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**Division of Insurance, Petitioner**  
**v.**  
**Melissa Leeanne Pell, Respondent**  
**Docket No. E2004-29**

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

***Introduction and Procedural History***

On November 17, 2004, the Massachusetts Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Melissa Leeanne Pell (“Pell”), who is currently licensed as a non-resident individual producer. The Division seeks orders that Pell has violated G.L. c. 175, §§162R and 162V (a) and (b), and c. 176D, §§2 or 3. It asks for revocation of her license, an order requiring her to dispose of any insurance-related interests in Massachusetts, and imposition of fines for the alleged violations.

The Division alleges that in 2000 and 2002 Pell was prosecuted in West Virginia on “worthless check” charges, and in July 2003 was assessed court costs and fees. In May 2003, Ms. Pell submitted an application for a Massachusetts Transitional Individual Producer License. Question 2 on the form asks if the applicant has “ever been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld.” Ms. Pell answered “no” to that question, even though criminal charges were pending against her at that time. The Division further alleges that, in September 2003, the Kentucky Department of Insurance imposed a civil penalty on Pell for failure to disclose the criminal charges on a non-resident license application to that state, and that in May

2004, the Virginia State Corporation Commission revoked Pell's insurance license for failure to report to it the disposition of the Kentucky administrative action. The Division asserts that Pell did not notify the Massachusetts Commissioner of Insurance ("Commissioner") of the disposition of either the Kentucky or Virginia administrative action within thirty days of its completion.

A Notice of Procedure ("Notice") was issued on November 19, advising Pell that a prehearing conference would take place on January 4, 2005 and that a hearing on the OTSC would be held on January 20, 2005, both at the offices of the Division. It further advised her that the hearing 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 Pell to file an answer pursuant to 801 CMR 1.01(6)(d) and that, if she 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 Pell that, if she failed to appear at the prehearing conference or hearing, an order of default, summary decision or decision on the pleadings might be entered against her. The Commissioner designated me as presiding officer for this proceeding.

On November 22, the Division sent the Notice and OTSC by certified mail to respondent at two mailing addresses appearing on the Divisions records: a business and mailing address of 300 8<sup>th</sup> Street, Huntington, W. Va. and a residential address of 1514 Maple Street, Kenova, W. Va. The post office returned to the Division a green receipt for the certified mail sent to the Kenova residential address; the date on the receipt showed that it had been received on November 26. No receipt was returned for the mail sent to the Huntington address, and the letter itself was not returned to the Division. Pell filed no answer or other responsive pleading to the OTSC.

On January 4, a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Because Douglas Perry, Esq., the attorney of record for the Division was unavailable, Douglas Hale, Esq. appeared for the Division. Neither Pell nor any person representing her appeared. Mr. Hale reported that Mr. Perry had received no communication from the respondent or from any person purporting to represent her and submitted, on Mr. Perry's behalf, a motion for decision on the pleadings. On January 4, an order issued advising Pell to file any response to the motion by January 18, and stating that any argument on the

motion would be heard on January 20 at the time set for the evidentiary hearing. Pell filed no response to the motion, and failed to appear at the January 20 hearing. Mr. Perry stated that he had received no communication from Pell or any person representing her.

### ***Finding of Default***

On the basis of the record before me, I conclude that the Division took appropriate actions to ensure proper service, and that sufficient service was made.<sup>1</sup> The OTSC and Notice were sent to Pell at two addresses in the Division's licensing records, which incorporate information on license applications. The Huntington, W. Va. address is shown as her business and mailing address and the Kenova, W. Va. address as her residential address. The OTSC and Notice sent to Pell's residential address were signed for by a person with Pell's surname. The copy of the motion for decision on the pleadings sent to that address was not returned. I conclude that Pell's failure to answer the OTSC or to respond to the Division's motion, and her failure to appear at the prehearing conference or at the hearing warrant findings that she is in default. By her default, Pell has waived her 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***

On the basis of the record, consisting of the OTSC, I find the following facts:

1. Respondent Melissa Pell was first licensed in Massachusetts as an individual insurance agent on or about February 21, 2001. Her license was converted to a Massachusetts producer license effective June 24, 2003. In connection with that conversion, on or about May 20, 2003 she submitted a Massachusetts Application for a Transitional Individual Producer License (the "Application").

2. On or about December 1, 2000, and again on or about August 30, 2002, Pell was arrested in West Virginia on charges of passing worthless checks. She was prosecuted in Wayne County, West Virginia and assessed court costs and fees in July 2003.

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<sup>1</sup> I note that G.L. c. 175, §174A provides that notices of hearings in matters involving revocation of licenses "shall be deemed sufficient when sent postpaid by registered mail to the last business or residence address of the licensee appearing on the records of the commissioner. . . ." This section, however, does not require that notices of hearing must be sent by registered mail; nor does it provide that registered mail is the only method of service, which may be found to be sufficient.

3. Pell answered "No" to Question 2 on the Application, which asked if she had ever been convicted of or was currently charged with committing a crime. At the time, Pell had been charged twice with passing worthless checks.

4. On or about September 24, 2003, the Kentucky Department of Insurance assessed a \$500 civil penalty against Pell for answering "no" to a question on her non-resident license application to that state that asked about current or past criminal charges, when the charges were pending in West Virginia.

5. Pell did not notify the Commissioner of the Kentucky assessment within 30 days of the disposition of the Kentucky administrative action.

6. On or about May 12, 2004, the Virginia State Corporation Commission revoked Pell's insurance license for failure to report to it the disposition of the Kentucky administrative action.

7. Pell did not notify the Commissioner within 30 days of the disposition of the Virginia administrative action.

### ***Analysis and Conclusions of Law***

801 CMR 1.01 (7) (h) allows a party, when he or she is of the opinion that there is no genuine issue of fact relating to a claim, and that he or she is entitled to prevail as a matter of law, to file a motion for summary decision, with or without supporting affidavits. The Division's motion for decision on the pleadings notes that respondent failed to file an answer to the OTSC within the time prescribed by the Standard Adjudicatory Rules of Practice and Procedure and failed to appear at any of the scheduled prehearing conferences. As noted above, respondent's failure to comply with the directives in the Notice warrant a finding that she is in default. No genuine issue of fact has been raised in connection with the Division's claims. I find that it is entitled to prevail as a matter of law.

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 for reasons that include, in pertinent part: (1) providing incorrect, misleading, incomplete or materially untrue information in the license application; (2) violating any insurance laws; (3) obtaining a license through misrepresentation or fraud; (8) demonstrating financial irresponsibility in the conduct of business in the Commonwealth or elsewhere; and (9) revocation of a producer's license by any other state. G.L. c. 175, §162V requires a Massachusetts licensed producer to report to the Commissioner any disciplinary taken by another state and any criminal prosecution.

Based on the above findings of fact, I conclude that the Commonwealth of Virginia revoked Pell's insurance producer license in May 2004, and that such revocation is grounds for revocation of her Massachusetts producer license. I conclude that Pell was obligated by G.L. c. 175, §162V to report both the Virginia license revocation and the outcome of an administrative action taken by the Kentucky Department of Insurance in September 2003 to the Commissioner, and that her failure to do so violates Massachusetts law. Her failure to report her criminal history on an application for a transitional producer license violates c. 175, §162R (a), subsections (1), (2) and (3). Further, the criminal violation, passing worthless checks, demonstrates financial irresponsibility, and provides an additional ground for license revocation. I further conclude, pursuant to G. L. c. 176D, §2, that failure to provide correct information on a license application is an unfair and deceptive practice in the business of insurance.

I find, on this record, that the Massachusetts producer license issued to Melissa Leeanne Pell should be revoked, and that a fine should be imposed for each violation of the statute. The maximum fine permitted by statute is \$1,000 per violation. The allegations in the OTSC indicate that Ms. Pell has committed three acts that violate Massachusetts insurance laws: 1) failure to report her criminal history on her license application; 2) failure to report the Virginia action; and 3) failure to report the Kentucky action. I will therefore impose a total fine of \$3,000.

## **ORDERS**

Accordingly, after due notice, hearing and consideration it is

**ORDERED:** That any and all insurance producer licenses issued to Melissa Leeanne Pell by the Division are hereby revoked; and it is

**FURTHER ORDERED:** that Melissa Leeanne Pell shall return to the Division any licenses in her possession, custody or control; and it is

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

**FURTHER ORDERED:** that Melissa Leeanne Pell shall pay a fine of Three Thousand Dollars (\$3,000) to the Division.

This decision has been filed this first day of February 2005, in the office of the Commissioner of Insurance. A copy shall be sent to Pell by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

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Jean F. Farrington  
Presiding Officer

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