

Superintendent of Financial Services

Regarding the *Insurance Act*, R.S.O. 1990, c.1.8, as amended (the “Act”), in particular, sections 31(1) (c) 393(9) – 393(11), 443(1) & (2) and 447(2) (b), and Ontario Regulation 347/04 (the “Regulation”), in particular, section 13

AND REGARDING James Bruce Simpson

DECISION and ORDER

Introduction:

A Notice of Opportunity for Hearing dated February 16, 2011 (the Notice) informed Mr. Simpson of allegations against him and the opportunity for a hearing before an Advisory Board. The Notice advised Mr. Simpson 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). Mr. Simpson 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 Ms. Shaifa Chandani, licensing and registration specialist at the Commission that the Notice was served by registered mail. I am satisfied that the Notice was properly served in accordance with the provisions of the Insurance Act. Ms. Chandani’s affidavit further indicates that Mr. Simpson did not request a hearing.

A copy of the allegations is attached to this Decision.

The Evidence:

Mr. Simpson has not requested a hearing. However, as noted below, he has admitted to the first allegation and provided an explanation for his actions.

The evidence can be summarized as follows. The Commission received notification from Mr. Simpson’s insurance company that Mr. Simpson’s errors and omissions insurance policy was cancelled. The Commission made several attempts to contact him by mail, email, registered mail and by telephone without success.

The affidavit from Ms. Chandani included an exchange of email between

Mr Simpson and Stephen Scharbach, legal counsel at the Commission which was prompted by the Notice. In that exchange of email, Mr Simpson indicated that his current job does not permit the selling of insurance and he admitted to not having errors and omissions insurance. Mr. Simpson asked about terminating his licence or putting his licence "on hold". Stephen Scharbach responded by explaining the implications of the Notice and the process to surrender a licence. The affidavit from Ms. Chandani indicates that no further communication from Mr. Simpson was received.

Findings of Fact

I find the allegation that Mr. Simpson has failed to maintain errors and omissions insurance to be established. The reasons for this finding are the notification of cancellation of the policy by Mr. Simpson's insurance company and Mr. Simpson's admission of that fact.

I find the allegation that Mr. Simpson has failed to facilitate an investigation to be established. The reason is Mr. Simpson's failure to respond to repeated requests by mail, email and telephone for information. Mr. Simpson responded to the Commission when he received the Notice; however, that is not the standard of facilitating an examination that is expected of insurance agents.

I find the allegation that Mr. Simpson is unsuitable to hold a licence as an insurance agent to be established by virtue of his failure to maintain errors and omissions insurance and his failure to facilitate an examination. That does not mean that he could not at some time in the future become suitable by retraining in both his obligations to the Superintendent and his obligations under the law such as by completing the Life Agent Qualification Program.

While Mr. Simpson did not request a hearing, he offered an explanation for his actions by email. In that email he stated that he was under the assumption that he did not need errors and omissions insurance if he was not selling insurance. Since Mr. Simpson did not request a hearing, it is not possible for an Advisory Board to question him on this statement. Mr. Simpson did not explain why he did not respond to earlier communication from the Commission. Since the requirement to maintain errors and omissions insurance is established by law, it is not reassuring to hear that Mr. Simpson is not aware of his duty under law as an insurance agent.

Decision:

I have found that Mr. Simpson is unsuitable to hold a licence as a life insurance agent.

Findings of unsuitability frequently result in revocation of the licence of an insurance agent.

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. Accordingly insurance agents that do not have errors and omissions insurance cannot be allowed to be engaged in the business of insurance.

In this case, Mr. Simpson would not respond to the Commission on this matter, and he only communicated with the Commission when he received the Notice. Insurance agents must be governable and amenable to being regulated. 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.

Mr. Simpson has not requested a hearing. While he did offer an explanation for his behaviour by email, there was no opportunity for an Advisory Board to question him on his explanation. Mr. Simpson has not demonstrated interest in maintaining his licence as an insurance agent.

Accordingly considering the lack of suitability as demonstrated by the failure to facilitate an examination, and the absence of the necessary insurance to protect the public, I believe that the appropriate penalty is revocation of Mr. Simpson's licence as an insurance agent.

ORDER

Accordingly, the life insurance agent licence of Mr. Simpson is hereby revoked by this order.

Dated at Toronto, this thirtieth day of April, 2011

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