



REGARDING the *Insurance Act*, RSO 1990, c I-8, as amended (the “Act”), in particular, sections 393(9) – 393(11)

AND REGARDING Neil Brian Kennelly, Life Insurance and Accident and Sickness Agent

DECISION AND ORDER

Overview:

Mr. Neil Brian Kennelly has not requested a hearing in response to the July 22, 2014 Notice of Opportunity for Hearing (the “Notice”) to refuse to renew his life insurance and accident and sickness insurance agent licence (“insurance agent licence”). There are no explanations for his behaviour. Nor is there any demonstrated interest in maintaining his insurance agent licence. The application for renewal of an insurance agent licence by Mr. Kennelly is denied.

Introduction:

On July 22, 2014, the Superintendent of Financial Services (“Superintendent”) issued a Notice to Mr. Neil Brian Kennelly. The Notice informed Mr. Kennelly of allegations against him and the opportunity for a hearing before an Advisory Board. The Notice advised Mr. Kennelly 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. Kennelly was also advised that such decision could include the refusal to renew his insurance agent licence and/or imposition of terms and conditions on the licence.

I have received evidence from the Regulatory Discipline Officer at the Commission that the Notice was sent by registered mail to the address on file at the Commission and that no request for a hearing was received. I am satisfied that the Notice was properly served in accordance with the provisions of the Act and that Mr. Kennelly did not request a hearing.

A copy of the allegations is attached to this Decision in Schedule 1.

The Evidence:

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

The evidence can be summarized as follows. Mr. Kennelly held a licence as a life insurance and accident and sickness insurance agent since November 14, 2002, and the licence expired on November 12, 2012. On January 22, 2013 FSCO received an application to renew his insurance agent licence.

In reviewing the renewal application, FSCO staff noted that Mr. Kennelly's errors and omissions insurance ("E&O") policy was about to expire on February 1, 2013. Section 13 of Ontario Regulation 347/04 (the "Regulation") requires an agent who holds a life insurance licence to maintain E&O. On January 24, 2013, an email was sent to Mr. Kennelly by Commission staff requesting a copy of his renewed E&O policy and a list of business written while unlicensed, if any. Commission staff attempted to contact Mr. Kennelly by letter, email and telephone to obtain this information or to request that Mr. Kennelly withdraw his renewal application. Mr. Kennelly did not respond to these requests.

Findings of Fact:

I find that Mr. Kennelly failed to respond to requests for information from the Commission. Commission staff made eight requests by telephone, email and letter. Mr. Kennelly spoke with Commission staff about the requirements to complete his application on at least two occasions. The March 21, 2013 and September 10, 2013 registered letters sent to Mr. Kennelly by the Commission's Licensing & Registration Specialist were successfully delivered by Canada Post.

I find that Mr. Kennelly is unsuitable to hold a licence as an insurance agent by virtue of his failure to respond to information requests from the Commission.

In the absence of testimony by Mr. Kennelly, I am not aware of any explanations for his behaviour or mitigating circumstances.

Decision:

I have found that Mr. Kennelly has failed to respond to information requests from the Commission and is not suitable to hold a licence as an insurance agent.

Sections 442.1 and 442.3 of the Act permit the Superintendent to direct an inquiry to an agent and require the agent to give the Superintendent full information about any matters as may be specified by the Superintendent.

Si vous désirez recevoir cet avis/ordre en français, veuillez adresser votre demande dans un délai de 15 jours à:
Adjointe, audiences, Greffe, Commission des services financiers de l'Ontario, 5160 rue Yonge, boîte 85, Toronto
ON M2N 6L9

Furthermore, section 7(3)(e) of the Regulation authorizes the Superintendent to require anyone who applies for an insurance agent licence in Ontario (whether a new licence or a renewal) to furnish "such other information as the Superintendent may require." An applicant who fails to comply with the Superintendent's requirement for information frustrates this responsibility.

Mr. Kennelly failed to give or furnish the information requested and therefore a penalty is warranted. Refusing to co-operate with Commission staff or to offer any explanation is a serious breach of the Act, and demonstrates an unwillingness to being regulated and a lack of suitability to hold an insurance agent licence within the meaning of section 4(1)(i) of the Regulation.

Insurance agents must be governable and amenable to being regulated. In this case, Mr. Kennelly failed to meet his obligation to respond to information requests from the Commission about the E&O policy documentation related to a statutory requirement.

Findings of unsuitability frequently result in the denial of an application for issuance or renewal of an insurance agent licence. Accordingly, I believe that the appropriate penalty is denial of Mr. Kennelly's application to renew his licence as an insurance agent.

ORDER

The application for renewal of a life insurance and accident and sickness insurance agent licence by Neil Brian Kennelly is hereby denied.

DATED at Toronto, Ontario, January 19, 2015.

Original signed by Anatol Monid
Anatol Monid
Executive Director, Licensing & Market Conduct Division

By Delegated Authority from:
The Superintendent of Financial Services

Schedule 1

The following allegations were set out in the Notice:

Allegations

1. Kennelly has failed to maintain appropriate errors and omissions insurance (“E&O”), as required by section 13 of the Regulation.
2. Kennelly has failed to respond to a request for information by the Superintendent of the Financial Services Commission of Ontario (“FSCO”) as required by section 442.3(1) the Act.
3. Kennelly’s failure to comply with the requirements to maintain E&O and to facilitate an investigation by the Superintendent make him unsuitable to hold a life insurance and accident and sickness insurance agent licence in Ontario.