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DANIEL R. JUDSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Christopher J. Kopatz, Respondent
Docket No. E2016-05

Order on Petitioner's Motion for Summary Decision

On April 6, 2016, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Christopher J. Kopatz ("Kopatz"), who was licensed in 2013 as a Massachusetts non-resident insurance producer. Pursuant to the provisions of G.L. c.175, §162R (a)(9), the Division seeks revocation of Kopatz's Massachusetts producer license on the grounds that nine other jurisdictions, the states of Iowa, Kansas, Delaware, Indiana, South Dakota, Maine, Arkansas, West Virginia and the Commonwealth of Virginia, have previously revoked or suspended his insurance producer licenses.

The Division alleges that Kopatz failed timely to report to the Division administrative actions taken against him in Utah and in the nine jurisdictions identified above, as he is obligated to do so pursuant to G.L. c. 175, §162V (a). It asks that he be fined for that failure. In addition to revocation of Kopatz's license and the imposition of fines, the Division seeks orders that, among other things, require Kopatz to dispose of any insurance-related interests in Massachusetts and prohibit him from conducting business in the Commonwealth.

Kopatz filed no answer or other response to the OTSC. The Division filed a motion for entry of default and summary decision ("Motion 1") on or about May 9, 2016; a copy was sent to Kopatz at the business address shown on the Division's records.

Subsequently, that employer notified the Division that Kopatz was no longer with the company and also provided it with a different residential address. No action was taken on Motion 1 in order to serve Kopatz at that new address. On November 30, 2016, the Division filed a second motion for entry of default and summary decision (“Motion 2”). An order, entered on December 1, 2016, set a date for responding to Motion 2, and scheduled a hearing on it for December 20, 2016. Matthew Burke, Esq. represented the Division in this matter. Neither Kopatz nor any person representing him attended the hearing. Mr. Burke reported that he had not been contacted by Kopatz or any person purporting to represent him.

Finding of Default

According to the certificate of service initially submitted with the OTSC, the Division served the documents on Kopatz by certified and regular United States mail addressed to his business and residential addresses as shown on the Division’s producer licensing records, 5910 Mineral Point Road, Madison, WI 53593 and 9216 Silverstone Lane, Verona, WI 53593. The Postal Service returned the documents sent to his residential address, with the notation that they were undeliverable as addressed and unable to forward. On May 9, the Division filed Motion 1, sending it to Kopatz at his business address on Mineral Point Road. On May 31, his employer notified the Division that Kopatz had left his employment on October 30, 2013, and advised it of a new residential address in Middleton, WI. Subsequently, the Division served the OTSC on Kopatz at that new address. On November 30, 2016, the Division filed Motion 2, seeking summary decision on the grounds that Kopatz had failed to answer the OTSC. In that Motion, the Division stated that it had served the OTSC on Kopatz at the Middleton address, both by regular first class mail and by certified mail. He did not report that either mailing had been returned. On the basis of the postal records, I conclude that the OTSC was served on Kopatz by certified mail and that, pursuant to G.L. c. 175, §174A, service was sufficient.¹

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.

I find that Kopatz's failure to answer the OTSC or to respond to the Motion, and his failure to appear at the hearing warrant a finding that he is in default. By his default, Kopatz has waived his right to proceed further with an evidentiary hearing in this case and I may consider the Division's Motion based on the record.

The record in this proceeding consists of the OTSC, Motions 1 and 2, and the exhibits attached to them. The exhibits to the OTSC consist of administrative actions revoking or suspending Kopatz's insurance producer licenses that were initiated by the states of Iowa, Kansas, Delaware, Indiana, South Dakota, Maine, Arkansas, West Virginia, and the Commonwealth of Virginia, and a notice of administrative action by the state of Utah.

Findings of Fact

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

1. The Division first licensed Kopatz as a non-resident insurance producer on or about January 30, 2013.
2. By order dated July 11, 2014, the Utah Insurance Department assessed Kopatz an administrative forfeiture of \$500 for failure to respond to inquiries from the Utah Department.
3. On or about September 4, 2014, the Iowa Insurance Commissioner revoked Kopatz's Iowa insurance producer license.
4. On or about November 25, 2014, the Kansas Department of Insurance revoked Kopatz's Kansas insurance producer license.
5. On or about December 9, 2014, the Delaware Department of Insurance revoked Kopatz's Delaware insurance producer license.
6. On or about March 6, 2015, the Indiana Commissioner of Insurance suspended Kopatz's Indiana insurance producer license.
7. On or about April 20, 2015, the South Dakota Division of Insurance revoked Kopatz's South Dakota insurance producer license.
8. On or about February 17, 2015, the Maine Superintendent of Insurance issued an order revoking Kopatz's Maine insurance producer license effective March 24, 2015.
9. On or about April 14, 2014, the Commonwealth of Virginia State Corporation Commission revoked Kopatz's Virginia insurance producer license.
10. On or about June 24, 2014, the Arkansas Insurance Commissioner revoked Kopatz's Arkansas insurance producer license.
11. On or about July 2, 2015, the West Virginia Insurance Commissioner revoked Kopatz's West Virginia insurance producer license. —
12. Kopatz did not report the administrative actions by any jurisdiction to the Division within 30 days of the final disposition of the matter.

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. Kopatz 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) identifies fourteen specific grounds on which the Commissioner may suspend or revoke a producer's license. The Division identifies §162R (a)(2) and (a)(9) as grounds for revocation of Kopatz's license.

Subsection (a)(2) supports disciplinary action against a licensee for "violating any insurance laws, or violating any regulation, subpoena or order of the commissioner or of another state's insurance commissioner." On its face, the statute does not limit the phrase "any insurance laws" to violations occurring in any specified jurisdiction. The Division relies on the orders entered in the ten administrative actions attached to the OTSC as evidence that Kopatz violated the insurance laws of other jurisdictions.² To the extent, however, that those orders resulted in suspension or revocation of Kopatz's license, as a ground for discipline they are effectively subsumed into subsection (a)(9). Only the Utah administrative action might have independent evidentiary value as support for disciplinary action against Kopatz pursuant to subsection (a)(2).³

Subsection (a)(9) supports disciplinary action when another jurisdiction has revoked or suspended an insurance producer's license. The evidence submitted by the Division, copies of orders issued by Iowa, Kansas, Delaware, Indiana, South Dakota, Maine, Virginia, Arkansas and West Virginia revoking or suspending Kopatz's insurance producer license in each of those jurisdictions, supports disciplinary action under that section. I find that the prior revocation or suspension of producer licenses in nine jurisdictions fully warrants revocation of his Massachusetts license.

2. The Division does not allege that any violations of Massachusetts insurance law support disciplinary action against Kopatz pursuant to G.L. c. 175, §162R (a)(2).

3. The Utah decision, described by that jurisdiction as an Informal Agency Action, assessed Kopatz a \$500 administrative forfeiture for failure to respond to an inquiry from the Commissioner and advised him that failure to obey might subject him to further penalties, including license suspension or revocation. It is insufficient to support disciplinary action pursuant to c. 175, §162R (a)(2).

G.L. c. 175, §162V (a), requires a Massachusetts licensee to report to the Commissioner any administrative action taken against him or her by another jurisdiction. The record fully supports a conclusion that Kopatz did not report to the Division the administrative actions initiated in ten jurisdictions, and that he thereby violated G.L. c. 175, §162V (a).

The Division seeks relief in the form of fines for what it refers to as “violations” of G. L. c. 175, §162R (a)(2) and (a)(9). Section 162R (a) permits the Commissioner to levy a civil penalty in accordance with G.L. c. 176D, §7 for reasons that support disciplinary action under that statute. Past decisions in administrative hearings seeking license revocation have distinguished reasons for disciplinary action that arise from affirmative acts committed by the licensee from those that arise from administrative or judicial actions by third parties against the licensee.⁴ Further, it has been found that imposing fines for violations of another state’s statutes that were resolved in that jurisdiction would unfairly penalize the Massachusetts licensee.⁵ Because the grounds for disciplining Kopatz under §162R (a) are based entirely on administrative actions against him by other jurisdictions, I find no basis for imposing fines on him.

The Division also seeks fines for Kopatz’s violations of G.L. c. 175, §162V (a). Because that section does not specify a penalty for non-compliance with its requirements, violations of the section are therefore subject to fines authorized under G. L. c. 175, §194. The maximum fine allowed under that section is \$500 per violation. I find that Kopatz committed ten violations of G. L. c. 175, §162V (a) and impose the maximum fine of \$500 for each.

On this record, I find that, in addition to revocation of his license, Kopatz should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and be required to dispose of any interests he may have in any insurance business in Massachusetts.

ORDERS

Accordingly, after due notice, hearing and consideration it is

⁴ See, *Division of Insurance v. Russell*, Docket No. E2015-09, 6.

⁵ See, *Division of Insurance v. Austin*, Docket No E2014-11, 6.

ORDERED: That any and all insurance producer licenses issued to Christopher J. Kopatz by the Division are hereby revoked; and it is

FURTHER ORDERED: that Christopher J. Kopatz shall return to the Division any licenses in his possession, custody or control; and it is

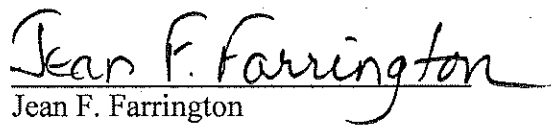
FURTHER ORDERED: that Christopher J. Kopatz shall cease and desist from the conduct that gave rise to this Order to Show Cause; and it is

FURTHER ORDERED: that Christopher J. Kopatz 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 Christopher J. Kopatz 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 Christopher J. Kopatz shall pay a fine of Five Thousand Dollars (\$5,000) to the Division within 30 days of the entry of this order.

This decision has been filed this 27th day of January 2017, in the office of the Commissioner of Insurance. A copy shall be sent to Kopatz by regular first class mail, postage prepaid.


Jean F. Farrington
Presiding Officer

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