

Superintendent of Financial Services

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

AND REGARDING Andrew Kemal Shaw

DECISION and ORDER

Introduction:

A Notice of Opportunity for Hearing dated June 20, 2011 (the Notice) informed Mr Shaw of allegations against him and the opportunity for a hearing before an Advisory Board. The Notice advised Mr Shaw 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 Shaw 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 Karen McNamara-Mucha, Licensing and Registration Specialist at the Commission that the Notice was sent by registered mail to the last address on file at the Commission. Canada Post indicated that the letter was unclaimed. While the Commission is not required to do so, Ms McNamara-Mucha's memo further indicated that attempts had been made to locate Mr Shaw. A search was conducted of the Ministry of Transportation database for another address, and it was found that database showed the same address as the Commission's records. The Insurance Act provides that service can be made by registered mail to the last known address of a person on file at the Commission. I am satisfied that the Notice was properly served in accordance with the provisions of the Insurance Act. No request for a hearing was received.

A copy of the allegations is attached to this Decision.

The Evidence:

Since Mr Shaw 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. The Commission received notification from Mr Shaw's insurance company that Mr Shaw's errors and omissions insurance policy was cancelled. The Commission made

several attempts to contact him by mail, registered mail and by telephone. These attempts finally resulted in Mr Shaw contacting the Commission and advising that he did not have errors and omissions insurance, that he had not done any insurance business since his policy expired, and that he would be surrendering his licence. However, despite follow up by the Commission, Mr Shaw did not surrender his licence.

Findings of Fact

I find the allegation that Mr Shaw 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 Shaw's insurance company and Mr Shaw's admission that he did not have the required insurance.

I find the allegation that Mr Shaw has failed to respond to the Commission to be established. While Mr Shaw did make one telephone contact with the Commission, he failed to respond to several requests for information and failed to follow through on his commitment to surrender his licence.

I find the allegation that Mr Shaw 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 respond to the Commission.

In the absence of testimony by Mr Shaw, I am not aware of any explanations for his behaviour. Mr Shaw noted in his telephone conversation with Ms McNamara-Mucha that he had not conducted any business since his insurance policy expired. However, since errors and omissions insurance policies are claims-made policies, and not occurrence policies, it is the receipt of a claim rather than the doing of business during a period that matters.

Decision:

I have found that Mr Shaw 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 Shaw did not respond to several requests for information from the Commission. He did not follow through on his commitment to surrender his licence as an insurance agent. 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.

Since Mr Shaw has not requested a hearing, there are no explanations for his behaviour, nor is there any demonstrated interest in maintaining his licence as an insurance agent.

Accordingly considering the lack of suitability as demonstrated by the failure to respond to the Commission, the absence of the necessary insurance to protect the public and lack of any explanation for such behaviour, I believe that the appropriate penalty is revocation of Mr Shaw's licence as an insurance agent.

ORDER

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

Dated at Toronto, this fourteenth day of November, 2011

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:

1. Mr Shaw has failed to maintain appropriate errors and omissions insurance (“E&O”), as is required by section 13 of the Regulation.
2. Mr Shaw has failed to respond to the Superintendent as required in connection with the regulation of his licence.
3. Mr Shaw’s failure to comply with the requirements to maintain E&O and to respond to the regulator makes him unsuitable to hold a life insurance agent licence in Ontario.