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COMMISSIONER OF INSURANCE

J. Edward Surette, III, Petitioner
v.
Division of Insurance, Respondent
Docket No. E2013-10

Order on Respondent's Motion to Dismiss
Or for Summary Decision

Introduction and Procedural History

On or about June 27, 2013, J. Edward Surette, III ("Surette") filed with the Division of Insurance ("Division") a Notice of Claim for an adjudicatory proceeding ("Notice of Claim.") He requested a hearing on a decision by the Division's Director of Producer Licensing ("Director") in her June 7, 2013 letter ("the Denial Letter") denying his application for a Massachusetts individual insurance producer license. A Notice of Procedure instructing the Division to file an answer and an order scheduling a prehearing conference were issued on June 27, 2013.

On July 12, 2013, the Division filed its answer to Surette's Notice of Claim; that answer consisted of copies of the Denial Letter, Surette's application for a producer license, which included a summary of the facts supporting an Order of Indefinite Suspension ("OIS") entered by the Supreme Judicial Court on June 30, 2010, an Order of Public Reprimand issued by the Board of Bar Overseers on April 28, 2009 and the OIS issued by the Supreme Judicial Court on June 30, 2010. The Division identified these documents as exhibits that it would introduce at any hearing.

The prehearing conference took place as scheduled on July 23, 2013. Mary Ellen Thompson, Esq. represented the Division, while Surette appeared *pro se*. Surette did not dispute the facts relating to his suspension from the practice of law that the Director, in the Denial Letter, specified as the grounds for her decision. Because no facts were in dispute, the parties agreed that no evidentiary hearing was required and that the matter could be resolved on summary decision. They further agreed to submit memoranda of law on the issues and to rely, in preparing those memoranda, on a record consisting of the documents that the Division submitted as its answer. A briefing schedule, set at the prehearing conference, required Surette to file his memorandum by August 6, 2013, and the Division to file its memorandum by August 23, 2013.

Surette did not file a memorandum on August 6, 2013, and did not request a continuance of the filing date. On August 20, 2013, the Division moved to dismiss this matter for failure to prosecute or, in the alternative, to enter summary decision in its favor. An order issued that same day requiring Surette to file any written response to the Division's motion by September 3, 2013. He failed to do so, and did not ask to continue the response date.

Discussion

The Division offers two alternative procedural grounds for resolving this appeal: a motion to dismiss for failure to prosecute and a motion for summary decision. The first is based on Surette's failure to comply with an order to submit a memorandum of law by August 6, 2013 and his subsequent failure to respond to the Division's motion to dismiss or for summary decision.¹ The second ground reviews the record and addresses the merits of the Director's decision denying Surette's application for an insurance producer license. Because a decision on the motion for summary decision has the salutary benefit of offering guidance for future licensing matters, I have elected to decide that motion.

Pursuant to 801 CMR 1.01 (7)(h), summary decision is appropriate when a party to an adjudicatory proceeding is of the opinion that there is no genuine issue of fact relating to all or part of a claim or defense and he is entitled to prevail as a matter of law. Surette did not dispute the factual record that he provided as part of his license application and which the Director relied on in reaching her decision. I find that there is no genuine issue of material fact that precludes summary decision in this matter.

The Denial Letter states that the Director denied Surette's application pursuant to Massachusetts General Laws Chapter ("Chapter") 175, §162R(a)(8), which authorizes the

¹ The procedure for dismissal for failure to prosecute is set out in 801 CMR 1.01 (7)(g)(2).

Commissioner of Insurance (“Commissioner”) to deny a license to an applicant who has been shown to have been “using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth...” The Director explained that her conclusion was based on a review of Surette’s entire application, including the OIS issued by the Supreme Judicial Court on June 30, 2010.² Specifically, the Director wrote that the Supreme Judicial Court found that Surette had intentionally misused for personal or business at least \$71,000 in funds held by a trust of which Surette was a trustee, that he had received a public reprimand in 2009 for failure to deliver trust funds to a person entitled to receive them, and failed to cooperate with bar counsel in its investigation. She also stated that the Division identified a similar lack of cooperation with orders of the Massachusetts Probate and Family Court requiring Surette to transfer funds and to appear in Court.

It is self-evident that the events that resulted in Surette’s suspension from the practice of law occurred in the context of conducting business as an attorney. Evidence that a licensed insurance broker or producer has converted funds entrusted to that licensee has consistently resulted in revocation of the license.³ Pursuant to Chapter 175, §162R (a), such evidence is an equally sound basis for denying a license application.

Surette submitted a statement dated May 10, 2013 with his producer license application, in which he acknowledged that he had been suspended from the practice of law. In his Notice of Claim, he acknowledged that the suspension was the basis for denying his license application.⁴ Surette further commented in the May 10, 2013 statement that once the issue [of personal use of trust funds] arose, he never attempted to conceal the amount and that the amounts were paid back in full. On the Notice of Claim, Surette wrote that he had learned a lesson, abided by the restrictions imposed by the Court, and that his prospective employer supported his application. To the extent that Surette sought by these statements to mitigate the impact of his suspension on his eligibility for a producer license, he failed to provide supporting documentation with his

² Although the Director refers to the Order of Indefinite Suspension, the document that Surette submitted with his application is the Summary of the OIS (“OIS Summary”) compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court. The OIS Summary chronicles the events that supported the OIS, while the OIS itself, Exhibit D to the Division’s answer, imposes the suspension and instructs Surette on what he must to do comply with the suspension.

³ See *Division of Insurance v. Burbridge*, DOI Docket No. E95-05 (1995); *Division of Insurance v. Gilman*, DOI Docket No. E2005-02 (2005); *Division of Insurance v. Kilcommons*, DOI Docket No. E2003-08 (2003); *Division of Insurance v. Gahan*, DOI Docket No. E2012-03 (2012).

⁴ In his May 10, 2013 correspondence, Surette refers to a five year suspension. Neither the OIS Summary nor the OIS includes a termination date for the suspension.

application or to present any legal argument addressing the relevancy of his statements to a decision on his application.

Surette identified no error in the Director's decision denying his license application on the Notice of Claim, and offered no other basis for setting aside her decision. He indicated that he would submit a more detailed separate memorandum of his reasons for appealing that denial. He confirmed that intent at the prehearing conference, but failed to do so.

Conclusion and Order

After careful review of the record in this matter, I find that the record fully supports the Director of Producer Licensing's determination that J. Edward Surette, III, in the course of conducting business as an attorney at law, engaged in actions that, pursuant to Chapter 175, §162R (a)(8), disqualify him from licensure as insurance producer. The Division's Motion for Summary Decision affirming the Director's decision is hereby allowed.

DATED: October 10, 2013

Jean F. Farrington
Presiding Officer

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