



AB 137-2014

REGARDING the *Insurance Act*, R.S.O. 1990, c. I-8, as amended (the “*Act*”), particularly Part XIV, in particular subsections 393(9) to 393(11)

AND REGARDING a hearing concerning the suspension or revocation of the life insurance agent licence of Estrella Tabije Ogalino

DECISION AND ORDER

Overview:

Ms. Estrella Tabije Ogalino requested a hearing in response to the July 10, 2014 Notice of Opportunity for Hearing to suspend or revoke her life insurance agent licence (“insurance agent licence”). On March 25 and May 5, 2015, a hearing was held before an Advisory Board (“Board”). The insurance agent licence of Ms. Ogalino is suspended for a period of 12 months and conditions are imposed on her licence for a further period of 36 months.

Introduction:

On July 10, 2014, the Superintendent of Financial Services (“Superintendent”) issued a Notice of Hearing to Ms. Estrella Tabije Ogalino. The Notice informed Ms. Ogalino of the appointment of a Board to consider the allegations against her, her character, her competence, and the propriety of her conduct.

Pursuant to the Notice of Hearing, a Board was duly appointed under subsection 393(9) of the *Act*. The hearing was conducted on March 25 and May 5, 2015 and was proceeded by way of an Agreed Statement of Facts.

A copy of the allegations is attached to this Decision as a Schedule.

A copy of the report of the Board is attached.

Findings of Fact:

Ms. Ogalino has held a licence as an insurance agent since 2006. On January 22, 2014, Ms. Ogalino submitted an on-line application to renew her insurance agent licence which would otherwise expire on January 23, 2016.

Four allegations were made against Ms. Ogalino with respect to her licence renewal application and her conduct from the securities related business. Ms. Ogalino testified at the hearing.

Ms. Ogalino admitted and accepted as true all of the findings of fact made by the Mutual Fund Dealers Association ("MFDA") in its Decision dated January 31, 2014, other than the findings relating to clients identified by the initials PS and JD. The MFDA found that Ms. Ogalino had failed to deal fairly, honestly and in good faith with clients, had failed to attend an interview to provide a statement, and had failed to produce documents and records as requested by MFDA staff during the course of its investigation. The MFDA ordered a life-time ban, fines and costs against Ms. Ogalino.

The Board made a finding that Ms. Ogalino admitted making a misstatement to the Superintendent in her application for a licence renewal and falsely answered inquiries in an interview with FSCO investigators.

Although the Board did not specifically say so, it appears (paragraphs [27] to [31] of the Board's report) that the Board found that Ms. Ogalino is not unsuitable to be a life insurance agent.

I hereby adopt the findings of fact of the Advisory Board.

Recommendation of the Advisory Board:

The Board recommended that Ms. Ogalino's licence as an insurance agent be suspended for a period of eighteen (18) months subject to the following conditions:

1. Ms. Ogalino to successfully complete a course in ethics acceptable to the Superintendent within four (4) months, and provide confirmation in writing. The ethics course is not to count toward CE credits.
2. Provide proof of acceptable errors and omissions insurance immediately after the period of suspension. After the suspension, for a minimum period of three years Ms. Ogalino's licence will be conditional on:

- A. Being supervised by a licensed life agent and obtaining a written undertaking from an Ontario licensed life agent acceptable to the Superintendent to:
 - i. Supervise Ms. Ogalino and co-sign all applications as evidence of joint responsibility for the insurance transacted by Ms. Ogalino.
 - ii. Immediately report to the Superintendent in writing any suspected contraventions by Ms. Ogalino of the Act, or regulations.
 - iii. Prepare a written report documenting his/her supervision of Ms. Ogalino every six months to be filed within 30 days of the end of each six month period.
- B. Provide the Superintendent with at least 30 days written notice that he/she wants to discontinue supervising Ms. Ogalino.
- C. Ms. Ogalino providing a written undertaking that she will not transact any insurance business unless supervised by the life agent approved by the Superintendent and undertaking to stop all Activity during any period when no supervising life agent is in place.
- D. Ms. Ogalino is not to have access to policyholder funds, or accounts, or to facilitate policy loans.”

The Board made reference to the following considerations:

- Ms. Ogalino acknowledged her wrongdoing, was remorseful, and had received a significant punishment for the matters addressed by the MFDA.
- Unlike the MFDA proceeding, where Ms. Ogalino did not respond or even appear at the MFDA hearing, Ms. Ogalino cooperated with the Financial Services Commission of Ontario (the “Commission”) in its investigation, and her counsel fully cooperated in this hearing, agreeing to all of the facts thereby relieving the Commission of the need to call witnesses.
- Although she falsely completed the Commission’s online renewal application in January 2014, she did make disclosure to her employer in the life insurance business over 2 years prior.
- Her employer is willing to continue to retain her and there was testimony from the employer that the insurance companies she writes policies for are aware of the facts in this case.
- Notwithstanding the serious findings against her, it was indicated that she retains the trust of her client base.
- Any new clientele would easily be able to find the MFDA Decision and Order online and will be able to find the Superintendent’s Decision as well, through an internet search.
- Ms. Ogalino has given an undertaking to the Board that she will pay both the \$7,500 in costs ordered by the MFDA and \$13,897.00 to Investors Group Financial Services Inc. (“Investors Group”) for unrecovered payments by

Investor's Group to investors, within 12 months after the end of any licence suspension, should a licence suspension be ordered.

Decision:

The Board found that Ms. Ogalino had failed to disclose in her insurance agent licence renewal application the sanction imposed by the MFDA, and recommended a period of suspension, the completion of an ethics course, and a number of other conditions on her licence.

I have considered the Board's comments that Ms. Ogalino co-operated, admitted her wrongdoing, expressed remorse, and had undertaken some restitution. Had she not done so, the penalty would have been more serious.

As is the case when dealing with a matter involving disciplinary action by a non-insurance regulator that leads to a proceeding under the *Act*, there are two issues for deliberation. The first is the degree to which findings of unsuitability before a regulator of financial services, other than insurance, should be considered as a basis for a finding of unsuitability for purposes of a licence as an insurance agent. The second is misrepresentation to the Superintendent arising from the other matter.¹

The principles from the *Nerdahl*² case deal with disciplinary action by a non-insurance regulator that leads to a proceeding under the *Act*. They are as follows:

1. If in a proceeding under the *Act* it is found that the agent is not suitable, the agent does not meet the requirements under Section 393 of the *Act* to hold a licence.
2. If in a proceeding under the *Act* it is found that the agent is suitable to hold a licence under the *Act*, it is necessary to ensure that misbehaviour does not emerge for insurance business. To achieve this objective, licence conditions and a licence suspension can be considered.
3. If in a proceeding under the *Act* it is found that the agent is suitable to hold a licence under the *Act*, any penalties should reflect only the Superintendent's responsibilities under the *Act*. This does not detract from the seriousness of discipline imposed by the other regulators.

Accordingly, the disciplinary action imposed by another regulator is not solely determinative of any discipline that might be imposed under the *Act*. Each such case must be considered on its own merits.

The *Nerdahl* case raises additional considerations which are outlined below. There is a reasonable concern for the public that arises as a result of Ms. Ogalino's actions in the mutual fund business, notwithstanding that there was no evidence presented that

¹ Harvey v. Ontario (Superintendent Financial Services), 2014 AB 115-2013 ("Harvey"),

² Nerdahl v. Ontario (Superintendent Financial Services), 2013 AB 100-2012 ("Nerdahl"),

clients in the insurance business have been harmed. This concern is described below.

It is possible that a finding by a non-insurance regulator may relate to the honesty and integrity of an individual in such a way that a Board could find that the individual has the proclivity toward such behaviour and represents an unacceptable risk to the public, or that a single action by the individual is so serious that the individual would not meet the suitability standard for an insurance agent. In such a case, the individual would be unsuitable to be licensed as an insurance agent. The Board did not find that either of these circumstances exists in this case.

It is also possible that a Board, taking into consideration both the agent's history in the insurance industry, as well as the agent's history in other financial services, might find that any risk to the public is more specifically related to the non-insurance financial services and that the risk that such behaviour will recur in the insurance business can be managed. Such a finding would not represent condoning the action by the individual or a diminution of the findings of the non-insurance regulator. This appears to be the conclusion of the Board in this case.

It is clear from the report of the Board that it concluded, correctly, that a finding of unsuitability would reasonably lead to an order for revocation of Ms. Ogalino's licence. Section 393 of the *Act* makes suitability a pre-condition of the granting of a licence as an insurance agent and places a duty on the Superintendent to assess suitability.

Section 407 of the *Act* provides that "a licence may be issued to an agent or adjuster subject to such limitations and conditions as the Superintendent or the organization recognized under subsection 393(14), as the case may be, may prescribe." Limitations or conditions are designed to manage risk in those circumstances where risk can practically be managed. This can be used in situations where protection of the public may require greater oversight of the behaviours of an agent.

It would be inappropriate to ignore the fact that an individual who did not comply with the regulations governing the sale of non-insurance financial products is also continuing to be licensed to sell insurance (another financial product) to the public. This is especially the case when mutual funds compete with certain insurance products. Regulated persons are expected to know and comply with the rules governing those financial services.³

That being said, the system of insurance regulation must be both fair and practical to administer. Fairness has two aspects. First, similar contraventions of the *Act* should result in similar consequences. That certainty promotes compliance and facilitates the administration of the *Act*. Second, fairness also requires that consideration be given to what is necessary to cause the individual to alter his or her behaviour and what is

³ Harvey

necessary to provide a penalty for the wrong doing, both for specific and general deterrence.⁴ Accordingly a penalty must be imposed for the contravention of subsection 447(2)(a) so that it is clear to the industry that the system of licensing must not be undermined by misrepresentations to the Commission.

The Board did not find that orders by the MFDA represented a sufficient basis to conclude that Ms. Ogalino was unsuitable to be licensed as an insurance agent. This does not imply that there is a lesser standard of suitability under the *Act*.

I have also considered that Ms. Ogalino's behaviour towards the MFDA creates a question as to whether or not this is an insight into her governability as a licensed insurance agent. The Board noted that while she participated and was cooperative with the Commission's investigation and hearing, Ms. Ogalino did not participate in the MFDA's proceedings. The Board also remarked that Ms. Ogalino has indicated a willingness to reimburse the costs of the MFDA proceedings and to make restitution to the Investors Group, but the Board stated she has no plan, and claims she has no ability, to pay the \$110,000 in fines ordered to be paid by the MFDA. It would be inappropriate for another financial services regulator to ignore this.

In a related point, the subject matter of the MFDA proceedings was Ms. Ogalino's misconduct related to numerous misappropriations that spanned a period of 4 years and involved forgery of signatures etc. Between July 2007 and March 2011 she misappropriated at least \$52,728 from at least 8 clients. The Board noted that Ms. Ogalino gave it an undertaking that she will pay both the \$7,500 in costs ordered by the MFDA and \$13,897.00 to Investor's Group for unrecovered payments by it to investors, within 12 months after the end of any licence suspension, should a licence suspension be ordered. I note that the Board did not make any recommendation to formally include this undertaking as a condition of Ms. Ogalino's insurance agent licence. It would also be inappropriate to ignore that there is a party that has remained harmed by Ms. Ogalino's actions.

For whatever her motivation - the Board surmised that the reason for this is personal embarrassment - Ms. Ogalino did not provide as full an explanation of the reasons for her misconduct as the Board would have liked to have heard. Therefore, it remains unclear to me if the circumstances that led to Ms. Ogalino's misconduct in the first place have been dealt with so as not to continue to be a potential cause for misconduct in the future. In the absence of such knowledge about the cause and with a significant financial obligation outstanding to the MFDA and Investors Group, can any sanction or condition practically manage for the unknown? I am concerned with managing this risk.

I have considered that the insurance business is premised on the principle of utmost good faith and that a key doctrine of the business is placing a priority on the client's interest. It is clear that Ms. Ogalino was aware that she was using client monies for

⁴ *Hilderman v. Ontario (Superintendent Financial Services)*, 2013 AB 110-2012 ("Hilderman"),

her own purposes, without their permission, and accordingly there is no question of competence for which additional training and supervision would be appropriate. Since the Board did not find Ms. Ogalino to be unsuitable, a licence revocation is not appropriate.

In light of the findings of the Board, I believe that licence conditions providing for supervision and monitoring are necessary to ensure that Ms. Ogalino's contraventions are isolated to the mutual fund business and that she does not pose a risk to insurance clients. I will be ordering a period of supervision, along with ethics training, monitoring of errors and omissions insurance, and more strict conditions than the Board has seen to recommend to address the risks and behaviours I have noted above.

The Board indicated that after three years of continuous supervision, Ms. Ogalino could apply to the Superintendent to have its proposed conditions removed from her licence. It is the practice of the Superintendent when ordering a continuous supervisory period that the terms and conditions expire automatically, without the requirement of the licensee to apply to have them removed. Given that there will be regular monitoring and reporting of Ms. Ogalino's behaviour, this is administratively expedient.

The Board found that Ms. Ogalino made misstatements to the Superintendent in her application for a licence. Providing false or misleading information to the Superintendent is a serious matter. The absence of this information precludes the Superintendent from requiring closer supervision of the agent to ensure that misconduct in the sale of mutual funds does not become misconduct in the sale of insurance. Regulation would not be possible if licensees did not bear serious consequences for providing false, misleading or incomplete information to the regulator.⁵

The Board recommended a penalty at the longer end of the range of suspensions that have been imposed by the Superintendent. Past Superintendents' decisions have typically resulted in suspensions of less than a year for such misstatements. The object of the penalty is a sanction for providing false or misleading information rather than a reflection of the cause of the misstatement. I agree that the penalty should be at the longer end of the range but I am not prepared to accept the 18 month range recommended by the Board.

Mitigating factors are the support of her employer and the remorsefulness expressed by Ms. Ogalino as summarized by the Board in its report. I also appreciate that in the life insurance business, payments are typically made directly to the insurance company and do not pass through accounts controlled by agents.

⁵ Nerdahl

I have found that Ms. Ogalino consistently acted in her own self-interest, whatever that may have been, and not in the best interests of her clients or in compliance with the law. The fact that Ms. Ogalino contravened the *Act* and the way she conducted herself prior to that, rather than the access to funds themselves, was the basis for these findings.

ORDER

I hereby order the following suspension of, and conditions on, the insurance agent licence of Ms. Estrella Tabije Ogalino:

1. Ms. Ogalino's insurance agent licence shall be suspended for a minimum period of 12 (twelve) months commencing September 14, 2015.
2. Ms. Ogalino is to successfully complete a course in ethics acceptable to the Superintendent within four (4) months from the date of this Order. The ethics course is not to count toward Continuing Education credits.
3. Subject to section 5 below, Ms. Ogalino's licence as an insurance agent shall remain suspended until the later of the completion of the period of suspension ordered in section 1 above and the date Ms. Ogalino provides the Superintendent with the following written confirmations:
 - a. From the Investor's Group: that there is an agreement, in writing, to address payment of the \$13,897.00 owed to it for unrecovered payments to investors;
 - b. From the MFDA: that there is an agreement, in writing, to address payment of the \$7,500.00 in costs and \$110,000 in fines ordered by it on January 8, 2014;
 - c. From an insurance carrier acceptable to the Superintendent: written proof that she has obtained errors and omissions insurance as required under the *Act* for an insurance agent in her circumstances; and
 - d. From the provider of the ethics course as referred to in section 2 above: that she successfully completed the course as and within the time required by section 2.
4. Ms. Ogalino will:
 - a. not work as a life insurance agent except for Kabis and Associates Inc., 210-3033 Palstan Road, Mississauga, Ontario, L4Y 4E7, unless otherwise authorized, in writing, by the Superintendent to do otherwise;
 - b. notify the Superintendent immediately, in writing, if she is or becomes subject to any proceeding by any regulatory and/or licensing body regarding any licence she has, or may have, that is required in order to deal with the public; and
 - c. notify the Superintendent immediately, in writing, if she is charged with an offence in any province or country.
5. Ms. Ogalino's licence as an insurance agent shall remain suspended until the later of the completion of the period of suspension ordered in section 3 above,

and the date that the Superintendent notifies Ms. Ogalino, in writing, that he has accepted a written undertaking of another insurance agent (the Supervising Agent) who is licensed in Ontario, located in Ontario and acceptable to the Superintendent, to do the following for a period of 36 months commencing on the day following the conclusion of the period of suspension of Ms. Ogalino's licence:

- a. supervise Ms. Ogalino and co-sign all applications, as evidence of joint responsibility for the insurance business transacted by Ms. Ogalino;
 - b. confirm that Ms. Ogalino has not had access to policyholder funds or accounts, and has not facilitated any policy loans;
 - c. confirm that the required errors and omissions insurance is continuously maintained;
 - d. report to the Superintendent immediately any suspected contraventions of the *Act* or its regulations by Ms. Ogalino; and
 - e. prepare promptly after each six month period during the period of supervision a report regarding Ms. Ogalino's insurance business, other requirements and her compliance with the terms of this Order, and deliver it to the Superintendent.
6. The Supervising Agent shall notify, in writing, the Superintendent forthwith if he or she is no longer willing to comply with the terms of the undertaking. Ms. Ogalino shall not act as an insurance agent for any period of time during which she does not have a Supervising Agent.
 7. Ms. Ogalino shall immediately notify the Superintendent, in writing, if she wishes to substitute the Supervising Agent and shall immediately thereafter cease to act as an insurance agent until such time as she has received the written approval of the Superintendent of a substitute Supervising Agent in accordance with section 5 above.

DATED at Toronto, Ontario, August 31, 2015.

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Executive Director, Licensing & Market Conduct Division

By Delegated Authority from:
The Superintendent of Financial Services

Schedule

The following allegations were set out in the Notice:

The Financial Services Commission of Ontario (“FSCO”) submits that the life insurance agent licence of Estrella Tabije Ogalino (“Ogalino”), licence# 06090304, should be suspended or revoked based upon the following Allegations, details of which are set out separately under Particulars.

Allegations

1. Ms. Ogalino has demonstrated that she is unsuitable to transact business as a life insurance agent, contrary to Regulation 347/04, in the following ways:
 - a. Contrary to s.4(1)(a), she is not of good character and reputation, but instead is an untrustworthy individual as evinced by her misappropriation of client funds.
 - b. Contrary to s.4(1)(c), she has an unsatisfactory record in business, and in particular financial services, having been permanently prohibited by the Mutual Funds Dealers Association (“MFDA”) from securities related business.
 - c. Contrary to s.4(1)(i), she is an unsuitable person to hold a life agent licence, having misappropriated money from clients; having been uncooperative with the MFDA; having furnished false information to FSCO on her licence renewal application contrary to section 447(20(a) of the Act; and, not otherwise being amenable to regulation as a licensed professional.
2. Pursuant to section 8(c) of Regulation 347/04, Ms. Ogalino has been found guilty of a fraudulent act or practice by the MFDA.
3. Pursuant to section 8(d) of Regulation 347/04, Ms. Ogalino has demonstrated that she is either incompetent or untrustworthy in regards to the best interests and property of her clients.
4. Pursuant to section 8(d) of Regulation 347/04, Ms. Ogalino has demonstrated that she is untrustworthy in dealing with regulatory agencies, as evinced by her failure to attend an interview as required by the MFDA and having furnished false information to FSCO on her licence renewal application contrary to section 447(20(a) of the Act.
5. Such further allegations as counsel for FSCO may advise.