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## **Superintendent of Financial Services**

**Regarding** the Insurance Act, R.S.O. 1990, c.1.8, as amended, in particular, sections 393(9) - 393 (11)

**AND REGARDING** Desmond Chambers, life insurance agent

### **DECISION AND ORDER**

#### **Introduction:**

A Notice of Opportunity for Hearing dated March 30, 2011 (the Notice) informed Desmond Chambers of allegations against him and the opportunity for a hearing before an Advisory Board. The Notice advised Mr. Chambers if a hearing was not requested the Superintendent would make a decision based on information in possession of the Financial Services Commission of Ontario (the Commission). Mr. Chambers was also advised that such decision could include suspension or revocation of his licence as a life insurance agent.

I have received an affidavit from [REDACTED], Head of Investigations at the Commission that the Notice was sent by registered and regular mail to the address on file at the Commission. Canada Post returned the registered letter. The affidavit further states that no request for a hearing was received. The Notice stated that a Commission Investigator had contacted Mr. Chambers in Jamaica and that Mr. Chambers had advised the Investigator that he would not be returning to Canada. The Insurance Act provides that service can be made by registered mail to the address on file at the Commission. I am satisfied that the Notice was properly served in accordance with the provisions of the Insurance Act and that Mr. Chambers did not request a hearing.

A copy of the allegations is attached to this Decision.

#### **The Evidence:**

Since Mr. Chambers has not requested a hearing, the evidence of Commission staff in the particulars attached to the Notice is uncontroverted.

The evidence can be summarized as follows. Mr. Chambers was introduced to a client and recommended that she increase the mortgage on her residence to repay debts and to make investments. The client accepted the recommendations and Mr. Chambers made arrangements for a mortgage. Mr. Chambers also accepted \$ 25,000 to make investments on behalf of his client, even though he did not have the required licence to sell securities. Mr. Chambers did not provide an accounting of the \$ 25,000 to his client. His client requested that the investment be repaid to her. Mr. Chambers committed to return a portion of the investment but ultimately failed to do so.

Mr. Chambers applied for renewal of his licence as a life insurance agent in December 2009. He provided false answers to questions in the application by not declaring that he was under investigation by the Ontario Securities Commission for engaging in the sale of securities without a licence.

Mr. Chambers failed to respond to information demands from a Commission Investigator despite speaking to the Investigator by telephone.

### Findings of Fact

Much of the evidence relates to an investment transaction on behalf of a client. The allegations relate to Mr. Chambers' licence as an insurance agent. Accordingly there must be a sufficient connection between Mr. Chambers' actions and his insurance licence to make findings under the Insurance Act.

It is alleged that Mr. Chambers has engaged in a fraudulent act or practice. Regulation 347/04 does not limit fraudulent acts or practice to the business of an insurance agent, and accordingly any fraudulent act or practice could be a basis for suspension or revocation of a licence as an insurance agent. This is a disciplinary proceeding, and not a criminal one, and the standard to be applied reflects that distinction.

There is no accounting for the disposition of the client's money, nor has a portion of the money been returned in response to the client's request as he had promised. There is no reasonable explanation why Mr. Chambers conducted business in this fashion. Clearly Mr. Chambers has a responsibility to his client, and his dealings with his client leads to a reasonable conclusion that fraud has occurred as a result of the actions of Mr. Chambers. Accordingly, I find that the allegation that Mr. Chambers engaged in a fraudulent act to be established.

It is alleged that Mr. Chambers demonstrated untrustworthiness to transact the insurance agency business for which the licence has been granted. (Section 8(d) of Regulation 347/04) This Regulation requires a close nexus to the business of an insurance agent. Untrustworthiness touches on character. Insurance agents must be trustworthy.

As previously noted, failing to provide an accounting for money received, or failing to return it as promised demonstrates that Mr. Chambers cannot be trusted. I find that the allegation that Mr. Chambers demonstrated untrustworthiness such as to make him unsuitable to transact the insurance agency business for which the licence has been granted to be established.

It is alleged that Mr. Chambers made a false statement to the Superintendent in his application to renew his licence as an insurance agent. I find that Mr. Chambers made a false statement by virtue of failing to declare that he was being investigated by the Ontario Securities Commission when he was aware of such investigation.

It is alleged that Mr. Chambers failed to respond to requests for information from a Commission investigator. I find that Mr. Chambers failed to provide information in response to such a request following a telephone conversation with a Commission Investigator.

#### Decision:

I have found that Mr. Chambers is not trustworthy, has engaged in a fraudulent act or practice, has made a false statement on his application to renew his licence and has failed to respond to a Commission Investigator.

Such findings do not demonstrate suitability as an insurance agent. Suitability is a fundamental attribute of an insurance agent. The nature of the business of insurance agents places them in situations where they have access to sensitive personal and financial information about their clients. The business often results in agents meeting clients in their homes or in other situations where no one is overseeing the interaction between the agent and client.

I have considered whether there is any practical way to mitigate the risk that Mr. Chambers represents to his clients. Since the findings demonstrate a lack of integrity and touch on Mr. Chambers' character, and considering the nature of the business of an insurance agent, there is no practical way to mitigate risk.

Since Mr. Chambers has not requested a hearing, there is no basis to

assess whether there are mitigating circumstances, nor is there any demonstrated interest in maintaining his licence as an insurance agent.

Accordingly considering the lack of suitability and his failure to request and attend a hearing to answer questions about his actions I believe that the appropriate penalty is revocation of Mr. Chambers' licence as an insurance agent.

### **ORDER**

Accordingly, the life insurance agent licence of Desmond Chambers is hereby revoked by this order.

Dated at Toronto, this twenty ninth day of June, 2011

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