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**Financial Services
Commission
of Ontario**
5160 Yonge Street,
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Toronto ON M2N 6L9

REGARDING the *Insurance Act*, R.S.O. 1990, c.1.8, as amended (the "Act"), particularly Part XIV, sections 393(9) – 393(11), and Ontario Regulation 347/04, in particular Section 2

AND REGARDING a hearing concerning the suspension or revocation of the life insurance agent licence of Anna Khan

DECISION and ORDER

Introduction:

Pursuant to a Notice of Hearing dated September 13, 2012, an Advisory Board was duly appointed under Subsection 393(9) of the Act. The hearing for this case and a related one involving Mr Gregory Hilderman were combined and conducted on April 12, 2013.

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

The report of the Advisory Board is attached.

The Superintendent is of the opinion that the interests of the public may be adversely affected by any delay in the revocation of Mortgage Lenders' licence. The reasons are as follows:

Findings of Fact:

The Advisory Board found that Anna Khan acted as a life insurance agent when she was not licensed to do so. However, the Advisory Board did not find that the two allegations about untrustworthiness were established. I hereby adopt the findings of fact of the Advisory Board.

Recommendation of the Advisory Board:

The Advisory Board recommended that consideration be given to the fifteen month period of time that Ms Khan was unable to earn a living in the industry and if that was not a sufficient penalty, that the Superintendent impose a period of suspension of one month. In addition the Advisory Board recommended that Ms Khan complete a course in ethics and present evidence of completion by December 31, 2013.

The Advisory Board stated the reasons for its recommendation. It noted that "although Ms Khan was unlicensed to sell or solicit insurance she was highly qualified to be licensed as an insurance agent." It also noted that she had an "exemplary and unblemished career" and there was no evidence of harm to the public nor was there negligence in the professional advice provided to the clients.

The Advisory Board report notes, although not as a reason for its recommendation, that Ms Khan had been licensed as an insurance agent from 2007 to 2009. While not explicit, the implication is that she had met the requirements to be a life insurance agent in the recent past. The Advisory Board also noted Ms Khan reacquired a licence as a life insurance agent in April 2011. However, as a consequence of this proceeding she was unable to obtain errors and omissions insurance since February 2012 and as a result was unable to work in the industry since then.

The Advisory board noted that Ms Khan was co-operative and remorseful.

The Advisory Board concluded its reasons by saying that there is no need for specific deterrence for Ms Khan noting that she is an outstanding citizen with an impressive and (otherwise) unblemished career and that there is no likelihood that she would repeat this behaviour. "With respect to general deterrence, the Board does not believe that it would be served by a period of suspension in light of the consequences for [Ms Khan] which form part of the public record and in and of themselves constitute general deterrence."

Decision:

The Advisory Board has found that Ms Khan engaged in the business of an insurance agent without a licence. However, it did not conclude that she was not suitable to hold a licence.

The Advisory Board noted that “The reason for insisting on licenses for life insurance agents is obvious. It allows for a review by governmental authorities of a licensee’s qualification and character to protect the public.” It also noted that “Public confidence in the life insurance industry is anchored on the qualifications and character of those licensed to sell it.”

While this is certainly true, the regulatory system depends on licences since it is not only a gatekeeper role but also a means to identify who is working in the business and to ensure there is a means to oversee their conduct. Regulation 347/04 imposes an obligation on insurance companies to screen agents, monitor their conduct, and to report unsuitability to the Superintendent. This obligation can only be met if the persons actually engaged in the sale of insurance are licensed.

Implicitly through the Advisory Board’s consideration of Ms Khan’s character and competence, it is suggesting that unlicensed activity by a competent person of good character should have a different consequence than unlicensed activity by a person without those attributes. While I agree that the risk to clients may be less if the unlicensed person is competent and of good character, the implication to the system of regulation is not different. In such a case the regulator does not know who is selling insurance and the system of supervision by insurance companies required by Regulation 347/04 cannot be applied. So there may be good fortune and no problems arise, or there may be problems. If problems arise, there will also be a question whether errors and omissions insurance coverage would apply during a period of unlicensed sales of insurance.

It is clear from the Advisory Board report that Ms Khan knew of her obligation to obtain a licence.

The system of insurance regulation must be both fair and practical to administer. Fairness has two aspects. First, similar contraventions of the Insurance Act should result in similar consequences. That certainty promotes compliance and facilitates the administration of the Insurance Act. Second, fairness also needs to consider what is necessary to cause the individual to alter his or her behaviour as well as what is necessary to provide a penalty for the wrong doing. Accordingly a penalty must be imposed for engaging in the business of an insurance agent without a licence.

The Advisory Board also considered her inability to work in the industry as a result of these proceedings as a penalty. The range of penalties available under the Insurance Act at the time the contravention occurred is limited to licence revocation, a period of suspension, or licence conditions. As a point of clarification, on January 1, 2013, the power to impose administrative monetary penalties was granted for contraventions

occurring after that date; however, that penalty is not available in this case. I note this for the benefit of any other future cases which may refer to this case.

Since licensing is fundamental to the system of regulation, acting as an agent without a licence is a serious matter, and is not less serious if the individual can subsequently demonstrate competence and good character. Accordingly, I believe that the Advisory Board gave undue consideration to competence and good character in its recommendation. In this case there were several insurance sales over a period of approximately one year, Ms Khan knew of her obligation to obtain a licence, and it appears that this situation would have continued but for the complaint received by the Commission and its subsequent investigation. Accordingly, I believe that a period of suspension of three months is appropriate to reflect that this is not a minor matter. This is at the shorter end of the range of suspensions that have been imposed and is appropriate for an important matter where no specific consumer harm has been identified. The period of suspension recommended by the Advisory Board would convey to the industry that working without a licence is not serious.

I have considered the Advisory Board's comments that Ms Khan co-operated, had expressed remorse, and had initiated remedial action. Had she not done so, the penalty would have been more serious.

In some cases, the Advisory Board has recommended that some or all of the period of suspension should be considered satisfied by the period of time at an agent has been unable to work in the industry. Clearly such an argument needs to be compelling since agents may not be active in the industry for many reasons, and it would be inappropriate to allow reductions of days, weeks, or months in a period of suspension simply because the agent was not active in the industry. In this case, the Advisory Board made the case that the inability to obtain errors and omissions insurance was the cause of Ms Khan's inability to work, and the refusal by the errors and omissions insurer to renew her coverage was a result of disclosure of the investigation. I also recognize that this period of inability to work is considerably greater than the period of suspension that I am ordering. Accordingly, I am prepared to consider that the suspension which I am ordering will be satisfied by the period of time that Ms Khan has been unable to work in the industry.

I agree with the Advisory Board that a course on ethics is appropriate.

ORDER

Accordingly, by this order:

1. The life insurance agent licence of Ms Anna Khan is hereby suspended for a period of three months, which suspension will be considered completed effective the date of this order.

2. Ms Anna Khan is required to complete a course in ethics acceptable to the Superintendent by December 31, 2013. Ms Khan will pay for this course. This course will not be considered as part of the continuing education obligation imposed by Regulation 347/04.

Dated at Toronto, this twenty fifth day of July 2013

Original Signed By

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. On ten separate occasions, between October, 2009 and April, 2011, Ms. Anna Khan failed to comply with the *Insurance Act* and/or demonstrated untrustworthiness to transact insurance agency business by acting as a life insurance agent while unlicensed
2. On ten separate occasions, between October, 2009 and April, 2011, Ms. Anna Khan demonstrated untrustworthiness to transact insurance agency business by participating in and/or facilitating the submission to an insurer of applications for life insurance that she knew contained a false Representative's Declaration

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