

Superintendent of Financial Services

Regarding the Insurance Act, R.S.O. 1990, c.1.8, as amended, particularly subsections 393(9) – 393(11)

AND REGARDING a hearing concerning the suspension or revocation of the life insurance agent licence of Eva Agpaoa

DECISION AND ORDER

Introduction:

A Notice of Opportunity for Hearing dated October 26, 2010 (the Notice) informed Ms. Agpaoa of allegations against her and the opportunity for a hearing before an Advisory Board. The Notice advised Ms. Agpaoa that if a hearing was not requested, the Superintendent would make a decision based on information in the possession of the Financial Services Commission of Ontario (the Commission). Ms. Agpaoa was also advised that such decision could include suspension or revocation of her licence as a life insurance agent. A hearing was requested and an Advisory Board hearing was convened and conducted on November 15, 2010.

The report of the Advisory Board is attached to this decision.

Findings of Fact

The Advisory Board found the first allegation to be established. The Advisory Board did not find the second allegation to be established. I hereby adopt the findings of fact of the Advisory Board.

Recommendation of the Advisory Board

The Advisory Board recommended:

1. "A suspension for a period of one year from the date of the decision of the Superintendent
2. Within thirty days of the decision of the Superintendent, the agent is to provide proof of errors and omissions insurance with includes a "prior acts" or "Gap coverage" clause, acceptable to the Superintendent.
3. The Agent is required to pay for and provide proof of satisfactory

completion of the Advocis course "Protect my Practice" or an alternative course dealing with professional ethics, responsibility and compliance within twelve months from the date of the decision of the Superintendent.

4. Failure to comply with paragraph 2 or 3 above within the time specified will result in the immediate revocation of the agent's licence."

The Advisory Board set out the factors it considered in making its recommendation. The Advisory Board noted the agent's failure to maintain the insurance and the lack of honesty and lack of timely response to her regulator. The Advisory Board also considered her remorse and her financial circumstances as mitigating factors.

The Advisory Board stated "The sanction recommended is an attempt by the panel to balance principles of rehabilitation of the agent with protection of the public through specific and general deterrence. The proposed penalty attempts to demonstrate to the agent and others that the allegations are serious while providing the agent an opportunity to demonstrate that she is serious about taking the steps necessary to maintain her licence. The recommended course is intended to aid in the rehabilitation of the agent and her understanding of the risks to the public and herself of failing to maintain appropriate errors and omissions insurance coverage."

Decision:

The Advisory Board has found that Ms. Agpaoa failed to maintain the required errors and omissions insurance. The Advisory Board stated that it believes that Ms. Agpaoa is able to be rehabilitated as an insurance agent.

Previous cases have some similarities - a failure to maintain errors and omissions insurance as well as a failure to facilitate an examination. Penalties ordered have ranged from licence revocation to licence suspension. Generally where there was a finding of lack of suitability as a result of the failure to maintain errors and omissions insurance and the failure to facilitate an examination, revocation of the agent's licence has been ordered. In other circumstances, a period of suspension has been ordered.

The Advisory Board has not concluded that Ms. Agpaoa is unsuitable to be a life insurance agent, and accordingly it recommended a period of suspension rather than revocation of her licence.

The purpose of penalties is to correct behaviour of the agent and to set an example for the industry. Considering that Ms. Agpaoa did not maintain errors and omissions insurance as she attested to in her licence application, her failure to obtain errors and omission insurance in spite of the follow up by Commission staff, her failure to respond to Commission staff, the provision of false information to Commission staff when she did respond, I believe that the period of suspension should be a period of nine months. This is neither the least nor the harshest penalty that has been imposed.

I note that a period of suspension of twelve months has been recommended by the Advisory Board. I have made reference to the [REDACTED] case and the [REDACTED] case. I do not see any argument to suggest why the penalty should be greater than in the [REDACTED] case. I disagree that Ms. Agpaoa's financial circumstances should be a mitigating factor in determining a penalty since the potential loss to one of her clients as a result of negligence can be far greater than the cost of an insurance premium to Ms. Agpaoa.

In this case, Ms. Agpaoa would not respond to the Commission on a timely basis. The Insurance Act imposes a duty on licensed persons to facilitate an examination. Responding to information requests is an attribute of a person suitable to be an insurance agent. The Advisory Board has recommended that Ms. Agpaoa be required to complete a course dealing with professional ethics, responsibilities and compliance acceptable to the Superintendent

Professional education is not a penalty since continuing education is required by law for life insurance agents. I understand that the Advisory Board has identified a need for correction of Ms. Agpaoa's behaviour as a means to mitigate risk and accordingly and am prepared to order completion of a course dealing with professional ethics, responsibilities and compliance acceptable to the Superintendent.

Errors and omissions insurance is necessary to protect consumers from negligence by insurance agents. Insurance agents without errors and omissions insurance may not have sufficient assets to indemnify policy holders or applicants for insurance from such losses. Insurance agents that do not have errors and omissions insurance cannot be allowed to be engaged in the business of insurance. Accordingly I agree with the recommendation of the Advisory Board that Ms. Agpaoa be required to produce evidence of insurance designed to provide coverage for prior acts.

Finally, Ms. Agpaoa is entitled to a hearing prior to making an order to suspend her licence if there is failure to comply with conditions of an

order. Accordingly, I will not be ordering an immediate revocation if there is failure to comply with the following order.

ORDER

I hereby order the following suspension and conditions on Ms. Agpaoa's licence as an insurance agent:

1. Ms. Agpaoa's licence as an insurance agent be suspended for a period of nine months commencing January 1, 2011.
2. Ms. Agpaoa select a course dealing with professional ethics, responsibilities and compliance and seek approval from the Superintendent of Financial Services of the course chosen by February 1, 2011.
3. Ms. Agpaoa pay for the course.
4. Ms. Agpaoa provide evidence of satisfactory completion of the course to the Superintendent of Financial Services by August 1, 2011. Such course shall be in addition to the continuing education required by Regulation 347/04.
5. Ms. Agpaoa provide by January 1, 2011, evidence of errors and omissions insurance, that includes coverage for prior acts, acceptable to the Superintendent

Dated at Toronto, this fifth day of December 2010

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

Schedule 1

The following allegations were set out in the Notice:

- a. Agpaoa has failed to maintain appropriate errors and omissions insurance, as is required by Section 13 of Regulation 347/04.
- b. Agpaoa is not amenable to regulation, pursuant to sections 4(1)(i) and 8(d) of Regulation 347/04. Repeated efforts made to contact the agent were unsuccessful in obtaining required information regarding E&O insurance coverage.