

Disclaimer

An order that is made regarding a licence holder reflects a situation at a particular point in time. The status of a licence holder can change. Readers should check the current status of a person's or entity's licence on the Licensing Link section of FSRA's website. Readers may also wish to contact the person or entity directly to get additional information or clarification about the events that resulted in the order.

Government of Ontario: Superintendent of Financial Services

REGARDING the *Insurance Act*, R.S.O. 1990, c. I.8, as amended, in particular sections 392.5 and 407.1

AND REGARDING John Willoughby

NOTICE OF PROPOSAL TO REVOKE LICENCE

TO: John Willoughby

Section 392.5 of the *Insurance Act* ("the Act") provides that the Superintendent of Financial Services (the "Superintendent") may revoke an insurance agent licence in certain specified circumstances.

Section 407.1 of the Act provides that where the Superintendent proposes to revoke an insurance agent licence without the agent's consent, the Superintendent shall give written notice of the proposal to the agent, including the reasons for the proposal.

TAKE NOTICE THAT pursuant to sections . 392.5 and 407.1 of the Act, the **Superintendent is proposing to revoke John Willoughby's insurance agent licence**. The reasons for this proposal are described below.

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de l'Ontario, 5160 rue Yonge, boîte 85, Toronto ON M2N 6L9.

AND TAKE NOTICE THAT pursuant to subsection 407.1(3) of the Act, a **hearing before the Financial Services Tribunal about this proposal may be requested by completing the enclosed Request for Hearing (Form 1) and submitting it to the Tribunal within 15 days after this notice is given. A copy of that form is included with this notice**. Additional copies can be obtained by visiting the Tribunal's website at www.fstontario.ca.

If a Request for Hearing (Form 1) is submitted to the Tribunal within 15 days after this notice is given, subsections 407.1(3) and 407.1(4) of the Act provide that the Tribunal shall hold a hearing and decide whether or not to direct the Superintendent to carry out this proposal, with or without changes, or substitute its opinion for that of the Superintendent, and the Tribunal may impose such conditions as it considers appropriate in the circumstances.

If no Request for Hearing (Form 1) is submitted to the Tribunal within 15 days after this Notice is given, TAKE NOTICE THAT the Superintendent will carry out the proposal to revoke the insurance agent licence of John Willoughby pursuant to subsection 407.1(7) of the Act.

Completed Request for Hearing Forms must be received by the Tribunal within 15 days after this notice is given. They may be mailed, faxed or delivered:

TO:

Financial Services Tribunal
5160 Yonge Street, 14th Floor, Box 85
Toronto ON M2N 6L9

Attention: Registrar

Fax: 416-226-7750

AND TO:

Superintendent of Financial Services Regulatory Discipline Officer
Licensing and Market Conduct Division
5160 Yonge Street, 4th Floor, Box 85
Toronto ON M2N 6L9

Fax: 416-590-7070

The hearing before the Tribunal will proceed in accordance with the Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22. Those Rules are available at the website of the Tribunal: www.fstontario.ca. Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 ext. 7294.

At a hearing, your character, conduct and/or competence may be in issue. You may be furnished with further and or other particulars, including further or other grounds, to support this proposal.

REASONS FOR PROPOSAL

I. JOHN WILLOUGHBY'S LICENSING HISTORY

1. John Willoughby ("Mr. Willoughby") first became licensed in Ontario as a Life Insurance Level 1 and A&S Insurance Agent on April 1, 1994. His licence was reissued as a Life Insurance Level 2 and A&S Insurance Agent on November 27, 1995. His licence expired on June 3, 1996 and was renewed on June 4, 1996. Since then, Mr. Willoughby's licence has been renewed every two years. His current licence is scheduled to expire on June 3, 2018.
2. Mr. Willoughby has no disciplinary history with the Financial Services Commission of Ontario ("FSCO").

II. FSCO INVESTIGATION

3. On or about December 2, 2016, FSCO received a Life Agent Reporting Form ("LARF") from Sun Life Financial with respect to Mr. Willoughby. The LARF was signed by Noreen Stevenson ("Ms.. Stevenson"), Senior Investigator, Individual Compliance. The LARF stated that it contained evidence of untrustworthiness.
4. Attached to the LARF was a letter from Ms. Stevenson, stating that Mr. Willoughby was contracted with Sun Life Financial Distributors (Canada) Inc. from June 3, 1985 until March 4, 2016, at which time Mr. Willoughby was terminated. At the time of his termination, Mr. Willoughby was working out of a home office. The letter further stated that Sun Life Assurance Company of Canada Inc. conducted a review of Mr. Willoughby's business practices, when it identified trends of pre signed blank forms, altered forms, instances where client signature was cut from another form and taped to another form, and reused forms.
5. Ms. Stevenson's letter included a list of eighteen client files that included instances of the above-noted issues. The letter also included copies of the documents that contained the noted issues, as well as a copy of Mr. Willoughby's Advisor's Agreement and Advisor's Termination Notice.
6. The irregularities found in the documents attached to the LARF, include the following (collectively "the irregularities"):

a. **ER**

- i. *Form:* Pre-Authorized Chequing ("PAC"), dated February 18, 2014 and February 24, 2014.

Concern: \$5,000 whited out and replaced with \$5,200; Advisor signature predates client signature.

- ii. *Form:* Know Your Client ("**KYC**"), dated February 6, 2014.

Concern: Net worth altered - written over.

- iii. *Form:* KYC, dated February 6, 2014.

Concern: Net worth and risk tolerance altered on the carbon copy.

b. **MLP**

- i. *Form:* KYC, dated July 7, 2014.

Concern: Client signature was a scanned copy.

c. **KS**

- i. *Form:* Unknown (incomplete form attached).

Concern: Pre-signed blank form.

d. **NH**

- i. *Form:* Application for SunSpectrum Accumulation, dated November 13, 2015 and October 28, 2015.

Concern: Date. on form is altered; Advisor signature predates altered client signature date.

e. **DF**

- i. *Form:* National Bank Credit Application, dated February 24, 2015.

Concern: Amount requested was taped to the document.

f. **PM**

- i. *Form:* Application for SunSpectrum Accumulation, dated November 29, 2011.

Concern: Client signature taped to the document. Two versions of signature page found in file (2009 and 2011); client signature portion of 2009 form cut out.

g. **DR**

- i. *Form:* Transfer Authorization, dated February 2, 2014 and February 11, 2014.

Concern: Form was reused to execute three transactions; amount and dates were altered.

h. **AT**

- i. *Form:* Transaction Authorization, dated December 30, 2011.

Concern: Client information part was cut from another form and taped to this form.

i. **KS**

- i. *Form:* SunWise Essential Series Application, dated November 13, 2012.

Concern: The entire application is original copy except for the signature page, which is a photocopy or fax and the signature appears to be cut and taped from another form.

j. **KW**

- i. *Form:* Assignment of Policy, dated December 11, 2014.

Concern: Altered form (white out), and signature was cut from another form then photocopied onto this form.

- ii. *Form:* PAC, dated November 1, 2014.

Concern: Investment direction added after client signed form (faxed copy).

- iii. *Form:* Beneficiary Change Request Form, dated December 11, 2014.

Concern: Policy number was added and date was changed after client signed form.

k. JW

- i. *Form:* Assignment of Policy, dated January 7, 2015.

Concern: Client signature cut and taped.

l. VL

- i. *Form:* Life Insurance Replacement Disclosure, undated.

Concern: Pre-signed blank form.

m. **RB**

- i. *Form:* Life Insurance Replacement Disclosure, undated.
Concern: Pre-signed blank form.

n. **AF**

- i. *Form:* SunWise Order Ticket, undated.
Concern: Altered form (white out).

o. **LB**

- i. *Form:* Life Insurance Replacement Declaration, .dated August 18, 2011.
Concern: Altered form (white out).

p. **GF**

- i. *Form:* Written Analysis to Accompany Life Insurance Replacement Declaration, dated November 14, 2012.

Concern: Client signature cut and taped.

q. **TC**

- i. *Form:* Transfer Authorization, dated July 23, 2013.

Concern: Client signature cut and taped.

- ii. *Form:* Calculation of Medical and Disability-Related Component of Withdrawal (notarized).

Concern: Altered form (white out).

r. **EH**

- i. *Form:* Life Insurance Disclosure Form, dated March 23, 2000.

Concern: Pre-signed blank form.

7. After receiving the LARF and supporting documentation, the file was assigned to Gary Logan ("Mr. Logan"), Investigator with the Licensing and Market Conduct Division of FSCO.

8. During the investigation, Mr. Logan communicated with Greig Humphrey ("Mr. Humphrey"), Associate Supervisory Manager at Sun Life Financial. Mr. Humphrey advised Mr. Logan of the following:
 - a. The irregularities in the documentation of Mr. Willoughby's files were discovered after his termination, which was effective March 4, 2016.
 - b. After Mr. Willoughby was terminated, his files were redistributed to other advisors. After this redistribution, some irregular documentation was discovered.
 - c. After the irregular documentation was discovered, Mr. Humphrey was asked to review all of Mr. Willoughby's former files for other irregularities.
 - d. Mr. Humphrey reviewed close to eighty files, and discovered issues concerning irregular documentation in twenty-six of those files.
9. Mr. Logan was advised by Ms. Stevenson that Sun Life did not discover any specific losses suffered by clients on account of the irregular documentation. Ms. Stevenson further advised that Sun Life had put in place a process to meet with clients in order to review and correct any documentation that was found to be irregular.
10. On September 14, 2017, Mr. Logan attended a scheduled interview with Mr. Willoughby, conducted in Mr. Willoughby's home, in order to discuss the allegations contained in the LARF.
11. During the course of the interview, Mr. Logan presented Mr. Willoughby with copies of the documentation referenced in the LARF. Mr. Willoughby was directed to the sections in the documentation that contained the irregularities in question.

12. Mr. Willoughby did not provide explanations as to why the documents contained the irregularities. Mr. Willoughby's responses included: that the issue has not been brought to his attention before; that he did not recall why the documentation was as it was; and that he did not think he was responsible for the irregularities in the documentation.

13. Based on the investigation conducted, the Superintendent concluded that the irregularities in the documents were significant and concerning, and that Mr. Willoughby was responsible for the irregularities.

III. GROUNDS FOR REVOCATION OF LICENCE

14. Subsection 392.5(1) of the Act provides that the Superintendent may revoke a licence where the agent has failed to comply with the Act, the regulations or a condition of the licence.

15. Subsection 392.5(2) of the Act and section 8 of O. Reg. 347/04 permit the Superintendent to revoke a licence on any grounds on which an application can be refused or if it appears to the Superintendent that the licensee has done any of the following:

- a. violated any provision of the licence in the licensee's operations as an agent;
- b. has made a material misstatement or omission in the application for the licence;
- c. has been guilty of a fraudulent act or practice; or

- d. has demonstrated incompetence or untrustworthiness to transact the insurance agency business for which the licence has been granted.

16. Subsection 392.4(1) of the Act provides that the Superintendent may refuse to issue a licence where the applicant fails to meet the prescribed requirements or the Superintendent believes, on reasonable grounds, that the applicant is not suitable to be licensed having regard to such circumstances as may be prescribed and such other matters as the Superintendent considers appropriate. Section 4 of O. Reg. 347/04 provides that to issue a licence, the Superintendent must be satisfied, *inter alia*, that the applicant:

- a. is of good character and reputation;
- b. is not engaged in any business or occupation that would jeopardize the applicant's integrity, independence or competence as an agent;
- c. is otherwise a suitable person to receive a licence; and
- d. intends to hold himself, herself or itself out publicly and carry on business in good faith as an agent.

17. In the Superintendent's opinion, the irregularities found in Mr. Willoughby's client files warrant a revocation of his licence. As seen above, the irregularities include, but are not limited to:

- a. Improperly altered forms, including using white out and writing over forms;

- b. Manipulated forms including cutting client signatures and form sections and taping them onto new forms;
- c. Pre-signed blank forms;
- d. Forms re-used multiple times by altering the date and other information;
- e. Forms that were added to after the client signed.

18. In the Superintendent's opinion, Mr. Willoughby's actions and business practices, as demonstrated by the irregularities in the documentation, amount to incompetence or untrustworthiness to transact the insurance agency business for which the licence has been granted, contrary to section 8(d) of O. Reg. 347/04. Improperly altering and manipulating documents is a serious act that goes to the heart of trustworthiness. Given the nature of the documents in question, the frequency with which these practices occurred, and the duration of these practices, Mr. Willoughby has shown himself to be untrustworthy to transact the insurance agency business for which he is licensed.

19. In the Superintendent's opinion, based on the irregularities in the documents, Mr. Willoughby is not suitable to be licensed, and is not of good character and reputation, contrary to sections 4(1)(a) and (c) of O. Reg. 347/04.

20. Therefore, the Superintendent is of the opinion that Mr. Willoughby's licence should be revoked.

IV. REVOCATION OF LICENCE

21. In the Superintendent's opinion, Mr. Willoughby's actions put his clients and the public at risk. Even though no clients were found to have suffered specific losses

on account of the irregularities in the documents, Mr. Willoughby's actions put his clients at serious risk. The improper alteration and manipulation of the forms could have rendered the forms illegitimate, which could have had deleterious effects on Mr. Willoughby's clients' insurance policies and other financial products.

22. During Mr. Willoughby's interview with Mr. Logan, no reasons were provided as to why the irregularities appeared in the documents. It is the Superintendent's opinion that, even if the irregularities were not based on malicious intent and were based on instructions received by clients, Mr. Willoughby's actions warrant a revocation of his licence.

23. The Superintendent is of the view that the interests of the public may be adversely affected by Mr. Willoughby's continued operation as a licensed insurance agent.

24. For all of the reasons above, the Superintendent is of the view that Mr. Willoughby's licence must be revoked.

25. Such further and other reasons as may come to my attention.

DATED at Toronto, Ontario, February 12, 2018.

Original signed by

Heather Driver
Director
Licensing Branch

By delegated authority from the Superintendent of Financial Services

TO: Financial Services Tribunal
5160 Yonge Street, 14th Floor, Box 85
Toronto ON M2N 6L9

Attention: Registrar

Tel: (416) 226-7752
Fax: (416) 226-7750
Email: contact@fstontario.ca

AND TO: Ministry of the Attorney General, Civil Law Division

Financial Services Commission of Ontario Branch
5160 Yonge Street, 17th Floor
Toronto ON M2N 6L9

Attention: Ariel Schneider

Tel: (416) 590-7203
Fax: (416) 590-7556
Email: ariel.schneider@fSCO.gov.on.ca

Counsel for the Superintendent of Financial Services

Si vous désirez recevoir cet avis en français, veuillez nous envoyer votre demande par courriel immédiatement à : contactcentre@fsrao.ca.