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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Christopher Todd Horn, Respondent
Docket No. E2019-08

Order on Petitioner's Motion for Entry of Default and Summary Decision

On April 10, 2019, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Christopher Todd Horn ("Horn"), a licensed non-resident Massachusetts insurance producer. The Division alleges that, on or about November 15, 2016, Horn pleaded guilty in a Florida court to a felony, manufacture of cannabis, and that, on or about March 19, 2018, Florida revoked Horn's resident producer license. Subsequently, Horn's non-resident producer license was suspended by Arkansas and revoked by South Carolina and South Dakota. The Division alleges that Horn failed to report the administrative actions suspending or revoking his license to the Division within the time limit prescribed in M.G.L. c. 175, §162V(a).

The Division contends that Horn is also subject to disciplinary action for the reasons set out in M.G.L. c. 175, §162R (a)(2), (a)(6) and (a)(9). It seeks revocation of Horn's Massachusetts producer license, a cease and desist order, fines, 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.

The certificate of service filed with the OTSC states that it was served on Horn by certified and United States mail at the home address appearing on the Division's records, 1401 Gulf Blvd, Apt. 202, Clearwater, FL 33767. Copies were also sent to Horn at that

address by regular postpaid United States mail. Horn did not file an answer to the OTSC. On May 24, 2019, the Division moved for an entry of default and summary decision (the "Motion"). On June 26, an order was issued instructing Horn to submit any response to the Motion by July 9 and scheduling a hearing for July 16, 2019. Horn did not respond to the Motion. Neither Horn nor any person representing him appeared at the July 16 hearing. Matthew Burke, Esq., counsel for the Division in this proceeding, stated that he had not been contacted by Horn or any person representing him. Pursuant to M.G.L. c. 175, §174A, notice of a hearing required under §162R is deemed sufficient if sent postpaid by registered mail to the last business or residence address appearing on the records of the Commissioner.¹ On this record, I conclude that service of the OTSC on Horn was sufficient under §174A and that Horn's failure to answer the OTSC or to respond to the Motion, and his failure to appear at the hearing, warrant findings that he is in default. By his default, Horn has waived his right to proceed further with an evidentiary hearing in this case and I may consider the Motion on the record.

The record in this proceeding consists of the OTSC and attached Exhibits A through E and the Motion and attached Exhibits A through D. The exhibits to the OTSC are: A) copy of Plea Agreement executed by Horn in *State of Florida v. Horn*, Circuit Court for the 13th Judicial Circuit, Hillsborough County, FL; B) Order dated March 19th, 2018 from the Florida Division of Insurance revoking Horn's producer license; C) Order dated May 24, 2018 from the Arkansas Insurance Department suspending Horn's license; D) Order dated October 18, 2018 from the South Carolina Department of Insurance revoking Horn's license; and E) Order dated December 5, 2018 from the South Dakota Division of Insurance revoking Horn's license. Exhibits A and B to the Motion are photocopies of mail addressed to Horn that the United States Post Office returned to the Division; Exhibit C is a photocopy of Horn's licensing record maintained by the Division; and Exhibit D includes copies of the Certificate of Service and Notice of Action dated April 10, 2019.

Findings of Fact

1. Horn was first licensed as a non-resident Massachusetts insurance producer on or about September 17, 2014; that license was renewed on April 27, 2017.

¹ For purposes of this section, certified mail includes registered mail.

2. On November 15, 2016, in the Circuit Court of the 13th Judicial District, Hillsborough County, Florida, Horn pleaded guilty to three charges, manufacture and possession of cannabis and possession of drug paraphernalia.
3. On March 19, 2018 the Florida Division of Insurance revoked Horn's resident license, on the ground that the manufacture and possession of cannabis are felonies under Florida law and that it was therefore required, under the Florida Administrative Code, to revoke Horn's license.
4. On May 24, 2018, the Arkansas Insurance Department suspended Horn's license because he was no longer licensed in Florida, his home state.
5. On October 18, 2018, the South Carolina Department of insurance revoked Horn's license because he was no longer licensed in his home state; it also noted that he had failed to notify South Carolina of the Florida action.
6. On December 5, 2018, the South Dakota Division of Insurance revoked Horn's license, in part because of the prior revocations.

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. On this record, Horn became ineligible for a Massachusetts producer license as of March 19, 2018, but no action was initiated to terminate his license on that ground.

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)(6), and (a)(9) as grounds for revocation of Horn's license.

Subsection 162R (a)(6) supports disciplinary action if a licensee has been convicted of a felony. As with other grounds, §162R (a) does not mandate actions; whether to impose discipline on any particular ground is within the sound discretion of the Commissioner. In this case, Horn pleaded guilty in Florida to two criminal complaints that, according to the Florida Division of Insurance, are classified as felonies in that state: manufacture and possession of cannabis. The Florida decision also reported that Horn grew four marijuana

plants and stated that they were for personal consumption. That decision noted that the cannabis was intended for recreational, rather than medical purposes, and that the Florida Division had previously concluded that the recreational manufacture of cannabis is a crime of moral turpitude. It also conceded, in a footnote, that some thirty states and the District of Columbia had laws legalizing cannabis in some form. I am not persuaded that, absent evidence that Horn's use of marijuana affected his performance as an insurance producer, it is reasonable to revoke his license for pleading guilty to an action that, while classified as a felony in his home state, would not rise to that level in Massachusetts. For that reason, no discipline will be imposed pursuant to §162R (a)(6).²

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

The Division also asserts that Horn violated M.G.L. c. 175, §162V (a) by failing to report the administrative actions taken by Arkansas, Florida, South Carolina and South Dakota within 30 days after the final disposition of those matters. The statutory reporting requirement is limited to "final" dispositions; I am not persuaded that a suspension is appropriately characterized as final, absent evidence that the license in question was subsequently revoked. For that reason, I conclude that Horn was not obligated to report the Arkansas suspension. The record supports a conclusion that Horn did not report to the Division the Florida, South Carolina and South Dakota administrative actions and thereby violated M.G.L. c. 175, §162V (a).

The Division contends that that violations of §162V (a) also are grounds for disciplinary action pursuant to §162R (a)(2) that, 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. It requests fines for alleged violations of §162R (a)(2) and (a)(9) pursuant to M.G.L. c. 176D, §7, and for alleged violations of §162V (a) pursuant to M.G.L. c. 175, §194 ("§194"). Chapter 176D,

² M.G.L. c. 175, §162V (b) requires a producer to report to the Commissioner any criminal prosecution in any jurisdiction. The OTSC does not address the question of Horn's compliance with that statute or the effect of failure to do so.

§7 fines are denied for reasons set out at length in previous decisions in enforcement actions.³

Section 162V (a) does not specify a penalty for failure to comply with the statute. Violations of the section are therefore subject to a \$500 fine authorized under M.G. L. c. 175, §194. On this record, I conclude that the following §194 fines are appropriate. M.G.L. c. 175, §162N provides that a producer is not eligible for a non-resident license in Massachusetts unless he or she is licensed as a resident in a home state and in good standing in that state. As of March 19, 2018, Horn was neither licensed in his home state, Florida, nor in good standing there and therefore, by operation of law, ineligible to hold a Massachusetts producer license. Failure to report the Florida effectively enabled him to retain his status as a non-resident Massachusetts licensed producer for well over a year after he was ineligible to hold that license, to the potential detriment of Massachusetts consumers. For that reason, I find that he should be fined \$500 for failure timely to report the Florida revocation. The South Carolina and South Dakota revocations, unlike the failure to report the Florida revocation, did not have a similar immediate direct effect on his status as a Massachusetts licensee or on Massachusetts consumers. I will therefore impose a fine of \$250 each for Horn's failure to report the South Carolina and South Dakota administrative actions in timely fashion.

I also find that, in addition to revocation of his license, Horn should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and be required to dispose of any interests he may have in any insurance business in Massachusetts.

Conclusion

The Division's request to revoke Horn's Massachusetts insurance producer license, on the ground that it has been revoked in three other jurisdictions, is hereby allowed. On this record, I find that, in addition to revocation of his license, Horn should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and should

³ Although the Division persistently refers to revocation or suspension of a producer's license in another jurisdiction, an event that under §162R (a)(9) supports revocation or suspension of a Massachusetts license, as a "violation", it is appropriately referred to as a statutory ground for an enforcement action. Prior decisions in enforcement actions decline to impose fines on producers because of their status as respondents in administrative actions in other jurisdictions. The "violation" associated with revocations or suspensions by those jurisdictions is the producer's obligation to report that action to Massachusetts in timely fashion. That violation is subject to the fine specified in §194. Our enforcement decisions decline to impose multiple fines for a particular violation.

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 Christopher Todd Horn by the Division are hereby revoked; and it is

FURTHER ORDERED: that Christopher Todd Horn shall return to the Division any licenses in his possession, custody or control; and it is

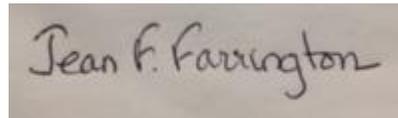
FURTHER ORDERED: that Christopher Todd Horn is, from the date of this order, prohibited from directly or indirectly transacting any insurance business in or acquiring, in any capacity whatsoever, any insurance business in the Commonwealth of Massachusetts; and it is

FURTHER ORDERED: that Christopher Todd Horn 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; and it is

FURTHER ORDERED: that Christopher Todd Horn shall cease and desist from the conduct that gave rise to this Order to Show Cause; and it is

FURTHER ORDERED: that Christopher Todd Horn shall pay a fine of One Thousand Dollars (\$1,000.00) to the Division within 30 days of the entry of this order.

This decision has been filed in the office of the Commissioner of Insurance this 17th. day of June 2020. A copy shall be sent to Christopher Todd Horn by electronic mail to the address on the records of the Division.



Jean F. Farrington
Presiding Officer

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