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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Nadine A. Petrarca, Respondent

Docket No. E2017-07

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

Introduction and Procedural History

On March 23, 2017, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Nadine A. Petrarca (“Petrarca”), who was first licensed as a Massachusetts non-resident insurance producer on or about March 30, 2009. The Division alleges that on July 21, 2015, the Kentucky Insurance Department revoked Petrarca’s insurance producer license in that state. It further alleges that in 2016 three other jurisdictions, Washington, Virginia and South Dakota, revoked Petrarca’s insurance producer licenses and one jurisdiction, Georgia, suspended her license. The Division alleges that Petrarca did not report these administrative actions to the Division within the time period prescribed in M. G. L. c. 175, §162V (a) (“§162V (a)”)¹.

The Division contends that the allegations in the OTSC support revocation of Petrarca’s Massachusetts producer license pursuant to the provisions of M.G.L. c. 175, §162R (a). The Division also asks that Petrarca be fined for failing to report the administrative actions to the Division on a timely basis as she is obligated to do so. In addition to revocation of Petrarca’s license, the Division seeks orders that, among other things, require her to dispose of any

¹ Chapter 175, §162V prescribes a reporting obligation; failure to comply is not, itself, a basis for disciplinary action.

insurance-related interests in Massachusetts, prohibit her from conducting any insurance business in the Commonwealth, and require her to surrender her license to the Division.

Petrarca filed no answer or other response to the OTSC. On April 27, 2017, the Division filed a motion for entry of default and summary decision. An order entered on April 28, 2017 setting a date for responding to the Division's motion and scheduling a hearing on the motion for May 9, 2017. Neither Petrarca nor any person representing her attended the hearing.

Finding of Default

According to the certificate of service submitted with the OTSC, the Division served it on Petrarca by certified United States mail sent to her mailing and residential address shown on the Division's producer licensing records, 1140 Main Avenue, Warwick, RI 02886 and to her business address as shown on those records, 10 Amica Center Blvd, Lincoln, RI 02865. Copies were also sent by regular first-class mail, postage prepaid, to Petrarca at those addresses. On April 27, 2017, the Division filed a Motion for Entry of Default and Summary Decision, on the grounds that Petrarca had failed to answer the OTSC within 21 days of receiving it. The Division attached to its motion copies of an undated green card returned by the Postal Service signed by Carolyn Petrarca and a Postal Service tracking order indicating that the certified mail was delivered on March 27, 2017. In its Motion, the Division's counsel, Robert J. Kelly, also reported that he had received a telephone call from Petrarca on April 10, 2017, in which she acknowledged receipt of the OTSC and Notice of Action.

Petrarca did not file an answer or other response to the OTSC. I find that her failure to answer the OTSC or otherwise to respond to the Motion, and her failure to appear at the hearing warrant findings that she is in default. By her default, Petrarca has waived her 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 and the Motion for Summary Decision, and the exhibits attached to them. The exhibits attached to the OTSC consist of the decisions in administrative actions initiated against Petrarca by the states of Kentucky, Washington, Georgia, South Dakota, and the Commonwealth of Virginia. The exhibits to the Motion confirm that the OTSC was served on Petrarca.

Findings of Fact

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

1. The Division first licensed Petrarca as a non-resident insurance producer on or about March 30, 2009.
2. On July 21, 2015, the Kentucky Department of Insurance revoked Petrarca's non-resident insurance agent license.
3. On January 20, 2016, the Washington Insurance Commissioner revoked Petrarca's insurance producer license effective February 9, 2016.
4. On June 17, 2016, the Georgia Commissioner of Insurance suspended Petrarca's non-resident agent license, effective July 8, 2016.
5. On June 27, 2016, the State Corporation Commission of the Commonwealth of Virginia revoked Petrarca's non-resident insurance agent license.
6. On December 28, 2016, the South Dakota Division of Insurance revoked Petrarca's non-resident insurance producer license.
7. Petrarca failed to report the administrative actions in Kentucky, Washington, Georgia Virginia and South Dakota to the Division.

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. Petrarca 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)(9) as the ground for revocation of Petrarca's license.

Subsection 162R (a)(9) supports disciplinary action when an insurance producer's license has been revoked or suspended in another jurisdiction. The orders issued in the Kentucky, Washington, Virginia and South Dakota administrative actions revoked Petrarca's insurance license in each of those states; Georgia suspended her license. Those decisions fully support disciplinary action under §162R (a)(9). The Division also seeks civil penalties in accordance with G.L. c.176D, §7 ("Section 7 fines"), as permitted under §162R (a) for Petrarca's alleged violations of Massachusetts law. Decisions in administrative proceedings seeking license revocation distinguish grounds for disciplinary action that arise from the respondent's

affirmative acts from grounds arising from administrative or judicial actions initiated by third parties to revoke or suspend the respondent's license. Because the ground on which the Division seeks to discipline Petrarca under §162R (a) is based entirely on administrative actions against her by other jurisdictions, I find no basis for imposing Section 7 fines on her.²

The number and nature of the events that the Division cites as support for disciplinary action against Petrarca fully warrant its request to revoke her Massachusetts producer license. I find that, in addition to revocation of her license, Petrarca should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and should be required to dispose of any interests she may have in any insurance business in Massachusetts.

The Division also requests fines for each of Petrarca's specific violations of G.L. c. 175, §162V (a), failure to report five administrative actions to the Division. 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. Petrarca's failure to report those administrative actions effectively enabled her to avoid any enforcement action in the Commonwealth for almost two years. For that reason, I will impose the maximum penalty of \$500 for each of Petrarca's five failures to report an administrative action.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Nadine A. Petrarca by the Division are hereby revoked; and it is

FURTHER ORDERED: that Nadine A. Petrarca shall return to the Division any licenses in her possession, custody or control; and it is

FURTHER ORDERED: that Nadine A. Petrarca 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 Nadine A. Petrarca 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 Nadine A. Petrarca shall pay a fine of Two Thousand Five Hundred Dollars (\$2,500) to the Division within 30 days of the entry of this order.

² See, Division of Insurance v. Russell, Docket No. E2015-09, 6; Division of Insurance v. Kopatz, Docket No. E2016-05, 5.

This decision has been filed in the office of the Commissioner of Insurance this 24th day of November 2017. A copy shall be sent to Nadine A. Petrarca 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.