

Superintendent of Financial Services

Regarding the life insurance agent licence of
Mr. Gary Clarke

AND the Insurance Act, R.S.O. 1990, c.1.8, as amended,
particularly subsections 393(9) – 393(11)

DECISION

Introduction:

A Notice of Opportunity for Hearing dated August 26, 2009 (the Notice) informed Mr. Clarke of allegations against him and the opportunity for a hearing before an Advisory Board. The Notice advised Mr. Clarke 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. Clarke was also advised that such decision could include suspension or revocation of his licence as a life insurance agent.

I have received an affidavit from [REDACTED] legal counsel at the Commission that the Notice was served by registered mail and that Canada Post confirms that the Notice was successfully delivered.

[REDACTED] memo further indicated no request for a hearing was received. I am satisfied that the Notice was properly served in accordance with the provisions of the Insurance Act.

A copy of the allegation is attached to this Decision.

The Evidence:

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

The evidence can be summarized as follows. The Commission received notification from Mr. Clarke's insurance company that Mr. Clarke's errors and omissions insurance policy was cancelled. The Commission made several attempts to contact him by mail, registered mail and by telephone without success.

Findings of Fact

I find the allegation that Mr. Clarke has failed to maintain his errors and omissions insurance to be established. The reasons for this finding are the notification of cancellation of the policy by Mr. Clarke's insurance company and Mr. Clarke's failure to respond to the several attempts by the Commission to contact him.

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

Decision:

I have found that Mr. Clarke failed to maintain errors and omissions insurance as is required by regulation 347/04.

Errors and omissions insurance is necessary to protect consumers from negligence by insurance agents. Insurance agents without errors and omissions insurance may not have sufficient assets to indemnify policy holders or applicants for insurance from such losses. Accordingly insurance agents that do not have errors and omissions insurance cannot be allowed to be engaged in the business of insurance.

In this case, Mr. Clarke would not respond to the Commission on this matter. Insurance agents must be governable and amenable to being regulated. The Insurance Act imposes a duty on licensed persons to facilitate an examination. Responding to information requests is an attribute of a person suitable to be an insurance agent.

Since Mr. Clarke has not requested a hearing, there are no explanations for his behaviour, nor is there any demonstrated interest in maintaining his licence as an insurance agent.

Accordingly considering the lack of suitability as demonstrated by the failure to facilitate an examination, the absence of the necessary insurance to protect the public and lack of any explanation for such behaviour, I believe that the appropriate penalty is revocation of Mr. Clarke's licence as an insurance agent.

Accordingly, I hereby revoke the life insurance agent licence of Mr. Gary Clarke.

Dated at Toronto, this 17th day of October, 2009



Executive Director, Licensing and Market Conduct
by delegated Authority from
Superintendent of Financial Services

Schedule 1

The following allegation was set out in the Notice:

1. Mr. Clarke has failed to maintain appropriate errors and omissions insurance as is required by section 13 of regulation 347/04.