

COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

1000 Washington Street • Suite 810 • Boston, MA 02118-6200
(617) 521-7794 • FAX (617) 521-7475
<http://www.mass.gov/doi>

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

MICHAEL KENNEALY
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

EDWARD A. PALLESCHI
UNDERSECRETARY

GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

v.

Daniel Zaborowski, Respondent

Docket No. E2019-20

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

On October 30, 2019, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Daniel Zaborowski ("Zaborowski"), a licensed non-resident Massachusetts insurance producer. The Division alleges that, on or about June 10, 2019, the Connecticut Insurance Department revoked Zaborowski's producer license for violations of that State's insurance laws, specifically for allegedly submitting fictitious applications for health and life insurance to an insurer in order to obtain commissions. It further alleges that Zaborowski failed to report that revocation to the Division.

The Division contends that Zaborowski is subject to disciplinary action for the reasons set out in M.G.L. c. 175, §162R (a)(2), (a)(5), (a)(8) and (a)(9). It further asserts that Zaborowski, by failing to report the Connecticut administrative action, violated M.G.L. c. 175, §162V (a). The Division seeks revocation of Zaborowski'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.

Finding of Default

The certificate of service filed with the OTSC states that on October 30, 2019 it was served on Zaborowski by both certified and regular United States mail at the home

and mailing address appearing on the Division's records: 68 Tremont Street, New Britain, CT 06051, and the business address on those records: 15 North Main Street, West Hartford, CT 06107. Zaborowski did not file an answer or other response to the OTSC. On January 31, 2020, the Division moved for entry of default and summary decision (the "Motion"). It attached to that motion a photocopy of a United States Postal Service document showing that the certified mailing sent to Zaborowski's home and mailing address was returned to the Division, with the notation that it was unclaimed and could not be forwarded. It also attached a photocopy of a signed receipt for the certified mail sent to Zaborowski's business address. The Division reported that mailings sent by regular first class mail to Zaborowski at both addresses were not returned.

On January 30, 2020, an order was issued instructing Zaborowski to submit any response to the Motion by February 18 and scheduling a hearing for February 28, 2020. Zaborowski did not respond to the Motion. Robert J. Kelly, Esq. represented the Division in this proceeding. Neither Zaborowski nor any person representing him appeared at the February 28 hearing. Attorney Kelly stated that in the course of this proceeding he had not been contacted by Zaborowski or any person purporting to represent him. He also reported that Zaborowski did not renew his non-resident producer license in 2019 and that, as a result, his license was cancelled on or about December 22, 2019.

On the basis of the records attached to the Motion filed on January 30, 2020, I conclude that the OTSC was served on Zaborowski and that his failure to answer the OTSC or to respond to the renewed Motion, as well as his failure to appear at the hearing, warrant findings that he is in default. By his default, Zaborowski 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 Exhibit A and the Motion and attached Exhibits B and C. The exhibit to the OTSC is the complaint that the Connecticut Insurance Commissioner filed against Zaborowski dated May 6, 2019 and the order for default judgment and order of revocation entered in the proceeding on or about June 10, 2019. Exhibits B and C, attached to the Motion, are documents from

the United States Postal Service relating to the service on Zaborowski of the certified mail that the Division sent on October 30, 2019.

Findings of Fact

1. Zaborowski was most recently licensed as a non-resident Massachusetts insurance producer on or about July 7, 2017.
2. Zaborowski did not renew his license in 2019 and it was therefore cancelled on or about December 22, 2019.
3. On or about May 6, 2019, the Connecticut Insurance Commissioner filed a complaint against Zaborowski alleging that he had submitted to a life insurance company fictitious applications for supplemental health insurance that misrepresented information and were not authorized by the putative purchaser.
4. The Connecticut complaint also alleged that Zaborowski had engaged in conduct that indicated that he was untrustworthy or financially irresponsible.
5. On or about June 10, 2019, the Connecticut Insurance Commissioner entered a decision against Zaborowski by default, and revoked his Connecticut producer license.
6. As of June 10, 2019, Zaborowski was no longer licensed as an insurance producer by his home state.
7. Because he was not licensed in his home state, as of June 10, 2019 Zaborowski was no longer eligible to hold a non-resident producer license in Massachusetts.

Analysis and Discussion

Chapter 175, §§162G through 162X sets out, among other things, the requirements for obtaining and maintaining a Massachusetts insurance producer license. 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)(5), (a)(8) and (a)(9) as grounds for revocation of Zaborowski's license.²

Subsection 162R (a)(2) supports disciplinary action if a licensee has violated any insurance laws, or violated any order of the [Massachusetts] commissioner or another state's insurance commissioner. Subsection 162R (a)(5) supports such action if the

licensee intentionally misrepresented the terms of an actual or proposed insurance application or contract. Subsection 162R (a)(8) allows discipline if the licensee has used fraudulent or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business, and (a)(9) if the person's license has been denied, suspended or revoked in another jurisdiction.

Subsection 162R (a)(2), in pertinent part, permits disciplinary action if the applicant has violated any insurance laws or orders of another state's insurance commissioner. The Division, relying on the text of the Connecticut order, contends that Zaborowski is subject to discipline in Massachusetts because of the alleged violations of Connecticut law.¹ Implicit in the Connecticut order is that state's conclusion that Zaborowski violated the Connecticut insurance laws. Inclusion of a separate claim requesting disciplinary action against Zaborowski under §162R (a)(2) for violations of Connecticut law therefore, in essence, separates an integral aspect of the Connecticut decision into an independent ground for discipline in Massachusetts. On this record, I conclude that the Division's claim for discipline pursuant to §162R (a)(2) is duplicative and decline to treat it as a separate ground for disciplining Zaborowski..

The Division's claims asserting that Zaborowski engaged in activities that permit discipline pursuant to §162R (a)(5) and (a)(8) are also derived from the statements in the Connecticut order involved Connecticut consumers. The OTSC does not allege that Zaborowski misrepresented the terms of insurance policies, as set forth in the Connecticut complaint, to Massachusetts residents or engaged in other specified activities in Massachusetts that would support discipline pursuant to §162R (a)(5). In contrast, §162R (a)(8) proscribes activities that are broader in scope than §162R (a)(5), stating that the misconduct must relate to the conduct of business but may occur either in Massachusetts or elsewhere. For that reason, allegations that directly arise from Zaborowski's irregularities in the conduct of business, although they appear to have occurred in Connecticut, also serve as a ground for discipline in Massachusetts; the seriousness of those claims supports the Division's request for revocation pursuant to §162R (a)(8). Subsection 162R (a)(9) supports disciplinary action if the licensee has had

¹ The OTSC alleges that Zaborowski violated G.L. c. 175, §162V (a) by failing to report the Connecticut administrative action, but does not seek to discipline Zaborowski under §162R (a)(2) for that alleged violation.

a producer license, or its equivalent, suspended or revoked in any other state. The Connecticut revocation of Zaborowski's license, for engaging in activities that would support a similar outcome in Massachusetts, is a sound basis for revocation of his Massachusetts non-resident producer license.

The Division requests fines for alleged violations of §162R (a)(2), (a)(5), and (a)(8) pursuant to M.G.L. c. 176D, §7, and for alleged violations of §162V (a) pursuant to M.G.L. c. 175, §194 ("§194"). Although I find that the grounds for the Connecticut administrative action are sufficient to support the Division's request for revocation pursuant to §162R (a)(8), there is no evidence that any of the activities underlying those grounds either occurred in Massachusetts or affected Massachusetts consumers; for that reason the Division's request for fines is denied. The Division's requests for disciplinary action pursuant to §162R (a)(2) and (a)(5) are denied, its requests for fines related to those sections are also denied.

The Division also asserts that Zaborowski violated M.G.L. c. 175, §162V (a) by failing to report the administrative action taken by Connecticut within 30 days after the final disposition of those matters. Section 162V (a) does not specify a penalty for failure to comply with the statute; statutory violations are therefore subject to a \$500 fine authorized under M.G. L. c. 175, §194. On this record, I conclude that Zaborowski's failure to report the Connecticut revocation enabled him to remain licensed for some six months after he was no longer eligible for a Massachusetts non-resident producer license. I therefore impose the maximum fine, \$500, for his failure to do so.

I also find that, in addition to revocation of his license, Zaborowski 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 Zaborowski's Massachusetts insurance producer license is hereby allowed. On this record, I find that, in addition to revocation of his license, Zaborowski 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 Daniel Zaborowski by the Division are hereby revoked; and it is

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

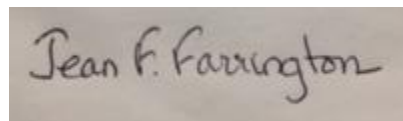
FURTHER ORDERED: that Daniel Zaborowski is, from the date of this order, prohibited from directly or indirectly transacting any insurance business in or acquiring, in any capacity whatsoever, any insurance business in the Commonwealth of Massachusetts; and it is

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

FURTHER ORDERED: that Daniel Zaborowski shall pay a fine of Five Hundred Dollars (\$500.00) 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 27th day of August 2020. A copy shall be sent to Daniel Zaborowski by electronic mail at the address appearing 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.