impose no additional fine based on those activities.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Steve Stokeling by the Division are hereby revoked; and it is

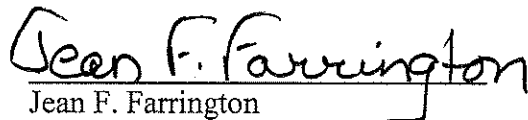
FURTHER ORDERED: that Steve Stokeling shall return to the Division any licenses in his possession, custody or control; and it is

FURTHER ORDERED: that Steve Stokeling 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 Steve Stokeling shall comply with the provisions of G.L. c. 175, §166B and dispose of any and all interests in Massachusetts as a proprietor, partner, stockholder, officer or employee of any licensed insurance producer; and it is

FURTHER ORDERED: that Steve Stokeling shall pay a fine of Three Thousand Five Hundred Dollars (\$3,500) to the Division within 30 days of the entry of this order.

This decision has been filed this 1st day of February 2017, in the office of the Commissioner of Insurance. A copy shall be sent to Stokeling by regular first class mail, postage prepaid.


Jean F. Farrington
Presiding Officer

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

⁵ The record does not indicate that Stokeling violated any other Massachusetts insurance law or regulation that supports discipline under §162R (a)(2) and is not subject to the limitations of G. L. c. 175, §194.