

Superintendent of Financial Services

Regarding the life insurance agent licence of
Mr. Mark Lindsay

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 September 21, 2009 (the Notice) informed Mr. Lindsay of allegations against him and the opportunity for a hearing before an Advisory Board. The Notice advised Mr. Lindsay 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. Lindsay 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 ordinary and registered mail and that the ordinary mail was returned by Canada Post and that Canada Post reported that the registered mail was unclaimed. I have received an affidavit from [REDACTED], Licensing Registration Specialist, that outlines attempts to contact Mr. Lindsay at the address he provided to the Commission, at the address used in the cancellation letter from Mr. Lindsay's insurance company, and at two different addresses provided by the Ministry of Transportation. The Notice was served at the last address provided by the Ministry of Transportation. The Insurance Act provides that service can be made by registered mail at the last known address of a person on file at the Commission. I am satisfied that the Notice was properly served in accordance with the provisions of the Insurance Act. [REDACTED] memo further indicated that no request for a hearing has been received.

A copy of the allegations is attached to this Decision.

The Evidence:

Since Mr. Lindsay 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. Lindsay's insurance company that Mr. Lindsay's errors and omissions insurance policy was cancelled. The Commission made several attempts to contact Mr. Lindsay by mail, registered mail and by telephone without success.

Findings of Fact

I find the allegations that Mr. Lindsay is unsuitable to hold a licence as a life insurance agent to be established. The reasons for this finding are the notification of cancellation of the policy by Mr. Lindsay's insurance company, Mr. Lindsay's failure to advise the Commission where he can be located as required by Regulation 347/04, the fact that several attempts by the Commission to locate him have been unsuccessful, and the absence of any information that alternative coverage has been obtained.

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

Decision:

I have found that Mr. Lindsay is unsuitable to hold a licence as a life insurance agent.

Findings of unsuitability frequently result in revocation of the licence of an insurance agent.

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. Lindsay cannot be located and accordingly the Commission has not received any response from him 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.

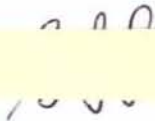
Since Mr. Lindsay has not requested a hearing, there are no explanations for his behaviour, nor is there any demonstrated interest in maintaining his

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. Lindsay's licence as an insurance agent.

Accordingly, I hereby revoke the life insurance agent licence of Mr. Mark Lindsay.

Dated at Toronto, this 13th day of November, 2009



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

Schedule 1

The following allegations were set out in the Notice:

1. Mark Lindsay is not a suitable person to hold an insurance agent licence because he has not complies with the requirement to maintain errors and omissions insurance since January 13, 2009
2. Also, Mr. Lindsay is not suitable because he has not responded to several communications from the Commission regarding compliance with the requirement to maintain errors and omissions insurance.