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FSCO File No. AB044-2007

Superintendent of Financial Services

Regarding a hearing concerning the suspension or revocation of the life insurance agent licence of Roland Gebhard

AND the Insurance Act, R.S.O. 1990, c.1.8, as amended, particularly Part XIV

DECISION

Introduction:

Pursuant to a Notice of Hearing dated September 26, 2007, an Advisory Board was duly appointed under section 393 (9) of the Act. The hearing was conducted on January 30 and 31, 2008.

The allegations are set out in Schedule "1" as attached.

The report of the Advisory Board is attached.

Findings of Fact:

Mr. Gebhard represented himself at the hearing. He chose not to testify at the hearing or to call any witnesses on his behalf. There is case law that entitled the Advisory Board to draw a negative inference from this failure to testify once a prima facie case had been established against him. The Advisory Board stated "Although Gebhard had no initial necessity to testify, once the case was made against him the onus of proof shifted so it would have been prudent for him to consider coming forward to testify..." This negative inference was the additional factor described by the Advisory Board when it stated "Taking this additional factor into consideration, the Board finds the allegations against Gebhard proven on the basis of clear, convincing and cogent evidence".

However, subsequent in its report, the Advisory Board only makes reference to untrustworthiness (the second allegation), particularly in its discussion of penalty. Accordingly, I am granting the benefit of doubt to Mr. Gebhard and am only adopting the finding of fact with

respect to the second allegation made against Mr. Gebhard, since it is unclear whether the Advisory Board also found the first and third allegations to be established. No further allegations were made at the hearing.

Recommendation of the Advisory Board

The Advisory Board recommended that Mr. Gebhard's licence be suspended for a period of six months.

The Advisory Board considered mitigating factors. These included the isolated nature of Mr. Gebhard's misconduct, an otherwise clean record, and the absence of any substantial monetary gain.

Decision:

The Advisory Board has found the allegation of untrustworthiness against Mr. Gebhard to be established.

I note that Mr. Gebhard admitted alteration of company production reports, but offered no explanation for his actions. If it was a correction of an error, Mr. Gebhard could have so stated. The Advisory Board noted that "Gebhard profited only in a small way from the changes made to the agent's weekly production reports".

I note that Mr. Gebhard's action did not place clients at risk, but did cause problems associated with a "not sufficient funds" cheque for a client. Mr. Gebhard's actions did not result in the creation of fictitious policies for which the insurer paid commission, but rather had the effect of creating the appearance that he had produced business that he had not and to receive commissions for such business. In this regard, the nature of his untrustworthy actions was less egregious than someone placing clients at risk or creating fictitious policies.

Had the first and third allegations about suitability been established, one of the fundamental requirements to hold a licence would not be met. Accordingly, in such a circumstance, Advisory Boards have frequently recommended that the agent's licence be revoked. While this would not be a bar against ever again holding a licence as an insurance agent, the licence applicant would have to satisfy the Superintendent that he or she has reformed and is now a suitable person.

While I believe that a period of suspension is required, I believe that a six month period is excessive in the circumstances. Since I have previously noted that I am prepared to give Mr. Gebhard the benefit of the doubt with respect to the established allegations, I accordingly feel that the penalty should be reduced to reflect one established allegation rather than three and the fact that allegations related to suitability have been excluded.

I believe that a period of suspension of two months is consistent with other circumstances where there was not a material harm to either clients or an insurance company.

Accordingly I hereby order that Mr. Roland Gebhard's licence as a life insurance agent be suspended for a period of two months commencing June 1, 2008.

Dated at Toronto, this 28th day of April 2008.

A handwritten signature in black ink, appearing to read "G Swanson". The signature is fluid and cursive, with the first letter "G" being particularly large and stylized.

Grant Swanson
Executive Director,
Licensing and Market Conduct Division
by delegated authority from
the Superintendent of Financial Services

SCHEDULE 1

The allegations referred to in the Notice of Opportunity for a Hearing are as follows:

1. Mr. Roland E. Gebhard ("Gebhard") has violated the conditions for the maintenance of his licence according to section 8 of Regulation 347/04 ("the regulation") in that he failed to demonstrate that he is of good character and reputation and is suitable to be licensed, as required in section 4 of the regulation.
2. Mr. Roland E. Gebhard has violated the conditions for continued licensing in section 8(d) of the regulation in that he has demonstrated incompetence or untrustworthiness to transact the insurance agency business for which the licence has been granted.
3. By engaging in the conduct noted above, Gebhard has demonstrated that he is not a suitable person to hold a life insurance licence.
4. Such further and other allegations as counsel for FSCO may advise.