

An order that is made regarding a licence holder reflects a situation at a particular point in time. The status of a licence holder can change. Readers should check the current status of a person's or entity's licence on the [Licensing Link](#) section of FSCO's website. Readers may also wish to contact the person or entity directly to get additional information or clarification about the events that resulted in the order.

FILE AB067-2009

Superintendent of Financial Services

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

AND Eileen Mayer, life insurance agent

DECISION

Introduction:

Pursuant to a Notice of Hearing dated November 10, 2009, an Advisory Board was duly appointed under Subsection 393 (9) of the Insurance Act. The hearing was conducted on February 22, 2010. The Advisory Board notes that Ms. Mayer attended the pre-hearing conference but failed to attend the hearing. The hearing proceeded in her absence.

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 that Ms. Mayer allowed her errors and omissions insurance coverage to lapse for a period of approximately two months. The Advisory Board also found that over a period of approximately one year, Ms Mayer demonstrated a "careless attitude with respect to her obligation to communicate with the Commission, and apparently failed to appreciate the significance of full and complete co-operation with her Regulator." The Advisory Board did not find that Ms Mayer was untrustworthy or unsuitable to hold a licence as an insurance agent.

Recommendation of Advisory Board

The Advisory Board recommended that:

1. Ms. Mayer's licence as an insurance agent be suspended for a period of three months.
2. The suspension be followed by a period of supervision by an

- individual satisfactory to the Superintendent
3. Ms. Mayer be required to attend an appropriate course of education to ensure that she fully understands the regulatory requirements of maintaining a life insurance agent's licence.

The Advisory Board set out the factors it considered in making its recommendation. It noted that "Although she did respond to requests for information from time to time, her responses were late or incomplete. Lack of cooperation of this type increases the cost of compliance enforcement." The Advisory Board also noted that the principles of specific and general deterrence require a penalty.

Decision and Order

The Advisory Board found that Ms Mayer failed to maintain errors and omissions insurance for a period of two months and that she has "demonstrated a careless attitude with respect to her obligation to communicate with the Commission."

The Insurance Act imposes an obligation on licensed persons to facilitate an examination. This is necessary to enable the Superintendent to carry out his responsibilities to protect the public by investigating allegations against agents and other licensed persons. Failure to facilitate an examination wastes Commission resources that can otherwise be applied in the public interest and increases the cost of regulation. Failure to facilitate an examination also demonstrates a lack of respect for regulator.

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.

While Ms. Mayer requested a hearing, she failed to attend the hearing and did not provide any explanation for her absence. In so doing, she has continued a pattern of behaviour that has been demonstrated in her other dealings about her errors and omissions insurance with the Commission. The Advisory Board has not taken this into consideration in making its recommendation regarding penalty. I do consider it to be an aggravating circumstance, particularly considering that the allegations against her related in part to her behaviour towards her regulator, and these allegations were known to her at the time she failed to attend the hearing.

Since Ms. Mayer has not attended the hearing, there are no explanations for her behaviour.

Accordingly the failure to facilitate an examination, the failure to attend a requested hearing and the lack of any explanation for such behaviour warrant a period of suspension to modify Ms. Mayer's unacceptable behaviour. The facts are not as serious as some other cases where there were failure to facilitate an examination and failure to attend a hearing and where, as a result, revocation of licences has been ordered. However, the recommended period of suspension is at the low end of the range that might be considered, especially considering the aggravating circumstances of her failure to attend the hearing without explanation.

I note that the Advisory Board has made recommendations about supervision and education. I agree that education can assist in modifying Ms. Mayer's behaviour. However, since there were no findings related to Ms. Mayer's dealings with her clients, I do not agree that the nexus between supervision and her behaviour is sufficiently clear to order supervision. However, I do believe that the desired behaviour can be enhanced with practice and accordingly I will be ordering some performance standards for Ms. Mayer's communication with the Commission as well as the obligation to provide defined information to the Commission on a monthly basis for a period of eighteen months.

I hereby order the following suspension and conditions on Ms. Eileen Mayer's licence as an insurance agent:

1. Ms. Mayer's licence as an insurance agent be suspended for a period of three months commencing June 1, 2010.
2. Ms. Mayer select a course dealing with professional ethics, responsibilities and compliance and seek approval from the Superintendent of Financial Services of the course chosen by September 1, 2010.
3. Ms. Mayer pay for the course.
4. Ms. Mayer provide evidence of satisfactory completion of the course to the Superintendent of Financial Services by June 1, 2011. Such course shall be in addition to the continuing education required by Regulation 347/04.
5. For a period of eighteen months commencing October 15, 2010, Ms. Mayer mail a letter each month bearing a post mark not later than the fifteenth day of the month to the Superintendent of Financial Services, listing all insurance applications she submitted to insurance companies during the preceding month. The letter shall not include the actual applications.

Dated at Toronto, this 16th day of April, 2010



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. Mayer demonstrated her untrustworthiness to transact the business of insurance per section 8(d) of regulation 347/04 by:
 - a. Failing to maintain appropriate errors and omissions insurance as is required by Section 13 of regulation 347/04.
 - b. She is not amenable to regulation and repeated efforts had to be made via telephone, email, and in-person visits before information could be obtained from Ms. Mayer.

2. Mayer is not otherwise suitable to continue her licence per section 8(d) of regulation 347/04 for the following reasons:
 - a. Failing to maintain appropriate errors and omissions insurance as is required by Section 13 of regulation 347/04.
 - b. She is not amenable to regulation and repeated efforts had to be made via telephone, email, and in-person visits before information could be obtained from Ms. Mayer.