
Division of Insurance, Petitioner
v.
**Michael Francis Napadow, Nations Hazard Insurance
Company, and Nations Hazard Insurance Agency,
Respondents**

Docket No. E2004-21

Order on Motion for Summary Decision

Introduction and Procedural History

On October 22, 2004, the Massachusetts Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Michael Francis Napadow (“Napadow”), the Nations Hazard Insurance Company (“NHIC”) and the Nations Hazard Insurance Agency (“NHIA”) (collectively, the “Respondents”). The Division alleges that Napadow, who has been licensed in Massachusetts as a non-resident insurance producer since September 9, 2003, represented to a Massachusetts resident that he was insured for general liability and errors and omissions through a company that did not offer such coverage, and that Napadow ultimately provided to the consumer a policy issued by NHIC, which is not licensed or authorized to do business in Massachusetts. Further, the Division asserts, Napadow did not report to the Massachusetts Division that, since 2003, six states have ordered Napadow and NHIC to cease and desist from engaging in the insurance business, or that Illinois revoked Napadow’s producer license and NHIA’s registration.

The Division seeks orders that Respondents NHIC and NHIA have violated G.L. c.175, §175 and G.L. c. 176D, §§2 and 3, that NHIC has violated G.L. c. 175, §3 and that Napadow has violated G.L. c.175, §§162R(a), 162V, and 175, as well as G.L. c. 176D, §§2 and 3. It asks the Commissioner to revoke Napadow's license, prohibit all Respondents from directly or indirectly transacting any insurance business in Massachusetts, and impose fines.

The Commissioner designated me as presiding officer for this proceeding. A Notice of Procedure ("Notice") was issued on October 26, 2004, advising Respondents that a prehearing conference and a hearing on the OTSC would be held on November 29 and December 20, 2004, respectively, at the offices of the Division, and that the proceeding 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 Respondents to file answers pursuant to 801 CMR 1.01(6)(d) and that, if they 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 Respondents that, if they failed to appear at the prehearing conference or hearing, an order of default, summary decision or decision on the pleadings might be entered against them.

On October 26, 2004, the Notice and OTSC were sent by certified mail, return receipt requested, to each of the Respondents at the address in West Dundee, Illinois, that Napadow listed as his home, business and mailing address on his producer license application. It is also, according to the policy form provided to a Massachusetts consumer, the address for NHIC and, as shown on an order issued by the Illinois Department of Insurance, the address for NHIA. A second copy was sent to Respondents at that address by regular first-class mail, postage prepaid. At the prehearing conference on November 29, Douglas A. Hale, Esq., counsel for the Division, filed an affidavit regarding its attempts to serve the Respondents. He stated that the Post Office had returned all mail sent to the West Dundee address with the notation that a forwarding order had expired. The Division had also sent additional copies of the OTSC and Notice to the Respondents at two addresses in Elgin, Illinois, the first in care of the Napslo

Holding Company and the second directly to a street address.¹ The Post Office returned those documents as well, noting that the first was undeliverable as addressed and that the forwarding order on the second had expired.

None of the Respondents filed an answer to the OTSC or other responsive pleading. On December 2, the Division filed a motion for summary decision. By order dated December 3, Respondents were ordered to file responses to that motion by December 17, and were notified that argument on the motion would be heard on December 20. The order was sent to the Respondents by first class mail, postage prepaid, and has not been returned to the Division.

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. Copies of the OTSC and Notice were sent to all Respondents at Napadow's address of record with the Division, that shown on his non-resident producer license application, which is also the address of NHIC and NHIA.² I conclude that Respondents' failure to answer the OTSC or to respond to the Division's motion, and their failure to appear at the scheduled prehearing conferences or at the hearing, warrant findings that they are in default. By their default, Respondents have waived their rights to proceed further with an evidentiary hearing in this case and I may consider the Division's Motion for Summary Decision based solely upon the OTSC and the documents attached to it.

Findings of Fact

The OTSC and eight attached exhibits constitute the record before me. The exhibits consist of copies of the following documents: Exhibit A) Napadow's application for a Massachusetts non-resident producer's license dated July 18, 2003; Exhibit B) three documents sent to an investigator for the Division, consisting of correspondence from a

¹ The check accompanying Napadow's application for a Massachusetts producer license was drawn on a Napslo Holding Company account and is signed Michael Napadow. Napslo's address is the same as that shown for Stephen Napadow who, together with Michael Napadow, was the target of enforcement actions in Illinois and Colorado.

² 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.

consumer, a certificate of insurance purporting to insure the consumer's home inspection business, and an e-mail communication to the consumer from the Hartford Financial Group; Exhibit C) correspondence from the consumer to the Division's investigator and a policy issued by NHIC; Exhibit D) a cease-and-desist order issued on July 22, 2003 against NHIC, Napadow, Stephen C. Napadow and Jeffery M. Napadow; Exhibit E) an emergency order issued by the Colorado Division of Insurance against NHIC and Napadow, dated October 20, 2003; Exhibit F) a page from the regulatory activity report of the Arizona Department of Insurance reporting entry of a cease-and-desist order against NHIC and Napadow on December 22, 2003; Exhibit G) records of the Illinois Department of Insurance relating to administrative enforcement actions against Napadow, NHIC, NHIA, Stephen Napadow and Jeffrey Napadow; and Exhibit H) a list of 2004 enforcement actions taken by the Mississippi Department of Insurance showing that it issued cease-and-desist orders against Napadow and NHIC on June 2, 2004.

On the basis of that record, I make the following findings:

1. Napadow applied for a Massachusetts non-resident insurance producer's license in July 2003, and obtained such license effective September 9, 2003. His license application lists his employment as president of NH Company.

2. On September 22, 2003, Napadow sent to a Massachusetts consumer, the owner of a home inspection business, by facsimile, a certificate of commercial general liability and errors and omissions insurance that identified three insurers. Insurer A was the Hartford Casualty Insurance Company and Insurer B was NHIA. The certificate also showed the NHIC and Michael Napadow as producers of the coverage.

3. The consumer contacted the Hartford to "check out" the new policy and was informed that Hartford does not write errors and omissions coverage for home inspectors and that the Hartford's corporate database did not show the consumer's business as an insured.

4. The consumer received a general liability and errors and omissions policy showing the NHIC, with an office address in West Dundee, Illinois, as the insurer.

5. The endorsement on a check issued to NHIC by a Colorado consumer identifies NHIC as a division of the NH Company, of which Napadow is president.

6. NHIC issued an insurance policy to a Massachusetts consumer when it was not authorized to conduct business in Massachusetts. Furthermore, the Illinois Department of Insurance had not licensed or authorized NHIC to participate in the insurance business in any capacity in that state.

7. NHIA was not authorized to act as an insurance company or an insurance agency in Massachusetts.

8. On July 23, 2003, the Insurance Commissioner for the State of Washington ordered Napadow and NHIC to cease and desist from insurance activity in that jurisdiction. The order indicated that NHIC and Napadow had solicited purchases of insurance without authority to do so.

9. On October 10, 2003, the Colorado Division of Insurance issued an *ex parte* emergency order against NHIC and Napadow, ordering them to cease and desist from the unauthorized transaction of the business of insurance in that state.

10. On December 22, 2003, the Arizona Department of Insurance ordered Napadow and NHIC to cease and desist from the unauthorized transaction of insurance in that state.

11. The Nevada Division of Insurance ordered Napadow and NHIC to cease and desist from all insurance activity in Nevada effective January 21, 2004. Napadow and NHIC were soliciting insurance business there without a license or certificate of authority to do so.

12. The Illinois Department of Insurance revoked Napadow's producer license and the NHIA's registration as an insurance agency, effective March 24, 2004. On December 10, it made permanent an order requiring NHIC to cease and desist from the unauthorized transaction of insurance business in Illinois.

13. On June 2, 2004, the Mississippi Department of Insurance ordered Napadow and NHIC to cease and desist from the unauthorized transaction of business in that state.

14. Napadow did not report revocation of his license to the Massachusetts Division of Insurance.

Analysis and Conclusions of Law

On the basis of these findings of fact, I allow the Division's motion for summary decision on counts One through Four, which seek relief against Napadow individually,

for violations of G. L. c. 175, §§162R and 162 V, and G.L. c. 176D, §§2 and 3, and on counts Five through Seven, which seek relief against NHIC for violations of G.L. c. 175, §175 and G.L. c. 176D, §§2 and 3. I deny it, in part, on Claims Eight through Ten, which seek relief against NHIA for violations of G.L. c. 175, §175 and G.L. c. 176D, §§2 and 3. My conclusions of law with respect to each Respondent follow.

Based on the record, I find that Napadow's actions violated G.L. c. 176D, §§2 and 3. Napadow caused to be delivered in Massachusetts a certificate of liability insurance that misrepresented the name of one insurer, the Hartford Casualty Insurance Company, and identified a second insurer as the NHIA. The certificate also names NHIC as the producer of the policy. I conclude that the certificate of insurance misrepresented the status of the Hartford, of the NHIA and of the NHIC. The provision of such false information violates G.L. c. 176D, §3(2). In addition to the certificate of insurance, I am persuaded that it is more likely than not that Napadow also caused the NHIC policy to be delivered to a Massachusetts consumer. I find that the delivery of a product that is not underwritten by an insurer authorized to do business in Massachusetts is an unfair and deceptive practice in the business of insurance and violates G. L. c. 176D, §2.

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 fourteen specific reasons, that include violations of the insurance laws of any state, using fraudulent or dishonest practices, and denial or revocation of a producer's license by any other state. I find that the record in this case supports the Division's position that Napadow's license is subject to revocation for five of the reasons set out in the statute. The OTSC and the documents attached to it show that six other states have found that Napadow violated their insurance laws and regulations, thus justifying revocation pursuant to §162R (a)(2). The certificate that Napadow caused to be delivered in Massachusetts, by misstating the names of the insurers, intentionally misrepresents the terms of an actual or proposed insurance contract, supporting revocation pursuant to §162R (a)(5). Further, I have found Napadow's actions constitute unfair trade practices, and justify revocation pursuant to §162R (a)(7). The solicitation of business in Massachusetts for an unlicensed insurance company is a fraudulent and dishonest practice; the actions taken by the six states that have ordered Napadow to cease and desist

from conducting unauthorized insurance business indicate that he has demonstrated untrustworthiness elsewhere as well. Such actions support revocation pursuant to §162R (a)(8). In addition, Illinois has revoked Napadow's producer license, an action which permits revocation under §162R (a)(9).

G.L. c. 175, §162V requires a producer to report to the Commissioner any disciplinary taken by another state within 30 days of the final disposition. Napadow's failure to report to the Division any of the six administrative enforcement actions against him in other states is a violation of that statute.

On this record, I find that summary decision is appropriate on all counts of the OTSC relating to respondent NHIC. The certificate of authority shows that NHIC held itself out as an insurance producer in Massachusetts without having authority to do so, in violation of G.L. c. 175, §175. I conclude that providing such false information is a violation of c. 176D, §3(2). Further, the policy delivered in Massachusetts demonstrates that NHIC held itself out as an insurer when it had no authority to conduct business in Massachusetts. I find that such conduct is an unfair or deceptive practice in the business of insurance that violated c. 176D, §2. NHIC also delivered or issued for delivery in Massachusetts a policy that had not been previously filed, as required under G.L. c. 175, §2B. Failure to comply with G.L. c. 175, §2B is, pursuant to G.L. c. 176D, §3(12), an unfair and deceptive practice in the business of insurance.

The record does not support the Division's specific claims against NHIA. NHIA was not licensed as a producer in Massachusetts; it appears in this record only as an entity listed as an insurance company on the certificate of authority that Napadow sent to a Massachusetts consumer. The certificate does not demonstrate that NHIA held itself out as a broker or producer, and NHIA's role in soliciting or transacting insurance business in Massachusetts cannot be determined from any other documents in this record. That NHIA was registered in Illinois is not sufficient to permit a conclusion that it was acting as a producer in the Commonwealth. On this record, then, I do not find that NHIA affirmatively held itself out to the public in Massachusetts as a licensed producer in a manner that would support a conclusion that it violated G.L. c. 175, §175, or that it participated in specific activities that would support conclusions that it violated c. 176D. Consequently, I deny the Division's motion for summary decision on the claims that

pertain solely to it. However, even though the evidence is insufficient to support findings of past violations by NHIA of Massachusetts insurance laws, the documents from the administrative proceedings conducted by the Illinois Department of Insurance persuade me that there is a link between NHIA and Napadow; Napadow is described as the licensee and NHIA as a registered business entity at the same address. The harm to be avoided in the future is the unauthorized conduct of an insurance business in Massachusetts by or in the name of NHIA. I find it appropriate, therefore, to prohibit NHIA from engaging in the insurance business in Massachusetts without authority to do so.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: that the Respondents Michael F. Napadow, Nations Hazard Insurance Company and Nations Hazard Insurance Agency are, from the date of this order, prohibited from directly or indirectly transacting any insurance business, acquiring any insurance business, or participating in any capacity in the insurance business in the Commonwealth of Massachusetts; and it is

FURTHER ORDERED: that all licenses issued to Michael F. Napadow are hereby revoked; and it is

FURTHER ORDERED: that Michael F. Napadow shall submit all insurance-related licenses issued by Massachusetts that are in his possession, custody or control to the Division within ten (10) days of this order; and it is

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

FURTHER ORDERED: that Michael F. Napadow shall pay a fine of \$1,000 for each of four violations of G.L. c. 176D and \$1,000 for each of six violations G.L. c. 175, §162V, for a total fine of \$10,000; and it is

FURTHER ORDERED: that the Nations Hazard Insurance Company shall, pursuant to G.L. c. 176, §7, pay a fine of \$1,000 for each violation of c. 176D, for a total fine against it of \$3,000; and it is

FURTHER ORDERED that Napadow and Nations Hazard Insurance Company shall pay any and all amounts due or that may become due on claims from Massachusetts residents that were or are covered under any policy of insurance issued in the name of Nations Hazard Insurance Company or Nations Hazard Insurance Agency.

This decision has been filed this 18th day of January 2005, in the office of the Commissioner of Insurance. Copies shall be sent to Michael F. Napadow, the Nations Hazard Insurance Company and the Nations Hazard Insurance Agency by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

Jean F. Farrington
Presiding Officer

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