



AB 148-2014

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 Jeffrey Murray Willis

DECISION AND ORDER

Overview:

Mr. Jeffrey Murray Willis requested a hearing in response to the October 6, 2014 Notice of Opportunity for Hearing to suspend or revoke his life insurance agent licence ("insurance agent licence"). On October 16, 2014, February 19, 2015 and April 23, 2015, a hearing was held before an Advisory Board ("Board"). Mr. Willis participated in and testified at the hearing. The insurance agent licence of Mr. Willis is suspended for a period of nine months and conditions are imposed on his licence for a further period of 24 months.

Introduction:

On October 6, 2014, the Superintendent of Financial Services ("Superintendent") issued a Notice of Hearing to Mr. Willis. The Notice informed Mr. Willis of the appointment of a Board to consider the allegations against him, his good character, his competence, and the propriety of his conduct.

Pursuant to the Notice of Hearing, a Board was duly appointed under subsection 393(9) of the *Act*. The hearing was conducted on October 16, 2014, February 19, 2015 and April 23, 2015, and proceeded by way of an Agreed Statement of Facts (AFS) and a Joint Document Brief.

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:

Mr. Willis has held a licence as an insurance agent since 1994. On December 13, 2013, Mr. Willis submitted an on-line application to renew his insurance agent licence in which he responded to:

- question 13 on the renewal application that he had been fined by and prohibited from participating in the Mutual Fund Dealers Association (“MFDA”).
- question 15 on the renewal application that he had been successfully sued, referencing the civil action by the NF Family Trust and the settlement that resulted.
- question 17 on the renewal application that he was a discharged bankrupt. He filed an assignment into bankruptcy on August 18, 2011 and was discharged May 30, 2013.

Five allegations were made against Mr. Willis with respect to his conduct from the securities related business, his competence and his co-operation with an examination by the Superintendent. Mr. Willis testified at the hearing.

The Board was of the view that during the March 6, 2014 interview, the FSCO Investigator was clear in his request that Mr. Willis must provide client names to the Commission. In the end, Mr. Willis did not provide the Investigator with the requested information. However, the Board noted that the FSCO Investigator did not provide clarity in the email exchange subsequent to the interview and this led them to conclude that Mr. Willis was not ungovernable (paragraph [86] of the Board’s report).

The Board was of the view that, for his own financial gain, Mr. Willis knowingly facilitated the investment by his clients in financial products which were not approved by his dealer and which resulted in significant losses for his clients. The Board noted that Mr. Willis profited by the sale of unapproved investments to a number of clients and thereby took advantage of those clients.

The Board observed that it was clear that Mr. Willis breached the MFDA rules. It was equally clear to the Board that as a result of those breaches, his clients suffered. The fact that Mr. Willis also lost money does not diminish the loss of his clients. The Board also noted that Mr. Willis was represented by counsel during the MFDA hearings and that Mr. Willis did not appeal or judicially review the MFDA findings.

The Advisory Board accepted the findings from the regulatory proceedings by the MFDA. It noted that it would have been an abuse of process to permit re-opening the

issues that have already been conclusively determined by a court or administrative tribunal.

The Board was of the opinion that the MFDA proceedings are relevant to the application of Mr. Willis for an insurance agent licence. Mr. Willis reviewed the MFDA ASF and admitted to the facts contained in that document, although he only admitted to two of the three allegations. He also admitted that the facts constitute misconduct. He did not oppose the MFDA staff recommendations regarding sanctions. The MFDA ordered a life-time ban, fines and costs against Mr. Willis.

It appears from the Board report (paragraph [74]) that Mr. Willis was sued by a number of defendants related to unapproved investments, and that law suit was settled by a payment of \$150,000 from Mr. Willis and a payment by his dealer.

Although the Board did not find Mr. Willis ungovernable, it was the Board's conclusion that Mr. Willis is unsuitable to be licenced (paragraph [110] of the Board's report).

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

Recommendation of the Advisory Board:

The Board stated that it was unanimous in its conclusions regarding the allegations; however, the Board was divided on the recommendations (paragraph [111] of the Board's report).

The majority recommended:

- a. a suspension of Mr. Willis' insurance agent licence for a period of one year;
- b. following the termination of his one-year suspension:
 - i. Mr. Willis be supervised for a period of one year;
 - ii. Mr. Willis provide quarterly reports to the Commission:
 1. Detailing his insurance related activity during the quarter, including any insurance sales made during the quarter; and
 2. Confirming that his client interactions were supervised;
- c. During the one-year suspension, Mr. Willis attend and successfully complete insurance related courses including at least the following:
 - i. A course on Ethics approved by the Commission;
 - ii. Enroll in the Chartered Life Underwriter (CLU) course;
- d. Mr. Willis attend ADVOCIS quarterly meetings for a period of at least one year.

The majority, in reaching its decision that the licence of Mr. Willis not be revoked, considered the following factors:

- a. The evidence of good character, including the evidence of his pastor;
- b. The evidence of his current employer and his trust;
- c. The 20 year tenure of Mr. Willis in the insurance industry;
- d. The lack of any further concerns arising since the matters raised by the MFDA proceedings, which date from 2008/9; and
- e. The price paid by Mr. Willis to date, including the stigma associated with the MFDA findings.

The recommendation of the minority is that the licence of Mr. Willis be revoked.

The minority, in reaching its decision that the licence of Mr. Willis be revoked, considered the following factors:

- a. The MFDA proceeding clearly established that Mr. Willis facilitated the investment by 32 clients and others in financial products which were not approved, contrary to the MFDA rules;
- b. As a result, these clients lost substantial amounts of money;
- c. Mr. Willis was also indebted to a client in the amount of \$150,000 contrary to the MFDA rules;
- d. The willingness of Mr. Willis to knowingly place his clients at risk in products which he knew were not approved, and to profit from that arrangement, demonstrates his unsuitability to hold an insurance licence; and
- e. That this recommendation exceeds the sanction suggested by the Commission.

Decision:

The Board found that Mr. Willis had disclosed in his insurance agent licence renewal application the sanction imposed by the MFDA, and as a result recommended a period of suspension, the completion of courses, and a number of other conditions on his licence.

I have considered the Board's comments that Mr. Willis co-operated, had a 20-year insurance career, had the trust of his current employer, and had undertaken some restitution. Had he not done so, the penalty would have been more serious.

As with any case 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 any contravention of the Insurance Act arising from the other matter, like a failure to cooperate with the Superintendent.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, which the Board's minority notes in this case (paragraph [136] of the Board's report).³

The *Nerdahl* case raises additional considerations which are outlined below. There is a reasonable concern for the public that arises as a result of Mr. Willis' use of unapproved products while in the mutual fund business, notwithstanding that there was no evidence presented that clients in the insurance business have been harmed. Had Mr. Willis responded to FSCO's Investigator's legitimate inquiry, this may have been confirmed. Nonetheless, 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 find that these circumstances existed in this case (paragraph [124] of the Board's report). However, only the minority considered revocation appropriate.

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

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

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

³ Vorstadt v. Ontario (Superintendent Financial Services), 2014 AB 117-2013 ("Vorstadt")

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 majority of the Board in this case (paragraph [116] of the Board's report).

It is clear from the report of the Board report that it concluded, correctly, that a finding of unsuitability would reasonably lead to an order for revocation of Mr. Willis'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. This appears to be the how the majority of the Board assessed this situation.

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.⁴ In this case, the MFDA proceedings dealt with unapproved investments and not with mutual fund products.

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 necessary to provide a penalty for the wrong doing, both for specific and general deterrence.⁵ Accordingly a penalty should be imposed for the contravention of subsection 443(1) (Examinations, general) so that it is clear to the industry that a person who holds or held a licence under the *Act* has a duty to prepare and submit to the person conducting an examination any information with respect to the person's business, finances or other affairs as the Superintendent may require.⁶

I agree with the Board's view that Mr. Willis is not unsuitable for failing to facilitate an examination. It is my view that if FSCO's Investigator advised Mr. Willis on March 28, 2014 that there was nothing further he required (paragraph [58] of the Board's

⁴ Harvey

⁵ *Hilderman v. Ontario (Superintendent Financial Services)*, 2013 AB 110-2012 ("Hilderman")

⁶ *Suspension Order Sabourin, Richard* - Jun 20, 2014 ("Sabourin")

report), even though Mr. Willis had not responded to the initial request. Mr. Willis should not be deemed to be ungovernable for his effort to seek further clarification on his counsel's advice. Even though the Investigator should have responded to Mr. Willis' subsequent inquiries, Mr. Willis' behaviour in response to the Investigator's initial legitimate request to facilitate an examination will carry some weight in the final assessment.

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

Mr. Willis did not participate in the MFDA's proceedings. The Board noted that Mr. Willis may now regret the way in which he conducted the MFDA proceedings; however, he remains bound by them (paragraph [102] of the Board's report). The MFDA proceedings resulted in a permanent ban on his authority to conduct securities related business, together with a fine of \$35,000 and a cost award against him in the amount of \$2,500. There was no indication from the Board that it was aware of the disposition of the fine and cost award. It would not be appropriate for another financial services regulator to ignore this.

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 Mr. Willis knowingly placed his clients at risk in unapproved investments and that he profited substantially from those arrangements, in spite of his attempts to mitigate their losses. Although the Board found Mr. Willis to be unsuitable, only a minority of the Board recommended licence revocation.

The Advisory Board recommended a course in ethics to respond to its first finding with respect to the proceedings before the MFDA. Mr. Willis' failure to take the steps directed by his dealer to monitor the consequences of leveraged investments was the cause of regulatory action by the MFDA. I am not satisfied that a CLU course or attending an industry association meeting would be beneficial in dealing with the risks associated with recommending insurance products.

In light of the findings of the Board, I believe that licence conditions providing for supervision and monitoring are necessary to ensure that Mr. Willis' contraventions are isolated to the securities related business and that he 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 majority of the Board recommended to address the risks and behaviours I have noted above.

The Board's unanimity on its conclusions regarding Mr. Willis' unsuitability, but its division on the recommendation warrants that I must rely more substantively on the

key precedential cases involving sanctions by other financial services supervisors for my decision.⁷

Mr. Willis' willingness to place his interests ahead of his clients' interests necessitates the Superintendent requiring closer supervision of the agent to ensure that misconduct related to securities does not become misconduct in the sale of insurance. Regulation would not be possible if licensees did not bear serious consequences for failing to put a priority on the client's interests.

The Board recommended a penalty at the longer end of the range of suspensions than have been previously imposed by the Superintendent in such cases. Past Superintendents' decisions have typically resulted in suspensions of less than a year. The object of the penalty is a sanction for a contravention under the Insurance Act, which in this case is a failure of a person who holds or held a licence under the Act to prepare and submit to the person conducting an examination any information with respect to the person's business, finances or other affairs as the Superintendent may require. I agree that there should be a penalty but I am not prepared to accept the 12 month range recommended by the majority of the Board; nor does this contravention warrant a revocation, as recommended by the minority of the Board.

Mitigating factors are the support of his employer and the attempt to off-set the losses of his clients, as summarized by the Board in its report. It also appears that in his current employment, Mr. Willis works with brokers regarding estate planning and other consulting work. This is described as a back office function but he does meet with clients.

I have found that Mr. Willis acted in his own self-interest and not in the best interests of his clients or in compliance with the law. The fact that Mr. Willis contravened the *Act* and the way he conducted himself prior to that, rather than the nature of the investments themselves, was the basis for these findings.

ORDER

I hereby order the following suspension of, and the imposition of conditions on the insurance agent licence of Mr. Jeffrey Murray Willis:

1. Mr. Willis' insurance agent licence shall be suspended for a minimum period of nine months commencing February 15, 2016.
2. Mr. Willis 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.

⁷ Vorstadt, Harvey, Nerdahl

3. Subject to section 5 below, Mr. Willis' 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 Mr. Willis provides the Superintendent with the following written confirmations:
 - a. From the MFDA: that there is an agreement, in writing, to address payment of the \$2,500.00 in costs and \$35,000.00 in fines ordered by it on June 1, 2012 or proof that it has been paid;
 - b. From an insurance carrier acceptable to the Superintendent: written proof that he has obtained errors and omissions insurance as required under the *Act* for an insurance agent in his circumstances; and
 - c. From the provider of the ethics course as referred to in section 2 above: that he successfully completed the course as and within the time required by section 2.
4. Mr. Willis will:
 - a. not work as a life insurance agent except for Strategic Alliance Finance Group, Suite 201, 3 Director Court, Vaughan, ON, L4L 4S5, unless otherwise authorized, in writing, by the Superintendent;
 - b. notify the Superintendent immediately, in writing, if he is or becomes subject to any proceeding by any regulatory and/or licensing body regarding any licence he has, had, or may have, that is required in order to deal with the public; and
 - c. notify the Superintendent immediately, in writing, if he is charged with an offence in any province or country.
5. Mr. Willis' 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 that the Superintendent notifies Mr. Willis, in writing, that the Superintendent 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 24 months commencing on the day following the conclusion of the period of suspension of Mr. Willis' licence:
 - a. supervise Mr. Willis and co-sign all applications, as evidence of joint responsibility for the insurance business transacted by Mr. Willis;
 - b. confirm that Mr. Willis has not had access to policyholder funds or accounts, and has not facilitated any policy loans or other investments;
 - 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 Mr. Willis; and
 - e. prepare promptly after each six month period during the period of supervision a report regarding Mr. Willis's insurance business, other requirements and his 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. Mr.

Willis shall not act as an insurance agent for any period of time during which he does not have a Supervising Agent.

7. Mr. Willis shall immediately notify the Superintendent, in writing, if he wishes to substitute the Supervising Agent and shall immediately thereafter cease to act as an insurance agent until such time as he has received the written approval of the Superintendent of a substitute Supervising Agent in accordance with section 5 above.

DATED at Toronto, Ontario,

2016.

Anatol Monid
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 insurance agent’s licence of Jeffrey Murray Willis (“Mr. Willis”) should be revoked or suspended based upon the following Allegations, details of which are set out under Particulars.

Allegations

1. Mr. Willis is unsuitable to be licensed as an agent because he has demonstrated incompetence or untrustworthiness to transact the insurance agency business for which his licence was granted, pursuant to section 8(d) of Regulation 347/04. He has also demonstrated that he is ungovernable pursuant to subsection 443(1) of the Act.
2. Mr. Willis is not of good character and reputation as required by clause 4(1)(a) of Regulation 347/04.
3. Mr. Willis was disciplined by the Mutual Fund Dealers Association (“MFDA”) for various activities between February 2005 and May 2009 that were contrary to the MFDA Rules. On June 1, 2012, the MFDA imposed a permanent prohibition on the authority of Mr. Willis to conduct securities-related business while in the employ of or associated with any MFDA member, and fined him \$35,000 plus costs of \$2,500.
4. Mr. Willis was named as a defendant in a Statement of Claim issued in the Ontario Superior Court of Justice by a 78-year-old widow, N.F., for damages for negligence, negligent misrepresentation, breach of contract, breach of trust, unjust enrichment, and breach of fiduciary duty in the amount of \$4 million for activities relating to unauthorized investments in insurance funds and securities. The settlement of this action included a payment to the plaintiffs by Mr. Willis’ errors and omissions insurer.
5. Such other grounds as may be advised.