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COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Jeffrey B. Cohen, Respondent
Docket No. E2016-03

Order on Petitioner's Motion for Summary Decision

Introduction and Procedural History

On March 11, 2016, the Division of Insurance filed an Order to Show Cause ("OTSC") against Jeffrey B. Cohen ("Cohen"), who is licensed as a non-resident Massachusetts insurance producer. The Division alleged that in 2013 Maryland revoked Cohen's insurance producer license and that Washington, Idaho and Vermont had each revoked the non-resident producer license it had issued to Cohen. In addition, the Division alleges that on or about December 14, 2015 Cohen was convicted in the United States District Court for Maryland of wire fraud, aggravated identity theft, making false statements to an insurance regulator and obstruction of justice.

The Division contends that Cohen is subject to disciplinary action for the reasons set out in M.G.L. c. 175, §162N, §162R (a)(2), (a)(4), (a)(6), (a)(7), (a)(8) and (a)(9), and that his conduct violated M.G.L. c. 176D, §2. It seeks revocation of Cohen's Massachusetts producer license, a cease and desist order, and orders requiring him to dispose of all interests as proprietor, partner, stockholder, officer or employee of any Massachusetts insurance producer, and prohibiting him from engaging in the business of insurance in Massachusetts in any capacity.

On March 11, the Division served the OTSC and a notice of action on Cohen by certified United States mail and by regular first-class United States mail addressed to him at the federal correctional institution in West Virginia where he has been incarcerated following his conviction in the United States District Court for Maryland. The receipt for certified mail, signed and dated March 14, 2016, was returned to the Division on March 31, 2016. On April 13, the Division filed a motion for summary decision. An order issued on April 14 instructing Cohen to submit any response to the motion by May 5 and scheduling a hearing for May 10, 2016.¹ Cohen did not respond to the Division's motion.

Neither Cohen nor any person representing him appeared at the May 10 hearing. Robert Kelly, Esq., counsel for the Division in this proceeding, stated that he had not been contacted by Cohen or any person representing him. He moved orally to find Cohen in default. I conclude that service was sufficient and that Cohen's failure to answer the OTSC or to respond to the Division's motion, and his failure to appear at the hearing, warrant findings that he is in default. By his default, Cohen has waived his 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 Motion for Summary Decision

Pursuant to 801 C.M.R. 1.01(7)(h), "[w]hen a Party is of the opinion there is no genuine issue of material fact relating to all or part of a claim or defense and he is entitled to prevail as a matter of law, the Party may move, with or without supporting affidavits, for summary decision . . ." In deciding if summary decision is appropriate, the presiding officer must determine that there is no genuine issue as to any material fact and must then rule as a matter of law. *Caitlin v. Board of Registration of Architects*, 414 Mass. 1, 7 (1992).

The record that is the basis for this decision consists of the OTSC, Exhibits A through G attached thereto, and the Motion for Summary Decision. The exhibits are: A) Information from the United States Department of Justice on Cohen's current address; B) Order from the Maryland Insurance Commissioner, dated August 16, 2013, summarily

¹ Copies of the order were sent to Cohen at the federal correctional institution and to the address in Sparks, Maryland, appearing on the Division's licensing records as his home, business and mailing address. The documents sent to the Maryland address were returned.

suspending Cohen's Maryland insurance producer license, as well as the licenses of insurance agencies of which he was president; C) Order from the Maryland Insurance Commissioner, dated February 19, 2014, revoking Cohen's Maryland producer license and those of his agencies effective August 16, 2013; D) Order from the Insurance Commissioner for the State of Washington, dated December 31, 2013, revoking Cohen's Washington producer license effective January 14, 2014; E) Order from the Director of the Department of Insurance for the State of Idaho, dated March 25, 2014, revoking Cohen's Idaho producer license; F) Order from the Commissioner of the Vermont Department of Financial Regulation, dated July 14, 2014, revoking Cohen's Vermont producer license; G) Docket in *United States v. Cohen*, Criminal Docket for Case #:1:14-cr-00310-GLR-1, United States District Court for Maryland.

Findings of Fact

1. Cohen was licensed as a non-resident Massachusetts insurance producer on or about October 12, 2004.
2. The Maryland Insurance Commissioner summarily suspended Cohen's Maryland resident insurance producer license on August 16, 2013.
3. Cohen appealed the summary suspension.
4. The Maryland Insurance Commissioner issued an order on February 19, 2014 revoking Cohen's resident producer license as of August 16, 2013.
5. The Insurance Commissioner of the State of Washington issued an order on December 31, 2013 revoking Cohen's Washington non-resident producer license effective January 14, 2014.
6. The Director of the Department of Insurance of the State of Idaho issued an order on March 25, 2014 revoking Cohen's non-resident Idaho producer license.
7. The Commissioner of the Vermont Department of Financial Regulation issued an order on July 14, 2014 revoking Cohen's non-resident Vermont insurance producer license.
8. On or about June 24, 2014, Cohen was indicted in the United States District Court for Maryland on counts including wire fraud and making false

statements to an insurance regulator; on or about September 16, 2014, superseding indictments were filed adding additional counts.

9. On December 15, 2015, judgment was entered against Cohen on four counts; he was sentenced to imprisonment for 444 months and ordered to make restitution of \$137,000,000.²

Analysis and Discussion

Chapter 175, §§162G through 162X sets out, among other things, the requirements for obtaining and maintaining a Massachusetts insurance producer license. Section 162N sets out the requirements for licensing non-residents as insurance producers; subsection (a)(1) requires that the person be currently licensed as a resident and in good standing in his or her home state. The Division alleges that Cohen violated §162N when he became ineligible for a Massachusetts producer license when Maryland revoked his resident producer license. I find that Cohen became ineligible for a Massachusetts nonresident producer license, at the earliest on August 16, 2013 and at the latest on February 19, 2014, as a result of the revocation of his Maryland producer license.³ Section 162N, however, does not provide for automatic revocation or suspension of a license by operation of law when the licensee is no longer eligible for appointment as a nonresident producer, nor does it require the licensee to report that he is no longer eligible. On the record in this case, the Division has provided no legal support for its claim that Cohen violated §162N, and I decline to make such a finding.⁴

Chapter 175, §162R (a) specifies fourteen grounds on which the Commissioner may suspend or revoke a producer's license. The Division identifies subsections §162R (a)(2), (a)(4), (a)(6), a(7), (a)(8) and (a)(9) as grounds for revocation of Cohen's license, as well violations of G. L. c. 176D, §2.

²According to Exhibit G, Cohen appealed his conviction to the United States Court of Appeals for the 4th Circuit. That Court's docket indicates that the appeal was dismissed on April 5, 2016.

³ Maryland summarily suspended Cohen's license on August 16, 2013. He appealed and a final decision, revoking his license as of that date, was issued on February 19, 2014. I reach no conclusion on Cohen's status as a licensee during that six month period. It appears that no action was taken in 2014 to terminate his Massachusetts license on the ground that he was no longer licensed in Maryland.

⁴ Even if Cohen's Massachusetts license had expired by operation of law, the Commissioner, pursuant to c. 175, §162R (e) retains the authority to enforce against a licensee the provisions of c. 175, §§162H through 162X and Chapter 176D.

Subsection 162R (a)(2), in pertinent part, permits disciplinary action against a licensee for violating any insurance laws, or any regulation, subpoena or order of the Commissioner or of another state's insurance commissioner. Although the Division alleged that Cohen violated c. 175, §162N, as noted above I find that he did not do so. To support disciplinary action against Cohen under (a)(2), the Division relies on the representations made in decisions issued in the Maryland, Washington, Idaho and Vermont administrative actions. The decision and order issued by each of those jurisdictions specifies the violations of its laws, regulations or administrative orders that underlie the decision to revoke Cohen's license.⁵ I find that those orders support the Division's claim that Cohen may be disciplined pursuant to (a)(2).

Subsection 162R (a)(4) supports disciplinary action if the licensee has improperly withheld, misappropriated or converted funds received in the course of doing insurance business. Subsection 162R (a)(7) supports disciplinary action if a licensee has admitted or been found to have committed any insurance unfair trade practice or fraud. Subsection 162R (a)(8) permits revocation if a producer has used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business. As support for its position that each of these sections is a ground for disciplining Cohen, the Division cites the Maryland orders suspending and revoking Cohen's resident licenses. The February 19, 2014 order, in particular, includes copious information on Cohen's business practices in that state that also underlie the federal prosecution. Cohen did not contest the Maryland allegations or appear in the administrative proceeding. I find that the Maryland order is sufficiently reliable to support disciplinary action against Cohen under (a)(4), (a)(7) and (a)(8).

Subsection 162R (a)(6) supports disciplinary action if the licensee has been convicted of a felony. The Division's claim that Cohen has been convicted of multiple felonies is fully supported by Exhibit G to the OTSC. I find that Cohen may be disciplined pursuant to (a)(6).

Subsection 162R (a)(9) supports disciplinary action if the licensee has had a producer license suspended or revoked in any other state. Exhibits B through F attached

⁵ Although Cohen appealed his Maryland summary suspension, he did not appear in the appeal proceeding, or in any of the other state administrative proceedings to revoke his licenses.

to the OTSC support the Division's claim that Cohen may be disciplined pursuant to (a)(9).

Conclusion

The number and nature of the grounds that the Division cites for taking disciplinary action against Cohen fully warrant its request to revoke his Massachusetts insurance producer license. On this record, I find that, in addition to revocation of his license, Cohen should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and should 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

ORDERED: That any and all insurance producer licenses issued to Jeffrey B. Cohen by the Division are hereby revoked; and it is

FURTHER ORDERED: that Jeffrey B. Cohen shall return to the Division any licenses in his possession, custody or control; and it is

FURTHER ORDERED: that Jeffrey B. Cohen is, from the date of this order, prohibited from directly or indirectly transacting any insurance business in or acquiring, in any capacity whatsoever, any insurance business in the Commonwealth of Massachusetts; and it is

FURTHER ORDERED: that Jeffrey B. Cohen shall comply with the provisions of Chapter 175, §166B and dispose of any and all interests in Massachusetts as proprietor, partner, stockholder, officer or employee of any licensed insurance producer.

This decision has been filed this 15th day of July 2016, in the office of the Commissioner of Insurance. A copy shall be sent to Jeffrey B. Cohen 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