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FSCO File No. AB048-2007

Superintendent of Financial Services

Regarding a hearing concerning the suspension or revocation of the life insurance agent licence of Vineet Massey

AND the Insurance Act, R.S.O. 1990, c.1.8, as amended, particularly section 393 and Ontario Regulation 247/04, s. 8(d)

DECISION

Introduction:

Pursuant to a Notice of Hearing dated December 6, 2007, an Advisory Board was duly appointed under section 393 (9) of the Act. The hearing was conducted on June 11, 12, and July 2, 2008.

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

The report of the Advisory Board is attached.

Findings of Fact:

The Advisory Board found the first, second and third allegations to be established. No further allegations were made. I hereby adopt the findings of fact of the Advisory Board.

Recommendation of the Advisory Board

The Advisory Board recommended that Mr. Massey's licence be suspended for a period of one year.

The Advisory Board set out the factors it considered in recommending this penalty. These included Mr. Massey's conduct itself, his failure to accept personal responsibility for his conduct, and his attempt to "cover up" his activity by making false statements to the Commission investigator. The Advisory Board also noted that "the interests of the public, and specifically the interests of [the client] were put at risk by the agent's conduct." The

Advisory Board concluded that a lengthy period of suspension was required.

The Advisory Board also considered whether there were mitigating factors. It concluded that since Mr. Massey was relatively new to the insurance industry, he "is not beyond redemption".

Decision:

The Advisory Board has found that Mr. Massey provided false information to the Commission and demonstrated incompetence or untrustworthiness in the transaction of insurance business.

The Advisory Board has recommended a suspension for a period of one year. The Advisory Board has not found Mr. Massey's inappropriate conduct to be pervasive in his character and accordingly recommended that Mr. Massey be allowed to continue in the insurance industry after discipline. In other cases, Advisory Boards have found that the inappropriate conduct was pervasive in the character of the agent and much more serious penalties were recommended.

Two matters warrant a penalty. The first is providing false information to the Commission and the second is placing his client at risk by knowingly submitting an application for insurance which contained false information after a previous application to another insurance company was denied.

I agree that a penalty for making a false statement to Commission investigators is necessary to ensure the integrity of the licensing system. Effective and efficient regulation of agents requires that agents are truthful. False or misleading information undermines the regulatory system and shows disrespect for regulation. False statements to the Commission are a serious matter.

False information on an application for insurance placed his client at risk. Insurance contracts are based on utmost good faith. A misrepresentation in an application for insurance places a client at risk of not being insured when the loss occurs. Since Mr. Massey did not offer an explanation for his behaviour, it is not possible to know whether he erroneously thought that obtaining a policy in such a circumstance was assisting his client or whether the motivation was simply to obtain commission on a sale. Placing clients at risk is a serious matter.

Since there is no finding by the Advisory Board that Mr. Massey is unsuitable to be an insurance agent, the appropriate penalty is a period of suspension rather than a licence revocation. The Advisory Board stated

that Mr. Massey "is not beyond redemption ", and accordingly this decision and order needs to address the most appropriate way of ensuring that result is achieved. A period of suspension penalizes inappropriate actions, but does not necessarily result in appropriate behaviour when the agent returns to the industry. I am not satisfied that merely punishing the agent through a period of suspension will necessarily achieve that result. Mr. Massey did not offer an explanation for his actions, and accordingly it is not possible to know why he acted inappropriately. The Advisory Board noted that he is relatively new to the industry. He demonstrated a lack of the necessary technical and ethical training necessary to ensure that he deals appropriately with clients, insurance companies and regulators.

Accordingly, I believe that a shorter period of suspension combined with additional training and supervision will reduce the risk to the public on Mr. Massey's return to the industry. The training will take the form of two courses – one about ethics and one about insurance underwriting. This additional training will assist Mr. Massey in understanding the consequences of answers in insurance applications and the need to be completely ethical in an industry that is based on the principle of utmost good faith. A period of supervision of one year will ensure that Mr. Massey is acting in accordance with this additional training. With this training and supervision, I believe that a period of suspension of ninety days is appropriate and while at the lower end of the range of penalties, is consistent with another similar case. This lesser period of suspension does not detract from the seriousness of Mr. Massey's actions, but reflects that a more comprehensive approach to Mr. Massey's return to the industry is being ordered.

Accordingly I hereby order:

1. Mr. Vineet Massey's licence as an insurance agent be suspended for a period of ninety days commencing September 1, 2008.
2. Mr. Vineet Massey satisfactorily complete a course about insurance underwriting and a course about ethics subject to the following conditions:
 - a. Mr. Massey select the two courses and submit them for approval by the Superintendent by November 30, 2008.
 - b. Mr. Massey pay for the approved courses.
 - c. Mr. Massey provide to the Superintendent evidence of successful completion of the two approved courses by November 30, 2009.
3. Mr. Vineet Massey be supervised by a supervisor approved by the Superintendent for a period of one year commencing the day after completion of his period of suspension subject to the following conditions:
 - a. Mr. Massey select a supervisor and submit the name of the

supervisor and his or her resume to the Superintendent by November 1, 2008.

- b. Subject to written approval of the supervisor proposed by Mr. Massey by the Superintendent, such approval not to be unreasonably withheld, Mr. Massey will arrange for his supervisor to provide a signed undertaking to the Superintendent that he or she will review all insurance applications prepared by Mr. Massey and will report in writing to the Superintendent in May 2009 and November 2009 that the business on those applications in those six month periods complied with the law and good business practice.
- c. Mr. Massey shall have the right to substitute supervisors subject to written approval by the Superintendent, such approval not to be unreasonably withheld

Dated at Toronto, this 6th day of August 2008.

Grant Swanson
Executive Director,
Licensing and Market Conduct Division
by delegated authority from
the Superintendent of Financial Services

REVISED SCHEDULE 1

The allegations referred to in the Notice of Opportunity for Hearing are as follows:

1. Mr. Massey's licence should be suspended or revoked because he has demonstrated incompetence or untrustworthiness to transact the insurance agency business for which his license was granted, as per s. 8(d) of Regulation 347/04 under the *Insurance Act*.
2. By submitting a false application to Clarica and declaring it to be accurate, full, complete and true, Mr. Massey demonstrated incompetence or untrustworthiness to transact the insurance agency business for which his license was granted.
3. By making false statements to FSCO in his interview with an investigator, Mr. Massey demonstrated incompetence or untrustworthiness to transact the insurance agency business for which his license was granted.
4. Such further and other allegations as counsel for the Financial Services Commission of Ontario may advise.